



DWF Law LLP

# Employment Law Update

21 March 2024

# Agenda

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1. Welcome
2. Case update
3. Legislation and round-up
4. A new mandatory duty to take reasonable steps to prevent sexual harassment
5. What's on the horizon?

# Case update

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# Settlement agreements

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Can settlement agreements be used to settle unknown future claims?

***Bathgate v Technip Singapore PTE Limited (Inner House of the Court of Session)***



# Gender critical beliefs

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Professor wins gender critical  
discrimination case against  
university

***Phoenix v the Open University (Employment Tribunal)***

***Higgs v Farmor's  
School***

Due to be heard by the  
Court of Appeal on 7  
October 2024

# Case tracker: Key cases to watch

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Case	Detail	Key dates
<b>Discrimination</b> <i>British Bung Manufacturing Company Limited and another v Finn</i>	Does calling a male employee “bald” amount to harassment related to sex?	EAT – appeal heard on 28 November 2023 – judgment awaited.
<b>Dismissal and re-engagement</b> <i>Union of Shop, Distributive and Allied Workers &amp; Ors v Tesco Stores Limited</i>	When can an employer be prevented from dismissing and re-engaging to change a contractual entitlement?	Supreme Court – 23 and 24 April 2024

# Legislation round-up

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# The end of supremacy of EU law and divergence in NI

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## Retained EU Law (Revocation and Reform) Act 2023

- Supremacy of EU law ended.
- Further change may take place.
- The parameters of the Trade and Co-operation Agreement – “level playing field”.

