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Briefing Paper  
What to Expect in Employment Law in 2022

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The COVID-19 pandemic has dominated much of the regulatory and legislative landscape over the past few years, meaning that some anticipated employment law changes were delayed or postponed. While we expect this to continue for the foreseeable, the New Year brings hope of some legislative change that institutions need to be aware of.

Institutions in the UK HE Sector are recommended to familiarise themselves with new requirements, make relevant changes to policies and processes, communicate these changes, and consider how they will implement and assess their impact effectiveness.

*SUMS is a membership-based higher education consultancy, a registered charity and not-for-profit organisation that provides expert consulting to universities across all professional service areas. Here, Emma Ogden, SUMS Consultant, shares insight on what the Employment Law landscape might look like in 2022.*

*This is provided for information purposes only and is no substitute for, and should not be interpreted as, legal advice.*

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## 1. Workplace Sexual Harassment

Following a consultation on workplace sexual harassment<sup>1</sup> (launched in 2019), the Government is likely to introduce a proactive duty on employers to prevent sexual harassment in the workplace, and introduce protections from third-party harassment (i.e., customers and clients). This means that institutions would be required to take “all reasonable steps” to prevent sexual harassment from occurring and could be held liable for harassment committed by visitors to the workplace.

It is expected that a statutory code of practice will be published in 2022 on the duty to prevent sexual harassment (for instance, using anti-harassment policies and up-to-date employer training), alongside employer guidance on how to comply with this new duty. Additionally, consideration is being given to extend the time limits for claims under the Equality Act 2010 from the current three months to six months.

Sexual misconduct has held attention over the past few years, from the #MeToo campaign to victims submitting anonymous testimonies via “Everyone’s Invited” (of which 119 institutions are named<sup>2</sup>). This led to the Office for Students’ Statement of Expectations which sets out the requirement for institutions to address their culture, have a fit-for-purpose policy and demonstrate positive action in tackling misconduct claims. It is important that institutions consider all forms of sexual harassment (using the EHRC code<sup>3</sup> for principles and definitions); ensure they have clear policies; follow thorough, unbiased, and independent processes (aligned to ACAS guidelines<sup>4</sup> if required); and assess its impact and effectiveness.



<sup>1</sup> Consultation on sexual harassment in the workplace: government response - GOV.UK ([www.gov.uk](https://www.gov.uk))

<sup>2</sup> University List — Untitled ([everyonesinvited.uk](http://everyonesinvited.uk))

<sup>3</sup> Sexual harassment in the workplace | Equality and Human Rights Commission ([equalityhumanrights.com](http://equalityhumanrights.com))

<sup>4</sup> [conducting-workplace-investigations.pdf](http://conducting-workplace-investigations.pdf) ([acas.org.uk](http://acas.org.uk))

## 2. Employment Bill

The second reading of the Employment Bill is due on Friday 18<sup>th</sup> March 2022 and will seek to introduce some measures, which although are not yet confirmed in exact detail, are expected to be wide-ranging and will cover many of the recommendations highlighted within the 2018 Good Work Plan<sup>5</sup>. Specifically, the Bill is intended to ensure that the UK labour market is future-proofed to provide fair and decent work for all, provide greater clarity on employment relationships and place equal importance on the quantity and quality of work.

While many institutions have local policies and procedures regarding discretionary time off work, it is recommended that these are reviewed to ensure they define where legislation provides a statutory right. Some of these measures are likely to include:

### 1. 'Day one' right to carer's leave<sup>6</sup>

- One week (or up to 5-working days) of unpaid leave per year for employees with long-term caring responsibilities.
- Time to be taken in full or half days.
- Leave can be taken to provide care, or arrange care, for someone with a long-term care need (this can include illness or issues relating to old age).
- Employees will be required to give notice of leave that is at least twice the length of the time being requested as leave, plus one day.

### 2. Introduction of statutory neonatal leave and pay<sup>7</sup>

- Parents will have the right to take an additional week of leave for every week their baby is in neonatal care, up to a maximum of 12-weeks.
- It is likely that leave will have to be taken in a continuous block of one or more weeks.
- Those with a minimum qualifying period (26 weeks' service and earning above the minimum pay threshold) will be entitled to receive pay for the neonatal leave period at the current statutory rate.

### 3. New single labour market enforcement body<sup>8</sup>

- A new body will bring the following existing bodies into one organisation:
  - HMRC National Minimum Wage Enforcement
  - Employment Agency Standards Inspectorate
  - Gangmasters and Labour Abuse Authority.
- The aim is that they will have extensive powers to protect employment rights, improve employer compliance and protect workers in relation to labour exploitation and modern slavery, national minimum wage, holiday pay and statutory sick pay.

<sup>5</sup> Good Work Plan - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>6</sup> Carers' leave consultation: government response ([publishing.service.gov.uk](http://publishing.service.gov.uk))

<sup>7</sup> Neonatal leave and pay consultation: government response ([publishing.service.gov.uk](http://publishing.service.gov.uk))

<sup>8</sup> Establishing a new single enforcement body for employment rights: government response ([publishing.service.gov.uk](http://publishing.service.gov.uk))

#### 4. Extended redundancy protection for women and new parents<sup>9</sup>

- Protection will apply to pregnant women from the point they notify their employer of their pregnancy until 6 months after a mother has returned to work.
- This will also apply to those taking adoption and shared parental leave.

### 3. Gender Pay and Ethnicity Pay Gap Reporting

Due to the pandemic, the deadline for gender pay gap reporting was delayed to October 2021, however it is expected that it will now return to normal deadlines going forward (public sector deadline of 30 March 2022 and private/voluntary sector deadline of 4 April 2022).

