



DWF Law LLP

# Employment Law Update

12 October 2023

# Agenda

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1. Welcome
2. Case update
3. Legislation and consultations round-up
4. AI and the workplace
5. What's on the horizon?

# Case update

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# Gender critical beliefs

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What approach should an employment tribunal take when assessing the proportionality of any interference with rights to freedom of religion and belief and to freedom of expression?

***Higgs v Farmor's School (Employment Appeal Tribunal)***

**Employers have to  
balance competing  
interests**

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**As always, creating a  
workplace culture where  
both inclusion and  
diversity are prioritised  
will help mitigate the  
risk of future disputes**

# Harassment

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What if the alleged victim in a harassment claim was not aware of the unwanted conduct?

***Greasley-Adams v Royal Mail Group (Employment Appeal Tribunal)***





# Disability discrimination

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Could an employer's belief that an employee was working when off sick be "something arising" from disability?

***Pilkington UK Limited v Jones (Employment Appeal Tribunal)***



# Disability discrimination

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Job applicant with dyspraxia put at a substantial disadvantage when required to complete an online application thereby triggering the duty to make reasonable adjustments

***AECOM Limited v Mallon (Employment Appeal Tribunal)***

# TUPE

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When does the right to participate in a share incentive plan transfer under TUPE?

***Ponticelli UK Limited v Gallagher (Inner House of the Court of Session)***

[dwfgroup.com](http://dwfgroup.com)



