



## On the horizon

 Details awaited

 Open consultation; imminent implementation; ongoing activity

 In force

	<b>Sexual harassment and non-disclosure agreements (NDAs)</b>
	<p>Throughout the course of 2018 and 2019 there was a series of reports and consultation papers relating to the strengthening of protection against workplace sexual harassment, and the tighter regulation of NDAs. The Government has confirmed that it will:</p> <ul style="list-style-type: none"><li>• Legislate to ensure that a confidentiality clause cannot prevent an individual disclosing to the police, regulated health and care professionals or legal professionals;</li><li>• Legislate so that the limitations of a confidentiality clause are clear to those signing them;</li><li>• Legislate to improve independent legal advice available to an individual when signing a settlement agreement;</li><li>• Provide guidance on drafting requirements for confidentiality clauses;</li><li>• Introduce new enforcement measures for confidentiality clauses that do not comply with legal requirements.</li></ul> <p>The Government has also asked for views on:</p> <ul style="list-style-type: none"><li>• The evidence for the introduction of a mandatory duty on employers to protect workers from harassment and victimisation in the workplace, enforceable both by individuals and the EHRC, and breach of which could potentially lead to a financial penalty;</li><li>• How best to strengthen and clarify the laws in relation to third party harassment;</li><li>• The evidence for extending employment tribunal time limits in the Equality Act from the existing 3 months;</li><li>• Whether interns are adequately protected by the Equality Act;</li><li>• The evidence for extending the protections of the Equality Act to volunteers; and</li><li>• Non-legislative interventions to prevent sexual harassment or, where it has occurred, to stop it from happening again.</li></ul> <p><b>KEY PUBLICATIONS</b></p> <p><a href="#">Non-disclosure agreements: ACAS guidance</a> (February 2020)</p> <p><a href="#">GEO: Consultation on sexual harassment in the workplace</a> (July 2019)</p> <p><a href="#">BEIS: Confidentiality clauses: Government response to consultation on measures to prevent misuse in situations of workplace harassment or discrimination</a> (July 2019)</p> <p><a href="#">Women and Equalities Committee report: The use of non-disclosure agreements in discrimination cases</a> (June 2019)</p> <p><a href="#">BEIS: Confidentiality clauses – Consultation on measures to prevent misuse in situations of workplace harassment or discrimination</a> (March 2019)</p> <p><a href="#">WEC's report on sexual harassment in the workplace</a> (November 2018)</p>



## On the horizon

[Government response to sexual harassment in the workplace report \(November 2018\)](#)

[Women and Equalities Committee report: Sexual harassment in the workplace \(July 2018\)](#)



### Employment contracts

From 6 April 2020, the section 1 ERA 1996 rights, setting out the details of the employment particulars which must be provided to employees, will also apply for the first time to workers as well. It will be a day one right, with a requirement to provide the information on or before the commencement of employment.

The statement of particulars which must be provided is also extended to include extra information including:

- The days of the week the worker is required to work;
- Whether or not the days or hours may be variable and, if they may be, how they vary or how that variation is determined;
- Other paid leave (aside from holiday and sick leave);
- Any other benefits provided by the employer;
- Any probationary period, including any conditions, and its duration;
- Any training entitlement provided by the employer, and any part of that training entitlement which the employer requires the worker to complete, and any other training which the employer requires the worker to complete and which the employer will not bear the cost of.

These changes will apply to individuals whose employment begins on or after 6 April 2020.

In July 2019, the government also consulted on two recommendations of the Low Pay Commission regarding a right to reasonable notice of work schedules, and a policy to provide compensation for shifts that are cancelled at short-notice. The government is seeking to identify what current practice exists in relation to these two recommendations, what impacts they would have on employers and workers, how best the policies could be designed to ensure they effectively address one-sided flexibility and how any legislative policies can be supplemented with guidelines for employers.

The consultation seeks views on:

- What would be defined as 'reasonable notice' of work schedules;
- Whether this would vary between different types of work or contexts;
- What working hours should be in scope;
- What the impact would be of the introduction of the right to reasonable notice of work schedules;
- Whether the right to a reasonable notice of work schedules should be guaranteed from the start of someone's employment, or whether an individual would need to work for a certain amount of time before becoming eligible and, if so, how long;
- Whether government should set a single notice period for work schedules which applies across all employers, or whether certain employers / sectors should be allowed some degree of flexibility from the "baseline" notice period and, if so, which employers/sectors;
- What would be an appropriate "baseline" notice period and degree of flexibility;
- Whether there are any instances where reasonable notice of a work schedule would not need to be given;
- How reasonable notice of a work schedule would be recorded;
- What the penalty for non-compliance should be; and
- What should be contained in a statutory Code of Practice.



