Labour & Employment 2021

Contributing editors
Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer and Sabine Smith-Vidal

LEXOLOGY®
Getting The Deal Through

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager
Adam Sargent
adam.sargent@gettingthedealthrough.com

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Morgan, Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Labour & Employment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Hong Kong, Hungary, Mauritius, Romania, Singapore and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer and Sabine Smith-Vidal of Morgan, Lewis & Bockius LLP, for their continued assistance with this volume.

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United Kingdom

Lee Harding and Matthew Howse

Morgan, Lewis & Bockius LLP

LEGISLATION AND AGENCIES

Primary and secondary legislation

1 What are the main statutes and regulations relating to employment?

The main statutes relating to employment are the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Equality Act 2010. There are also several other employment laws and regulations in the United Kingdom. Although employment law in Scotland and Northern Ireland is very similar to that which applies in England and Wales, there are some differences, particularly in Northern Ireland concerning discrimination law.

Protected employee categories

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

In the United Kingdom, anti-discrimination legislation in the form of the Equality Act 2010 prohibits discrimination across nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (which includes colour, nationality and ethnic or national origin), religion or belief, sex and sexual orientation.

The term 'discrimination' encompasses several concepts and causes of action:

- direct discrimination: someone is treated less favourably than another person because of a protected characteristic he or she has (direct discrimination), or is thought to have (perception discrimination), or because he or she associates with someone who has a protected characteristic (discrimination by association). Age discrimination is the only type of direct discrimination that can be objectively justified by showing that it is a proportionate means of achieving a legitimate aim;
- indirect discrimination: applying a provision, criterion or practice that puts those with a protected characteristic at a disadvantage that cannot be objectively justified by showing that it is a proportionate way of achieving a legitimate aim;
- discrimination arising from disability: unfavourable treatment towards a disabled person because of something arising as a consequence of his or her disability that cannot be objectively justified by showing the treatment is a proportionate means of achieving a legitimate aim;
- reasonable adjustment (applying only in disability discrimination): a duty to make a reasonable adjustment to the working environment to ensure that a disabled person is not placed at a substantial disadvantage;
- equal pay: paying one gender less than the other where his or her work is the same work or equally valuable work, or has been rated as equivalent in a professional study and where such disparity in pay is not justified by a material difference;
- victimisation: subjecting someone to a disadvantage in retaliation for that person having availed him or herself of, or supported, any protections under any discrimination statute;
- harassment: unwanted conduct related to any protected characteristic having the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment (with specific provisions for sexual harassment); and
- third-party harassment: liability of the employer for persistent harassment of an employee by a third party, provided it has happened on at least two previous occasions, the employer is aware that it has taken place and the employer has not taken reasonable steps to prevent it from happening again.

Individuals are also protected from harassment by the Protection from Harassment Act 1997, provided there are at least two incidents of harassment, and the harasser must know or ought to know that his or her actions amount to harassment.

Employees are permitted to ask questions of their employers, and it will remain open to a tribunal to consider how an employer has responded to those questions as a contributory factor in deciding a discrimination claim.

Also, seeking, making or receiving a 'relevant pay disclosure' (aimed at discovering whether discrimination in pay is occurring) is protected under the Equality Act 2010. Clauses in employment contracts that are aimed at ensuring pay confidentiality are unenforceable insofar as they prevent disclosure for this purpose.

Enforcement agencies

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The enforcement of most employment rights is through individual claims and actions to and in the UK employment tribunals and civil courts. Some collective matters (eg, trade union recognition under a statutory scheme) are dealt with by the Central Arbitration Committee. HM Revenue and Customs is responsible for the enforcement of the national minimum wage.

The Equality and Human Rights Commission is a public body that has a statutory duty to promote and monitor human rights and protect, enforce and promote equality across the nine protected characteristics provided for in the Equality Act 2010.

WORKER REPRESENTATION

Legal basis

4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The Transnational Information and Consultation of Employees Regulations 1999 (and the 2010 amending Regulations) apply concerning European works councils, and the Information and Consultation of Employees Regulations 2004 apply to domestic works councils.

Works councils are not mandatory and require an employee request or employer initiative for establishment. These Regulations set out thresholds for the size and geographical spread of the relevant workforce for the provisions to apply.

After the Brexit transition period lapsed on 31 December 2020, the statutory framework that governs European works councils will no longer apply in the United Kingdom. The government has advised that it intends to protect existing European works councils' rights but intends to amend the Regulations so that no new requests to set up a European works council or information and consultation procedure can be made.

Powers of representatives

5 | What are their powers?

There are several circumstances in which an employer must inform and consult with employee representatives or recognised trade unions, which include but are not limited to:

- business transfers and service provision changes;
- collective redundancies;
- European works council agreements;
- health and safety issues;
- changes to pensions; and
- domestic works council agreements.

Consultation must be undertaken with the aim of reaching an agreement with the employee representatives. There is no requirement to reach an agreement.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

The Rehabilitation of Offenders Act 1974 applies, except in respect of certain exceptions (eg, working with children or vulnerable people and certain other occupations, including professions (eg, the medical and legal professions) and particular financial sector occupations). The Act prevents certain other employers from refusing to employ someone in a situation in which an employee or candidate has disclosed or has failed to disclose an offence that is spent under the Act. The check can be carried out by the employer or a third party. Disclosure and Barring Service checks are required before an applicant can work with young children or vulnerable adults, and may be desirable in other circumstances (eg, for those professions and occupations covered by the Rehabilitation of Offenders Exceptions Order).

The Asylum and Immigration Act 1996 and the Immigration, Asylum and Nationality Act 2006 require that certain prescribed background checks be conducted and information be kept before employment commencing (and thereafter on the expiry of an employee's limited leave to remain) to ensure that the employee may lawfully work in the United Kingdom.