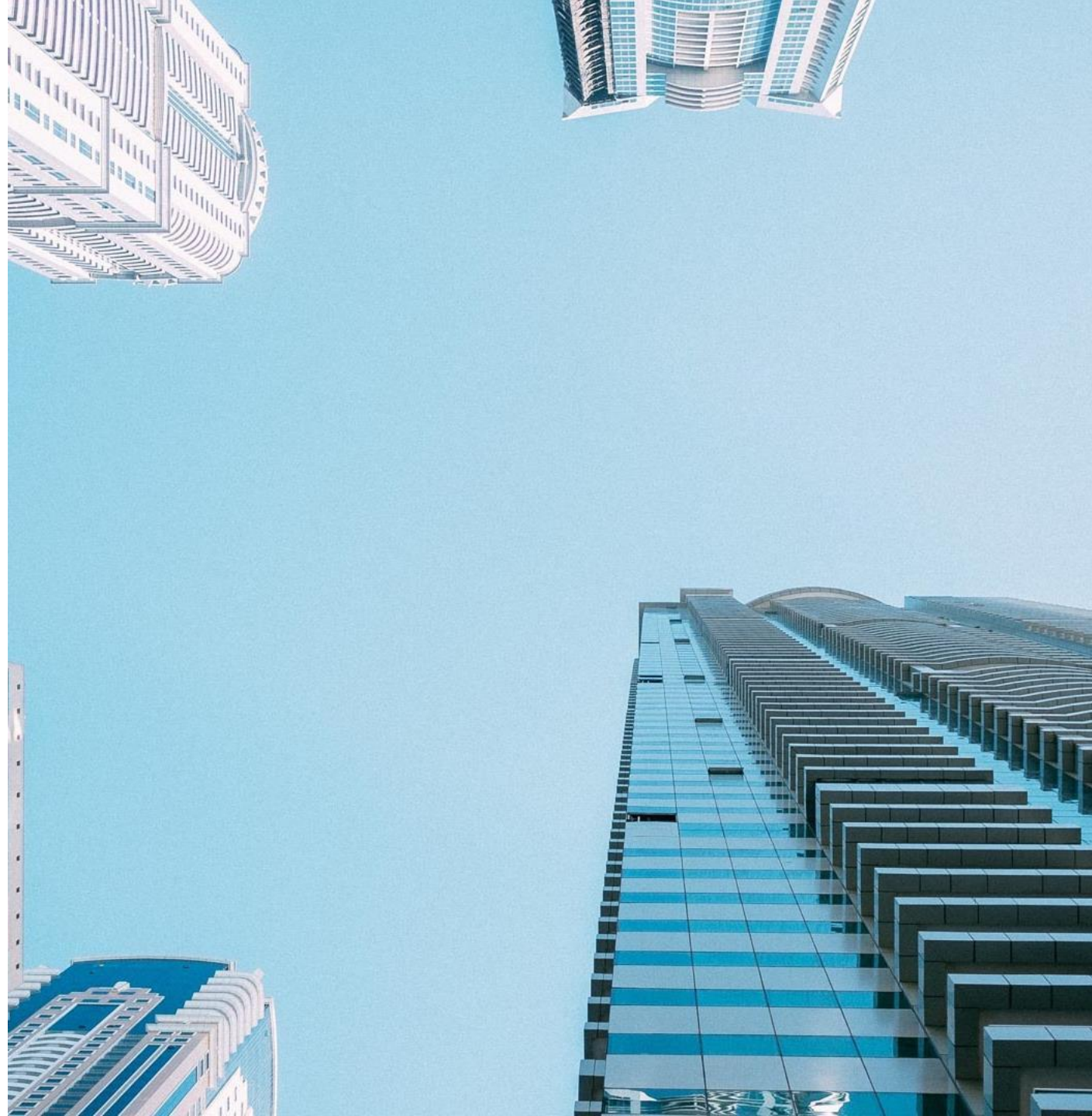


# Agency workers

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High Court quashes 2022 Regulations which allow striking workers to be replaced by agency workers

***R (on the application of ASLEF and others) v Secretary of State for Business and Trade (High Court)***





# Holiday pay

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Are the floodgates open for  
historical holiday pay claims?

***Chief Constable of the Police Service of  
Northern Ireland v Agnew - the Supreme  
Court***

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# Case tracker: Key cases to watch

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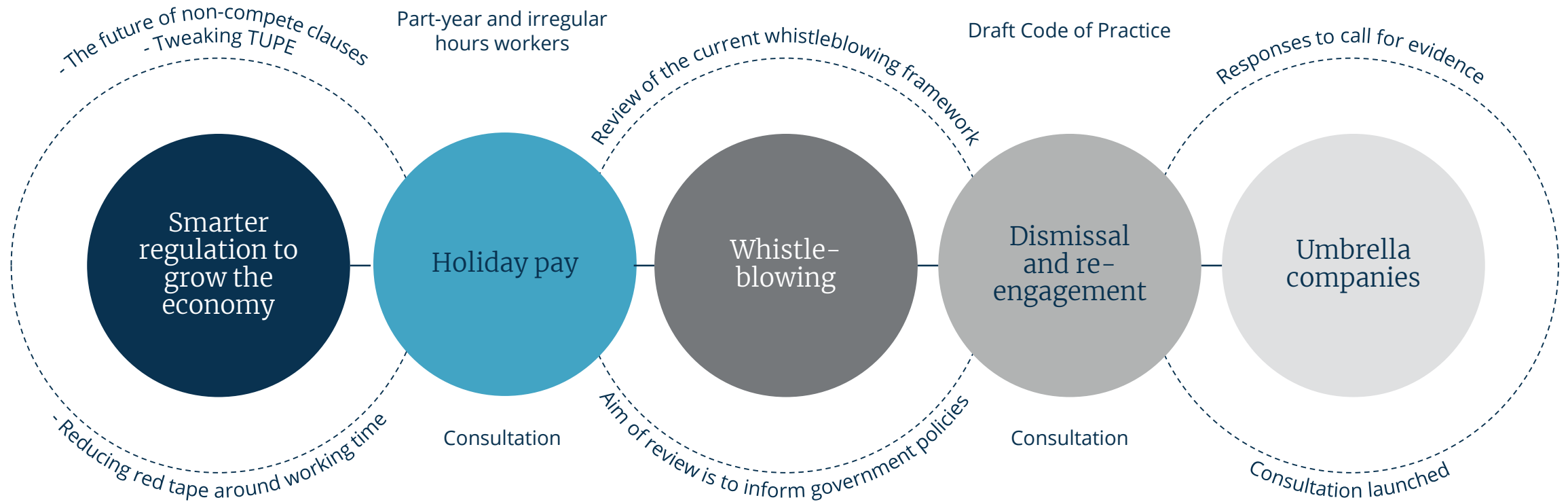
Case	Detail	Key dates
<b>Handling grievances</b> <i>Hope v British Medical Association</i>	When might it be fair to dismiss an employee for bringing “frivolous and vexatious” grievances?	Court of Appeal Awaiting new hearing date
<b>Employment status</b> <i>HMRC v Professional Game Match Officials Limited</i>	What is the employment status of football referees?	Supreme Court – 26 and 27 June 2023

# Legislation and consultations round-up

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# Employment law reform

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# Legislation tracker

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

- EU legislation will be automatically retained unless specifically revoked.