## On the horizon

	<p><b>KEY PUBLICATIONS</b></p> <p><a href="#">The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018</a></p> <p><a href="#">The Employment Rights (Miscellaneous Amendments) Regulations 2019</a></p> <p><a href="#">Good Work Plan: Consultation on measures to address one-sided flexibility</a> (July 2019)</p> <p><a href="#">Low Pay Commission response to the government on 'one-sided flexibility'</a> (December 2018)</p>
	<p><b>Increased redundancy protection for women and new parents</b></p>
	<p>The 2017 Taylor Review of Modern Working Practices recommended consolidation of the protections for pregnant women and new parents to make it easier for businesses and individuals to understand their rights. In early 2019 the government consulted on proposals to extend redundancy protection and, in July 2019, committed to:</p> <ul style="list-style-type: none"><li>• Ensuring that the period during which pregnant women benefit from redundancy protection applies from the point the employee informs the employer that she is pregnant;</li><li>• Extending the redundancy protection period for 6 months once a new mother has returned to work from maternity leave;</li><li>• Extending redundancy protection for a 6 month period following return to work for those taking adoption leave; and</li><li>• Extending redundancy protection into a period following return to work for those taking shared parental leave, proportionate to the leave taken and the threat of discrimination.</li></ul> <p><b>KEY PUBLICATIONS</b></p> <p><a href="#">Good Work Plan: Pregnancy and maternity discrimination consultation: Government response</a> (July 2019)</p> <p><a href="#">Pregnancy and maternity discrimination: Consultation on extending redundancy protection for women and new parents</a> (January 2019)</p> <p><a href="#">Taylor report</a> (July 2017)</p>



## On the horizon

	<b>IR35: OFF-PAYROLL WORKING REFORMS</b>
	<p>The government announced at Budget 2018 that, with effect from 6 April 2020, changes would be made to the current private sector IR35 regime (save in the case of small private sector businesses to which the current rules will continue to apply, at least in the short term). Its response to a policy paper and consultation document issued in March 2019, together with draft legislation, has now confirmed that those changes will apply and build on the IR35 rules which have applied to the public sector since 2017.</p> <p>This will mean that, from 6 April 2020:</p> <ul style="list-style-type: none"><li>• Medium and large private sector end-users, rather than PSCs, will be required to make a determination of an individual's employment status under the IR35 regime; and</li><li>• Generally, the organisation in the supply chain which pays the PSC (a Fee-Payer) will be required to include the individual on their payroll and account for the relevant IR35 Liabilities on the payments made to the PSC.</li></ul> <p>Additional changes, which build on the current public sector regime (and which will also apply to the public sector) include:</p> <ul style="list-style-type: none"><li>• A requirement on the end-user to provide (i) their determination and (ii) the reasons for that determination, to both the party they contract with in the supply chain and directly to the individual worker themselves, together with an obligation on each subsequent party in the supply chain (after the end-user) to pass on such determination and accompanying reasons to the party they contract with until they reach the Fee-Payer in the supply chain, with non-compliance resulting in any IR35 Liabilities remaining with the defaulting party; and</li><li>• A requirement on the end-user to put in place a process for dealing with status determination disagreements.</li></ul> <p>In January 2020, the Government announced that it would review the implementation of the reforms to off-payroll working in response to business and individual concerns, with the aim of ensuring a smooth and successful process.</p> <p>On 7 February 2020, HMRC announced that the changes to the off-payroll working rules would only apply to payments made for services provided on or after 6 April 2020.</p> <p><b>KEY PUBLICATIONS</b></p> <p><a href="#">HMRC announces changes to the off-payroll working rules</a> (February 2020)</p> <p><a href="#">Announcement of off-payroll review</a> (January 2020)</p> <p><a href="#">Policy paper: Rules for off-payroll working from April 2020</a> (updated July 2019)</p> <p><a href="#">Draft legislation</a> (July 2019)</p> <p><a href="#">Off-payroll working rules from April 2020 – policy paper and consultation document</a> (March 2019)</p>

