

UK People, Reward and Mobility Newsletter

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In this issue we look at some of the key employment law developments that have taken place over the past month. In particular, we examine: the effect coronavirus has had on mental health in the workplace and what employers can do to help, modern slavery in Leicester, further details on the UK government's plan to introduce a points-based immigration system, and the employment rights of carers in the UK.

Find out more about our team, read our blog and keep up with the latest developments in UK employment law and best practice at our [UK People Reward and Mobility Hub](#).

How to support employees' mental well-being

World Suicide Prevention Day will take place this year on 10 September, the theme being "working together to prevent suicide". At a time where we have seen people proudly come together for the greater good, this message could not be more relevant. Indications suggest that the coronavirus pandemic is having a significant impact upon the mental health of many people in this country. The "working together" theme suggests there is a hope the impetus built up over the last four months continues to help the country fight one of the more hidden knock-on effects of the pandemic. Employers will play an important role in this fight.

There are multiple factors to consider in this context. Outside the workplace setting, the impact of the lockdown and ongoing restrictions such as social distancing and self-isolation are both important considerations. In the employment context, remote working may have led to some employees working longer hours as the boundaries between professional and personal lives are blurred. Parents may have to juggle childcare and home schooling, and an absence of face-to-face interactions have led to some, perhaps many, people feeling isolated

and unsupported. There is also the uncertainty facing furloughed workers and the looming prospect of redundancies as the Coronavirus Job Retention Scheme begins to wind down. Against this backdrop, it is unsurprising that many employees are now experiencing higher levels of worry and stress, which may over time materialise into more serious medical conditions.

Statistics

On 4 May 2020, the Office for National Statistics released a survey of "personal well-being and economic well-being covering the period October 2019 to April 2020" to understand the impact of the pandemic on this country. The survey found that "between 20 March and 30 March 2020, almost half (49.6%) of people in Great Britain reported 'high' (rating 6 to 10) anxiety". This was much higher than the figure for the end of 2019 (21%) and equates to more than 25 million people aged 16 and over. The survey also found that the proportion of people reporting "low" happiness was 20.7% between 20 and 30 March. For comparison, it was only 8.4% in the period between October and December 2019.

Legal consequences for employers

Employers have a general duty to promote the health, safety and well-being of their staff, as far as reasonably practicable. This applies equally to physical and mental health. If they do not give this duty proper weight, organisations can face numerous tricky scenarios, including extended periods of absence, episodes of poor performance, and allegations of bullying and harassment. Employers should therefore ensure that they give this responsibility due regard by making regular health and safety assessments. In terms of mental health considerations, this could include risk assessments to ascertain whether their staff's workload is appropriate and whether the correct support is in place to get the employee through some of most unusual times they will have experienced in their career.

The most obvious claim that might arise in connection with an individual's mental ill-health is a disability discrimination claim under the Equality Act 2010. Individuals are protected if their mental ill-health has a substantial, adverse and long-term effect on their ability to carry out day-to-day activities. Employers must not treat staff less favourably because of their disability or for a reason related

EDITOR'S TOP PICK OF THE NEWS THIS MONTH

- [The Pension Schemes Bill: more questions than answers](#)
- [Women Count 2020](#)
- [The claim can go on...even if it's not worth anything...](#)
- [Changes to the criminal record checks regime](#)
- [National minimum wage: deductions for training and accommodation expenses](#)

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to their disability. Employers also have a duty to make reasonable adjustments for any employee experiencing a disability under the Equality Act. Reasonable adjustments for an individual with mental health issues could include adjusting their duties, reducing their working time, phased returns to work after time off, and allowing time off for treatment and appointments.

If an employee has been dismissed by reason of capability, caused directly or indirectly by their mental ill-health, this could give rise to claims both for unfair dismissal and for disability discrimination. Capability is a potentially fair reason for dismissal. However, for an organisation to avoid liability, this must be supported (among other things) by a fair process, sufficient medical evidence and a demonstration that alternatives to dismissal have been considered. Remember also that compensation for discrimination claims is uncapped.

The other risk in these circumstances is that, if an individual has had an excessive workload or been bullied and harassed and this has caused or exacerbated their mental ill-health, they might have suffered personal injury as a result. This could expose the organisation to a potential negligence claim.

How can employers help?