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Royal Assent on 29 June 2023. Many changes not until end of 2023. Draft regulations expected.



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## Strikes (Minimum Service Levels) Act 2022-23

- New legislation introduced to mitigate the disruption of strikes on the public.

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Royal Assent on 20 July 2023. Sector specific service levels – awaiting secondary legislation



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## The Employment (Allocation of Tips) Act 2023

- Fair allocation of qualifying tips, written policy where tips are not occasional or exceptional, record keeping.

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Royal Assent 2 May 2023 – expected to be in force around May 2024

# Legislation tracker

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## Worker Protection (Amendment of Equality Act 2010) Bill

- A new duty on employers to take reasonable steps to prevent sexual harassment of employees in the course of their employment.
- The provision for a compensation uplift of up to 25% where the duty has been breached by the employer.

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Considerations of Lords' amendments – 20 October 2023



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## Employment Relations (Flexible Working) Act 2023

- Changes to the flexible working process.
- The “day one” right provision will be introduced separately through secondary legislation.

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Section 1 of the Act and secondary legislation expected to come into force in July 2024



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## The Workers (Predictable Terms and Conditions) Act 2023

- A new statutory right for workers to request a more predictable working pattern.

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Royal Assent 18 September 2023

Act and secondary legislation expected to come into force in September 2024

# Legislation tracker

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## The Protection from Redundancy (Pregnancy and Family Leave) Act 2023

- Extended protection against redundancy for pregnant employees and those returning from maternity leave. Similar protection will be afforded to those taking shared parental leave or adoption leave.

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No date has been announced for the enabling regulations



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## Carers' Leave Act 2023

- New statutory right to up to one week's unpaid leave for carers.

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Not before April 2024 according to recent reports



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## Neonatal Care (Leave and Pay) Act 2023

- Provision for parents from "day one" of employment to each take up to 12 weeks of paid leave so that they can spend time with their baby who requires neonatal care after birth.

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New leave and pay entitlements expected in April 2025



# AI and the workplace

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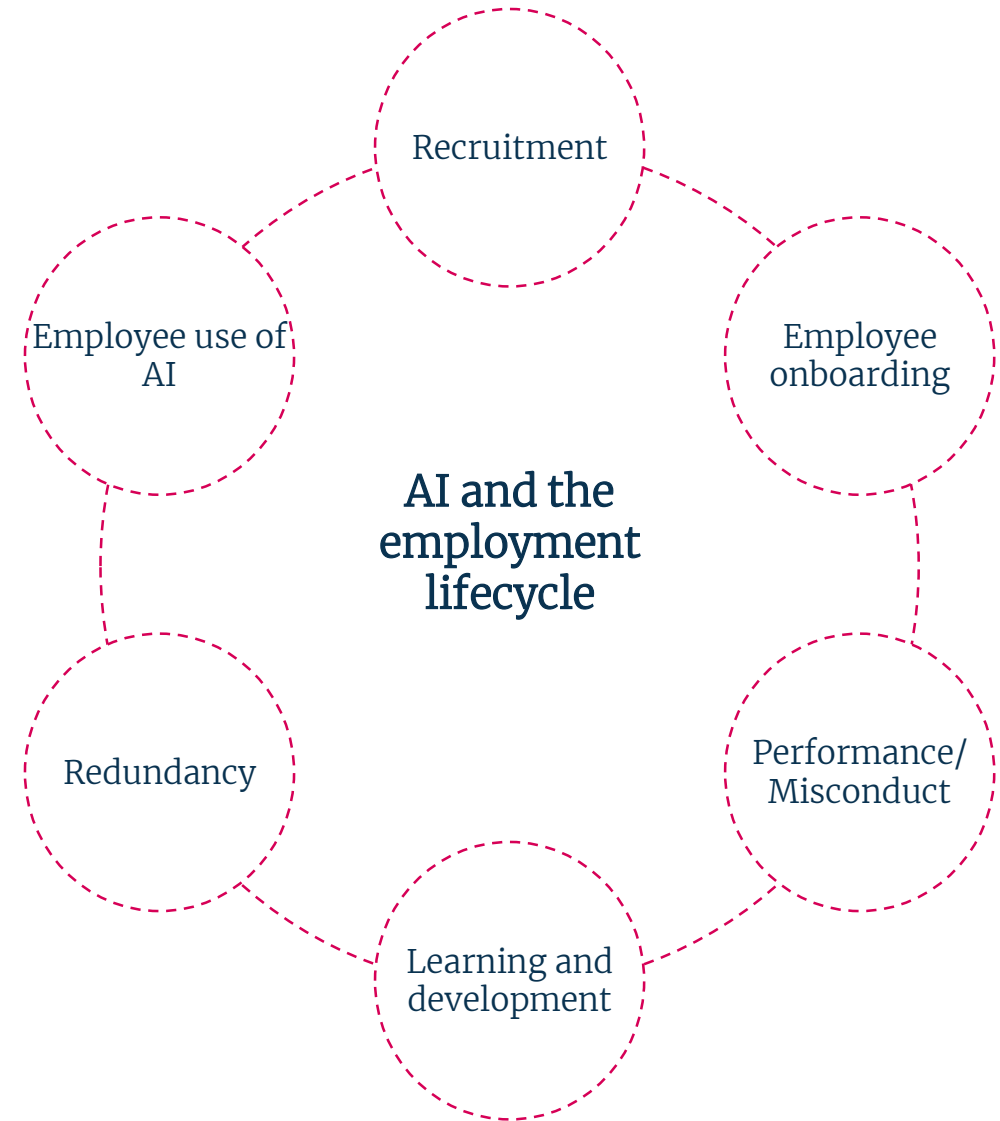
# AI and the workplace

