

HR

Solutions

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Hot Topics

EU law and Brexit - as predicted, there hasn't been a wholesale scrapping of employment law after Brexit; however, the Retained EU Law (Revocation and Reform) bill was published on 5 October 2022 which will automatically repeal any retained EU law (including UK enacted EU law) on 31 December 2023 unless specific legislation is introduced to retain it.

There are over 2400 pieces of legislation in total over all areas of law and it is difficult to predict what will be retained but from an employment law point of view we may see the end of:

- TUPE – or it might become easier to harmonise terms and conditions
- Paid Annual Leave – this is a bit of a concern as this is a right enjoyed by all UK workers
- The 48 hour working week – this has been rumoured but we always had the derogation of the 48-hour opt-out in the UK anyway
- The Part Time and Fixed Time Worker Regulations – this is also of concern as this will affect more female workers than male
- The Agency Worker Regulations – these have always been unpopular with employers

From the end of 2023, the UK will also no longer be required to incorporate EU law; however, under the Brexit Agreement, the UK cannot scrap laws or bring in new ones which would give it an unfair competitive advantage over EU member states. The UK's Trade and Cooperation Agreement stated that it would not weaken or reduce its labour standards below the levels in place on 31 December 2020. This includes worker rights as well as health and safety standards.

Employment laws contained in primary legislation will, by and large, be unaffected. The Equality Act 2010, for example, will remain in force even if the legislation that incorporates EU law is repealed. Any change to the existing regime governing direct discrimination, indirect discrimination and harassment seems unlikely.



Employment Tribunals

Dress and jewellery codes in the workplace are potentially contentious. Here, we consider three Employment Tribunal cases which resulted in successful claims.

In **Jackson v New Look Retailers**, the Employment Tribunal held that a retail worker was constructively dismissed after she resigned following being chastised for wearing trainers on the shop floor.

Ms Jackson had worked for New Look for 20 years in a role which required long periods of standing; she had a knee condition which she managed by wearing a knee support but also trainers which she had been wearing for nearly 18 months. In August 2018, Ms Jackson's line manager criticised her footwear, referring to "those horrid orange things", and saying that they were unsightly and inappropriate for work.

Ms Jackson raised a formal grievance which was not upheld and she appealed the decision which was also rejected. Ms Jackson resigned and brought claims of constructive dismissal and harassment related to disability.

The Tribunal concluded that New Look's conduct amounted to a breach of trust and confidence and held that Ms Jackson had been constructively dismissed. It found that there had been "no reasonable and proper cause to rebuke the claimant about the condition of her footwear in a public area".

The Tribunal also found that the comments amounted to unwanted conduct; however, it dismissed the claim of disability-related harassment as it concluded that New Look could not have known that she had a disability.

Ms Jackson was awarded total compensation of **£12,138**.



In **Onuoha v Croydon Health Services NHS Trust**, the Employment Tribunal held that a nurse was constructively dismissed for refusing to remove a cross necklace, and that this constituted discrimination and harassment on the grounds of religion.

Mrs Onuoha was a nurse who worked largely in theatre. As a devout Catholic, she wore a cross necklace for many years without any challenge from the Trust until 2014 when a new theatre manager asked her to remove it which she refused to do. In 2015, a matron then asked her to conceal the cross under her uniform; again she refused. In 2016, she was asked to remove a cross because it was an infection risk; once again she refused.

In Autumn 2017, the CQC criticised the Trust for failing to enforce its dress code. In response to this, the Trust instructed its employees to stop wearing certain items of jewellery, including the claimant's cross. When she again refused, the Trust took disciplinary action and issued her with a final written warning. Mrs Onuoha resigned and brought claims of constructive dismissal and discrimination on the grounds of religion.

The Tribunal found that the Trust's conduct amounted to a repudiatory breach of contract and therefore that Mrs Onuoha had been constructively dismissed. In addition, it held that Mrs Onuoha had been subjected to direct religious discrimination. Whilst it was accepted that the wearing of the necklace might be a small health and safety risk, the Tribunal found that "no real thought had been given as to whether it was appropriate to discipline the claimant for doing something that many others in the workplace were doing unchallenged", noting that many doctors and nurses continued to wear jewellery including necklaces; other employees were permitted to wear religious items such as headscarves and turbans; and ties were permitted which presented an equal choking risk as necklaces.

In **Kovalkovs v 2 Sisters Food Group**, the Employment Tribunal held that a factory worker was indirectly discriminated against on the grounds of religion for refusing to remove a crucifix necklace.