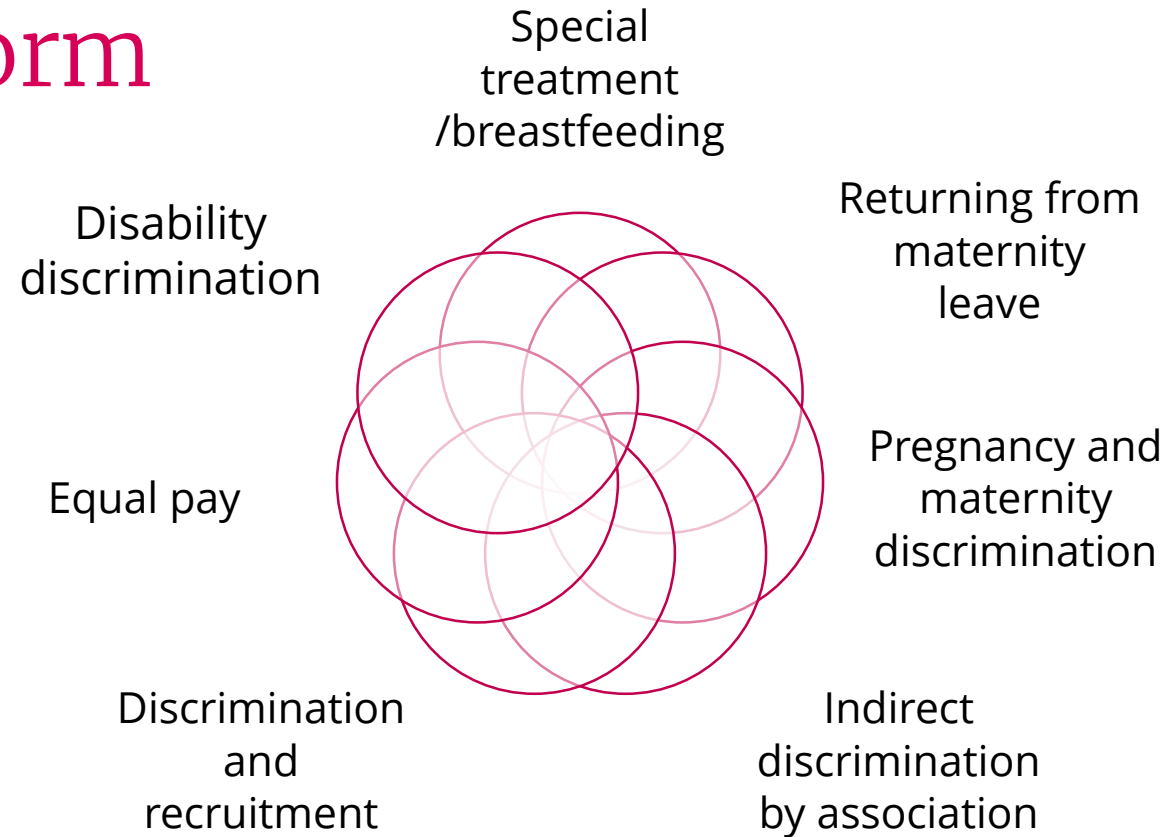
**Key-date – 1 January 2024**

What is the position in Northern Ireland?



# The Equality Act 2010: Employment law reform

The Equality Act 2010  
(Amendment)  
Regulations 2023



**Key date – the Regulations came into force on 1 January 2024**

# Flexible working

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## Employment Relations (Flexible Working) Act 2023

Key changes under the Act:

- Employees can make **two requests**, as opposed to one, in any 12 month period.
- The **timeframe** for employers to make a decision on a request is reduced from three to **two months** (as before, employees can agree to an extension).
- Employers must **consult** with the employee about their request before refusing it.
- The requirement for the employee to state what **effect the change** would have on the employer and how the effect could be dealt with is **removed**.

**Key date – The Act will come into force on 6 April 2024**

### Day 1 right

The Flexible Working  
(Amendment)  
Regulations 2023

No service will be  
required in order to  
make a flexible  
working request on or  
after **6 April 2024**.

# Extended redundancy protection for pregnant employees and new parents

## Existing redundancy protection

Employees on maternity leave, shared parental leave or adoption leave have special protection when a redundancy situation arises, in that they have an automatic right to be offered any suitable vacancy, if one is available, before being made redundant.

## Extension of the protection

New legislation will extend this protection to cover both pregnancy and a period of 18 months after the expected week of childbirth, unless the employee has notified the employer of the actual date of the child's birth, in which case the additional protection will end 18 months after that date. Similar protection will be afforded to those taking shared parental leave or adoption leave.

**Key date - Regulations expected to come into force on 6 April 2024**

What practical steps should employers take?

# A closer look at the extended protection

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	The protected period
<b>Pregnancy</b>	The redundancy protection starts when an employee tells their employer that they are pregnant. Where the employee is entitled to statutory maternity leave the pregnancy protected period will end on the day the statutory maternity leave starts. If the pregnancy ends and the employee is not entitled to maternity leave, the protected period will end two weeks after the end of the pregnancy (for example if the employee suffers a miscarriage – please note that pregnancies ending after 24 weeks are classed as stillbirths and the employee is entitled to maternity leave).
<b>Maternity leave</b>	The additional protected period will end 18 months after the expected week of childbirth, unless the employee has notified the employer of the actual date of the child’s birth, in which case the additional protection period will end 18 months after that date.
<b>Adoption leave</b>	The additional protected period ends 18 months after the child’s placement or the date the child entered Great Britain (if overseas adoption).
<b>Shared parental leave</b>	For employees taking six or more consecutive weeks of shared parental leave (but who have not taken maternity or adoption leave), the additional protected period ends 18 months after the date of the child’s birth or placement or date they entered Great Britain. If the employee takes less than six weeks shared parental leave the protection will end on the date the leave ends.

# Paternity leave

## Paternity Leave (Amendment) Regulations 2024

- Fathers and partners permitted to take leave as two one week, non-consecutive blocks.
- Leave can be taken at any point in first year after birth or adoption of their child (not just within first eight weeks).
- Shorter notice period, in most cases, to four weeks (exception for domestic adoption cases).
- 28 days' notice of variation.