As we adjust to living with the pandemic, many employees are now facing the prospect of returning to work. For some, that might mean returning from furlough. For others, that involves returning to the office after months of working from home. Employees may be worried about potential exposure to the virus, especially if they live with vulnerable family members. This in and of itself may lead to worry and potential

stress. However, employers can take steps to assist with this transition and promote the well-being of staff who are returning to work. Measures that may help include the following:

- carrying out risk assessments to identify risks in the workplace and putting in place appropriate safety control measures – this is required as part of making the workplace Covid-19 Secure;
- clearly communicating with employees to address, discuss and manage any concerns as they arise. Employees may have a multitude of concerns and regular updates may go a long way to providing structure and comfort;
- giving employees an opportunity to input their own insights and suggestions as they return to work. Not only will this help employers adapt to the evolving norm, but employees may feel more engaged if they have actively participated in the process;
- holding return to work meetings to help re-integrate employees back into the workplace. Employees can also use this as an opportunity to flag any issues or concerns early on and this can take place remotely or once employees are physically back in the office;
- considering and discussing areas where employers can afford to be flexible. Where possible, it will be important to document any arrangements agreed and be consistent as to what flexibility is offered to all employees.

Acas has also released "Coronavirus and mental health at work" guidance which provides additional advice to employers on supporting and managing mental health in the workplace. We recommend HR professionals and those in charge of employee welfare read this document.



Close to home – modern slavery in Leicester

The Modern Slavery Act 2015 (MSA) was designed to address the evolving nature of trafficking and slavery in the modern world. It created three types of criminal offences:

- slavery or servitude, where a person is compelled to provide services under coercion, under circumstances where their liberty is usually denied;
- forced or compulsory labour, which implied an element of coercion, oppression or deception of the victim; and
- human trafficking, meaning the arranging or facilitating of a person's travel with a view to their being exploited.

These crimes replaced earlier offences which were dispersed across a number of different laws.

The MSA also introduced new civil orders: Slavery and Trafficking Prevention Orders (STPOs) and Slavery and Trafficking Risk Orders (STROs). The police, National Crime Agency, immigration officers and labour abuse prevention officers from the Gangmasters and Labour Abuse Authority (GLAA) can apply to courts for these orders. If granted they place a restriction on the behaviour and activities of a person who poses a risk of committing offences under the MSA.

In addition, the MSA requires businesses with operations in the UK and annual turnovers of more than £36 million to prepare and publish a yearly slavery and human trafficking statement, outlining how they will recognise and address modern slavery issues in their business and their supply chains.

Leicester: what happened

It is estimated that there are approximately 1,500 textile factories across Leicester. Most of these are small businesses, some operating from workshops in crumbling buildings.

Since lockdown, demand at online retailers has skyrocketed as their competition was forced to close. The textile factories in Leicester supplied much of this boom. Now, the Health and Safety Executive (HSE) is investigating claims that people were forced to work in unsafe conditions during lockdown,

while the National Crime Agency investigates allegations of forced labour. Many of the victims were undocumented immigrants, making them vulnerable to abuse under the threat of deportation.

There are reports that workers were paid well below the national minimum wage of £8.72/hour. MP for Leicester East, Claudia Webbe, has said she has received anonymous reports that standard wages are £2-3/hour. When asked if claims of widespread exploitation in the city are an "open secret", deputy mayor Adam Clarke replied: "You call it an open secret. It's just open."

The wider picture

According to campaign group, the Medaille Trust, there are approximately 136,000 victims of modern slavery in the UK. Commentators have cited issues around enforcement as contributing to this bleak picture. There has been a failure to police it or give the legislation "real teeth".

In practice, the alphabet soup of agencies with the authority to enforce the MSA makes investigations incredibly complex. Municipal officials in Leicester report having to liaise between HMRC, the GLAA, the HSE and others.

There have only been seven criminal prosecutions for paying less than the minimum wage since 2010. Enforcement primarily relies on civil penalties. This may not deter the worst serial offenders.

Home Secretary Priti Patel is reportedly considering changes to the MSA. We have yet to see further detail of what this could look like in practice. Overall, the MSA represents a step in the right direction – but ongoing egregious labour practices illustrate a real need to rethink enforcement, effectiveness and funding. Clearly, there is a long way to go yet.



UK points-based immigration system: further details statement

In our [May newsletter](#), we brought you details of the new points-based immigration system that the UK is to introduce on 1 January 2021. This was following a Policy Statement published by the UK government setting out the end of free movement on 31 December 2020 and introducing a single, global immigration system.

The government has published a new Policy Statement setting out further details of its plans. The detail of the statement aligns with the plans that are made in the Immigration Bill that is continuing its passage through parliament. Further guidance for applicants will also be issued in due course, along with revised Immigration Rules and further regulations in the autumn.

The latest Policy Statement sets out the following anticipated changes to the immigration system:

Skilled Workers

The Tier 2 (General) route will close and be replaced by a Skilled Worker route. The government aims to ensure that applications can be made under the new route before the end of the transition period on 31 December 2020.

