




On the horizon

 Details awaited

 Open consultation; imminent implementation; ongoing activity

 In force

	Sexual harassment and non-disclosure agreements (NDAs)
	<p>Throughout the course of 2018 and 2019 there were 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">• Legislate to ensure that a confidentiality clause cannot prevent an individual disclosing to the police, regulated health and care professionals or legal professionals;• Legislate so that the limitations of a confidentiality clause are clear to those signing them;• Legislate to improve independent legal advice available to an individual when signing a settlement agreement;• Provide guidance on drafting requirements for confidentiality clauses;• Introduce new enforcement measures for confidentiality clauses that do not comply with legal requirements. <p>The government has also asked for views on:</p> <ul style="list-style-type: none">• 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;• How best to strengthen and clarify the laws in relation to third party harassment;• The evidence for extending employment tribunal time limits in the Equality Act from the existing 3 months;• Whether interns are adequately protected by the Equality Act;• The evidence for extending the protections of the Equality Act to volunteers; and• Non-legislative interventions to prevent sexual harassment or, where it has occurred, to stop it from happening again. <p>In July 2021, the government published its response on sexual harassment in the workplace and stated:</p> <ul style="list-style-type: none">• The government will introduce a duty requiring employers to take “all reasonable steps” to prevent sexual harassment. The government believes that the implementation of this duty will encourage employers to take proactive steps to make the workplace safer for everyone.• Explicit protections from third-party harassment (for example, harassment by a customer or a supplier) will also be introduced. Employers will have an defence to claims of this type if they are able to demonstrate that they took “all reasonable steps” to prevent harassment occurring.• Explicit protections will not be extended to volunteers and interns. In most cases interns are covered by the existing legislation and the government considers that extending protection to volunteers would create a disproportionate level of liability and difficulty for organisations.



On the horizon

- The government will look closely at the option of extending the time limits for bringing Equality Act based claims to an employment tribunal from 3 to 6 months. If an extension is introduced, it is likely that this would be across all Equality Act claims. This would avoid the risk of confusion which could result if the limits were increased only for claims based on specific grounds.
- The government is to encourage further EHRC strategic enforcement action so that enforcement will not rely solely on individuals pursuing employment tribunal claims. In addition, the EHRC will be supported to develop a statutory code of practice to complement its 2020 [technical guidance](#). The government will also produce its own guidance for employers which will outline practical steps that organisations can take to improve their workplace practices and culture which impact on sexual harassment at work.

The legislative changes required to introduce these measures will be introduced “as soon as parliamentary time allows”. There is no further news on the likely timescale for implementation.

KEY PUBLICATIONS

[Consultation on sexual harassment in the workplace: Government response](#) (July 2021)

[Non-disclosure agreements: ACAS guidance](#) (February 2020)

[GEO: Consultation on sexual harassment in the workplace](#) (July 2019)

[BEIS: Confidentiality clauses: Government response to consultation on measures to prevent misuse in situations of workplace harassment or discrimination](#) (July 2019)

[Women and Equalities Committee report: The use of non-disclosure agreements in discrimination cases](#) (June 2019)

[BEIS: Confidentiality clauses – Consultation on measures to prevent misuse in situations of workplace harassment or discrimination](#) (March 2019)

[WEC's report on sexual harassment in the workplace](#) (November 2018)

[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



Work schedules

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.

There has been no progress on implementation of these reforms since July 2019.

KEY PUBLICATIONS

[Good Work Plan: Consultation on measures to address one-sided flexibility](#) (July 2019)

[Low Pay Commission response to the government on 'one-sided flexibility'](#) (December 2018)



Non-exclusivity clauses

In December 2020, the government published a consultation paper on measures to extend the ban on exclusivity clauses in contracts of employment. In 2015, legislation banned exclusivity clauses within zero hours contracts and, at the same time, gave employees the right not to be unfairly dismissed or to be subjected to a detriment for failing to comply with an exclusivity clause. Now, the government is proposing to extend the ban on exclusivity clauses beyond zero hours contracts to contracts where a worker's guaranteed weekly income is less than the Lower Earnings Limit. The intention is to allow low-income workers to seek additional work elsewhere.

The government's response to this consultation is awaited.

KEY PUBLICATIONS

[Exclusivity clauses: Consultation on measures to extend the ban on exclusivity clauses in contracts of employment](#) (December 2020)



On the horizon



Reform of non-compete clauses

In December 2020, the government published a consultation paper on measures to reform non-compete clauses in contracts of employment as part of an initiative to explore avenues for unleashing innovation, creating the conditions for new jobs and increasing competition. The government is seeking views on:

- Making post-termination non-compete clauses enforceable only when the employer provides compensation for the period the clause prohibits the employee from working for a competitor or starting their own business; and/or
- Introducing a maximum limit on the period of non-compete clauses; or
- Making all post-termination non-compete clauses unenforceable.