### **Key dates -**

Regulations in force from 8 March 2024. The regulations will take effect in relation to children whose expected week of childbirth is after 6 April 2024 and children whose expected date of placement for adoption, or expected entry into GB for adoption is on or after 6 April 2024



# Carer's leave

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Carer's Leave Act 2023 and Carer's Leave Regulations 2024

- One week of unpaid leave.
- Individual days or half days, up to a block of one week.
- Employer can postpone.
- Notice required – twice as much as period of leave or three days (whichever is greater).



**Key date – The regulations will come into force on 6 April 2024**

# Neonatal care

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## Neonatal Care (Leave and Pay) Act 2023

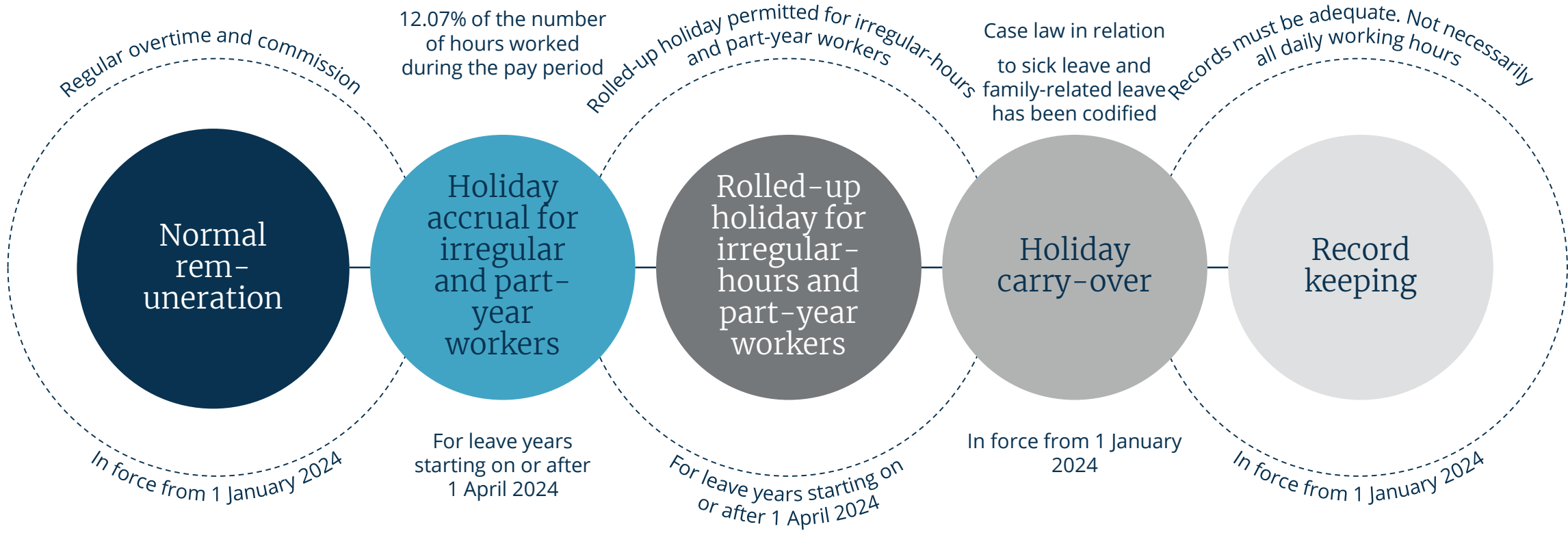
- Leave expected to be capped at 12 weeks.
- Pay expected to be statutory.
- Available to employees with a parental or other personal relationship to a child who is or has received neonatal care.
- No qualifying service for leave.
- 26 weeks' continuous service for pay.