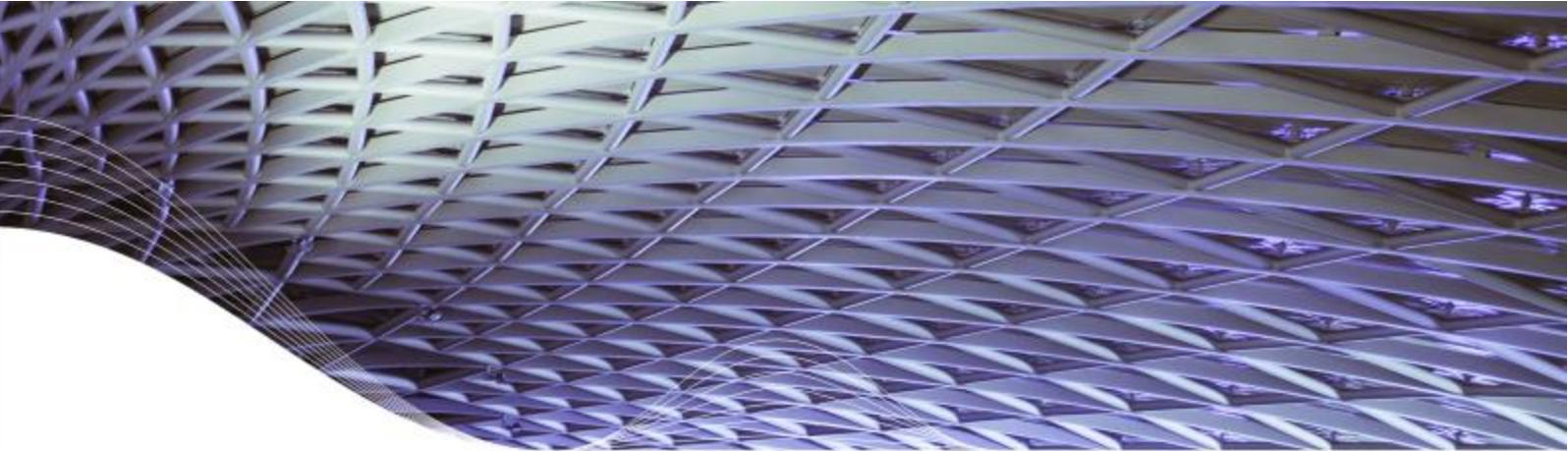
	<b>Employee health</b>
	<p>The government has announced that it must work “hand-in-hand with employers” to reduce ill health-related job loss, whilst stating that, “there is a case for employers to do more to support their employees who are managing health conditions or who are experiencing a period of sickness absence”.</p> <p>The government proposes a new right to request workplace modifications on health grounds for employees who do not meet the Equality Act 2010 definition of being a “disabled person”. This would potentially significantly widen employers’ obligations in this regard, albeit it is suggested that a request could be refused on legitimate business grounds. The government is also seeking views on eligibility for this right, including whether it should be linked to long-term absence (e.g of 4 weeks or more) or, instead, to return to work from a period of sickness absence or, wider still, to simply a demonstrable need for a workplace modification on health grounds.</p> <p>The government also proposes a Code of Practice could sit alongside this new right to support employers and employees to agree any modifications required. Activities or modifications which the government highlights as potentially reasonable for employers to undertake include:</p> <ul style="list-style-type: none"><li>• Having a conversation about the employee’s need for a modification;</li><li>• Keeping a written record of conversations between employer and employee;</li><li>• Seeking expert advice from occupational health services to support decision making; and</li><li>• Modifications of working hours/pattern, working tasks/duties, or to the physical environment.</li></ul> <p>The government proposes that employees who feel that their request for a modification has been unfairly refused, or due process has not been followed, could bring a claim in the employment tribunal.</p> <p>Other proposals of note for employers are:</p> <ul style="list-style-type: none"><li>• Strengthening statutory guidance to support employers to take early, sustained and proportionate steps to support a sick employee to return to work before that employee can be fairly dismissed on the grounds of ill health;</li><li>• Extending Statutory Sick Pay (SSP) to those who earn less than the Lower Earnings Limit (currently £118 per week);</li><li>• Reforming SSP to allow for greater flexibility in returning to work following sickness absence;</li><li>• Imposing fines on employers who fail to pay SSP where it is due;</li><li>• Enforcing SSP through a new single, labour market enforcement body;</li><li>• Requiring employers to automatically report sickness absence through their payroll system;</li><li>• Improving the provision of advice and information to support management of health in the workplace and encourage better informed purchasing of expert led advice;</li><li>• Reducing the costs for SMEs of purchasing occupational health services.</li></ul> <p><b>KEY PUBLICATIONS</b></p> <p><a href="#">Health is everyone’s business: Proposals to reduce ill-health-related job loss</a> (July 2019)</p> <p><a href="#">Improving lives: The future of work, health and disability</a> (November 2017)</p> <p><a href="#">Thriving at work: The Stevenson/Farmer review of mental health and employers</a> (October 2017)</p>



