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Client Alert

Global Human Capital and Compliance

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What Does 2025 Hold for UK Employers?

The 2024 UK election set change in motion for the employment law landscape. The most significant of these changes are delayed until 2026, giving employers a chance to prepare - see our October Alert. Our 2025 preview reports on more imminent changes and developments expected this year, and what employers could be doing to prepare for 2026.

Highlights include:

- Changes to employment policies required
- New leave rights
- Employment Rights Bill consultations continue
- New NMW and Employer NICs requirements
- Pay transparency – near and far
- Relaxation of banker bonus rules
- Guidance on flexible working
- Sexual harassment – increasing protections
- Decisions expected on key cases

REVAMP AND REFRESH YOUR POLICIES

The new year is a great opportunity to update your existing policies, in light of upcoming changes. We recommend a focus on the following:

- Parental leave policies, in light of the changes to paternity leave where a child dies shortly after birth;
- Flexible working policies and internal procedures for how flexible working requests are dealt with;
- Sexual harassment, in light of the new obligation for employers to take "*reasonable steps"* to prevent sexual harassment;

- Remuneration policies, where your firm is impacted by banker bonus rules and their subsequent changes; and
- Together with a general review of company practice on use of probationary period and performance management, and zero hours workers, given the major changes anticipated in 2026 under the Employment Rights Bill.

NEW RIGHTS TO NEONATAL LEAVE AND PATERNITY LEAVE FOR BEREAVED PARTNERS

Neonatal leave and pay will come into force from 6 April 2025, providing parents up to 12 weeks' leave and pay when their baby requires neonatal care. This means that their baby spends seven days or more continuously in hospital receiving medical or palliative care starting before they reach the age of 28 days. This will be a day one right but to qualify for statutory neonatal care pay, employees must also have 26 weeks' continuous service and meet a minimum earnings test, which will mirror existing family leave pay provisions (currently at least £123 per week). Family leave policies will need to be updated to reflect these new statutory rights.

It is expected that the Paternity Leave (Bereavement) Act 2024 will also take effect in 2025, although further regulations are needed. This removes the previous 26-week minimum length of service requirement for bereaved partners to take paternity leave where the mother, or child (or adoptive parent or intended parent in the case of a surrogacy arrangement) dies shortly after the birth of the child, making paternity leave a day one right for bereaved partners. It is reported that paternity leave for bereaved partners will also increase from two weeks to 52 weeks; watch this space.

CONSULTATION, CONSULTATION, CONSULTATION

The Labour Government's Employment Rights Bill will be subject to multiple consultation exercises in 2025. The purpose of consultation is for employers and other interested parties to give feedback so that the Bill can then be changed (clarified, scaled back, or enhanced) before it moves towards becoming law. Specific items we are expecting consultation on during 2025 are:

- Creation of a single status of worker – with a view to "simplifying" the framework for employment status;
- The legal right to switch off/disconnect;
- The Equality (Race and Disability) Bill;
- Removal of the banker bonus cap;
- Expanded flexible working rights;
- Collective redundancies and minimum thresholds; and
- Extending unfair dismissal rights to 'day one' – and how far probationary periods will provide an exception for employees with 'day one' unfair dismissal rights.

We will report back on the outcome of the consultations which will provide further clarity on the government's intentions and pave the way for further changes in 2026.

KEY BUDGET CHANGES FOR 2025: UPLIFT TO MINIMUM WAGE AND EMPLOYER NICS

- **21 years old and over**: the National Living Wage of £12.21
- **18-20 years old**: £10.00
- **16-17 years old and apprentices**: £7.55

The government has committed to abolishing the 18-20 age band so that more workers are entitled to the National Living Wage. The new rates reflect a narrowed gap between the adult bands in anticipation of this.

Employers will also see an increase in National Insurance contributions, from 13.8% to 15%. The earnings threshold for payment of NI contributions will drop from £9,100/ year to £5,000/ year. This increases the overall employer NI bill, particularly for employers with a number of low-income casual and part-time employees.