In 2018/19, the Government launched a consultation into whether mandatory ethnicity pay gap reporting should be introduced, but no formal response to this has been published.

During 2022, it is expected that the Government will review the efficacy of pay gap reporting, which may result in new and tightened reporting requirements and possible enforcement action being taken against employers who fail to comply with the regulations. It is recommended that institutions review their current pay gap reporting process in advance of any possible changes to requirements. Requirements may include:

1. Analysing pay by quartiles, to provide a more nuanced picture of a pay gap
2. Developing action plans to identify measures to address pay gaps
3. Showing pay differences for part- and full-time staff (particularly for gender pay reporting where the prevalence of women performing part-time roles is cited as a contributor to the gender pay gap).

### 4. Changes to Right to Work Checks

Currently, foreign nationals with biometric cards can evidence their right to work in the UK either by showing an employer their physical card or sharing their status via the Home Office's online service. New Government guidance<sup>10</sup> means that from 6 April 2022 holders of biometric cards will only be able to demonstrate their right to work in the UK using the online service. Employers will no longer be able to accept physical cards for the purposes of a right to work check.

It is expected that the new rules will only apply to new appointments, so retrospective checks are unlikely to be necessary. To ensure compliance, it is strongly recommended that institutions familiarise themselves with the [online service<sup>11</sup>](#) and ensure that recruiting managers are aware of the revised checking requirements.

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<sup>9</sup> [Pregnancy and maternity discrimination: extending redundancy protection for women and new parents - GOV.UK \(www.gov.uk\)](#)

<sup>10</sup> [An employer's guide to right to work checks \(publishing.service.gov.uk\)](#)

<sup>11</sup> [Checking a job applicant's right to work - GOV.UK \(www.gov.uk\)](#)



## 5. Statutory Pay Entitlements

The Government has accepted the recommendations of the Low Pay Commission and have confirmed the new pay rates<sup>12</sup>, which will come into effect on 6 April 2022.

The increases which will apply to a number of statutory benefits<sup>13</sup>, including statutory sick pay, maternity, paternity, shared parental and adoption pay; these have also been published.

The statutory cap on a week's pay for the purposes of calculating a basic award and statutory redundancy pay is expected to be confirmed in early 2022.

## 6. Flexible Working as the Default

Government consultation<sup>14</sup> on making flexible working a 'day one' right ended on 1 December 2021 and included the following considerations:

1. Limiting the reasons that employers can use for refusing the request
2. Placing employers under an obligation to look at alternative arrangements, should they be unable to accommodate the type of request specifically sought by the applicant
3. Permitting employees to be able to make one request per annum
4. Reducing the period to consider a request from the (current) three-month period.

It is hoped that changes to flexible working will encourage discussion between employees and employers on how to arrange working hours in a way that is agreeable to both parties.

<sup>12</sup> Minimum wage rates for 2022 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>13</sup> Proposed benefit and pension rates 2022 to 2023 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>14</sup> Making flexible working the default ([publishing.service.gov.uk](http://publishing.service.gov.uk))

The pandemic has accelerated the expectation of increased flexibility and new ways of working (such as flexitime, compressed hours, job shares and working location). It is recommended that institutions adopt a flexible mindset, supported by appropriate policies, recruitment, and workforce planning processes. Where refusals are given, these would still need to be aligned to the legal business reasons<sup>15</sup>.

## 7. Use of Post-Termination, Non-Compete Clauses

Government consultation<sup>16</sup> (which ended in February 2021) sought views on whether to make post-termination, non-compete clauses in contracts of employment enforceable only when the employer provides compensation during the term of the clause or alternatively to make all post-termination, non-compete clauses unenforceable (i.e., a ban on the use of these clauses within contracts of employment).

It is anticipated that any reforms would be included in an updated Employment Rights Act.



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<sup>15</sup> If your request is turned down: Making a flexible working request - Acas

<sup>16</sup> Non-compete clauses: consultation on measures to reform post-termination non-compete clauses in contracts of employment ([publishing.service.gov.uk](https://publishing.service.gov.uk))

## 8. Possible New Consultations 2022

Recent independent inquiries have suggested that the following may receive Government attention in 2022:

1. Consultation on disability workforce reporting (the difference in proportion of disabled versus non-disabled people who are in employment)
2. The Women and Equalities Committee have launched an inquiry into menopause and the workplace. While the recommendations of this are currently awaited, it is likely to be subject to a further Government response once it is published.

## 9. SUMS Recommendations

It is prudent that institutions begin to appropriately consider and plan for any of the possible new legislative and regulatory changes by:

1. Familiarising themselves with new processes, requirements or regulations and making relevant changes to their policies and processes as appropriate.
2. Ensuring that all staff, leadership, and management teams are familiar with legislative changes and their expected benefits, whether that be through briefing sessions or training.
3. Ensuring a proactive response; where consultations are still ongoing or proposed, institutions may wish to get ahead by reviewing procedures; ensuring effective, open, and supportive communication channels are in place; and engaging with staff.
4. Identifying where practical interventions are needed as part of a business and workforce planning cycle.
5. Considering workforce data and metrics to provide insight into current performance and possible gaps.
6. Planning implementation and impact assessments.

With expertise covering almost all areas involved in Human Resources, policy and employment law, the team at SUMS Consulting would be happy to help in supporting conversations further.

If you wish to discuss further or need any further information, please contact SUMS Consultant Emma Ogden at [e.l.logden@reading.ac.uk](mailto:e.l.logden@reading.ac.uk)



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