

MHA HR SOLUTIONS

# Employment Law update

February 2024

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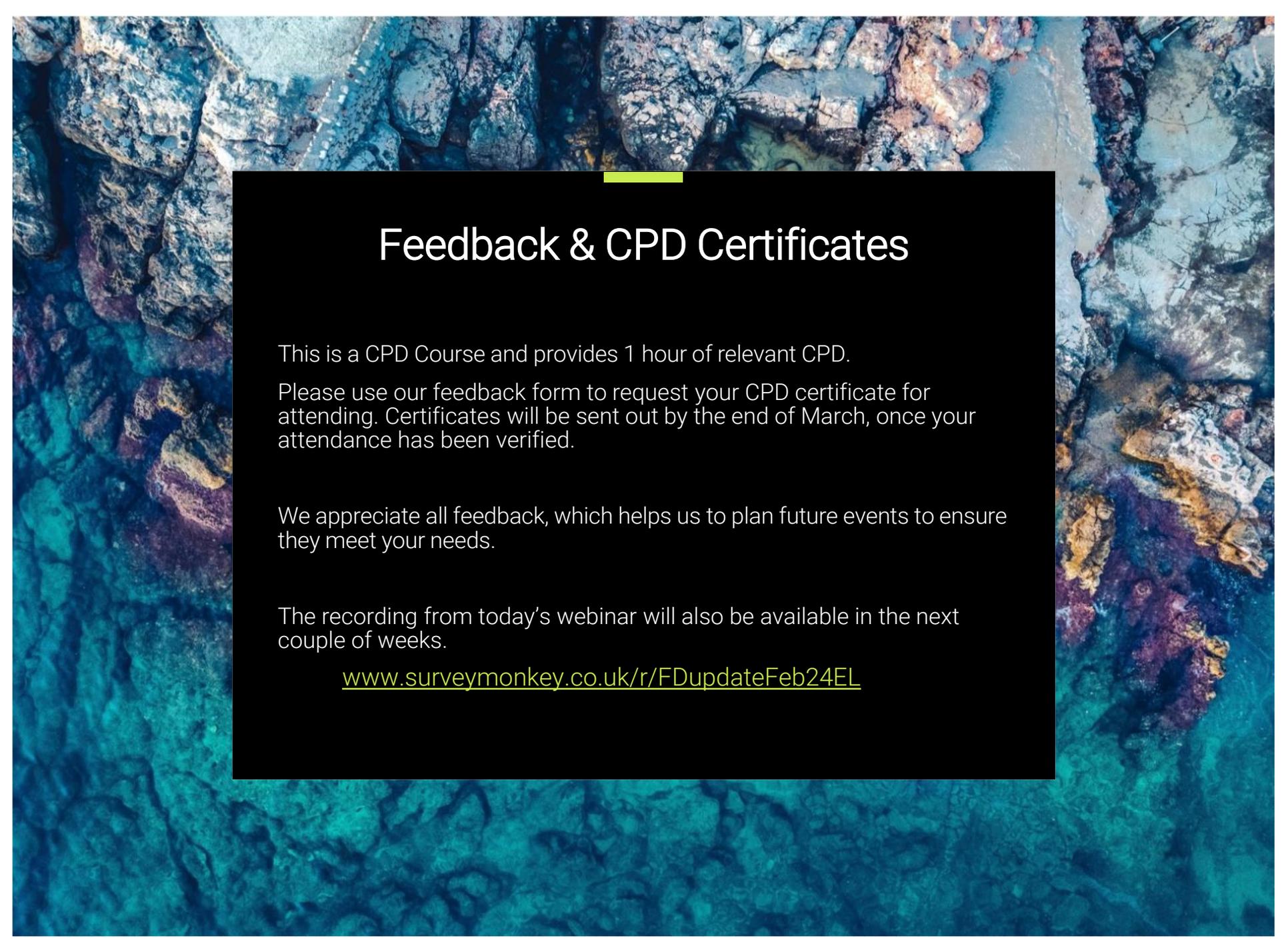
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# Feedback & CPD Certificates

This is a CPD Course and provides 1 hour of relevant CPD.

Please use our feedback form to request your CPD certificate for attending. Certificates will be sent out by the end of March, once your attendance has been verified.

We appreciate all feedback, which helps us to plan future events to ensure they meet your needs.

The recording from today's webinar will also be available in the next couple of weeks.

[www.surveymonkey.co.uk/r/FDupdateFeb24EL](http://www.surveymonkey.co.uk/r/FDupdateFeb24EL)

# Introductions



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# Agenda

- Minimum wage increases
- Changes to holiday entitlements and rules; clarification of holiday accrual for irregular hours and part-time workers
- Changes to consultation requirements under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE),
- Revised procedures for flexible working requests
- Statutory rights for workers under atypical contracts
- New provisions for family leave and safeguards around protection from redundancy for pregnant employees or those returning from parental leave
- Changes to regulations on Harassment

# Minimum wage increases

Increases to National Minimum Wage and National Living Wage announced by the Chancellor of the Exchequer in the Autumn Statement.

- National Living Wage rising from £10.42 to **£11.44** per hour from 1 April 2024; rise of **9.8%**, the largest ever increase in the National Living Wage.
- To be paid to 21 and 22-year-olds for the first time (currently, only workers over 23 years-old receive the rate of £10.42 an hour).
- National Minimum Wage increasing to **£8.60** (for 18-20 year olds) and to **£6.40** (for 16-17 year olds and apprentices).
- Accommodation offset to increase to £9.99 per day



# Minimum wage increases

You will need to:

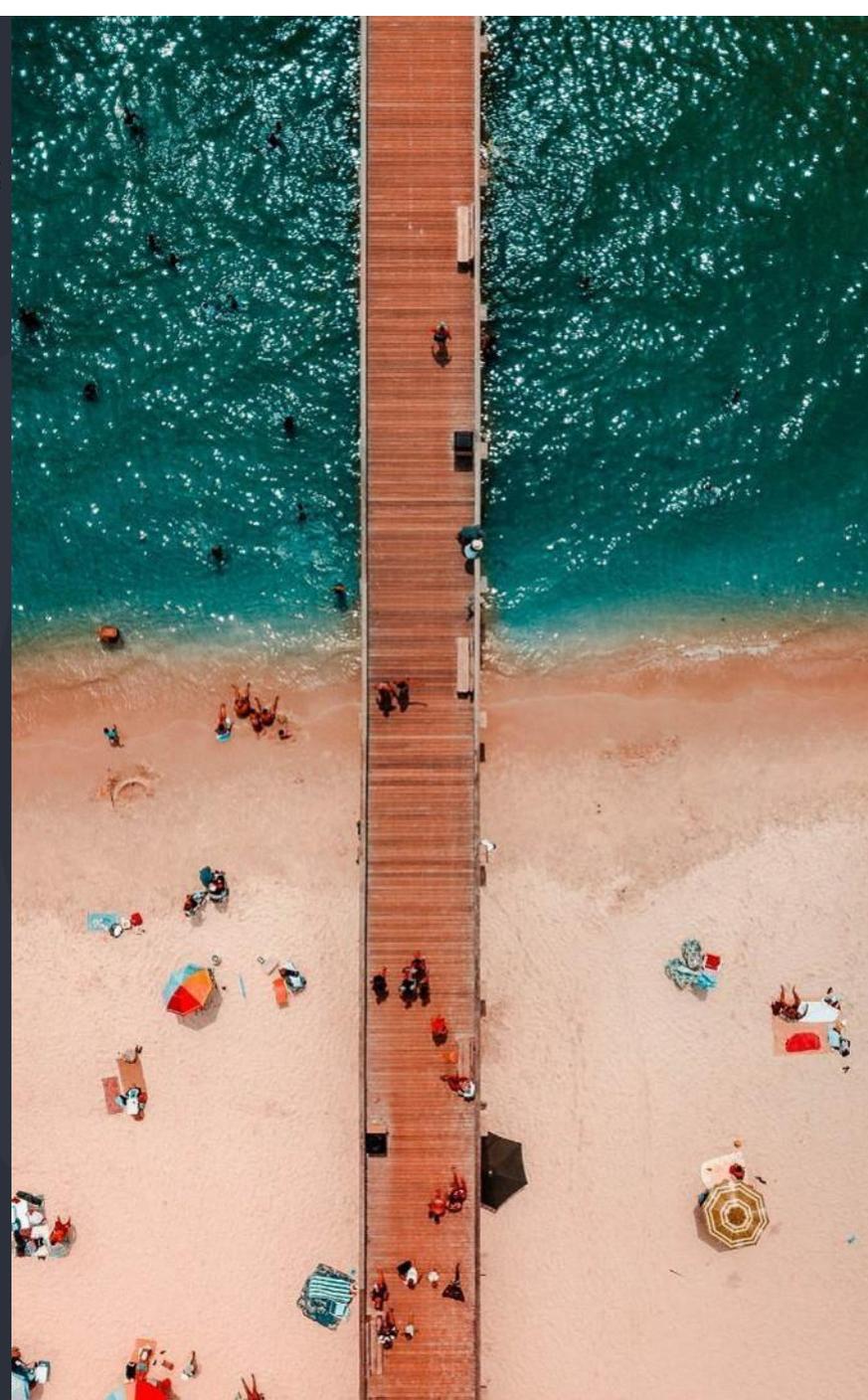
- Check workers on minimum wage to ensure increases are implemented
- Check workers aged 21 and 22 to ensure living wage is implemented
- Check accommodation offset (where applicable) and adjust accordingly



# Changes to Holiday rules and calculations

New holiday legislation commencing from 1 April 2024 onwards.

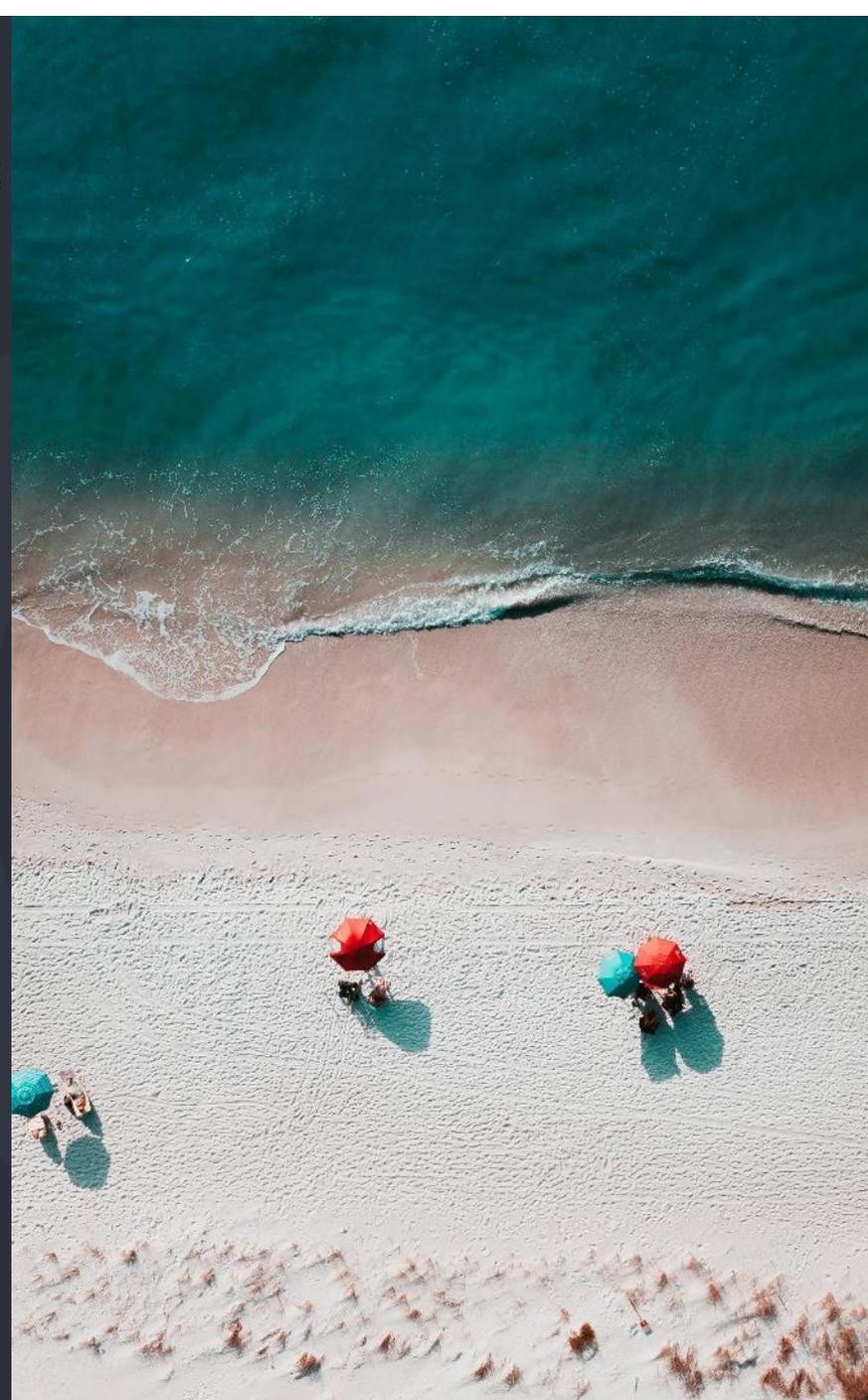
- the “EU entitlement”
- the “UK additional entitlement”
- Holiday entitlement carry over if untaken due to maternity leave or other family-friendly leave
- Holiday entitlement carry over if untaken due to long-term sick leave
- Holiday entitlement carry over in other circumstances