Medical examinations

7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Pre-employment health checks or questions are specifically regulated under the Equality Act 2010. Except in prescribed limited circumstances, pre-employment questions of or about an applicant for work are prohibited before an offer of work to the applicant being made, or before his or her inclusion in a pool from which candidates for work will be selected.

Individual offers of employment can be made conditional upon satisfactory health checks, but a recruiting employer may then render itself liable to discrimination claims if it appears that an offer is not confirmed based on the information disclosed by the health checks.

Medical reports given by a medical practitioner responsible for an individual's care (rather than by an independent doctor appointed by the employer) are subject to the Access to Medical Reports Act 1988, which essentially allows the patient the right of prior sight and comment on the report.

Medical information about an individual also constitutes a special category of personal data for the regime of protections of the Data Protection Act 2018 (DPA 2018), under the EU General Data Protection Regulation (Regulation (EU) No. 2016/679) (GDPR).

Drug and alcohol testing

8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

General principles derived from DPA 2018 (and the GDPR) and the Human Rights Act 1998 suggest that any such checks should be 'justified, necessary and proportionate'. Such checks tend, therefore, to be found in the context of particular roles within the transport and manufacturing sectors (justified by health and safety considerations) and sometimes also for particular roles within the financial and other professional sectors.

During employment, even where such checks are appropriately justified, it is recommended that their use also be reflected in an appropriate provision in relevant employment contracts.

It is rarely appropriate for such checks to be undertaken by the individual's doctor as, additionally, the rights afforded under the Access to Medical Reports Act 1988 would apply to the resulting report. Issues can arise, particularly where the requirement to submit such checks appears unjustified or unjustifiably targeted at particular groups.

HIRING OF EMPLOYEES

Preference and discrimination

9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

No. Positive discrimination is generally unlawful in the United Kingdom; however, there are certain additional positive requirements imposed on public bodies, and 'reasonable adjustment' in disability discrimination is regarded as a form of partial positive discrimination.

Under the Equality Act 2010, employers in the United Kingdom may (although they are not required to) take under-representation of those with protected characteristics into account when selecting between two equally qualified candidates for recruitment or promotion, provided that there is no automatic selection of under-represented groups, and decisions are not made irrespective of merit (ie, by the use of mandatory quotas, which is an increasingly common phenomenon in

mainland Europe). Regardless of the new provisions, the selection of a less-qualified candidate, because he or she is in a protected category, remains unlawful.

10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

No, there is no statutory requirement for a written employment contract. There must, however, be a statutory statement of particulars, which must be provided to the employee or worker on day one of their employment, incorporating the following:

- the names and addresses of the employee or worker and the employer;
- the start date and the continuous employment commencement date;
- the job title;
- the place of work;
- the length of the temporary or fixed-term work;
- terms relating to work outside the United Kingdom for a period of more than one month;
- remuneration details;
- the hours of work;
- the days of the week on which he or she is required to work and whether working hours or days may be variable;
- any probationary period that starts at the beginning of the engagement, including any conditions and its duration;
- holidays and holiday pay;
- sickness and sick pay;
- any other paid leave (eg, family related leave such as maternity or paternity leave, or time off for public duties);
- the pension;
- any part of any training entitlement that the employer requires him or her to complete, including any training that it requires but does not pay for;
- any other benefits provided by the employer;
- the notice period;
- whether the work is temporary or fixed-term;
- collective agreements; and
- the disciplinary and grievance procedures.

Therefore, it is common practice in the United Kingdom for all employees to have a written employment contract with their employers that contains at least the terms set out above.

Certain types of clauses are unlikely to be enforceable unless they are in a written employment contract; for example, post-termination covenants not to compete, post-termination confidentiality and intellectual property protection.

11 To what extent are fixed-term employment contracts permissible?

They are permissible; however, certain rights and protections are given by the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. There is no maximum duration of contracts, but successive fixed-term contracts of four or more years will automatically be deemed to be permanent contracts with the employer unless objectively justified by the employer.

Probationary period

12 What is the maximum probationary period permitted by law?

There is no maximum period. Customarily, employers will impose a period of six months or less. This probationary period may be extended at the discretion of the employer if stated in the employment contract.

Classification as contractor or employee

13 What are the primary factors that distinguish an independent contractor from an employee?

An employee is someone required to perform work under the control of an employer, and the employee has no power to substitute his or her labour. An employment relationship is also characterised by the fundamental mutual obligations to personally perform work (employee) and to provide and pay for it (employer). There is no single determining test of employment. Various factors will be considered, including the amount of control exercised over an individual by the hirer, whether the individual is required to personally provide the services and the extent to which the individual is integrated within the business.

An independent contractor is in business on his or her own account, takes profits and bears losses and risks, and controls his or her own work product. He or she normally (subject to limited exception) has the power to substitute labour. Determination of employee or independent contractor status is a question of substance over form.

Temporary agency staffing

14 Is there any legislation governing temporary staffing through recruitment agencies?

The Agency Workers Regulations 2010 implements EU law to guarantee that basic employment conditions are no less favourable for temporary agency workers and that they have equal access to facilities and opportunities as permanent staff. The regulations provide two different classes of rights: those that are provided as soon as the agency worker starts at the company (day one rights) and those that are granted after 12 weeks' continuous work.

Day one rights include access to the hirer's collective facilities and amenities and information about vacancies with the hirer. This means that the agency worker must be provided with the same access to collective facilities and amenities that the hirer would offer to its own employees. Agency workers are also protected from less favourable treatment (unless this can be objectively justified) and must be provided with information about job vacancies.

Once a temporary agency worker has completed 12 weeks' continuous work at the hirer, he or she is entitled to the same basic working and employment conditions as a comparable worker employed by the company. This means that he or she is entitled to the same pay, duration of working time, conditions concerning night work, rest periods and annual leave as a comparable worker employed by the company. From 6 April 2020, agency workers who have entered into a 'pay between assignments contract' (previously exempt from pay parity) will also be entitled to equal treatment concerning pay.

