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**HR**

# Solutions

Monthly Newsletter | March 2024



## Hot Topics

A series of significant alterations and additions in employment law, notably announced in recent months, will have implications for employers in 2024. Whilst some of the upcoming changes are set to take place later in the year, the large majority come in to force in April. It is essential that employers are reviewing their existing policies and procedures in relation to the various changes to ensure that they do not fall into any difficult situations in the coming weeks and months.

As there have been updates on the legislation changes, each of our newsletters has focussed on the various proposed changes due to come in to force and our recent **Webinar** discussed these in more detail.

### The Legislative changes due to come into force in April 2024 include;

- National minimum wage increases (Link to **December 2023 newsletter**)
- New holiday legislation in relation to the calculation of holiday entitlement for irregular workers and part-year workers. (Link to **February newsletter**)
- Employment Relations (Flexible Working) Act 2023 and Secondary legislation
- The Flexible Working (Amendment) Regulations 2023 (Link to **January Newsletter**)
- The Paternity Leave (Amendment) Regulations 2024 (Link to **February newsletter**)
- Employment Relations (Flexible Working) Act 2023.

### This month we will be focussing on:

- The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
- The Protection from Redundancy (Pregnancy and Family Leave) Act 2023.

### In future months we will provide updates on:

- A new statutory right for workers (to include agency workers) to request a more predictable work pattern. - Due to come in to force in September 2024
- The Worker Protection (Amendment of Equality Act 2010) Act - Due to come in to force in October 2024
- Neonatal Care (Leave and Pay) Act 2023 – Expected to come in to force in April 2025.

**The Transfer of Undertakings (Protection of Employment) Regulations 2006** regulations are designed to safeguard employees' rights when the organisation or service they work for transfers to a new employer. This transfer can occur due to a business being sold, outsourced, or when a contract for services is moved from one provider to another.

The key aim of TUPE is to ensure that when employees move to the new business, they do so under their existing terms and conditions, and that continuity of employment is preserved. Any changes to employees' terms and conditions for a reason connected to the transfer would be deemed void unless certain conditions are met. 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."**

Currently businesses with more than 10 employees cannot consult employees directly about transfers if there are no appropriate employee representatives in place. This means that there is a requirement to elect representatives, which can add an additional period of time and administration to a TUPE consultation process. The benefit of course is that it has the potential to reduce the number of one to one's required.

### The key changes from 1 July 2024 are that:

- 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.

These changes may of course be viewed differently by different employers. For those of you with smaller workforces this could very well reduce the additional time added to consultation by not having to facilitate an election process. You can of course still have elected representatives for consultation if you so wish.

Others may be concerned about the additional time and process of consulting with each affected employee individually. It's also unclear how this proposed law change might impact existing agreements with trade unions, as employers will likely still be expected to follow them.

We would expect there to be further updates in relation to trade unions and any collective agreements in place.

With the takeover of a business, a service provision change, or the merger of two businesses it is likely that TUPE would apply to existing employees.

**HR Solutions can support you with advice prior to a transfer and during the consultation process along with supporting documents including business case, template letters and scripts for meetings.**

**The Protection from Redundancy (Pregnancy and Family Leave) Act 2023** brings amendments to the existing Employment Rights Act 1996, introducing crucial safeguards for a broader range of individuals during pregnancy or family leave. Notably, the Act prioritises pregnant employees and recent parental leave returners in redeployment opportunities during redundancy. Employers must adhere to guidelines, offering suitable alternative roles before implementing redundancy. The Act aims to bolster job security during pregnancy and family leave, emphasising fair treatment and alternative job exploration prior to redundancies.

Expanding beyond existing protections, the Act covers a wider group, including a pregnant employee in a protected period, someone who has recently suffered a miscarriage,

maternity returners, adoption leave returners, and shared parental leave returners. By providing safeguards for a more extensive range, the Act promotes an inclusive workplace, encouraging employers to support employees during various life stages.

The Act specifies the duration of protection for different situations, such as maternity leave, miscarriage, adoption leave, and shared parental leave. Employers planning restructuring in 2024 must consider the implications of these new protections, applicable to pregnancies notified on or after April 6, 2024, and maternity/adoption leave ending on or after the same date. For shared parental leave, the protection applies to employees taking at least six weeks of leave beginning on or after April 6, 2024. Some examples of the timescales are below;

### Length of protection

#### Pregnant employee who takes maternity leave

**Start:** When the employer has been notified of pregnancy.

**End:** 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)  
(Includes any time spent in this period on maternity leave or other statutory leave)

#### Employee who has suffered a miscarriage

**Start:** When the employer has been notified of pregnancy.

**End:** Two weeks after the end of the pregnancy, for pregnancies ending before 24 weeks.

**Note:** Pregnancies ending after 24 weeks are classed as stillbirths and the employee would be entitled to statutory maternity leave (see above).