PAY TRANSPARENCY – NEAR AND FAR

The government has committed to introducing mandatory ethnicity and disability pay gap reporting for UK employers with more than 250 staff, under a proposed new Equality (Race and Disability) Bill. This will be subject to an extended consultation period, given this is a complex area – but the government's starting point is to mirror existing gender pay rules. A draft bill for consultation is expected before Spring 2025.

The Bill also builds on existing gender pay gap reporting in the UK by including a new requirement for employers with more than 250 employees to publish annual action plans to address gender pay disparities. It remains to be seen whether this will also be included in the proposal for ethnicity and disability pay gap reporting. The Bill also extends gender pay gap reporting requirements to outsourced workers, however, at least initially, this will be limited to the public sector.

Although these changes will not take effect until 2026 at the earliest, we may see an uptick in equal pay claims which are notoriously complex and costly, with long running litigation. Employers may wish to prepare for changes now by assessing their potential exposure and considering how to address any red flag disparities before reports are made public.

Further afield we are seeing a trend towards greater pay transparency. EU Member States are in the process of implementing the EU Pay Transparency Directive which will be effective from June 2026, giving all employees a right to receive information on how their pay is set and the gender comparison for their role, together with specific gender pay reporting and assessments for larger companies (based on headcount of 150 workers in 2027 and 100 workers in 2031). Although the Directive does not apply in the UK, many companies are using 2025 to consolidate job architecture schemes and 'stress test' their job evaluation systems on a group-wide basis.

RELAXATION OF BANKER BONUS RULES

In October 2023, the PRA and the FCA removed the cap on banker bonuses which limited variable pay for Material Risk Takers to a maximum of 200% of fixed remuneration. The cap had been implemented post-2008 financial crash in an attempt to curb excessive risk-taking, but was considered to be ineffective in tackling excessive risk and had instead led to higher guaranteed pay and less performance-based remuneration.

There are now plans to further de-regulate, including proposals by the regulators to:

- Decrease the number of material risk takers whose bonuses are subject to deferral by raising the threshold at which at least 60% of variable remuneration must be subject to deferral (from £500,000 to £660,000).
- Shorten deferral periods for senior Material Risk Takers to 5 years and other, less senior bankers to 4 years.
- Allow faster vesting by permitting vesting on a pro rata basis from the award date rather than from year 3.

These changes are consistent with wider reforms to help UK employers compete internationally. The Bank of England is seeking feedback on their proposals through consultation until 13 March 2025.

FLEXIBILITY VS DISCRIMINATION: NAVIGATING THE RISKS OF OFFICE ATTENDANCE POLICIES

2024 saw the right to make statutory flexible working requests from 'day one' of employment, where previously employees needed six months in role. The government had committed to making flexible working the 'default' but in fact the Employee Rights Bill only has the aim that "more requests are agreed". Employees will still only have a right

to request flexible working, but to reject a request, employers will have to show both a specific valid ground (as currently) but also that the rejection is "*reasonable"*.

The stage is set for conflict, with an increasing number of large employers announcing they will be enforcing mandatory 4- or 5-day office attendance policies this year.

To minimise these risks, employers enforcing return to office policies in 2025 should:

- Develop guidelines so that HR/ Legal can assess higher risk flexible working requests on a case-by-case basis. A 'blanket no' approach could lead to claims for indirect discrimination;
- Review both hybrid working policies and employment contracts. Consider a clear contractual right to recall workers to the office where there are performance concerns, and clearly communicate expectations around team collaboration (core hours, any in-person events);
- Consider whether legal requirements have been met if planning to monitor employee's use of company systems while working remotely, and minimum security standards needed; and
- Where workplaces are hybrid, ensure they have the opportunity to participate equally in training and are not unfairly disadvantaged in performance reviews, promotion etc.