Any breaches of the Agency Workers Regulations will be enforceable against the recruitment agency in the first instance unless it can demonstrate that it has satisfied conditions in respect of taking reasonable steps to ensure that the hirer complies with the regulations. If this can be shown, then liability will pass to the hirer.

The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) also regulate staffing through recruitment agencies. In particular, the law:

- prohibits an employment agency or employment business from charging agency workers a fee for finding them work;
- prescribes the terms that must be agreed upon by agency workers;
- prescribes the terms that must be agreed upon by hirers;
- prohibits the use of agency workers to replace individuals taking part in industrial action; and
- limits the transfer fees that may be charged to a hirer if the agency worker becomes directly engaged by the hirer.

FOREIGN WORKERS

Visas

15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

With effect from 1 December 2020, there is no limit on the number of visas that may be issued annually.

Briefly, unless an individual satisfies personal criteria to qualify as being exceptionally talented, an entrepreneur or an investor in the United Kingdom, employees must be sponsored by an employer before they can obtain entry clearance and authority to work in the United Kingdom. An employer must have obtained a sponsorship licence from the Home Office before it can sponsor employees to work for it in the United Kingdom. The two principal visas available for both EEA and non-EEA nationals coming to the United Kingdom, which are issued under a points-based system, are known as Skilled Worker and Intra-Company Transfer (ICT).

Skilled Worker visas are for employees coming to the United Kingdom to do an eligible job with an approved sponsor. Some employees already in the United Kingdom may also be eligible to switch onto Skilled Worker visas from within the United Kingdom. The employee must satisfy the eligibility and points criteria and be able to evidence this as part of the visa application process.

ICT visas are available for employees of multinational companies who are transferring from one overseas corporate entity to undertake an assignment in a skilled job with a related entity in the United Kingdom. These employees must also satisfy the points criteria and they will be required to demonstrate this as part of the entry clearance process.

Skilled Worker visas can be extended indefinitely (for periods of five years at a time). After five years of continuous residence in the United Kingdom, the employee may be eligible to apply for indefinite leave to remain in the United Kingdom (known as settlement). If an employee does not extend their visa or apply for another applicable immigration permission, sufficient evidence (specified by the Home Office) must be maintained to evidence the date that the employee permanently left the United Kingdom or the expiry of their visa, whichever is the sooner.

Spouses

16 | Are spouses of authorised workers entitled to work?

A dependent spouse or partner of a Skilled Worker or ICT visa holder is permitted to work in the United Kingdom (except as a professional sportsperson (including as a sports coach)), provided that he or she makes an entry clearance application and that the authorised worker can support the spouse without recourse to public funds.

General rules

17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

There are laws in place that prevent illegal working in the United Kingdom. An employer can face penalties if it employs a person aged 16 or over who does not have permission to be, or work, in the United Kingdom. An employer found guilty of an offence could face a civil penalty of up to £20,000 for each employee who has been employed illegally. There are defences against these penalties if original documents evidencing an individual's right to work in the United Kingdom (such as a passport or biometric residence permit) are checked, verified and copied by the employer before the employee commences work. In the case of employees who have only a limited right to remain in the United Kingdom, these checks must be repeated on the expiry of their further leave to remain.

Where, however, an employer is found to have knowingly hired illegal workers, the maximum penalty is a five-year prison sentence or an unlimited fine, or both.

A Global Talent visa, if granted, is personal to the applicant, meaning that he or she can then work for any employer or work on a self-employed basis for the duration of the visa (which is normally issued for a five-year period).

Start-up and Innovator visas only permit an individual to work for the company in which he or she has invested.

Skilled Worker and ICT visas are employer-sponsored immigration categories. Permission under the Skilled Worker and ICT routes only allow the individual to work for the employer entity that sponsors him or her and up to an additional 20 hours a week in a similar role for another employer (provided the additional work is not in place of the original sponsored employment). A precondition to Skilled Worker and ICT visas is that the UK entity has a sponsorship licence (granted by the Home Office).

Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

From 1 December 2020, the Home Office has removed the requirement for employers to conduct a resident labour market test. This has instead been replaced with a genuineness requirement. This means that employers must only sponsor an employee in the Skilled Worker route where they have a genuine vacancy for the role in the United Kingdom. Employers must retain sufficient evidence such as copies of any adverts posted, or the recruitment process undertaken for the role to evidence the genuine vacancy.

TERMS OF EMPLOYMENT

Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The Working Time Regulations 1998 limit working hours as follows:

- a 48-hour maximum working week calculated as an average over a 17-week period (the maximum working week is reduced for under-18s); and
- an individual opt-out by written agreement (under-18s cannot opt out).

These Regulations also govern shift work, night work and paid annual leave.

Post-Brexit, the UK government may, in theory, amend the Working Time Regulations 1998, including removing the requirement for employees to opt-out of the 48-hour maximum working week. However, given the government's public comments about not diluting workers' rights following Brexit, any changes are unlikely. Further, the wording of the Trade and Cooperation Agreement requires that the United Kingdom will not reduce certain fundamental employment law protections lower than their current levels in a manner that affects trade or investment. The European Union could apply tariffs on the United Kingdom if material impacts on trade and investment arise as a result of significant divergences between the UK and EU's employment standards. Certain amendments to the Working Time Regulations (eg, removing the requirement to opt out of the 48-hour working week) may affect trade or investment by giving UK companies a competitive advantage. Accordingly, any fundamental changes are unlikely.

Overtime pay

20 | What categories of workers are entitled to overtime pay and how is it calculated?

Overtime pay is not governed by specific legislation but is generally a matter of individual or collective agreement. The National Minimum Wage Act 1998 and the National Minimum Wage (Amendment) Regulations, as amended, govern an employer's obligation to pay a certain minimum amount per hour, which may render unpaid overtime unlawful in certain circumstances.