Mr Kovalkovs was a quality inspector at a chicken processing factory. As a member of the Russian Orthodox Church, he wore a sanctified crucifix necklace.

Upon commencing employment in 2019, Mr Kovalkovs was made aware of the factory's food safety policies which included the prohibition of jewellery in production areas with the exception of single band rings. Religious jewellery was permitted subject to a risk assessment being carried out in respect of the risks of foreign body contamination from damaged jewellery, injury due to entanglement, entrapment or tearing, toxic reaction to metal or other allergic reactions.

In December 2019, Mr Kovalkovs' line manager told him to remove his crucifix necklace. No risk assessment had been carried out. In January 2020, a different manager noticed Mr Kovalkovs' necklace and asked his line manager to conduct a risk assessment. His line manager then told him that she considered there was a risk of contamination, entanglement, entrapment and tearing, and told him to remove it. He refused.

Mr Kovalkovs was dismissed with immediate effect for failure to obey a management instruction. He brought a claim of indirect religious discrimination, stating that he had been disadvantaged as a Christian.

The Tribunal found that whilst the health and safety of staff is a legitimate aim, the risk assessment had not been properly conducted (the chain had not been examined and alternative ways in which the crucifix could be worn were not considered) and therefore this was not proportionate. It held that this constituted indirect religious discrimination.

Mr Kovalkovs was awarded **£22,075**.

Many employers operate a dress code to set standards about what it is appropriate for employees to wear to work; however, any such code must be applied sensitively and flexibly. A dress code applied rigidly may give rise to claims of sex, race, religion, and disability discrimination, and / or constructive dismissal. HR Solutions can advise you on how to protect yourselves from such claims when implementing a dress code, including how to conduct consultation, how to avoid impacting unfavourably on employees because of a protected characteristic, and how to carry out fair disciplinary proceedings if these become necessary.

UKVI publish a report listing the fines imposed on employers for employing illegal workers each quarter. The reports published for London and the South East, and Midlands and East of England on 1 August show the following fines were imposed:

Trading Name	Location	Value of Penalty
Khan's Restaurant	Epsom, Surrey	45000
Alert 4 Shutter	Purfleet, Essex	45000
Hand Car Wash	Plaistow, London	14000
British Fried Chicken	Basildon, Essex	45000
British Fried Chicken	Basildon, Essex	20000
Noodles City Chinese Buffet	Camberwell, London	10000
Kebab Knight Limited	Henfield, West Sussex	15000
Premier 24 Hours Convenience Store	Gosport, Hampshire	10000
Trelawney News	Slough, Berkshire	15000
Smokeys Burger & Shakes Limited	Southampton, Hampshire	15000
Too Sweet Limited	Lower Clapton, London	10000
Indish Indian Takeaway Horsham Limited	Horsham, West Sussex	10000
Golden Plaice	Worthing, West Sussex	10000
A1 Sandwell Skip Hire Ltd	Smethwick, West Midlands	15000
Windsor Fish Bar	Northampton, Northamptonshire	10000
G&S Shopfronts Ltd	West Bromwich, West Midlands	20000
Razbari Restaurant H F Business Ltd	Hereford, Herefordshire	20000
Jalalabad Akbari Cuisine	Leominster, Herefordshire	20000
Panache Balti Ltd	Warwick, Warwickshire	10000
Rabeen Salem Sabir	Coventry, West Midlands	10000
Safdar Builders	Solihull, West Midlands	30000
Shifnal Cottage Ltd	Shifnal, Shropshire	40000
Gourmet Shack.	Luton, Bedfordshire	10000

HR Solutions can advise you on compliant Right to Work in the UK checks and can conduct them on your behalf if required; this is particular pertinent now that the remote checks introduced during the COVID pandemic have been removed. HR Solutions can also assist with the employment of migrant workers via legal means i.e. Sponsorship on Skilled Worker visas.

In order to continue to raise awareness and promote HR Solutions, please see below some examples of the work that we have done recently.

Office

Type of work

London

Registering a child born to EU Settled migrants as a British Citizen

Thames Valley

Review of Contract of Employment; provision of Employee Handbook and Privacy Notice

London

Guidance on the Right to Work in the UK

Leicester

Advice on employee returning to work after long-term sickness absence issue with previously unresolved disciplinary issues

London

Conducting TUPE consultation process with two employees and preparing confirmation documents for signature

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available for you 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.



Caz and Stephanie

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Now, for tomorrow