SEXUAL HARASSMENT – INCREASING PROTECTIONS

As covered in our alert, employers have had a positive duty since 26 October 2024 under new legislation to take "*reasonable steps*" to prevent sexual harassment in the workplace. Employers are now obliged to (a) assess the risks and (b) take action to prevent sexual harassment from taking place. The EHRC can now take enforcement action against employers who do not take the "*reasonable steps*", and the Employment Tribunal may uplift sexual harassment claim amounts by a maximum of 25% where employers breach the duty. The EHRC have released guidance, and ACAS have released advice, on what will constitute "*reasonable steps*" depending on the nature of the employer and the facts of each case.

This new positive duty to take "*reasonable steps*" is not, however, the end of it. The Employee Rights Bill proposes the following additional changes in relation to workplace harassment:

- The positive duty will be extended to require employers to take "*all reasonable steps*" to prevent harassment, including by third parties. The addition of "*all*" clearly increases expectations of employers.
- The duty applies to all types of harassment, not just sexual harassment.
- Sexual harassment will be added to the list of topics that can qualify for whistleblower protection.

The current focus for UK employers should be on the new duty introduced in October 2024 – and ensuring compliance with this duty to take "*reasonable steps*" to prevent sexual harassment in the workplace will put employers in good stead for when the proposed protections of the Bill become law. The key requirements moving forward will focus on education and engagement of staff – setting clear expectations around workplace behaviour, and detailing these clearly in relevant workplace policies and training courses.

BELIEF BATTLES: THE TUG-OF-WAR BETWEEN COMPETING PROTECTED CHARACTERISTICS

In recent years we have seen decisions and hearings relating to what extent: (a) employees can express their personal beliefs in the workplace where such beliefs relate to competing protected characteristics and (b) whether employers can restrict freedom of expression where beliefs misalign with the organisations policies, values or offend colleagues. There has been legal debate as to what beliefs are protected, and whether adverse action taken against an employee

by an employer is because of their belief (which is generally unlawful) or inappropriate action they took in manifesting those beliefs (which is potentially lawful).

Decisions in the following cases expected in 2025 will be key as to where to strike this balance:

Higgs v Farmor's School

This case concerned a Christian school teacher who was dismissed for gross misconduct for resharing social media posts that opposed same-gender marriage and 'gender fluidity'. The teacher claimed she had been unlawfully discriminated against because of her Christian beliefs. The school denied dismissing the teacher on the grounds of beliefs and said it was because of the inflammatory and extreme language used in the posts. The school considered that the posts were not expressing moderate views and that it was legitimate for the school to impose restrictions on the teacher's right to freedom of speech.

The EAT remitted the hearing back to the Tribunal, finding that it had failed to ask whether the teacher was dismissed because of or for a reason related to the manifestation of protected beliefs or due to a justified objection to the manner of that manifestation, in respect of which there was a legal basis for her rights to freedom of belief and expression to be limited to the extent necessary for the legitimate protection of the rights of others.

The Court of Appeal then heard the teacher's appeal in October 2024. The awaited judgment will set an important precedent for future cases concerning the expression of protected beliefs in the workplace where these intersect with other protected characteristics. It will also provide guidance to employers on how to respond to where such views are published on social media platforms.

Corby v Advisory, Conciliation and Arbitration Service

This case involved an ACAS employee who expressed his opposition to critical race theory, the idea that racial bias is in inherent in many parts of western society. The ACAS conciliator had posted his criticism on a workplace communications platform, prompting complaints from colleagues that he was promoting racist ideas. He brought a claim against his employer after they asked him to delete a number of his social media posts on the topic. The Employment Tribunal found that Corby's beliefs were a protected philosophical belief due to them being genuinely held, cogent and coherent. He however had not been subject to any direct discrimination or harassment in being required to delete posts. The employer's actions were appropriate and proportionate. Corby has appealed to the EAT and we expect a decision towards the end of 2025.