21 | Can employees contractually waive the right to overtime pay?

Yes. There is no statutory right to overtime pay; it is a matter for a contract, so an employment contract will commonly confirm that no overtime pay is payable. It is possible to include a clause within an employment contract to confirm that an employee is not entitled to receive overtime payments in respect of any additional hours that are worked.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

The Working Time Regulations 1998 establish a statutory entitlement to 5.6 weeks' (or 28 days') leave per annum (inclusive of bank and public holidays), which is paid. Accrual is monthly and is paid in lieu only on termination. Special provision is made for part-time workers.

Typically, the four weeks' statutory entitlement may only be taken in the leave year in which it is due, or else it is lost; however, the government introduced emergency legislation on 26 March 2020 that enables employees to carry over their four weeks' statutory leave into the next two years, provided it is 'not reasonably practicable' to take it in the leave year 'as a result of the effects of the coronavirus (including on the worker, the employer or the wider economy or society)'.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

The Social Security Contributions and Benefits Act 1992, as amended, and the Statutory Sick Pay (General) Regulations 1982, as amended, govern the UK statutory sick pay scheme. The 1992 Act entitles qualifying employees who are absent for four or more consecutive days (including weekends) to receive a statutory minimum weekly payment. Employees cannot receive any payment for the first three days on which they are absent.

Statutory sick pay (SSP) is paid for up to 28 weeks in any period of incapacity or in any series of linked periods of incapacity (any periods that are not more than eight weeks apart). SSP stops at three years even if an employee has not yet been paid for 28 weeks of absence.

The covid-19 pandemic, however, has led to a series of changes to the SSP regime, starting in March 2020. In certain circumstances relating to the covid-19 crisis, the need for any waiting days was removed and the definition of deemed incapacity for SSP purposes was extended to cover employees who are shielding and in certain circumstances, self-isolating. The government has allowed employers to recover up to two weeks' SSP per eligible employee in such circumstances.

Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

The principal statutory leaves of absence are as follows:

- maternity leave: up to 52 weeks and up to 39 weeks paid at the statutory rate;
- adoption leave: same as maternity leave;
- paternity leave: two weeks paid at the statutory rate;
- shared parental leave: eligible employees are entitled to take up to 50 weeks' leave and up to 37 weeks paid at the statutory rate (this accounts for the two-week period of compulsory maternity leave and an equivalent two-week period of adoption leave). This leave can only be taken when a mother or adopter has given the requisite notice to end her maternity or adoption leave, and the remainder of her leave will be available as shared parental leave. Shared parental leave will enable parents or adopters to take leave together or to split the leave period between them. It is also possible for parents or adopters to determine how the shared parental pay will be divided between them;
- parental leave: 18 weeks for each child (which is available to each parent), unpaid;
- parental bereavement leave: two weeks paid at the statutory rate;
- dependant leave: reasonable unpaid time off to deal with emergencies; and
- jury service: length of jury service, unpaid.

'Paid' above does not mean full contractual pay. It is an amount set by the government but paid by the employer. Employers should be able to recover a large percentage of this amount from the government. Also, some employers may choose to pay enhanced maternity pay, paternity pay, adoption pay, shared parental pay and benefits, etc. Leave may also be provided for by contract or as otherwise agreed.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

Legislation came into force in October 2012 (the Pensions Act 2008) that requires employers to automatically enrol eligible jobholders into a qualifying workplace pension scheme. The obligations on employers have been brought into force in stages over a five-and-a-half-year period, depending on the size of the employer.

Eligible jobholders must be between the age of 22 and the state pension age and must earn a statutory minimum amount. Employers will need to determine whether existing pension schemes will comply with the requirements to be qualifying pension schemes. Alternatively, the government has set up the National Employment Savings Trust, which is available for employers to use to comply with the duty of auto-enrolment.

Overall employee and employer contributions to the qualifying pension scheme must total 8 per cent, with a minimum of 3 per cent being paid by the employer and the remainder being made up of employee contributions and tax relief. Contributions by the employer and the employee are limited to 'qualifying earnings' (earnings between two specific bands, which for the 2020–2021 tax year, are £6,240 and £50,000, respectively). The earnings thresholds are reviewed each tax year.

In a review published by the Department of Work and Pensions in December 2017, two legislative changes were announced. First, the lower age threshold will be reduced from age 22 to 18 years. Second, the lower end of the qualifying earnings band for auto-enrolment will be changed from the lower earnings limit to the first pound a worker earns. The amendments are not expected until the mid-2020s.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 grant employees (unless objectively justified):

- the right to the same terms and conditions as comparable permanent employees; and
- the right not to suffer a detriment or unfair dismissal because of their fixed-term status.

Successive fixed-term contracts of four or more years will automatically be deemed to be permanent contracts with the employer, unless objectively justified by the employer.

The rules relating to part-time workers are governed by the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, which grant these workers (unless objectively justified):

- the right to the same terms and conditions as comparable full-time workers; and
- the right not to suffer a detriment or unfair dismissal because of their part-time status.

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

Yes, the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the Regulations) impose an obligation on private or voluntary-sector employers with 250 or more employees on the snapshot date (which is 5 April in the relevant year) to publish certain data in respect of the employers' gender pay gap on an annual basis. 'Relevant employees' for the purposes of the Regulations does not include partners but does include casual workers and certain contractors.

Employers are required to publish the following information on their own websites and upload it to the government's gender pay gap services website:

- the gender pay gap (mean and median averages between men's and women's hourly pay);
- the gender bonus gap (mean and median averages between bonus pay awarded to men and women);
- the proportion of men and women receiving bonuses; and
- the proportion of men and women in each quartile of the employer's pay structure.

The government suspended the reporting obligation in 2020 due to the covid-19 pandemic and has further suspended the reporting obligation for 2021 until 5 October 2021.

