

December | 2023

Welcome...

...to the latest issue of **Dispatches**.

We've almost made it through another year in employment law! After a slow start, 2023 has developed into a year of much change in the employment law world, with the last-minute Retained EU Law (Revocation and Reform) Bill bringing about some major developments for employers to prepare for next year.

As always, we're here if you and your business need our support.

At a glance

- Sunset clause
- What should employers look out for in 2024?
- The key changes to immigration law
- 'Twas the night before the Christmas party



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Sunset clause: Where are we now?

Coming into 2023, the Retained EU Law (Revocation and Reform) Bill set out to automatically revoke, or 'sunset', remaining retained EU law at the end of 2023. However, that idea was later abandoned [as we reported in July](#).

The government has since published the draft Employment Rights (Amendment, Revocation and Transitional provision) Regulations 2023 which contain some key changes to employment legislation. These changes impact the calculation and payment of holiday, holiday carryover and TUPE consultations. You can find an article summarising the changes [here](#) and an article on arguably the most challenging element, rolled-up holiday pay, [here](#).

These changes are likely to become law on 1 January 2024, although when they actually take effect and impact you as an employer will depend on your leave year and individual employment contracts. We cover this in more depth in our previously-linked article.

If you require further information on any of the forthcoming changes, our expert employment law team are available to provide any advice you may need, so please don't hesitate to get in touch.



What else should employers be looking out for in 2024?



National minimum wage increase

From 1 April 2024, the national living wage is set to increase to £11.44 and will be inclusive of all workers aged 21 and over. In conjunction with this, the national minimum wage is set to rise. Both apprentices and workers aged 18 and under will be entitled to a minimum hourly rate of £6.40 (up from £5.28) and 18 to 20-year-old workers will be entitled to £10.18 (up from £8.60).

Third party harassment

The Worker Protection (Amendment of Equality Act 2010) Bill 2023 received royal assent on 26 October 2023, and is set to come into force in England, Wales and Scotland in October 2024.

The initial proposal sought to reintroduce employer liability for third party sexual harassment, without the requirement of the 'three strikes' rule. Instead, employers would have a proactive duty to ensure they took 'all reasonable' steps to prevent such an act or be held liable for its occurrence.

The House of Lords found that this requirement was too broad, arguing it potentially encapsulated an infinite number of preventative steps for an employer to consider. The wording was therefore revised to reduce the threshold to detail that employers must, instead, take 'reasonable' preventative steps to avoid sexual harassment of any employee.

Additionally, under this bill, employment tribunals will have the ability to grant a 25% increase to compensation where the employer has breached their preventative duties.

Flexible working bill

The Employment Relations (Flexible Working) Bill is likely to come into effect during the middle of 2024, meaning there will be several changes to the existing flexible working request process for both employers and employees. We've summarised the key changes in [this article](#).

If you have any queries regarding the changes to flexible working or any of the above changes, please do not hesitate to reach out to our expert employment law team.

Workers (Predictable Terms and Conditions) Act 2023

Looking likely to come into effect in September 2024, the Workers (Predictable Terms and Conditions) Act 2023 introduces a new statutory right for workers to request predictable working patterns after they have been employed continuously for 26 weeks. Workers can make two applications in any 12-month period and requests must be decided on within a month. Also, employers will only be able to refuse a request on specific grounds.

Carer's Leave Regulations 2024

Hot off the press are the Carer's Leave Regulations 2024 which were put before Parliament on 13 December. These regulations will allow employees to apply – in writing – for up to one week of unpaid 'carer's leave' in any 12-month period. This will be a day one right for employees who have a dependant with a long-term care need, who want to be absent from work to provide or arrange care for that dependant. They are due to come into force on 6 April 2024.

We will be discussing all these changes in more detail in our employment law update webinar in the spring, so make sure you're [subscribed](#) to receive notifications of our upcoming events. ■



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Immigration law: Key changes

2024 is shaping up to be full of change in the immigration sphere too. Visas fees were increased by around 10–15% in October 2023 (you can find the new fees [here](#)), and were promptly overshadowed by new developments and announcements. Here is what to look out for in 2024.

Fee increases

Besides the increase in visa fees, the Immigration Health Surcharge increases on 16 January 2024 to £1,035 per year – a 66% increase. The Immigration Health Surcharge is payable upfront, meaning a migrant worker will need to spend £5,175 on top of their visa fee, for a five-year visa.

For sponsors, earlier this year the [Certificate of Sponsorship](#) fee increased to £239, up from £199. We are also anticipating an increase to the Immigration Skills Charge during 2024.

