

Legislative Changes 2024

There are a number of pieces of legislation due to come into effect in the first 4 months of 2024. Read on to see how these may impact your policies and processes.

The Code of Practice on the Prevention of Illegal Working

The draft code of practice on the prevention of illegal working comes into effect from 22 January 2024 and is an update to the version issued in March 2022.

It should be used in conjunction with the Employers' Guide to Right to Work Checks. This is a statutory document which outlines the actions you should take as an employer to evidence right to work, follow-up right to work checks, avoid liability and how to establish a statutory excuse.

The key changes to the code of practice are:

- An increase in penalty fines from £15,000 to £45,000 per worker for first breaches and from £20,000 to £60,000 per worker for subsequent breaches.
- An emphasis on the importance of thorough and comprehensive right to work checks for all employees. Employers are encouraged to be vigilant in verifying the authenticity of documentation and ensuring that they meet the legal requirements.
- Stricter restrictions on employers who have breached right to work regulations, including limitations on hiring practices, probational periods for compliance and increased scrutiny in future hiring processes.

The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023

The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 have introduced various changes to our domestic laws. Primarily, these amendments aim to maintain the existing state of affairs post our departure from the EU, freeing us from the obligations of EU legislative decisions.



The Carer's Leave Act 2023

The Carer's Leave Act 2023 received Royal Assent in May 2023. On 11 December 2023, the draft regulations for the Act were laid in Parliament and it was confirmed that the legislation will come into force from 6 April 2024.

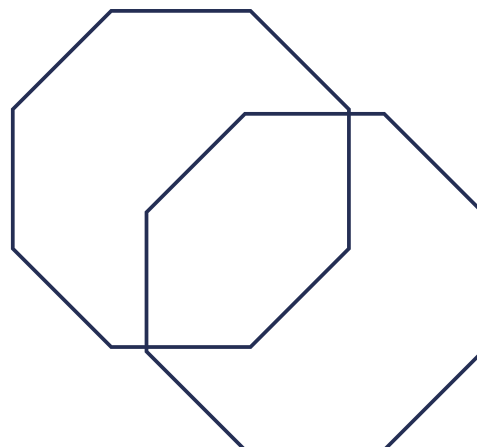
Approximately 2 million people across the UK who offer unpaid care are believed to be balancing this alongside their employment. This legislation has been implemented to offer a fresh and remarkably adaptable provision of one week's unpaid leave annually for employees engaged in providing or organising care, aiming to assist them in sustaining their employment. Its introduction has been awaited for some time but has come into effect earlier than initially expected.

This legislation has been introduced to provide a new and highly flexible entitlement of one week's unpaid leave per year for employees who are either providing or arranging care, and is intended to support them in remaining in employment.

The new act includes:

- Statutory entitlement of up to five days unpaid leave per calendar year for employees who are providing or arranging care.
- Entitlement is a day one right; therefore, you could have a new employee request for a period of carer's leave on their first day of employment.
- Employees will be able to take the leave flexibly and will not need to provide evidence of how the leave is used or who it will be used for.
- Employees will need to provide a minimum level of notice of their intention to take leave which is double the length of the leave requested, e.g. four days' notice for two days' leave.

For any form of leave, it's important to establish suitable procedures to effectively monitor absences. Additionally, review your leave of absence policy to ensure it reflects the statutory change, which is already reflected in the EPM model policy.



Paternity Leave (Amendment) Regulations 2024

The Paternity Leave (Amendment) Regulations 2024 come into force on 8 March 2024 and will apply in all cases where the expected week of childbirth or the expected date of placement for adoption is on or after 6 April 2024.

The Regulations make the following changes:

- Partners can take leave as either two separate one-week periods of leave (non-consecutive) or as one continuous period.
- Leave can be taken at any point in the first year of birth/adoption of their child.
- Except in the case of domestic adoption, the notice period for taking the leave will be reduced to four weeks.
- For domestic adoption, the notice period remains at seven days after the employee has received notice of being matched with a child.
- The dates for the leave can be varied with 28 days' notice of the variation.

The changes will improve flexibility for employees to take the leave at times which better suits their personal situation. However, schools and MATs will need to consider how this will impact on cover arrangements as less notice may be received that had been previously. The amended regulations do not stop you from talking to employees early to understand their intentions to allow for improved planning.



TUPE Legislation

As part of the same EU reform legislation, additional flexibilities have been included around TUPE.

The impact on schools and MATs is likely to be minimal but it's worth being aware of the changes in case you find yourself in circumstances where they may apply.

The government will change the TUPE consultation rules to allow employers to consult directly with their employees (if there are no existing representatives in place), where:

- the business has less than 50 employees (currently the exemption applies to businesses with less than 10 employees) or
- the transfer involves fewer than 10 employees (regardless of the size of the business).

Given the caveat of "where there are no existing representatives in place" this is likely to only apply in very limited circumstances in schools and MATs, such as when small groups of individuals like cleaners or caterers are TUPE'ing in.