# Changes to Holiday rules and calculations

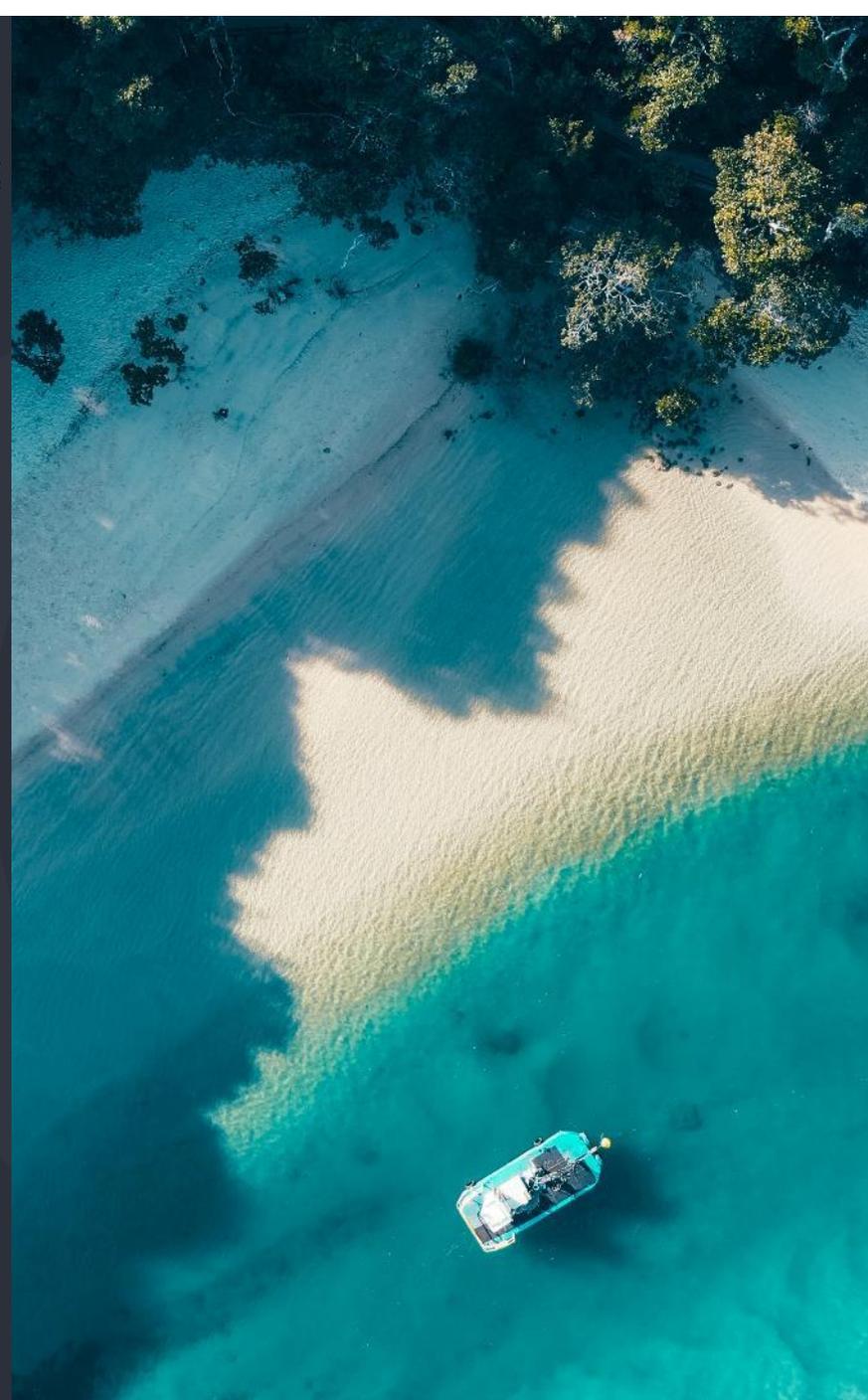
You will need to:

- amend your Holiday / Leave policy to reflect these changes
- amend sickness absence policy to reflect these changes
- be aware of which provisions refer to the "EU entitlement" only and which to the "UK additional entitlement"
- ensure that workers are given reasonable opportunities to take their leave throughout the year and informed that they will lose any entitlement not taken by the end of the holiday year