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## What is artificial intelligence?

“The capacity of a computer, robot, or other programmed mechanical device to perform operations and tasks analogous to learning and decision making in humans, such as speech recognition or question answering.”

Dictionary.com



# AI: Some legal considerations

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Discrimination



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Unfair dismissal



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Whistleblowing



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Data protection and  
privacy

“AI systems may lead to discrimination and deepen inequalities. Discrimination may happen because the data used to help the AI make decisions already contains bias.”

## **The Equality and Human Rights Commission Guidance**

# AI: Managing risk

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No specific legislation governing AI in the UK. However, legislation already existing is relevant.



## Transparency

Taking a transparent approach is key



## Risk assessment

Identify risk areas. Mitigate risk



## Consultation

Legally required? Useful from an engagement point of view



## Inform

Ensure candidates and employees are informed about profiling, automated decisions and any workforce monitoring



## Data protection laws and data privacy impact assessment

Lawful basis for processing? Necessary? Proportionate?



## Discrimination

Consider risk of bias. Final decision with a human manager



## Education and training for the workforce on AI

Employer's approach to AI. Interpreting data. Use of algorithms



## AI policy

Set out the rules around use of AI

What's on the horizon?

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# ESG: A top priority for employers

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A key interest for stakeholders



## A focus on the “S”

- Diversity, equity and inclusion
- Employee engagement
- Employee wellbeing
- The rise of the whistleblower
- Gender, ethnicity and disability pay gaps



## Not forgetting the “E”

- Whistleblowing claims relating to climate practices
- Climate conscious policies and procedures



## and the “G”

- Gender, ethnicity and disability pay gaps
- Anti-bribery
- Tax evasion

**ESG strategy remains an important differentiator in the attraction and retention of talent**

# A look ahead: Key issues for employers

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It is important to create a **culture of voice** in the workplace.

Employee voice is about creating an environment where employees are listened to, ideas are shared, innovation is actively encouraged, and difference of experience and perspective is embraced.





Questions?



# Contact us

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**Joanne  
Frew**

Global Head of Employment  
and Pensions

M 07796 174538

E [joanne.frew@dwf.law](mailto:joanne.frew@dwf.law)



**Nick  
Dent**

Partner

M 07917 230210

E [nick.dent@dwf.law](mailto:nick.dent@dwf.law)



**Nigel  
Crebbin**

Director

M 07821 866903

E [nigel.crebbin@dwf.law](mailto:nigel.crebbin@dwf.law)



**Melissa  
Willrich**

Associate

M 07955 312068

E [Melissa.willrich@dwf.law](mailto:Melissa.willrich@dwf.law)



**Jonathan  
Barron**

Associate

M 07729 611772

E [jonathan.barron@dwf.law](mailto:jonathan.barron@dwf.law)



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