The data will remain accessible to the public for three years, which will allow comparisons to be drawn year on year and across industry sectors.

Employers are required to provide a written statement confirming that the gender pay gap information is accurate. The confirmation statement must be signed by a senior individual, such as a director. Although it is not mandated by the Regulations to include an accompanying narrative, many employers choose to do so, and the Advisory, Conciliation and Arbitration Service guidance on the reporting requirements encourages the provision of a narrative to contextualise the data.

The Regulations do not contain any enforcement mechanisms or sanctions for failure to comply with the reporting obligations or for publishing inaccurate data. However, the government has indicated that it will run periodic checks to assess non-compliance, and the Equality and Human Rights Commission has stated that it will use its existing powers to take enforcement action in respect of a failure to comply with the Regulations.

In response to a recommendation of the House of Commons select committee report on strengthening the Regulations, in January 2019, the government confirmed that it would not make any immediate amendments to the Regulations. It further confirmed that it would not be extending the reporting obligations to companies with 50 or more employees at that time, but may consider revisiting the issue in the future.

Following the success of the mandatory gender pay gap reporting obligations, the government has announced proposals to introduce mandatory ethnicity pay reporting alongside gender pay gap reporting. Consultation on the proposals closed on 11 January 2019. Although the results of the consultation have not yet been published, following a petition to debate the subject in Parliament, the government announced that there were genuine difficulties in designing a mandatory ethnicity pay reporting framework that would produce reliable results. The Prime Minister announced a new cross-government Commission on Race and Ethnic Disparities. This Commission will examine continuing racial and ethnic inequalities in the United Kingdom, and potential ways government can address these and improve lives. It, therefore, remains to be seen whether ethnicity pay gap reporting will be a mandatory requirement for employers in the future

Additionally, listed companies have certain reporting obligations in respect of gender diversity and equality matters under the UK Corporate Governance Code, Provision B24 and Supporting Principle B6. Listed companies with an average of more than 250 UK employees in their group are also subject to the Companies (Miscellaneous Reporting) Regulations 2018. These Regulations came into force on 1 January 2019 and amend the directors' remuneration reporting requirements under Schedule 8 of the Large- and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008. The Companies (Miscellaneous Reporting) Regulations require the ratios of total CEO pay to be calculated against the 25th, median and 75th percentile of UK employees' pay. The ratios must be disclosed in a prescribed table, building up to 10 years of data. There must be an accompanying narrative, including justifying and explaining the employee pay calculations.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Post-termination covenants are assumed to be unenforceable as a restraint of trade as a matter of UK public policy unless:

- they go no further than is reasonably necessary in scope, duration and geographical extent to protect an employer's legitimate business interests from the employee in question; and
- they do not otherwise offend public policy.

There is no maximum period for a post-termination covenant. However, restrictions lasting more than 12 months are unlikely to be enforceable in the United Kingdom except for in exceptional circumstances. Even a full 12 months will only be justified for the most senior employees or in special circumstances; for example, where an employee may do a great deal of damage to an employer's business because of his or her knowledge of the employer's confidential or proprietary information.

Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

There is no requirement for an employer to continue to pay a former employee while he or she is subject to post-employment restrictive covenants.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

At common law, employers are vicariously liable to third parties for acts and omissions of employees 'in the course of' their employment. Employers are vicariously liable for the discriminatory acts and omissions (including harassment) by their employees 'in the course of employment' (where 'course of' has a broader meaning than at common law) and where an employer has failed to take reasonable practicable preventive steps.

TAXATION OF EMPLOYEES

Applicable taxes

31 | What employment-related taxes are prescribed by law?

The deduction at source of income tax and employer and employee national insurance contributions (social security) under the UK pay as you earn system is mandated by the Income Tax (Earnings and Pensions) Act 2003.

EMPLOYEE-CREATED IP

Ownership rights

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

Employee inventions are addressed by the Patents Act 1977 and the Copyright, Designs and Patents Act 1988. Generally, any intellectual property that is created by an employee in the course of his or her employment in the United Kingdom will belong to the employer. However, it is common for there to be an express provision in the employment contract to ensure that this is the case.

Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

Yes, confidential information and trade secrets are governed by the Trade Secrets (Enforcement, etc) Regulations 2018 (SI 2018/597) (the Trade Secrets Regulations), which came into force on 9 June 2018 and implement the Trade Secrets Directive (Directive (EU) 2016/943). The Trade Secrets Regulations are intended to operate alongside the common law of confidence.

DATA PROTECTION

Rules and obligations

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Data Protection Act 2018 (DPA 2018) and the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR) are the primary legal instruments that protect employees' data. The DPA 2018 provides a comprehensive and modern framework for data protection in the United Kingdom, with stronger sanctions for malpractice than under the previous regime.

There are six data processing principles provided by the UK GDPR, which are that personal data is:

- to be processed fairly, lawfully and transparently;
- to be processed for specified, explicit and legitimate purposes and not processed in a manner that is incompatible with those purposes;
- to be adequate, relevant and not excessive;
- to be accurate and up to date;
- not to be kept longer than necessary; and
- to be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and accidental loss, destruction or damage, using appropriate technical or organisational measures.

35 | Do employers need to provide privacy notices or similar information notices to employees and candidates?

Yes. The UK GDPR creates an obligation on employers (the data controller) to notify employees of their personal data handling practices through a privacy notice at the time the data is collected from the employee. If data is collected from another source, privacy information must be provided to the employee within one month.

Candidates at the recruitment stage will also need to be provided with a privacy notice. This can be a short-form privacy notice concerning the processing of their personal data for only the purposes of the recruitment exercise.

A privacy notice informs candidates and employees about how the employer collects, uses, stores, transfers and secures personal data. Employers are advised to undertake an information audit to find out what personal data they hold and what they do with it. The UK GDPR stipulates what information must be included in a privacy notice and requires the information to be presented in a concise, transparent, intelligible and easily accessible form. As a matter of good practice, employers should publish their privacy policy on their business website.