# Changes to Holiday rules and calculations (continued)

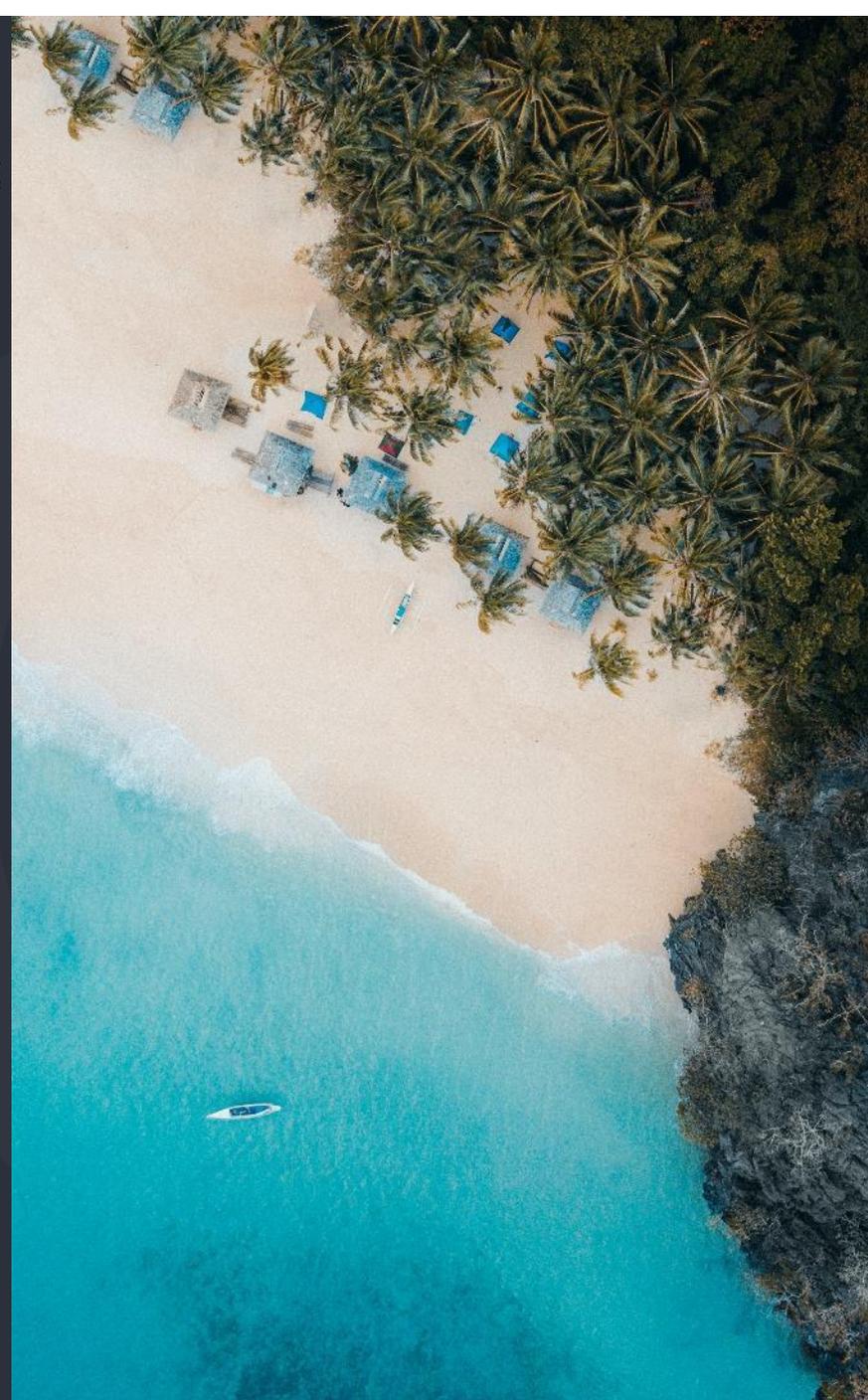
- Holiday pay calculations must take into account all aspects of “normal remuneration”
- These provisions have been enshrined in case law for some time but are now part of statute.



# Changes to Holiday rules and calculations (continued)

You will need to:

- review Contracts to ensure that any references to pay at basic pay are removed
- review workers who are paid bonus or commission to ensure these are taken into account (where applicable)
- review overtime working to establish where this is worked on a regular basis and ensure it is taken into account
- check any workers who may have additional payments for length of service, seniority or possession of professional qualifications and ensure these are taken into account



# Changes to Holiday accrual for variable hours and part year workers

- “New” method of calculating holiday entitlement for irregular hours and part-year workers
- For leave years commencing from 1 April 2024 onwards.
- A return to the old 12.07% rolled up holiday pay



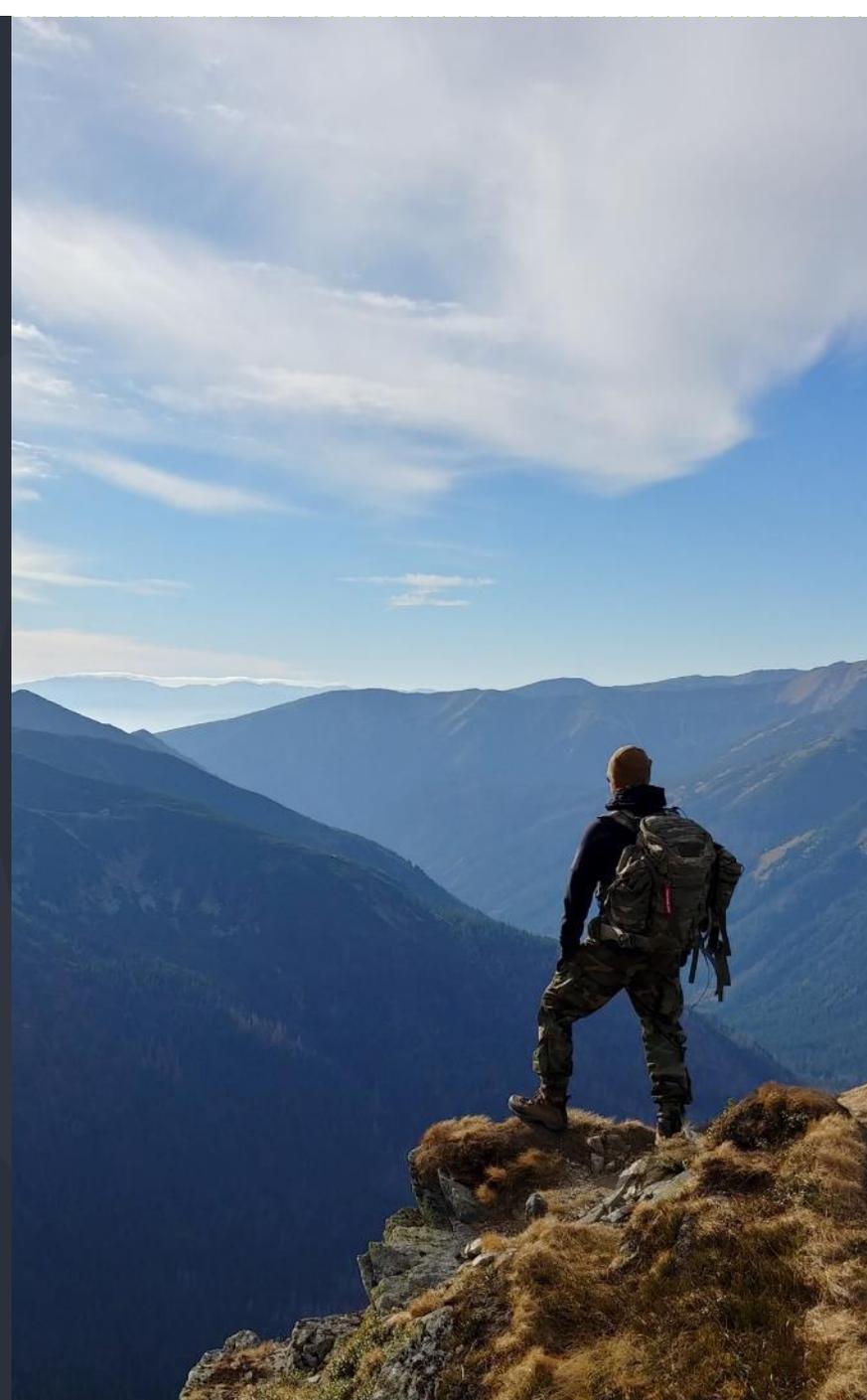
# Changes to Holiday accrual for variable hours and part year workers