## On the horizon

	<b>Worker status</b>
	<p>The Government has confirmed that it will:</p> <ul style="list-style-type: none"><li>• <b>Align the employment status frameworks for the purposes of employment rights and tax</b> The Government believes that having separate frameworks for determining employment status for the purposes of employment rights and tax causes confusion for individuals and employers. It says that it will bring forward detailed proposals on how the frameworks could be aligned. There is, however, no further information at this stage.</li><li>• <b>Improve the clarity of the employment status test and improve guidance and online tool</b> The Government also says that it will legislate to improve the clarity of the employment status tests and improve the guidance and online tools available to help people understand their status. It will also legislate to prevent businesses from trying to misclassify or mislead their staff. It refers to the Taylor Review's recommendation that whether someone is self-employed or has worker rights should have more emphasis on control, rather than the right to send a substitute.</li><li>• <b>Introduce a right to request a more stable contract</b> There will be a right for individuals, who have at least 26 weeks' service with an employer, to request a more stable employment contract if they would like a more fixed working pattern. For example, this may be in relation to the number of hours a person receives, or fixed days on which they will be asked to work. There is no detail yet on the obligations of an employer to consider this type of request.</li><li>• <b>Increase the time required to break a period of continuous service</b> Currently a gap of one week in employment with the same employer can break what counts towards continuous service, making it difficult for some employees to accrue employment rights. The Government proposes to allow a break of up to 4 weeks before continuity is affected.</li></ul> <p>No legislation has yet been published to implement these reforms.</p>
	<ul style="list-style-type: none"><li>• <b>Ban the use of pay-between-assignment contracts for agency workers (the Swedish derogation)</b> Agency workers can currently exchange their right to be paid equally to permanent employees in return for a contract guaranteeing pay between assignments (the Swedish derogation). The Government says that it has evidence that this opt-out is not benefiting agency workers and that there are cases where pay between assignments simply does not happen. It therefore intends to repeal the Swedish derogation to guarantee long-term agency workers equal pay with comparable permanent workers.</li></ul> <p><b>KEY PUBLICATIONS</b></p> <p><a href="#">Employment status consultation</a> (February 2018)</p> <p><a href="#">Good work: A response to the Taylor Review of Modern Working Practices</a> (February 2018)</p> <p><a href="#">The Agency Workers (Amendment) Regulations 2019</a></p>

	<b>EU Settlement Scheme</b>
	<p>The EU Settlement Scheme opened in March 2019 to enable EU citizens in the UK to apply for an immigration status to remain in the UK. EU citizens will be eligible for either pre-settled or settled status depending on the length of time for which they have been resident in the UK.</p> <p>The UK is expected to leave the EU on 31 January 2020, but EU citizens entering the UK until 31 December 2020 will be eligible to make an application under the EU Settlement Scheme. The deadline for applications is 30 June 2021.</p> <p>From 1 January 2021, a new Australian-style points-based immigration regime is expected to apply to both EU/EEA and non-EU/EEA citizens wishing to enter the UK from that date.</p> <p><b>KEY PUBLICATIONS</b></p> <p><a href="#">Apply to the EU Settlement Scheme</a></p> <p><a href="#">EU Settlement Scheme: Employer toolkit</a></p> <p><a href="#">Visiting the UK after Brexit</a></p> <p><a href="#">Living in country guides</a></p> <p><a href="#">A points-based system and salary thresholds for immigration (January 2020)</a></p>
	<b>Family-friendly leave</b>
	<p>In July 2019, a consultation was launched on changes to parental leave entitlements as the government says it wants these to “better reflect our modern society and the desire to share childcare more equally”. The consultation:</p> <ul style="list-style-type: none"> <li>• Questions whether statutory paternity leave for fathers and same sex partners should be changed;</li> <li>• Seeks suggestions on ways in which shared parental leave (introduced in 2015) could be improved;</li> <li>• Proposes a new Neonatal Leave and Pay entitlement for parents of premature and sick babies who need to spend a prolonged period in neonatal care following birth;</li> <li>• Proposes that employers should publish their pay and flexible working policies and questions whether there should be a requirements for employers to consider advertising jobs as flexible.</li> </ul> <p><b>KEY PUBLICATIONS</b></p> <p><a href="#">Good Work Plan: Proposals to support families (July 2019)</a></p> <p>In January 2020, the government published regulations which will bring parental bereavement leave into force on 6 April 2020, providing for up to 2 weeks leave for eligible parents who suffer the death of a child under the age of 18 or a stillbirth after 24 weeks of pregnancy. Statutory parental bereavement pay will be payable to eligible parents with 26 weeks’ service.</p> <p><b>KEY PUBLICATIONS</b></p> <p><a href="#">The Parental Bereavement Leave Regulations 2020</a></p> <p><a href="#">The Statutory Parental Bereavement Pay (General) Regulations 2020</a></p>



## On the horizon

[The Parental Bereavement \(Leave and Pay\) Act 2018](#)

[Parental Bereavement Leave and Pay Consultation: Government response \(November 2018\)](#)

[Consultation on Parental Bereavement Leave and Pay \(March 2018\)](#)

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