36 | What data privacy rights can employees exercise against employers?

Employees (and indeed all data subjects) have the rights listed below, under the UK GDPR, otherwise known as 'delete it, freeze it, correct it'. These rights are generally exercised or triggered if there is non-compliance with data protection principles. These rights are the right:

- to erasure or be forgotten;
- to rectification;
- to restriction of processing;
- to object to processing;
- to information;
- to access their own personal data;
- to receive a copy of their personal data;
- not to be subject to automated decision-making; and
- to be notified of a data security breach.

Employers must take particular note of an employee's right to a data subject access request (DSAR) to their employers, for disclosure of personal data and certain information regarding the personal data that is held about them. Employers are under an obligation to comply without undue delay and within one month, with an extension of two additional months if necessary. Given the complexity of most DSARs in an employment context, the likely normal period for compliance will be up to three months. However, where a request is 'manifestly unfounded or excessive', employers may either charge a reasonable fee, taking into account administrative costs or may refuse to act on the request altogether.

BUSINESS TRANSFERS

Employee protections

37 Is there any legislation to protect employees in the event of a business transfer?

Where there is no change in the identity of the employer – for example, on a share disposal – the employees' contracts of employment continue. All rights, duties and liabilities owed by, or to, the employees continue, and the buyer of the employer's shares inherits all those rights, duties and liabilities under being the new owner of the employer.

By contrast, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (together, TUPE) give special protection for the rights of employees on the transfer of an undertaking (where there is a 'relevant transfer'), which includes a sale of assets or business activity, or on a change of service provider (outsourcing). The TUPE creates:

- particular unfair dismissal rights in the context of a TUPE transfer;
- the automatic transfer principle whereby (subject to a few exceptions) the buyer inherits all rights, liabilities and obligations concerning the assigned employees; and
- the obligation to inform and consult with representatives of the affected employees, and liabilities for failure to do so by way of a penal award of up to 13 weeks' actual pay for each affected employee.

TERMINATION OF EMPLOYMENT

Grounds for termination

38 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Contractually, at common law, an employer can dismiss an employee for any reason, provided appropriate notice is given.

Statutorily, if the employee has the relevant qualifying length of service (if applicable), he or she may be dismissed only for a potentially 'fair reason', that is:

- capability;
- conduct;
- redundancy;
- breach of a statutory enactment by the employee; or
- some other substantial reason.

Notice

39 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Notice of at least the statutorily prescribed minimum must be given before dismissal, as follows.

Length of service	Notice period
Up to 1 month	Nil
1 month to 2 years	1 week
2 to 12 years	1 week for each year of completed employment
More than 12 years	12 weeks

UK employers provide additional notice as a matter of custom in the employment contract. Where this is the case, the contractual notice must be given by the employer. Payment in lieu of notice can be given if set out in the employment contract.

40 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

This may occur only in cases of gross misconduct (ie, misconduct of a very serious nature including that which the employer is justified in treating as very serious in the context of its business). A non-exhaustive list of examples of gross misconduct must be set out by the employer and relayed to each employee. The list is usually contained in the employment contract.

Severance pay

41 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Under the Employment Rights Act 1996, statutory redundancy pay exists for employees with two or more years' service. The exact amount is linked to the length of service, the age of the employee and the statutory cap on weekly pay.

Redundancy pay may be enhanced by the employer, including by custom and practice.

Procedure

42 Are there any procedural requirements for dismissing an employee?

Yes, an employer must act 'reasonably' under the Employment Rights Act 1996 for a potentially fair reason if it is dismissing an employee with at least two years' continuous service.

Employers carrying out dismissals (except for dismissals on the grounds of redundancy or the non-renewal of a fixed-term contract) should also follow the principles set out in the Code of Practice of the Advisory, Conciliation and Arbitration Service (ACAS) (a government public body). A failure to follow the ACAS Code does not in itself make an employer liable to a claim; however, employment tribunals will take the ACAS Code into account when considering relevant cases and can adjust any awards they make by up to 25 per cent for unreasonable failure by an employer to follow the ACAS Code.

Prior approval by the UK government is not required by law; however, if the employer proposes to make redundancies affecting 20 or more employees within a particular time frame, it must notify the Department for Business, Innovation and Skills (BIS). Collective consultation with representatives of the affected employees is also required.

Employee protections

43 | In what circumstances are employees protected from dismissal?

Ordinarily, employees with two years' service have general statutory protection from unfair dismissal.

The following categories have automatic unfair dismissal protection but require two years' service:

- dismissal owing to a spent conviction; and
- dismissal in the context of a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (together, TUPE).

Dismissals in the following contexts have automatic unfair dismissal protection and do not require any qualifying length of service:

- jury service;
- leave for family reasons and related leave for time off for dependants;
- health and safety activities;
- Sunday working;
- asserting certain statutory rights;
- asserting rights under the Working Time Regulations 1998;
- employee trustees of occupational pension schemes;
- employee consultation representatives or candidates (including European and domestic works councils);
- whistle-blowers;
- flexible working requests;
- certain discrimination-related dismissals;
- exercising the right to be accompanied at disciplinary or grievance hearings;
- the rights of part-time workers;
- the rights of fixed-term employees;
- in connection with entitlement to a national minimum wage;
- in connection with entitlement to working tax credits;
- in connection with the right to request study and training; and
- trade union membership or activities or official industrial action.

Dismissal is automatically unfair if it is because of a protected activity; that is, it is causally connected.

Dismissals can also attract protection under anti-discrimination legislation.

Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

Yes, a special information and consultation regime applies where there are 20 or more affected employees who are proposed to be dismissed for a 'non-fault' reason within a particular time frame. 'Protective awards' exist of up to 90 days' pay per affected employee for the employer's failure to consult. This is governed by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Also, if the employer proposes to make redundancies affecting 20 or more employees within a particular time frame, it must notify BIS. Collective consultation with representatives of the affected employees is also required.

Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

There is no direct equivalent to the US class action in the United Kingdom. However, there are procedural means of dealing with group actions of multiparty claims that allow groups of claimants to link the claims to proceed against a single defendant, as follows:

- where more than one person has the same interest in a claim, the claim may be begun or the court may order that one or more claimants, or one or more defendants, may bring or defend the claim representing others who have the same interest in the claim. Any judgment will be binding on all individuals represented unless the court directs otherwise; and
- where claims by several individuals give rise to common or related issues of fact or law, a court may make a group litigation order to manage the claims. Judgments, orders and directions of the court will be binding on all claims within the group litigation order.

In the context of collective consultation and TUPE, an employee representative brings the claim for a failure to inform and consult and failure to consult on a collective basis on behalf of the affected employees. If successful, compensation is awarded to each affected employee.

Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Any age-related compulsory retirement must be justified under anti-age discrimination legislation (the Equality Act 2010) and must be fair under unfair dismissal legislation (the Employment Rights Act 1996). Compulsory retirement on medical grounds also has the potential to raise discrimination (principally, disability and age discrimination) and unfair dismissal issues.

DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

In contractual disputes, yes, so long as they do not involve statutory employment protection rights.

Where statutory employment protection rights are affected, an employee cannot validly agree, in advance, to give up his or her right to litigate those rights; for example, an employee cannot agree in his or her employment contract, entered into before the dispute arose, not to sue his or her employer for unfair dismissal.

Once a dispute has arisen, private mediation agreed to between the parties is relatively common. Any settlement of a dispute about statutory employment protection rights (including one agreed to during mediation) must satisfy the statutory contracting out requirements if the relevant statutory right is to be validly compromised.

Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

An employee can agree to waive his or her contractual rights. An employee may only waive statutory rights with a valid statutory settlement agreement or through an officer of the Advisory, Conciliation and Arbitration Service (ACAS) on form COT3 (an official form used by

ACAS to evidence a binding legal settlement between employers and employees).

The requirements for a valid waiver are as follows, with regards to a statutory settlement agreement:

- it must be in writing;
- it must relate to specific proceedings;
- independent legal advice must have been given to the employee;
- the independent adviser must have insurance for negligence;
- the agreement must identify the adviser; and
- the agreement must state that the conditions regulating settlement agreements are satisfied.

Limitation period

49 What are the limitation periods for bringing employment claims?

Employment claim	Limitation period
Ordinary unfair dismissal and automatic unfair dismissal	Within 3 months of the date of termination
Discrimination	Within 3 months of the date of the act complained of
Equal pay	6 months from the date of termination of the relevant contract (tribunals can make awards to cover pay disparity going back 6 years)
Redundancy pay	6 months from the date of redundancy
Unlawful deduction of wages	Within 3 months beginning with the date of deduction

Specific provisions deal with discrimination by omission and for continuing acts extending over some time.

The standard limitation period for a breach of contract claim is six years (although some such claims can be litigated in an employment tribunal, but subject to a much shorter limitation period).

The primary limitation period applicable to the various statutory employment protection rights may be extended in appropriate circumstances by an employment tribunal. The tribunal's jurisdiction to extend the time limit applicable to discrimination rights provides it with a wider jurisdiction to do so than in the context of other statutory employment protection rights.

UPDATE AND TRENDS

Key developments of the past year

50 Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

The covid-19 pandemic will undoubtedly continue to dominate the employment law landscape throughout 2021 and beyond. New legislation was created in response to the pandemic and the pandemic itself delayed the implementation of various non-covid-19 legislative changes. Some key points for employers to note are as follows:

- the Coronavirus Job Retention Scheme will continue to apply until 30 September 2021 with the government continuing to contribute 80 per cent of furloughed employees' salaries. From July, employers will need to contribute 10 per cent of the furloughed employees' salaries. Employers' contributions will rise to 20 per cent during August and September;
- under the government's latest regulations underpinning its latest roadmap, remote working will remain the default position wherever possible until 21 June 2021 at the earliest;
- as the covid-19 vaccine roll-out continues in the United Kingdom, employers will need to consider the employment law and data privacy law implications arising out of any policy that mandates or incentivises vaccine up-take; and
- the pandemic is expected to result in a long-lasting shift towards hybrid working with remote and flexible working become commonplace. Employers should begin assessing how they will manage their hybrid workforce going forward.

Brexit

UK Employment Law is unlikely to substantially change as a result of the UK's departure from the European Union. This is because EU-derived domestic legislation relating to employment law that was effective before the end of the transition period remains in force as part of UK domestic law under the EU Withdrawal Act. Further, although the United Kingdom may diverge from future EU employment legislation, the wording of the Trade and Cooperation Agreement requires that the United Kingdom will not reduce certain fundamental employment law protections lower than their current levels in a manner that affects trade or investment. The European Union could apply tariffs on the United Kingdom if material impacts on trade and investment arise as a result of significant divergences between the UK and EU's employment standards. Major changes to employment law are therefore unlikely and indeed the UK government has made public statements to this effect in early 2021.

However, the United Kingdom may still implement non-radical and business-friendly amendments to certain legislation allowing, for example, employers to harmonise employment terms following a TUPE transfer (which is currently prohibited by EU law) and only include basic pay for holiday pay rather than all remuneration. There will also be new technical rules on whether UK courts need to follow the decisions of EU-based courts and whether claims can be brought against the UK government itself for failing to implement EU law properly.