You will need to:

- Choose if you are going to pay at the time the holiday is taken at the rate of the average weekly pay over the previous 52 weeks

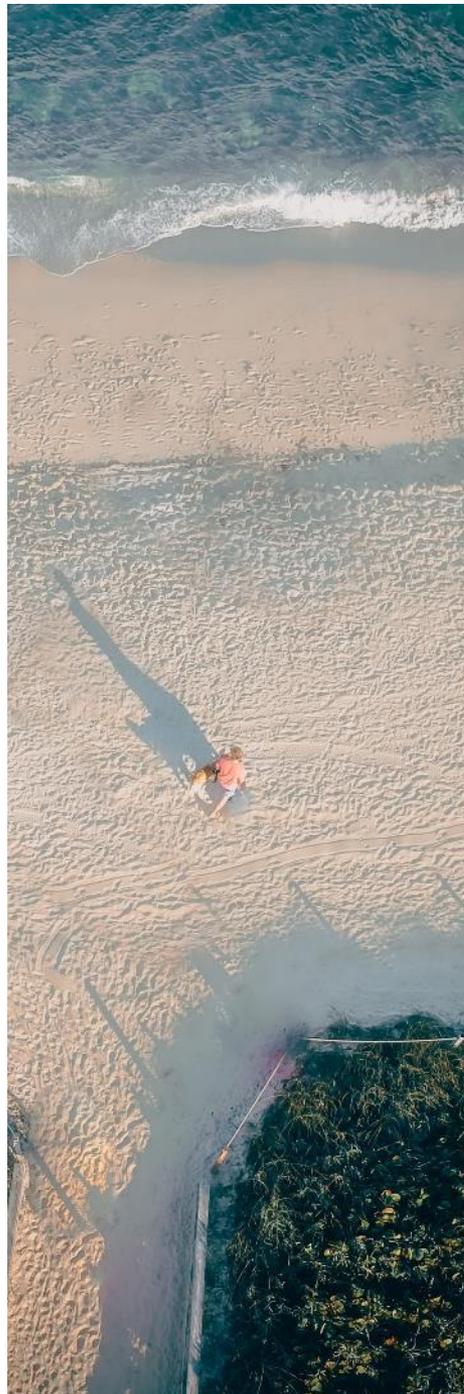
OR

- Pay rolled up holiday pay at a rate of 12.07% of the hours worked in each pay period



# TUPE Consultation

The government's policy paper states that:



**TUPE regulations provide important protections for employees and provide a legal framework for transfers of staff, but there are some simplifications that can be made to reduce administrative burden without changing employee rights.”**

# TUPE Consultation

The requirement to consult with appropriate employee representatives.

Currently this could mean going through an election process for representatives.

Can reduce the number of consultation meetings if individuals don't also want one to one meetings.

# TUPE Consultation

- All businesses with fewer than 50 employees will be permitted to consult directly with employees if there are no existing employee representatives in place, rather than having to arrange elections for new employee representatives;
- Businesses of any size will be permitted to consult directly with employees (where no existing employee representatives are in place) where a transfer of fewer than ten employees is proposed.



A white ceramic mug filled with dark coffee sits on a rustic wooden surface. To the left of the mug, there are some green ivy leaves. In the foreground, a spiral-bound calendar is open, showing a grid of dates from 1 to 28. The background is a dark, semi-transparent rectangular box containing white text.

# Flexible Working

Employment Relations (Flexible Working) Act 2023  
and Secondary legislation

(The Flexible Working (Amendment) Regulations  
2023)

# Poll Question

What is your current flexible working policy in your organisation?