The government's response to the consultation paper is awaited.

KEY PUBLICATIONS

[Non-compete clauses: Consultation on measures to reform post-termination non-compete clauses in contracts of employment \(December 2020\)](#)



Increased redundancy protection for women and new parents

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:

- 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;
- Extending the redundancy protection period for 6 months once a new mother has returned to work from maternity leave;
- Extending redundancy protection for a 6 month period following return to work for those taking adoption leave; and
- 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.

In May 2021, the government indicated in its response to a Women and Equalities Committee report that it would bring these proposals into effect when parliamentary time allows. There has been no further news on this.

KEY PUBLICATIONS

[Unequal impact? Coronavirus and the gendered economic impact: Government response \(May 2021\)](#)

[Unequal impact? Coronavirus and the gendered economic impact \(WEC report\) \(February 2021\)](#)

[Good Work Plan: Pregnancy and maternity discrimination consultation: Government response \(July 2019\)](#)

[Pregnancy and maternity discrimination: Consultation on extending redundancy protection for women and new parents \(January 2019\)](#)

[Taylor report \(July 2017\)](#)



On the horizon



Employee health

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”.

In this context, the government originally proposed 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 have potentially significantly widened employers’ obligations in this regard, albeit it was suggested that a request could be refused on legitimate business grounds.

Other proposals of note for employers were:

- 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;
- Extending Statutory Sick Pay (SSP) to those who earn less than the Lower Earnings Limit;
- Reforming SSP to allow for greater flexibility in returning to work following sickness absence;
- Imposing fines on employers who fail to pay SSP where it is due;
- Enforcing SSP through a new single, labour market enforcement body;
- Requiring employers to automatically report sickness absence through their payroll system;
- Improving the provision of advice and information to support management of health in the workplace and encourage better informed purchasing of expert led advice;
- Reducing the costs for SMEs of purchasing occupational health services.

In May 2021, as part of its response to a Women and Equalities Committee report, the government indicated that it would be publishing a response to its consultation shortly. The response was finally published in July 2021 and stated:

- The government has decided not to proceed with the introduction of the proposed right to request workplace modifications at this stage. This new right would have permitted requests for workplace modifications on health grounds by employees who do not meet the Equality Act 2010 definition of being a “disabled person”, and would potentially have significantly widened employers’ obligations in relation to workplace adjustments.
- HSE will explore ways to strengthen guidance on how employers can best support disabled people and those with long-term health conditions to remain in work, and on managing related sickness absence. HSE will strengthen existing non-statutory guidance before exploring the introduction of statutory guidance.
- Reforms to SSP require further consideration. The government has decided that now is not the right time to introduce changes to the sick pay system.

In December 2021, the Disability Unit of the Cabinet Office published a consultation on reporting of workforce disability for employers with 250 employees or more. The consultation will address both mandatory and voluntary reporting. The consultation closes on 25 March 2022.



On the horizon

This new consultation is in response to a commitment in the National Disability Strategy, published in July 2021. It aims to increase transparency on reporting practices which have been identified as crucial to introducing the social changes necessary in establishing a more inclusive workplace and society. Responses to the consultation are expected to be published by 17 June 2022.

KEY PUBLICATIONS

[Disability workforce reporting consultation](#) (December 2021)

[National disability strategy](#) (July 2021)

[Government response: Health is everyone's business](#) (published July 2021; updated October 2021)

[Unequal impact? Coronavirus and the gendered economic impact: Government response](#) (May 2021)

[Unequal impact? Coronavirus and the gendered economic impact \(WEC report\)](#) (February 2021)

[Health is everyone's business: Proposals to reduce ill-health-related job loss](#) (July 2019)

[Improving lives: The future of work, health and disability](#) (November 2017)

[Thriving at work: The Stevenson/Farmer review of mental health and employers](#) (October 2017)



Worker status

The government has confirmed that it will:

- **Align the employment status frameworks for the purposes of employment rights and tax**

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.

- **Improve the clarity of the employment status test and improve guidance and online tool**

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.

- **Introduce a right to request a more stable contract**

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.



On the horizon

- **Increase the time required to break a period of continuous service**

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.

No legislation has yet been published to implement these reforms.

