



Navigating Employment Law:

Key changes
for 2024

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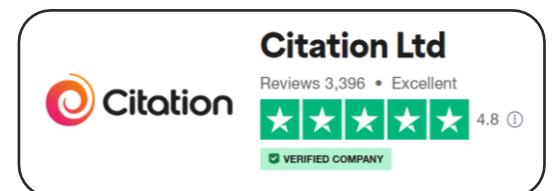
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About today



Latest updates in
Employment Law
(GB only)



What's on
the horizon for
2024 and how to
get prepared



New rules on holiday accrual and pay

- New rules apply to workers (including employees) who work **irregular** hours or **part-year**.
 - **Irregular worker** - working hours in each pay period are "wholly or mostly variable".
 - **Part-year worker** - only required to work part of the holiday year (at least a week where they are not required to work and are not paid).
- Rules came into force for holiday years starting from **1 April 2024** onwards e.g. new rules will apply to January - December holidays years from **1 January 2025**.





Usual rules on holiday

- All workers/employees are entitled to 5.6 weeks holiday and when calculating a week's entitlement, you must ignore weeks when they are not working.
- The Supreme Court decision in **Brazel v Harpur Trust** made it clear that calculating holiday entitlement on the basis of 12.07% of the hours worked is not correct.
- Not supposed to pay rolled-up holiday. Calculate holiday ignoring any weeks where they don't work.





Rolled-up holiday pay

- Employers can choose to pay rolled-up holiday pay to irregular hours and part-year workers (for holiday years starting 1 April 2024). Consult with existing staff.
- This must be paid at the rate of at least 12.07% of all pay for the work done - percentage would increase if get more than 5.6 weeks holiday a year.
- It must be itemised clearly on the payslip and paid each pay period.
- Rolled-up holiday payments will continue to be paid while the worker is on sick leave or statutory family leave, based on an average of the previous 52 weeks.
- Employee must still take their holiday - Health & Safety considerations.



Holiday accrual for irregular and part-year workers

- For holiday years starting on or after 1 April 2024, holiday entitlement will accrue, on the last day of each pay period, at the rate of 12.07% of the hours worked during that pay period.
- Where the accrual includes a fraction of an hour, this will be rounded down if it is less than 30 minutes and rounded up if more than 30 minutes.
- Leave will continue to accrue when they are on sick and statutory family leave (based on average hours worked over the previous 52 weeks).
- This will have the effect of accruing less than 5.6 weeks holiday if they don't work every week.



Restatement of key EU caselaw - holiday pay

- Retention of the two-tier approach to pay for statutory minimum holidays:
 - 4 weeks 'EU' holiday at 'normal' pay
 - 1.6 weeks additional UK holiday at 'basic' pay
- 4 weeks holiday pay should include average commission, bonuses, regular overtime, professional allowances etc. i.e. payments intrinsically linked to the performance of the role





Restatement of key EU caselaw - carry over of holidays in 3 situations

- The full 5.6 weeks can be carried over to next holiday year if not taken holiday because of statutory leave - e.g. maternity leave.
- The 4 week 'EU' entitlement can be carried over if they have been unable to take holiday because of sick leave (but must be taken by end of 18 months from the end of the leave year in which the entitlement originally arose).
- The 4 week entitlement can be carried over:
 - where the employer fails to recognise the worker's right to annual leave or pay for that leave; or
 - fails to tell the worker that any leave not taken in that year will be lost



How to deal with these new rules

- Review current contracts, handbook and policies.
- Review your current practices regarding the calculation of holiday pay - e.g. is regular overtime included?
- If you have irregular hours/ part year workers - do you want to introduce rolled-up holiday pay / 12.07% accrual?
- If so, consider the Health & Safety implications and put measures around this
- Consider your practices on managing outstanding holiday entitlement



Flexible Working (Amendment) Regulations 2023

- Came into force on **6 April 2024**.
- Makes the right to request flexible working a **day one right** - removes the requirement that employees need 26 weeks' qualifying service.





Employment Relations (Flexible Working) Act 2023

- Came into force on **6 April 2024**.
- Allows employees to make 2 flexible working requests in any 12-month period (previously limited to 1 request).
- Reduces employers' time limit to conclude the process from 3 months to 2 months.
- Removes requirement for employees to set out how the effects of their request might be dealt with by their employer.
- Requires employers to consult with their employees, as a means of exploring the available options, before rejecting a flexible working request.