- 0% flexibility and mostly onsite
- 25% flexibility (1-2 days at home, 3-4 days onsite)
- 50% flexibility (3 days at home, 2 days onsite)
- 75% flexibility (4 days at home, 1 day onsite)
- 100% flexibility and fully remote

# Flexible working as it is now

**1**

Limits on who can  
apply, and when

**2**

Right to request, not a  
right to insist changes  
are made

**3**

Employee to suggest  
how to manage  
impact

**4**

Refusal under one of  
eight prescribed  
reasons



## Changes in the upcoming legislation:



Right to request flexible working becomes a day one right



Requirement to consult with your employee



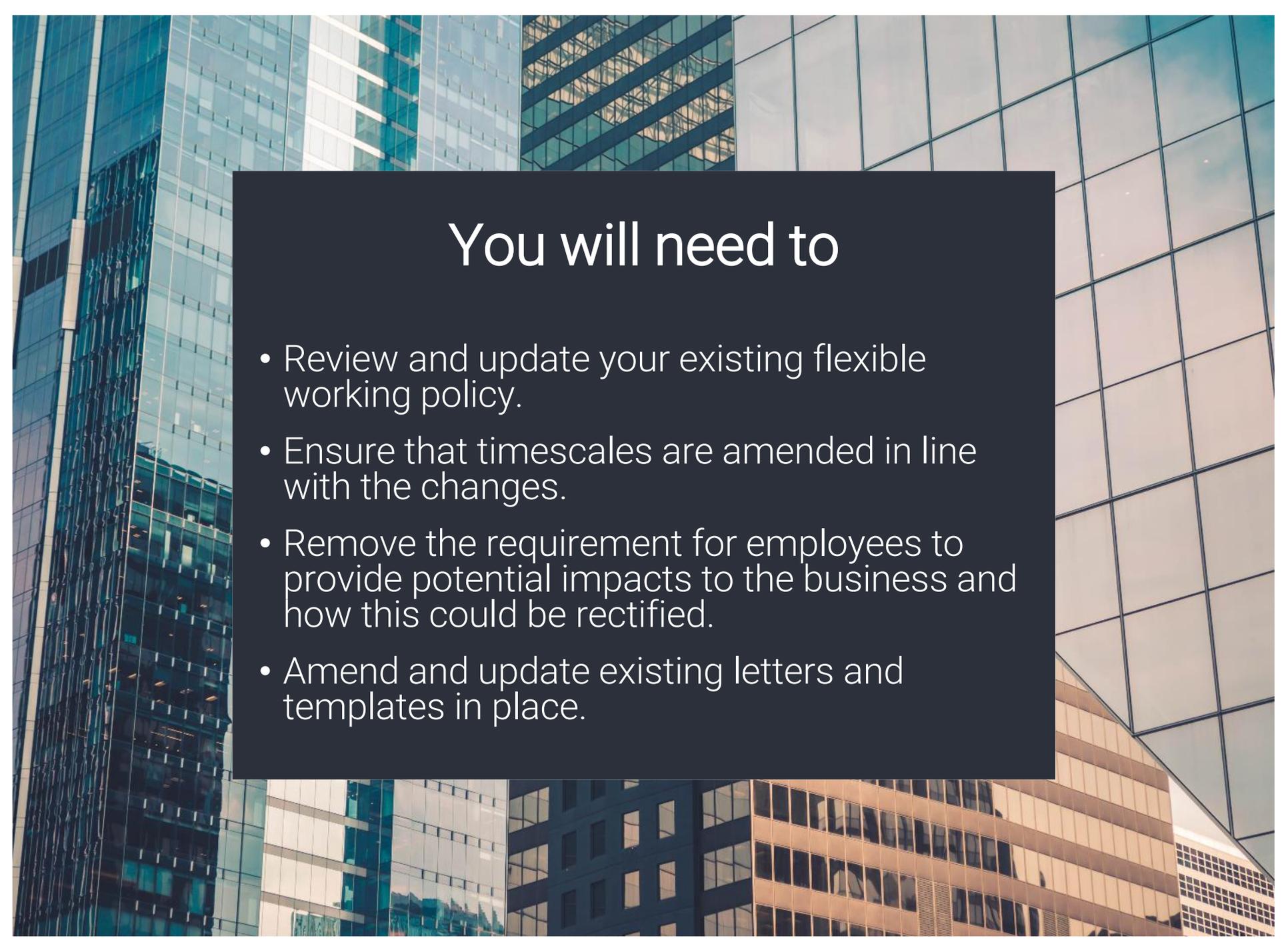
Increase to two requests per 12 months (rolling not calendar year)



Respond to requests within two months not three (including any appeal).



Removes requirement for employee to set out potential impact to business and places the onus on you



# You will need to

- Review and update your existing flexible working policy.
- Ensure that timescales are amended in line with the changes.
- Remove the requirement for employees to provide potential impacts to the business and how this could be rectified.
- Amend and update existing letters and templates in place.

# Statutory rights for atypical workers

Includes employees on Zero Hours, Variable Hours, and Part-Year workers as well as Casual Workers



# Current statutory rights

Casual Workers are entitled to:

- National Minimum Wage / National Living Wage
- Protection from discrimination
- Protection from unlawful deduction from wages
- Paid annual leave
- Daily and weekly rest breaks
- Rights under Data Protection legislation
- Whistleblowing protection



# Current statutory rights

Employees on Zero Hours, Variable Hours, and Part-Year contracts have full employment rights i.e.:

- Unfair Dismissal
- Redundancy
- Family-friendly leave (though not necessarily pay)
- Notice entitlement



A photograph showing two women sitting at a table, looking at a document together. The woman on the right is smiling broadly. The woman on the left is wearing glasses and has her back to the camera. The background is blurred, suggesting an outdoor or semi-outdoor setting with greenery.

# Section 1 Statement

As of April 2020, Casual Workers are also entitled to a written contract from day one of engagement (as set out in Section 1 of the Employment Rights Act 1996 as amended) setting out the terms of the engagement

