


Employment law in 2024: How changes impact education

 10 January 2024

As we begin 2024, we look ahead to a number of new legislative changes coming into force this year, including the introduction and extension of a number of family-friendly rights in the workplace. In the main, these changes take effect from 6 April 2024.

Education employers should consider and prepare for these forthcoming changes when reviewing their policies and procedures.

New Statutory Unpaid Carer's Leave

The Carer's Leave Act 2023 comes into force on 6 April 2024. This legislation gives employees (*not workers*) a 'day one' right to a week's unpaid leave to care for a dependant with a long term-care need. The leave can be taken flexibly, either as full days or half days, up to a block of one week per 12 months.

The term dependant mirrors the definition used for the right to time off for dependants and covers: a spouse, civil partner, child, parent, a person who lives in the same household as the employee.

As with other statutory leave entitlements, it is important for employers to not penalise any employee choosing to take advantage of carer's leave once it comes into force on 6 April 2024. Dismissal of an employee for a reason connected with them taking carer's leave will be automatically unfair.

It is important for an employer keep a written record of staff taking carer's leave. Employees have the flexibility of taking their leave in several days over the 12-month period, so you will want to keep a record.

Flexible working to become a 'day one' right

On the same day, 6 April 2024 we can also expect to see changes to flexible working requests made on, or after this date. The new measures aim to make it easier for employees to reach agreement with their employers about their flexible working patterns.

The Employment Relations (Flexible Working) Act 2023 is due to come into force around late-July, early August 2024. The act will give employees a 'day one' right to make a flexible working request and the following changes will enable employees the right to request flexible working:

- Employees will be able to make 2 (increased from one) flexible working requests in any 12-month period (unless an existing application is still under consideration).
- Employees will no longer need to explain what effect the requested change could have on the employer nor provide potential solutions for dealing with those effects.

Employers will be required to consult with their employees as a means of exploring the available options before deciding on the request. The act also requires employers to respond to a request within two months (decreased from three). However, both employee and employer can agree to extend the response period.

It is important to note that currently employees need to have 26 weeks qualifying service to make a flexible working request. Whilst the government has referred to this change as a 'day one' right (i.e. no minimum service). The act does not currently achieve this so the government has expressed an intention to introduce secondary legislation at the same time the act comes into force to remedy this, therefore removing the current 26-week qualifying period.

Flexible working – supporting resources

In line with this change, ACAS have produced a draft [Code of Practice on handling requests for flexible working](#). The consultation recently concluded and ACAS has now released non-statutory guidance on flexible working which sits alongside the Code.

For further information on the practicalities of managing flexible working in schools and how it can be a catalyst for change, [watch our recent webinar, now available on-demand](#).

Extending redundancy protections for those on statutory family leave

Where a redundancy situation arises during an employee's maternity, adoption or shared parental leave, the employee has the right to a suitable alternative vacancy where one is available to start immediately after their existing contract ends. This is a rare example of positive discrimination.

Under the new law, introduced by the Protection from Redundancy (Pregnancy and Family Leave) Act 2023 the period is being extended to include the period of pregnancy and for 18 months after the expected week of childbirth in cases of maternity. This will also apply to adoption leave (the protected period ending 18 months after the child's placement) and shared parental leave.

Employers across the sector will need to amend their policies to reflect this extension of the protection.

Note that this protection applies to the right to a suitable alternative, it does not mean that protected employees cannot be made redundant or that they should be taken out of the pool for selection. It is worth taking advice on these situations as they arise.

New duty to protect employees from sexual harassment

Studies carried out by both the BBC and the Fawcett Society show that around 40% of women have experienced some form of unwanted sexual harassment in the workplace. It is in this context that the Worker Protection (Amendment of Equality Act 2010) Act 2023 is, from October 2024, bringing in a new duty on employers to take reasonable steps to prevent sexual harassment of their employees.

Employment tribunals will have 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.

What is meant by 'reasonable steps' is not set out in the Act, but we know from comparable legislation that it will depend on the size and resources of the organisation. For most schools and academies an active approach will need to be taken to this. Whilst the sector is very good generally at having policies in place, consideration will need to be taken as to whether further steps need to be taken. The ECHR is due to publish a statutory code of practice later this year which will give clarity on the expectations, but we expect to be looking at considerations such as:

- Anonymous staff surveys as a starting point to get an insight into the extent of the issue.
- Board monitoring of how the organisation treats discrimination and harassment complaints.
- Effective anti-harassment policies that are actively used by the organisation, this might include training tailored to your organisation.

We will provide further advice when the code of practice is published.

Minimum service levels for education sector strikes and consultation

On 20 October 2023, the government announced its consultation into Minimum Service Levels (MSLs) in schools and colleges following passing the Strikes (Minimum Service Levels) Act 2023 in July last year.

The government's purpose for this legislation is to reduce the impact of strike action on day-to-day operations in key public services (Border Security, NHS Ambulance, Railway Services and Education).

The Act operates so that when a union gives a school or college notice of a strike, the institution is required to serve work notices to employees to prevent them engaging in strike action and to work i.e. to maintain service levels. The notice should identify the individual and the specifics of the work they are required to carry out during the strike.

The consultation is on what constitutes a MSL. The two proposals are:

Option 1

- Vulnerable children/young persons.
- Exam cohorts.
- Critical-worker children.

or

Option 2

- **All** primary children.
- Those within Option 1 for secondary and further education.

This approach by the government has given rise to significant concerns across the sector. The previous approach operated largely on good will – which in the majority of cases provided a high level of education - is expected to be much more difficult to achieve under these proposals.

It is unclear what the consequence will be for any employer who does not fulfil the MSL, as it is not specified in the legislation. Questions are also being raised about the extent to which this is indeed a proportional restriction on the Article 11 ECHR right to strike.

The consultation is due to close on 30 January 2024 and we expect the government's response to be published relatively shortly after.

Key contact

Heather Mitchell

Partner

heather.mitchell@brownejacobson.com

+44 (0)20 7871 8511