IR35

Changes to the off-payroll working rules (IR35) are being introduced to crack down on disguised employment. Disguised employment is a form of perceived tax avoidance whereby individuals avoid paying employee income tax and national insurance contributions by supplying their services through an intermediary and paying themselves in dividends. It was originally intended to come into effect in April 2020, but this has now been postponed until 6 April 2021 to allow employers time to deal with the economic impact of the covid-19 pandemic.

The new changes will ensure that where a contractor works like an employee but provides services through an intermediary, he or she will pay the same tax and national insurance contributions as an equivalent employee. From April 2021, the responsibility for determining whether IR35 applies will shift to large and medium-sized companies, bringing the private sector in line with the public sector. The end-user will need to determine the IR35 status of all of its off-payroll workers, while the fee-payer (usually a recruitment agency) will be responsible for deducting the relevant tax and national insurance contributions at source.

Consultation on post-termination non-competes and exclusivity clauses

The UK government launched consultations in December 2020 on post-termination non-competes and exclusivity clauses. Both consultations closed in February 2021.

Potential reform under consultation concerning post-termination non-competes includes:

- proposals to make non-compete clauses enforceable only when the employer provides compensation during the term of the clause, and whether this could be complemented by additional transparency measures and statutory limits on the length of non-compete clauses; and

- an alternative proposal to make post-termination, non-compete clauses in contracts of employment unenforceable.

Reform regarding exclusivity clauses may extend the ban on exclusivity clauses (the ban currently only applies to zero-hours contracts) to those workers who earn less than the Lower Earnings Limit (currently £120 a week).

Employment Bill

The new Employment Bill was originally promised in the Queen's Speech in December 2019. Its implementation has been delayed due to the covid-19 pandemic.

It is expected that the Bill will cover the following topics:

- a new single labour market enforcement agency. There are currently four main enforcement bodies in the United Kingdom:
  - the Employment Agency Standards Inspectorate;
  - the Gangmasters and Labour Abuse Authority;
  - HM Revenue and Customs; and
  - the Health and Safety Executive;
- the extension of redundancy protection for pregnant employees and those returning from maternity leave. The government intends on extending the period of protection from the point an employee notifies their employer of their pregnancy until six months after the end of their maternity leave;
- a new statutory right to 12 weeks' paid leave to support parents of premature or sick babies;
- provisions making flexible working the default position unless an employer has a good reason; and
- the right for all workers to request a more predictable and stable contract after 26 weeks' service.

Employment status

Employment status will continue to be a hot topic in 2021 as the United Kingdom continues to assess whether the UK's employment law framework remains fit for purpose in light of the increase in flexible, short-term contracts.

The Supreme Court handed down its long-awaited judgement in *Uber v Aslam* in February 2021. The Supreme Court agreed with the Court of Appeal that Uber drivers fall within the statutory definition of a worker and are not self-employed. Organisations who engage independent contractors should be increasingly aware of the increased litigation risk as contractors are now more likely to claim that they have been classified incorrectly and are in reality limb (b) workers (or even employees).

In the context of the covid-19 pandemic, employers should also note that, in response to the High Court's judgment in *R (Independent Workers' Union of Great Britain) v The Secretary of State for Work and Pensions*, the government intends amending section 44 of the Employment Rights Act 1996 so that workers, in addition to employees, have the right not to be subject to detriment in certain health and safety cases.

Coronavirus

51 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The UK government has implemented various new legislation, guidance and initiatives in response to the pandemic, most notably:

- the Coronavirus Job Retention Scheme, which introduced the concept of furlough and allows employers to claim a proportion of their employees' salaries from HM Revenue and Customs. The scheme as it currently applies will run until 30 September 2021;
- the Coronavirus Act 2020, which introduced, among other things, the new right for certain staff to take unpaid emergency volunteer leave and the ability for some employers to reclaim statutory sick pay paid in respect of the first 14 days of covid-19-related sickness absence;
- the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations, which provided that certain covid-19-related absences would be considered days of incapacity for the purposes of Statutory Sick Pay and that the relevant individual would be entitled to their sick pay entitlement from the first day of their absence in such cases rather than the fourth day of their absence;
- the Working Time (Coronavirus) Amendment Regulations 2020, which amended regulation 13 of the Working Time Regulations 1998 such that employees who could not take annual leave as a result of the effects of the coronavirus are permitted to carry over untaken leave in the two leave years immediately following the leave year in respect of which it was due;
- the government's 'Working safely during coronavirus' guidance. This guidance suggests various measures that employers should take to ensure that their workplaces are as coronavirus secure as possible and also requires certain employers to conduct risk assessments and encourages those assessments to be published; and
- the government's 'Holiday entitlement and pay during coronavirus' guidance. This guidance outlines how holiday entitlement and pay operate during the pandemic and is particularly focused on how this applies to furloughed workers.

Key points for employers to consider in 2021 in the context of the covid-19 pandemic will be on how they manage the return of their workforce and how this will interact with the vaccine rollout in the United Kingdom. In this context, communication with employees will remain vital so that any particular concerns can be accommodated at an early stage and before any decisions are imposed unilaterally by employers on employees, which is likely to result in litigation risk.

Concerning the vaccine in particular, and from an employee relations' perspective, it is unlikely that an employer-mandated vaccination programme would be well-received by employees, particularly in the

Morgan Lewis

Lee Harding
lee.harding@morganlewis.com

Matthew Howse
matthew.howse@morganlewis.com

Condor House
5–10 St Paul's Churchyard
London EC4M 8AL
United Kingdom
Tel: +44 20 3201 5000
Fax: +44 20 3201 5001
www.morganlewis.com

early stages of its rollout when some employees may have strong concerns (or simply be hesitant) about its safety and efficacy. A low-risk strategy would be to take a similar approach to the flu vaccine, providing information about the availability of the vaccine (following any published government guidance) or making arrangements to offer the vaccine to employees who wish to have it but voluntarily only. This would reduce the potential for legal challenges (on the grounds outlined above), as well as any backlash from those opposed to the vaccine generally.

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