# Unpredictable working patterns

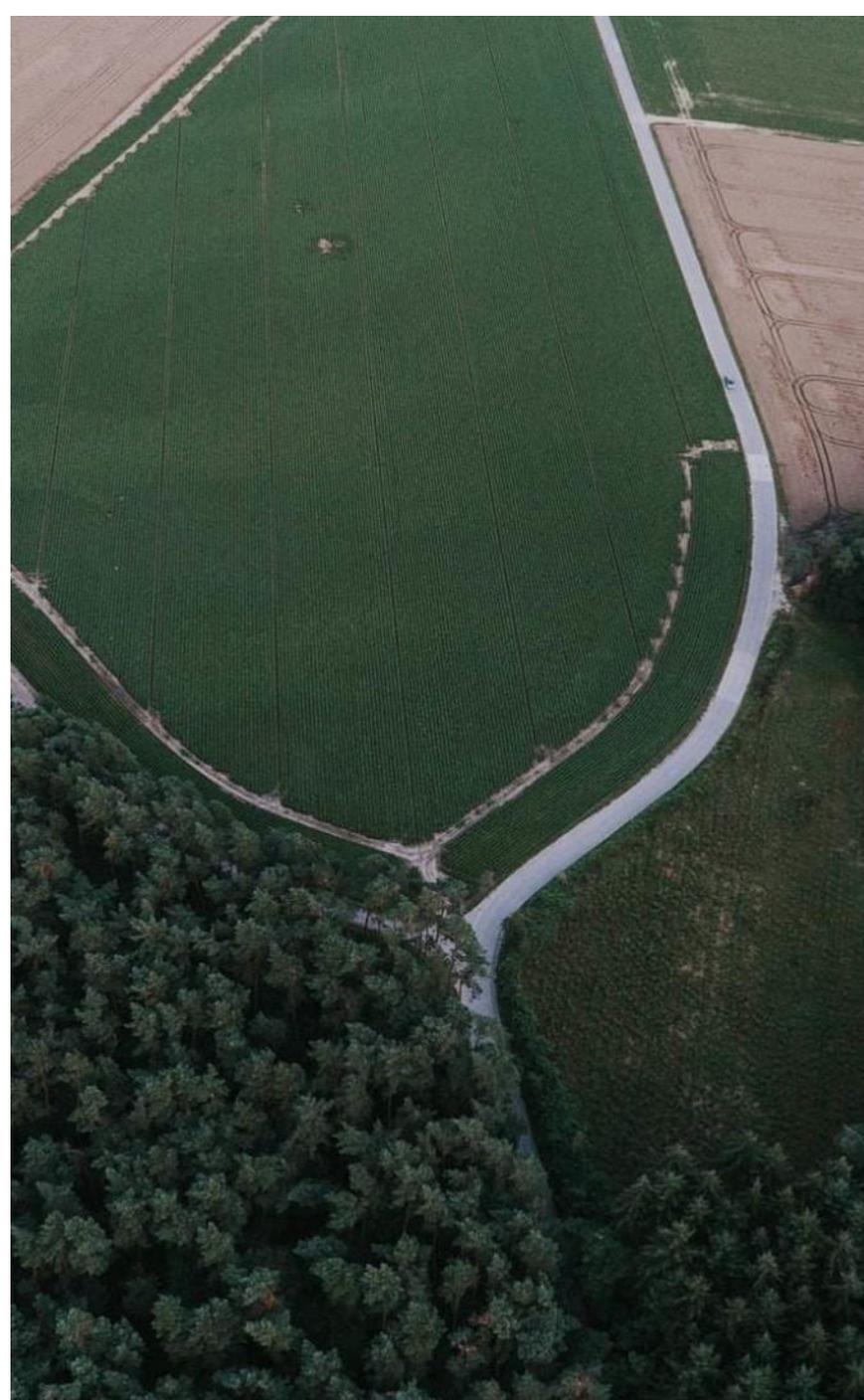
The Workers (Predictable Terms  
and Conditions) Act 2023

Expected to come in to force in  
September 2024



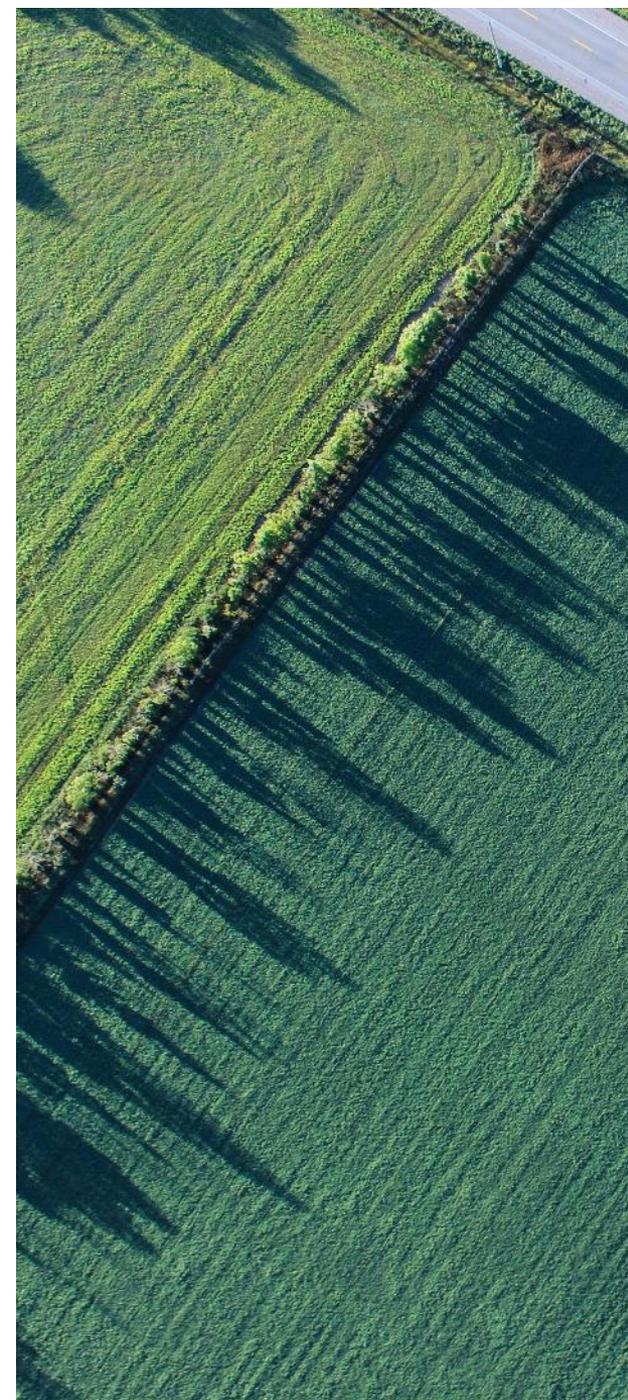
# New legislative provisions

- Any worker where there is a lack of predictability regarding their work pattern:
  - number of hours worked; days on which those hours fall; times of work
  - includes employees on fixed term contracts of 12 months or fewer as this is deemed to be an unpredictable period of time
  - right to request more predictable working conditions
- Waiting period for entitlement from the date of engagement, expected to be 26 weeks



