

Employment Healthcare Briefing - December 2023

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Welcome to our Employment Healthcare briefing, bringing you a roundup of what's happening in the world of employment law that is relevant to healthcare employers.

Five years since the Kark Report was published, the Government have published the revised Fit and Proper Person Test which came into force (in part) from 30 September 2023. In our article below we consider the key features of the test and what Trust's need to do to prepare.

After a number of strikes across the NHS in the last 12 months, Minimum Service Levels in the ambulance service are due to come into force and the Government have recently published a draft Code of Practice setting out reasonable steps for a Trade Union to take to comply with the new laws. Further consultations have also been launched regarding minimum service levels in the NHS and removing the ban on use of agency workers to cover for striking employees. In preparation for winter the Government have also announced funding to boost the social care workforce which is hoped will avoid discharge delays.

The Government have also announced changes to holiday entitlement and pay, which are the biggest change since the Working Time Regulations were introduced in 1998.

Flexible working has also been topical with new laws set to come into force in 2024. In addition, the NHS Staff Council has agreed to incorporate a home and agile/hybrid working framework into the NHS Terms and Conditions of Service Handbook. The Government has also recommended actions for NHS organisations to support staff experiencing pregnancy loss.

Finally, in a recent decision concerning Maintaining High Professional Standards (MHPS) the High Court refused a doctor's application for an interim injunction in relation to the Trust's conduct of disciplinary proceedings against them.

As ever, if you'd like to discuss any of the issues highlighted, please do get in touch.

The FPPT framework – New Guidance and what NHS organisations need to know

NHS England's revised FPPT Framework responds to the recommendations of the Kark review and takes into account the requirements of the Care Quality Commission (CQC) in relation to directors being fit and proper for their roles.

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Minimum Service Levels and reasonable steps – consultation response

In August 2023, we published an update on the Government consultation on a draft Code of Practice, setting out proposals for what steps will be considered "reasonable steps" for a trade union to take in order to comply with the Strikes (Minimum Service Levels) Act 2023 (the Act). The Government published its response to the consultation, confirming what proposals it intends to proceed with.

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Government launch consultation on minimum service levels for hospitals

The Government has recently passed the Strikes (Minimum Service Levels) Act 2023 which allows regulations to be made which set minimum service levels ('MSL') during strike action in a number of specified services. Consultation has already taken place within the fire and ambulance sector regarding minimum service levels and the Government has now launched a further consultation on introducing MSL regulations for hospitals.

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Agency cover and strike action

Between July 2022 and August 2023, employers had the option of using agency workers to cover for those taking part in official industrial action. However, following a successful judicial review challenge brought by thirteen trade unions, the prohibition set out in regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 was, in effect, reinstated as a result of a decision of the High Court.

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£600m funding unveiled to boost social care workforce

The Government has announced a £600 million package of funding to boost the social care workforce and help the sector prepare for winter.

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Holiday entitlement and pay: Reforms ahead

The Government has published its response to the previous Retained EU Employment Law consultation. This response has been extended to include not only this consultation but a previous consultation on 'Calculating holiday entitlement for part-year and irregular hours workers'. Draft legislation has also been produced, giving further information as to how these proposals are intended to operate in practice.

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Right to request flexible working – changes ahead for employers

The Employment Relations (Flexible Working) Bill 2022 was introduced by Labour MP Yasmin Quereshi on 15 June 2022. The Bill sought to amend the current right to request flexible working (contained in Sections 80F-I of the Employment Rights Act 1996) in several ways including permitting more than one request per year.

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New framework to support flexible working in the NHS

Since the pandemic home/hybrid working has become a reality for many workers with jobs which may have previously been considered unsuitable for such an arrangement now routinely undertaken by home/hybrid workers. The NHS is no exception, with many typical in-person consultations now taking place remotely either by telephone or video conference. Virtual wards have been developed, allowing for patients to be cared for in their own homes, giving clinicians greater flexibility over how their roles are performed.

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Government response to Pregnancy Loss Review recommends actions for NHS employers

The Government has recently published its response to the independent Pregnancy Loss Review. The review was jointly commissioned by the Government and Department of Health and Social Care and examined the care and support available to parents who lose a baby before 24 weeks of pregnancy.

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MHPS disciplinary processes: Dr's application for interim injunction refused

In the recent case of *Colbert v Royal United Hospitals Bath NHS Foundation Trust* ('the Trust'), the High Court refused a doctor's application for an interim injunction in relation to the Trust's conduct of disciplinary proceedings against them.

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