Right to work sanctions

On 22 January 2024, civil penalties for employers found to be employing illegal workers will triple to £45,000 per illegal worker for a first breach and £60,000 for repeat breaches. This comes as the Home Office announces its intention to further bolster measures against licenced businesses that hire illegal workers. What those measures will look like remains to be seen, but an increase in raids on illegal working has been promised.



Five-Point Plan



As part of the Home Secretary's recently announced five-point plan to clamp down on legal migration, the following changes can be expected:

- the minimum salary for skilled worker visas is going to go up to £38,700 in Spring 2024 (those on health and care worker visas will be able to earn less, along with other professions on a national pay scale)

- workers on health and care worker visas will be unable to bring family dependants
- the shortage occupation list will be cut down, and the 20% salary discount axed; a new Immigration Salary List will be created with a general threshold discount
- the minimum salary threshold for a family visa will be raised to £38,700, almost double the previous requirement of £18,600
- the Migration Advisory Committee will review the graduate route due to alleged "abuse".

In mid-December, the Home Secretary suggested that those already in the UK extending or renewing their visas would be "okay", implying that perhaps the new salary rates will not be applied to them, but no further information has been provided. The government have suggested that more clarity on transitional measures will be provided in January 2024. ■

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Finally, it wouldn't be December if we didn't provide some form of cheesy Christmas-themed advice, so please enjoy our entertaining (if not cliché) *'twas the night before the Christmas Party* poem, to really get you into the Christmas spirit.

*'Twas the night before the Christmas party and all through the place,
employees were plotting the next night's disgrace.
The management should warn 'employees beware',
or come Monday morning,
your jobs won't be there...*

Preventing problems

Many employers plan Christmas parties for their staff to thank and reward them for their hard work throughout the year. Whilst this is an opportunity for employees to relax and let their hair down, it is important to remember that employers can be liable for the

conduct of their employees at the Christmas party. It is therefore advisable that – prior to the party – you remind your employees that the Christmas party is a work event and advise them of the standards of conduct expected of them. In addition, it would be advisable to refer employees to your internal policies regarding behaviour, such as your 'dignity at work' or 'anti-bullying and harassment' policies, or increasingly more important, your 'social media' policy.

Whilst these measures may seem a little Scrooge-esque, this forewarning is likely to help prevent any inappropriate behaviour. If inappropriate behaviour does occur at the party, in breach of your instructions, you will then be justified in instigating your disciplinary procedure.

[continued on the next page]

*The workers were nestled all snug by the bar,
when Dave from accounts tried to get in his car.
And Karen and Sue, with white wine on tap,
had drunk way too much and were taking a nap.*

Post-party problems: Hangovers

It is a truth universally acknowledged that employees who consume too much alcohol at the Christmas party will be in possession of a hangover the following day. Whilst for many, two paracetamol, a pint of water and a black coffee will alleviate the hangover demons, this is not always the case, which could result in a number of issues for employers.

Employers are obliged to provide a safe place of work for their employees. If employees have to operate machinery, drive vehicles or undertake any other any other 'dangerous' activities the morning after the Christmas party, the health and safety of that employee, their colleagues and third parties could be put at risk. It is therefore important that employers are mindful of this potential risk if employees are required to attend work the morning after the night before. As a preventative measure, employers should remind staff that they should not be under the influence of alcohol or drugs at work.

If an employer suspects that an employee is under the influence of alcohol or drugs at work, they should:

- prevent the employee from carrying out any activities
- ask that employee to take an alcohol/drugs test in accordance with company policy
- consider instigating the disciplinary procedure.

*When out in the restaurant arose such a clatter,
everyone looked to see what was the matter.*

*Out in the car park, someone flew like a flash,
with a bloody red nose, where they'd been given a bash.*

Post-party problems: Inappropriate conduct

If, despite advising your employees of the expected levels of conduct at the work Christmas party, you become aware of an incident of inappropriate behaviour by one of your employees, it is important to take swift action.

As mentioned in our first tip of Christmas, employers can be liable for the conduct of their employees at the Christmas party, so it is important to investigate any reports of inappropriate conduct thoroughly and as soon as possible.

If an employee raises a grievance regarding the inappropriate conduct of a colleague, ensure that you follow your grievance procedure fully, and – if appropriate – instigate disciplinary proceedings against that employee.

If someone outside of the organisation raises a complaint against one of your employees, you should still consider instigating a disciplinary investigation.

Be sure to follow your disciplinary procedure fully. In cases of serious allegations such as sexual harassment or violence, you should consider suspending the employee in question, pending the outcome of the investigation.

*Now we've given these tips please continue with ease,
to throw a great party for your employees.
And with this we say, as we don't wish to fright,
Happy Christmas to all, and to all a good night!*

More news on our website www.willans.co.uk

Contact

For advice on any of the issues covered in this bulletin or any other area of law, please contact these people in the first instance.

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