# New legislative provisions

- Similar procedure to flexible working requests (which itself only applies to employees):
  - two applications will be allowed during any 12-month period
  - worker to be notified of the decision within one month
  - employers can refuse a request based on burden of additional costs, detrimental impact on the recruitment of staff, or insufficient work available during the periods the worker has asked to work
- Protection from dismissal (automatically unfair) or other detriment
- Direct claim for failure to follow procedure likely to be maximum eight weeks' pay



# You will need to:

- Implement a new policy
- Ensure that all line managers are aware of the new right so that requests are not dismissed out of hand
- Consider requests seriously and only decline on statutory grounds



# Family leave

## Carers Leave Regulations

Coming into force on 6 April 2024:

- Day One entitlement.
- Unpaid time off to provide or arrange care for a dependent with long-term care needs
- One week in any 12-month period.
- Consecutive or non-consecutive half-days or full days.
- Notification requirement: at least twice the length of the requested leave, or three days if longer.
- A request can be deferred if it would unduly disrupt business operations.
- Protection against dismissal or other detriment



What you will need to do:

- Put a Carers Leave policy in place
- Be aware of the right to leave if requested
- Keep records of Carers Leave taken in each 12-month period
- Ensure that perception of likelihood to take Carers Leave does not affect recruitment decisions

# Family leave

## Paternity Leave Regulations

Amendments effective in respect of  
children born or adopted on or after 6  
April 2024



# Paternity Leave as it is now

**1**

Leave can be taken as either one week or two consecutive weeks

**2**

Leave must be taken within 56 days of the birth or adoption

**3**

Notice to take Leave must be given no later than 15 weeks before the EWC or the matching week



## The upcoming legislative changes:



Leave can be taken as one week, two consecutive weeks, or two separate weeks



Leave must be taken within 52 weeks of the birth or adoption



Notice to take Leave must be given no later than 26 days before the commencement of the Leave

## You will need to:



Amend your Paternity Leave policy and letters / forms to reflect these changes



Be aware of anyone who will qualify to take leave and be ready to respond to requests, given the shorter notice requirement

# Family leave

## Neonatal Care (Leave and Pay) Act 2023

Expected to come into force in April 2025:

- Day One entitlement (Leave only)
- Parents of babies admitted into hospital up to the age of 28 days, with a continuous hospital stay of seven days or more
- Up to twelve weeks' leave
- To be taken within 16 weeks of the birth
- Notification requirements: to be finalised but likely to be minimal notice initially then more formal notification in order to be paid
- In addition to Maternity and Paternity Leave
- Payment at statutory rate (subject to eligibility including 26 weeks' service)



What you will need to do:

- Put a Neo Natal Leave policy in place
- Be aware of the right to leave if notified, particularly at short notice
- Keep records of Neo Natal Leave taken and paid

# The Protection from Redundancy (Pregnancy and Family Leave) Act



# Who will be protected?

- a pregnant employee who is in a protected period of pregnancy;
- an employee who has recently suffered a miscarriage;
- maternity returners;
- adoption leave returners; and
- shared parental leave returners.

By including safeguards for a wider group, the Act promotes an inclusive workplace, encouraging employers to support employees during these life stages



	Length of protection
Pregnant employee who takes maternity leave	<p><b>Start:</b> When the employer has been notified of pregnancy</p> <p><b>End:</b> 18 months from the child's date of birth if notified to employer before the end of maternity leave (or 18 months from the Expected Week of Childbirth if not notified)</p> <p>(Includes any time spent in this period on maternity leave or other statutory leave)</p>
Employee who has suffered a miscarriage	<p><b>Start:</b> When the employer has been notified of pregnancy</p> <p><b>End:</b> Two weeks after the end of the pregnancy, for pregnancies ending before 24 weeks.</p> <p><b>Note:</b> Pregnancies ending after 24 weeks are classed as stillbirths and the employee would be entitled to statutory maternity leave (see above).</p>
Employees taking adoption leave	<p><b>Start:</b> Beginning of adoption leave</p> <p><b>End:</b> 18 months from date of placement or date of entry into Great Britain (if overseas adoption).</p> <p>(Includes any time spent in this period on adoption leave or other statutory leave)</p>
Employee taking shared parental leave	<p><b>Note:</b> If the employee has also taken maternity or adoption leave, the above periods apply instead.</p> <p><b>Start:</b> Beginning of SPL</p> <p><b>End:</b> If less than six weeks of SPL is taken, at the end of SPL. If more than six continuous weeks of SPL is taken, 18 months from child's date of birth (inclusive of any time spent on statutory leave).</p>

# What does this Act mean for employers?

Employers must now implement systems for identifying any potential suitable vacancies across their entire organisation, extending to any group companies.

Ensure appropriate training takes place with any managers responsible for overseeing redundancy procedures.

There is currently limited guidance on what employers will need to consider where there are multiple 'family leave returners' that would be impacted in a single redundancy process.



# Harassment regulations

The Worker Protection (Amendment of Equality Act 2010) Act

Due to come in to force in October 2024



# Harassment regulations

The new statutory code is currently unfinalised but is likely to be based on the EHRC's technical guidance originally published in January 2020.

It is unlikely that a breach of the new duty will give rise to a separate Tribunal claim

## **BUT**

Compensation for a successful sexual harassment claim could be uplifted by up to 25% if there is a breach of the duty to take (some) reasonable steps.



# Steps to take

- 1 Regularly review and update anti-harassment policies and procedures to reflect current legal standards and societal expectations.
- 2 Invest in ongoing training programmes to educate employees about acceptable workplace behaviour and the consequences of harassment.
- 3 Foster a workplace culture that values diversity, inclusion and respect, making it clear that harassment will not be tolerated.
- 4 Establish effective mechanisms for addressing and investigating complaints promptly and impartially.
- 5 Seek advice to ensure that policies and procedures align with the specific requirements of the new Act.

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Save the date

# Finance Directors Update Course

Date: Thursday 19<sup>th</sup> September

Time: 8.30am – 12.30pm

CPD: 3 hours

[www.mha.co.uk/events](http://www.mha.co.uk/events)

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