**Key date – expected April 2025**





# Working Time Regulations 1998: Reform



**What is the position in Northern Ireland?**



# TUPE Reform

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The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023

Small businesses (with fewer than 50 employees) undertaking a transfer of any size, and businesses of any size undertaking a small transfer (of fewer than ten employees) will be allowed to consult their employees directly if there are no existing worker representatives in place.

**Key date – Applies to TUPE transfers which take place on or after 1 July 2024.**

# Workers/agency workers

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## Workers (Predictable Terms and Conditions) Act 2023

A photograph of a silver laptop on a wooden desk. A circular callout with a red border is overlaid on the laptop screen, containing the text 'Agency workers covering industrial action'. The laptop screen shows a document with some text and a sidebar.

**Agency workers  
covering industrial  
action**

- Workers and agency workers will have the right to request more predictable terms and conditions of work where there is a lack of predictability to their work pattern.
- Two applications in a 12 month period.
- Applications can be rejected on statutory grounds.
- 26 weeks' service requirement expected.

**Key date – Expected September 2024**

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# Legislation round-up

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Further key changes to be aware of:



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## Strikes minimum service levels

Minimum service levels in connection with the taking part of strike action in “relevant services”



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## Restrictive covenants reform

Statutory cap of three months on non-compete clauses “when Parliamentary time allows”.



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## Code of Practice on fire and re-hire

Draft Code of Practice has been published. Tribunals will be required to take the code into account and will have the power to uplift compensation by up to 25%.



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## NDA legislation

Legislation expected on the use of NDAs in harassment and discrimination cases.



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## NMW increases/Tips

**NMW** - Annual increases and NLW age band expanded to those aged 21+ (previously 23+) – April 2024.

**Allocation of Tips** – fair allocation of tips legislation expected to be fully in force in May 2024

Sexual harassment: *Mandatory*  
duty on employers to take  
reasonable steps

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# Sexual harassment: A quick re-cap

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The Equality Act 2010 protects individuals against direct discrimination, indirect discrimination, harassment and victimisation. There is further protection for disability discrimination, including a duty to make reasonable adjustments and discrimination arising from a disability.

## What is harassment?



### Three definitions:

1. General definition
2. Conduct of a sexual nature
3. Rejection of or submission to conduct of a sexual nature

## Sexual harassment definition

### In a nutshell:

‘A harasses B if A engages in unwanted conduct of a sexual nature, and the conduct has the purpose or effect of violating B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

## Who is held responsible?

Employers can be liable for acts of employees

Employees themselves can be personally liable

# Mandatory duty

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The Worker Protection (Amendment of Equality Act 2010) Act 2023.

The Act will:

- Introduce a duty on employers to take **reasonable steps** to prevent sexual harassment of their employees.
- Give employment tribunals the power to **uplift** sexual harassment **compensation** by up to 25% where an employer is found to have breached the new duty to prevent sexual harassment.

**The Act will come into force in October 2024**

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**EHRC technical  
guidance published  
on 15 January 2020**

**What further  
guidance can  
employers expect?**



# What can employers do to prepare?

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Complaints of sexual harassment can lead to:

- Costly settlements
- High profile senior departures
- Expensive litigation
- Reputational damage
- Poor employee and customer relations
- Lost productivity
- Reduced profitability



Investigate complaints quickly and effectively (including historic complaints)



Zero-tolerance approach to harassment



Robust policies and procedures focusing on inclusion as well as equality



Effective reporting mechanisms and analysis of reported data



Targeted risk assessment to identify problem areas



Third party awareness of zero tolerance approach



Require settlement agreements to be signed off or reviewed at board level



Ensure perpetrators are appropriately sanctioned



Effective regular training for all. Bespoke training for line managers. Including courageous bystander training to encourage witnesses to intervene.

