

Employment Healthcare Briefing - March 2024

28 March 2024

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.

2024 is set to be a busy year with a number of new pieces of legislation due to come into force, including the biggest change to holiday entitlement since the Working Time Regulations were introduced in 1998. Our articles below give you an overview of what employers need to know.

In readiness for the changes to flexible working, ACAS have also published a revised Code of Practice on Flexible Working. Although this is only guidance, it does set out best practice and tribunals will be able to take the Code into account when determining complaints. The draft Code on "fire and re-hire" has also been revised and is due to come into force later this year.

We have also had a helpful decision clarifying whether settlement agreements can be used to settle future claims and the Equality and Human Rights Commission have also published guidance on menopause in the workplace.

Finally, NHS England have published the new leadership competency framework which is linked to the updated fit and proper person test which was introduced last summer. The framework sets out the six domains board members are required to assess themselves against as part of the annual "fitness" appraisal. Going forwards, board members in trusts, integrated care boards and NHS England will be expected to discuss their assessments with their chair or chief executive as part of the annual appraisal process (starting from this year).

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

New employment rights set to come into force

With the Flexible Working (Amendment) Regulations 2023, employees will gain immediate access to flexible working, eliminating the previous 26-week service requirement starting April 6, 2024. Additionally, the Carer's Leave Regulations 2024 will grant employees one week of unpaid leave annually to care for dependents, effective the same date.

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Holiday reforms: What employers need to know

The Government has unveiled crucial guidance on the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023, effective since January 1, 2024, addressing holiday entitlement and pay. With looming changes impacting both full-year and irregular-hours workers, employers must brace themselves for a paradigm shift. Key amendments include calculating holiday pay using 'normal remuneration' for full-year workers, alongside provisions allowing the carry-over of unused holiday under specific circumstances.

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Revised Acas Code of Practice on requests for flexible working

Acas has finalised revisions to its Statutory Code of Practice for flexible working, aligning it with the impending changes. Noteworthy adjustments include eliminating the need for formal meetings post-approval of a flexible working request and extending the list of allowed companions for request meetings. With the Act expected to coincide with Regulations making flexible working a day-one right on April 6, 2024, it's crucial for organisations to gear up.

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Fire and re-hire: Updated statutory code summary for employers

In response to public consultation, the Government has unveiled a revamped statutory Code of Practice on dismissal and re-engagement, aiming to streamline processes and enhance clarity for employers, trade unions, and employees alike. While maintaining the core substance and scope, the Code has undergone significant revisions, becoming shorter, less technical, and more digestible with plain English usage.

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Settlement agreements: Court of Session finds future claims may be settled

In a landmark decision following *Bathgate v Technip UK Ltd*, the Employment Appeal Tribunal (EAT) and Scotland's Court of Session have weighed in on the intricacies of settling future discrimination claims under the Equality Act 2010. The case, centering on Mr. Bathgate's age discrimination claim post-settlement agreement, sparked debate over the settlement's scope.

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EHRC publishes new guidance on menopause and the workplace

In a groundbreaking move, the Equality and Human Rights Commission (EHRC) has unveiled comprehensive guidance for employers addressing the often-overlooked issue of menopause in the workplace. Shedding light on the impact of menopause and perimenopause symptoms on workers, the guidance elucidates employers' legal obligations under the Equality Act 2010. With a focus on protected characteristics like disability, age, and sex, the EHRC underscores the risks of non-compliance, including claims for failure to make reasonable adjustments, discrimination, harassment, and victimisation.

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

In a significant move towards bolstering governance standards, NHS England has rolled out a revamped Fit and Proper Person Test (FPPT) Framework, responding to the recommendations of the Kark review and aligning with the requirements of the Care Quality Commission (CQC). Effective from September 30, the framework aims to ensure that directors across NHS organisations are fit and proper for their roles, complying with the stringent criteria outlined in the Health and Social Care Act 2008.

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