#### Employees taking adoption leave

**Start:** Beginning of adoption leave.

**End:** 18 months from date of placement or date of entry into Great Britain (if overseas adoption).

(Includes any time spent in this period on adoption leave or other statutory leave)

#### Employee taking shared parental leave

**Note:** If the employee has also taken maternity or adoption leave, the above periods apply instead.

**Start:** Beginning of SPL

**End:** 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).

However, the legislation doesn't address the position of employees notifying their pregnancy before April 6, 2024, potentially leading to ambiguity and unfairness. Employers are advised to assume that any known pregnant employees may be protected from April 6, 2024, pending potential updates to government guidance.

For employers, the Act imposes essential guidelines and regulations, emphasising the commitment to prevent unjust targeting of protected employees during redundancy. Non-compliance may result in claims of unfair dismissal and/or discrimination. Employers are urged to implement systems

for identifying suitable vacancies, provide training for managers overseeing redundancy procedures, and address potential challenges in cases involving multiple family leave returners during a single redundancy process.

**HR Solutions can support you with advice both prior to commencing consultation and during a redundancy consultation process, along with providing template letters and scripts for consultation along with supporting documents including business case, template letters and scripts for meetings.**

## Please see below some examples of the work that we have completed recently.

### Maidenhead

Advice in relation to a potential redundancy consultation and completion of a Settlement Agreement including drafting the Agreement.

### London

Review and redraft of multiple contracts of employment along with the review and redraft of core HR policies.

### Leicester

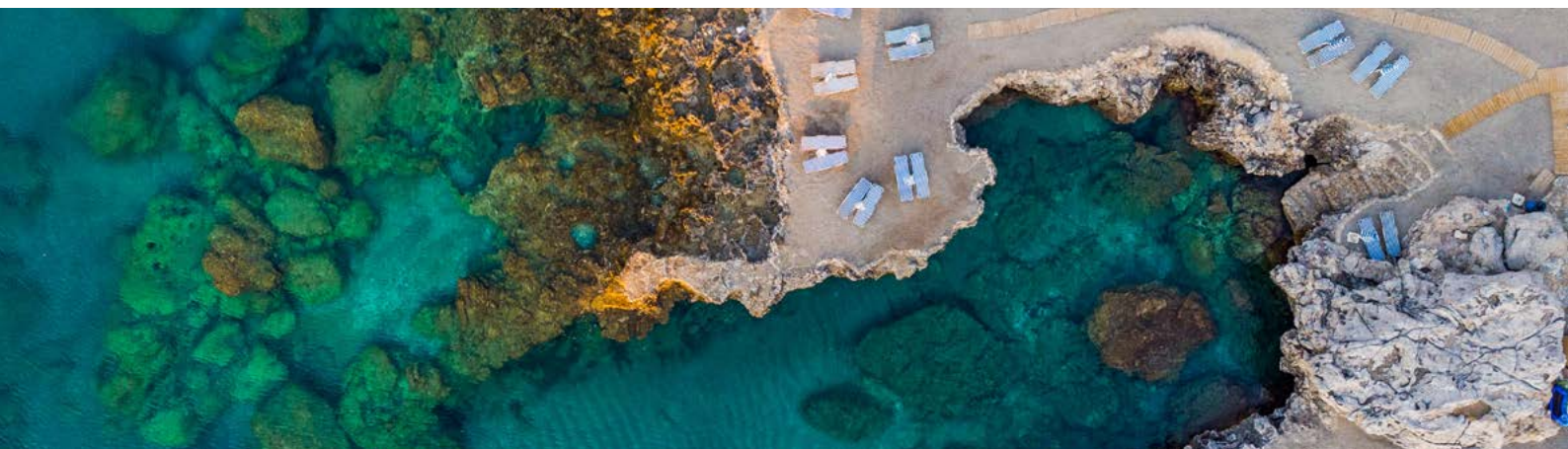
Advice in relation to a poor performer who was then on long term sick leave.

### Peterborough

Advice in relation to a dismissal along with a termination letter.

### Peterborough

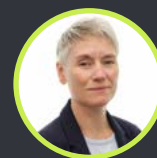
Provision of an Employee Handbook, Contract of Employment and Privacy Notice.



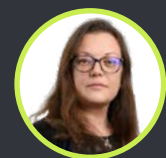
### How we can help?

If you require HR support, please contact us at [HRsolutions@mha.co.uk](mailto:HRsolutions@mha.co.uk) to discuss how we could assist you.

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available according to your needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.



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Now, for tomorrow