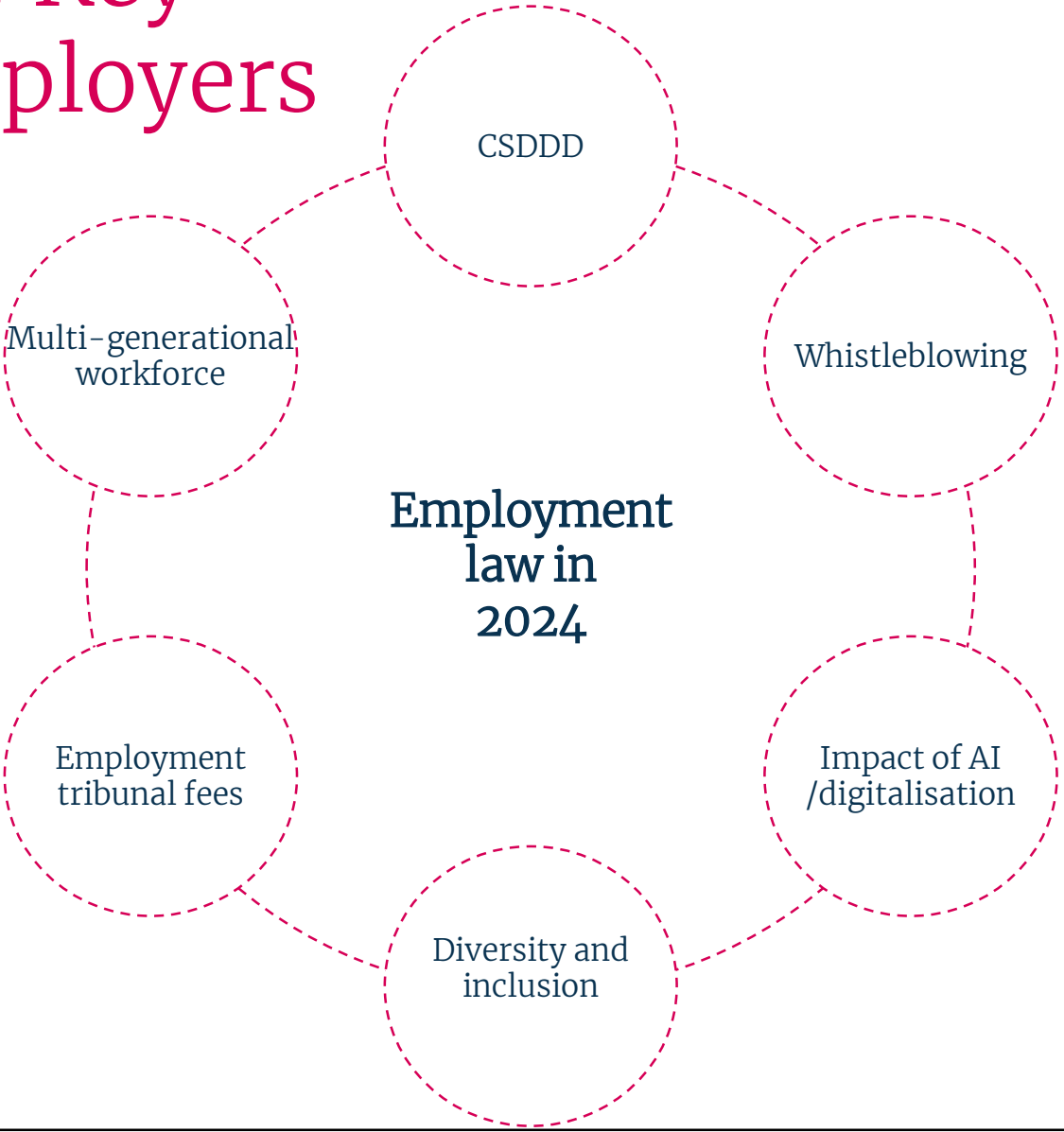


Factor in suggestions from the EHRC Technical Guidance

What's on the horizon?

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# A look ahead: Key issues for employers



**A year of change...**



What might a general election mean for employment law?

# Questions

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# Contact us

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