If you are in a situation where you are transferring any number of employees or a service (such as cleaning, catering or IT) in or out of your school or MAT, contact your EPM Adviser at the earliest opportunity.

The Equality Act 2010 (Amendment) Regulations 2023

Again, as part of the EU-related reforms, the government is amending the Equality Act 2010 from 1 January 2024.

This ensures that the law will continue to offer the same protection after the end of 2023 in relation to pregnancy, maternity and breastfeeding, indirect discrimination, access to employment and occupation, equal pay and the definition of disability. This is because some elements were derived from EU discrimination protections and would otherwise have disappeared at the end of 2023 due to Brexit.

The key points are:

- That special treatment can be afforded to women in connection with pregnancy, childbirth or maternity. They also have protection from unfavourable treatment in connection with the pregnancy following a return from maternity leave, and against pregnancy and maternity discrimination in the workplace.
- That less favourable treatment on grounds of breastfeeding constitutes direct discrimination on grounds of sex.
- That an individual may make a claim of indirect discrimination (where that individual does not have a protected characteristic themselves but suffers a disadvantage arising from a discriminatory provision).
- That employers may be liable for conduct equivalent to direct discrimination if a discriminatory statement is made regarding recruitment, even when there is not an active recruitment process underway.
- That an employee can make an equal pay claim by drawing a comparison with another employee where their terms are set or maintained by a single body (e.g. employer or collective agreement) with the ability to restore equal treatment. This highlights the importance of pay equality in trusts and local authority schools where the comparator could be an employee at another LA school.
- That the definition of disability must be understood as specifically covering a person's ability to participate in working life on an equal basis with other workers.
- There is also draft guidance for schools on how best to support students questioning their gender which is under consultation until 12 March, so a timely reminder to ensure that your EDI training is up to date and in place.

Getting this wrong can be costly to employers. Therefore, we strongly recommend reviewing your training methods and ensuring active participation from staff. It's crucial that decision-makers at middle and senior management levels fully understand their obligations regarding the requirements outlined in the Equality Act. Feel free to reach out to us with any questions or concerns regarding the application of the Equality Act.

Flexible Working (Amendment) Regulations 2023

The Flexible Working (Amendment) Regulations 2023 are due to come into effect on 6 April 2024.

The key changes are:

- The right of eligible employees to make two flexible working requests in any 12-month period.
- The requirement that employers deal with employee requests to work flexibly within 2 months of receipt where no extension has been agreed.
- The requirement for employers to "consult" with an employee before being able to refuse a request to work flexibly.
- The removal of the requirement for employees to explain what effect they believe agreeing to the request would have, and how any such effect might be dealt with within their application for flexible working arrangements.
- Further legislation has confirmed that the right to request a flexible work pattern is a "day one" right, that is to say that employees can request this without having first accrued any continuous service with an employer.

ACAS' statutory code of practice on flexible working requests has recently been out for consultation and is available currently in draft form. The code strengthens best practice around the right to be accompanied, the provision by employers of a rationale for their decision and a right of appeal in the event of a request being rejected.

These changes will be reflected in an updated model policy for you to access on the EPM website.

As with other changes, you will need to ensure that key decision makers are aware of the new requirements and review what you consider to be best practice in handling flexible working requests.



Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations

The Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations, also known as the 'Check-off' Regulations, aim to ensure there is no cost to the taxpayer as a result of the payment of union subscriptions directly through the payroll ("check-off").

Public sector employers frequently bear the costs of managing check-off by investing time processing union subscription deductions from payroll monthly. The Regulations mandate public sector employers offering check-off to charge trade unions a 'reasonable' fee for administration, ensuring it aligns closely with the costs involved. This practice aims to prevent any burden on taxpayers. Moreover, the Regulations stipulate that alongside the check-off option, an alternative payment method must be accessible.

Employers must demonstrate the methodology behind determining a 'reasonable amount' charged to Trade Unions. This amount might be a fixed monthly fee, a percentage deducted from collected fees, an invoice covering associated expenses, or any other mutually acceptable approach. This ensures employers can confidently assert they've billed a total sum substantially equivalent to the overall cost to public funds.

If no agreement can be reached and the relevant trade unions do not agree to pay the amount, then the Regulations state that the employer may wish to consider taking steps to stop administering check-off.

To ensure that you are compliant with the Regulations you should:

- review your current arrangements for paying union subscription fees
- if you offer check-off, calculate the 'reasonable amount' for the administration of this
- ensure that there are other payment options available for your employees to pay their union subscriptions
- engage with the relevant trade unions to seek an agreement on the "reasonable amount"
- if agreement cannot be reached, consider whether you wish to seek to remove the option of check-off.

If you are an EPM Payroll customer and wish to remove the option for check-off, please provide this instruction at least one pay run prior to when you wish for this to take effect. For example, if you wish for this to take effect from April 2024, you would need to provide this instruction prior to your payroll cut-off date for March payroll.



For further
information, please
contact your EPM
HR Adviser.