KEY PUBLICATIONS

[Employment status consultation](#) (February 2018)

[Good work: A response to the Taylor Review of Modern Working Practices](#) (February 2018)



Family-friendly leave

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:

- Questions whether statutory paternity leave for fathers and same sex partners should be changed;
- Seeks suggestions on ways in which shared parental leave (introduced in 2015) could be improved;
- 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;
- 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.

In March 2020, the government published a response to its consultation proposals on neonatal leave and pay, confirming that it will introduce neonatal leave and statutory pay for parents of babies in neonatal care. The relevant provisions will be contained in the Employment Bill, which is still awaited.

In May 2021, as part of its response to a Women and Equalities Committee report, the government indicated that it would be publishing a response to the remainder of its consultation in due course.

A response on unpaid carer’s leave was published in September 2021. This indicates the following:

- One working week of unpaid carer’s leave (per employee, per year) will be available as a day one right for employees managing caring responsibilities for those with long-term care needs alongside work;
- Eligibility in terms of who the employee is caring for will be broadly defined (following the definition of dependant used in the right to time off for dependants);
- The long-term care need person of the being cared for will be defined by reference to disability or issues related to old age, with limited exemptions;
- Leave will be available to be used for providing, or making arrangement for, the provision of care;
- The leave will be available to take flexibly (from half day blocks to a whole week);
- The administrative process to ensure legitimacy of requests to take carer’s leave will be light touch;
- The leave will be subject to a minimum notice period of twice the length of time being taken, plus 1 day (in line with annual leave notice periods).



On the horizon

This new carer's leave entitlement will be introduced "when parliamentary time allows". There is no further information on a likely timescale for implementation.

A response to the remainder of the government's proposals is awaited.

KEY PUBLICATIONS

[Carer's leave consultation: Government response](#) (September 2021)

[Unequal impact? Coronavirus and the gendered economic impact: Government response](#) (May 2021)

[Unequal impact? Coronavirus and the gendered economic impact \(WEC report\)](#) (February 2021)

[Neonatal leave and pay: Good Work Plan – proposals to support families](#) (March 2020)

[Good Work Plan: Proposals to support families](#) (July 2019)



Flexible working

In September 2021, the government published its heavily-trailed consultation on new proposals to make the right to request flexible working a day one entitlement. Currently, the statutory right to request flexible working only applies to employees with 26 weeks or more service with their employer. The government's 2019 manifesto committed to encourage flexible working and consult on making it the default unless employers have good reasons not to. The consultation applies to a wide range of flexible working options such as job-sharing, flexitime, compressed, annualised and staggered hours, as well as phased retirement.

The consultation sets out 5 proposals for reshaping the existing statutory framework:

- Making the right to request flexible working ("Request") a day 1 right;
- Considering whether the 8 business reasons for refusing a Request all remain valid;
- Requiring the employer to suggest alternatives if a Request is rejected;
- Changes to the administrative process underpinning the right to Request; and
- Whether there should be more potential to request a temporary arrangement.

The consultation closed on 1 December 2021 and the government's response is awaited.

KEY PUBLICATIONS

[Making flexible working the default](#) (September 2021)



On the horizon

	Ethnicity pay gap reporting
	<p>In 2018/2019 the government consulted on options for employer-level ethnicity pay reporting. Following this, the government met with businesses and representative organisations to understand the barriers to reporting and to explore what information could be published to allow for meaningful action to be taken. This data was then analysed by the government.</p> <p>In May 2021, as part of its response to a Women and Equalities Committee report, the government indicated that it would be publishing a response to its consultation in due course. It is still awaited. In September 2021, a petition to introduce mandatory ethnicity pay gap reporting was debated in the House of Commons and, separately, in October 2021, the issue was debated in the House of Lords. News of further developments is awaited.</p> <p>KEY PUBLICATIONS</p> <p>Unequal impact? Coronavirus and the gendered economic impact: Government response (May 2021)</p> <p>Commission on race and ethnic disparities: The report (March 2021)</p> <p>Unequal impact? Coronavirus and the gendered economic impact (WEC report) (February 2021)</p> <p>Ethnicity pay reporting: Consultation (January 2019)</p>

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper UK LLP and DLA Piper SCOTLAND LLP will accept no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please speak to your DLA Piper contact on +44 (0)20 7349 0296.

www.dlapiper.com

DLA Piper UK LLP is authorised and regulated by the Solicitors Regulation Authority. DLA Piper SCOTLAND LLP is regulated by the Law Society of Scotland. Both are part of DLA Piper, a global law firm operating through various separate and distinct legal entities. For further information please refer to www.dlapiper.com
UK switchboard: +44 (0)20 7349 0296. Copyright ©2020 DLA Piper. All rights reserved. UKD/KD/KM/UK/UKG/108231445.1 JAN2022