No change to 8 grounds for refusal



Carer's Leave Act 2023

- Came into force on **6 April 2024**.
- **Day one right** for all employees. Up to one week of **unpaid** carer's leave per 12 months to provide or arrange for care for a dependant with a long-term care need.
- Leave can be taken in single or even half days.
- Notice requirement - 3 days' notice OR double the length of leave, if this is longer.
- **Can I ask them to take it at another time?** Potentially - but take within a month
- **Can I ask them to prove they need it?** No, cannot require evidence.



Carer's leave - what should we do?

- Changes to documents:
 - Policies
 - Make provision to record carer's leave absences
 - Self-certification / request form
- Train managers
- Communicate with employees





Protection from Redundancy (Pregnancy and Family Leave) Act 2023

- In force since **6 April 2024**.
- Extends current protections from when employer knows about pregnancy up to 18 months after the birth of the child.
- For employees on adoption leave, extends to 18 months from the date of placement.
- Employees taking > 6 weeks shared parental leave are protected during leave. Employees taking < 6 weeks protected for 18 months from the birth of the child.





Paternity Leave (Amendment) Regulations 2024

Came into force for babies due or adoptions placed from **6 April 2024**. Under these new Regulations, employee can:

- split their paternity leave into 2 blocks of 1 week (previously was 1 week or 2 consecutive weeks' leave);
- take their paternity leave and pay at any point in the first year after the birth or adoption of their child (previously was within the first 8 weeks); and
- adjust the way they give notice of leave and pay - confirm they intend to take leave by 15th week before birth, and then 28 days' notice for each period of leave (adoption is within 7 days of adoption placement but can then amend dates).



Overview of other upcoming changes

DATES	KEY CHANGES
1 July 2024	TUPE consultation
July 2024	Employment (Allocation of Tips) Act 2023
October 2024	Worker Protection (Amendment of Equality Act 2010) Act 2023
October 2024	Workers (Predictable Terms & Conditions) Act 2023
April 2025	Neonatal Care (Leave and Pay) Act 2023



Overview of other upcoming changes - unclear implementation dates

KEY CHANGES	
Fire & Re-Hire Code of Practice	Employers should provide information, engage in meaningful consultation and genuinely explore alternatives - so that fire & re-hire is a last resort and only where there are legitimate business reasons. It's expected to come into force later this year.
Non-Compete Clauses	There will be a ban on non-compete clauses lasting more than three months -implementation date currently unknown.



A spotlight on National Minimum Wage



National Minimum Wage - Principles

- National Minimum Wage went up by 9.8% on 6th April to **£11.44**. Also, now for employees 21 and over (previously 23 and over).
- An employee doesn't have to receive the NMW as a rate for every hour worked, but over the pay period, wages received / hours worked **must equal NMW**.
- 'Hours worked' for NMW purposes includes any time spent on **training** at work or attending training in normal working hours.
- Travel time and time spent 'at or near a place of work' are also likely to be included in 'hours worked'.



National Minimum Wage - Deductions

- Some **deductions** will reduce 'wages received' for NMW purposes, e.g. deduction of fees where the employee has their family member in the home.
- **Uniform** deduction/purchase will reduce 'wages received' for NMW – e.g. even if just ask employees to wear 'a red top'.
- **Authorised** deductions include:
 - Tax, NI and legally required deductions
 - Repayment of loans, advance of wages or accidentally overpaid wages
 - In connection to the worker's conduct (if authorised by contract or similar written agreement), or amounts they are contractually liable for.



National Minimum Wage Issues in Care Sector

- Time **travelling** between appointments is working time.
 - 'Commute' to/from home is not working time.
 - Lower rate for travel is allowed, if balanced by higher rate for contact time.
 - Mileage allowances or expenses mitigate any technical reduction, but do not count as wages.
- Time which must be spent at or near workplace (not home) is working time. Would make **sleep-in shifts** uneconomical.
 - Exception: worker will only be deemed to be 'available for work' at times when they are 'awake for the purposes of working', even if employer provides facilities for sleeping at the workplace.
- Employers can offset accommodation as a benefit in kind, up to **£9.99** per day.
 - Does not apply to live-in care arrangements. HMRC guidance states that accommodation must be provided by employer, not third party.



Questions





Thank you!

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