Under the Skilled Worker route, migrants will be able to switch in the UK from the Intra-Company Transfer route. This will greatly assist migrants who want to switch to this route because of the main advantage of it leading to settlement. Sponsors will also benefit from the reduced time and costs of switching the migrant into this route in-country, rather than them needing

to leave the UK to return to their home country.

Under the new system, the cooling-off rules have also been pared back. The cooling-off rules currently restrict a migrant applying for a Tier 2 (General) visa if they have had leave (generally of more than three months) as a Tier 2 (Intra-Company Transfer) migrant in the past 12 months. The new cooling-off provision will only apply if the individual has had more than five years' leave under Tier 2 (Intra-Company Transfer) in any six-year period.

Other benefits of the Skilled Worker route include:

- The expansion of the skills threshold for skilled workers. An applicant's job must be at a minimum of RQF Level 3, whereas previously it was set at RQF Level 6. This means that applicants with skills on a par with A-levels or equivalent, rather than degrees, will qualify as skilled workers. This will widen the pool of available workers for sponsors.
- The cap on the number of Tier 2 (General) visas that can be issued to those skilled workers who want to come to the UK will be suspended.
- The Resident Labour Market Test (RLMT) will also be removed. This will introduce time savings for employers.
- The Home Office has hinted at further time saving changes, and we eagerly await more details of the same.

Intra-Company Transfers and Intra-Company Graduate Trainees

The Intra-Company Transfer and Intra-Company Graduate Trainee routes will replace the Tier 2 (Intra-Company Transfer) route. The new routes will still have the same aim as their predecessors. They will enable multinational companies to send employees to the UK to work in a connected company. The skill level will remain at RQF Level 6 and the route will have a separate salary requirement to the new Skilled Worker route. There are few changes to this route, including that it will still not lead to settlement for a migrant. That said, as above, from information available to date it appears that it may be possible for ICT migrants to switch into the Skilled Worker route and start accumulating time toward settlement.

Sponsor licence

Existing Tier 2 (General) and Tier 2 (Intra-Company Transfer) sponsors will automatically be granted a new Skilled Worker licence or Intra-Company Transfer licence, with an expiry date consistent with their



current licence, and receive an appropriate allocation of Certificates of Sponsorship (CoS).

Those organisations who do not currently have a sponsor licence should apply now if they anticipate needing to sponsor workers under the new system next year.

Highly skilled workers

Further to the recommendations of the Migration Advisory Committee (MAC), the Home Office has committed to creating a broader unsponsored route within the points-based system to run alongside the employer-led Skilled Worker route.

The Highly Skilled Worker route will allow a smaller number of the most highly skilled workers to come to the UK without a job offer. Further details of this route will be announced in due course.

What are the key take-away points for employers and sponsors?

The further Policy Statement has provided some positive news for employers. Key issues are the removal of provisions which caused a delay to the onboarding process (most notably, the Resident Labour Market Test). Without this extra hurdle to overcome, the process should be more streamlined for sponsors to bring skilled workers to the UK.

For those businesses that do not currently have a sponsor licence due to its use of settled workers, whether from the UK or EU, they will have to decide if it is going to be necessary to apply for one. If there are EU workers who will come to the UK after the end of the transition period or, for some reason, have not applied under the EU settlement scheme, a business will need a sponsor licence to recruit them. It is anticipated that only 3% of UK employers currently have a licence. There is likely to be a large volume of businesses applying for licences, and therefore it is advisable to start this process now, as it is likely that, as time goes on, there will be a delay in processing applications.

Alongside COVID-19 budget impacts, businesses should also factor in the increasing costs of sponsoring workers from the EU. Application visa fees, Immigration Skills Charge fees and the possible reimbursement of Immigration Health Surcharge fees are all additional costs attributed to the recruitment of EU workers that would not have previously been incurred.

At the time of writing, it is difficult to predict what the world of work will look like going forwards. However, on a positive note, where businesses are getting back on their feet and looking to recruit, they should be mindful of the possibility that, from next year, recruiting EU workers will be more difficult, timely and expensive. Such issues should now be taken into account in future business planning.

We are not yet in a position to advise businesses of any changes to the Investor route or Sole Representative route since further details are still awaited from the Home Office as to any changes to the eligibility criteria and processes linked to them. As with the Skilled Worker route and others mentioned above, we will look to keep you updated as and when further information is released.



Five million people provide unpaid care in the UK: what are their rights?

In the UK, all employees have the right to take "reasonable" time off to deal with emergencies involving a dependant. This is known as dependants' leave. Whether or not this is paid is at the discretion of the employer.

In addition to dependants' leave, since 2003, employees are entitled to request flexible working to look after their disabled child. The Work and Families Act 2006 extended the right for carers to request flexible working in respect of caring for adults. To qualify as a carer, you must either:

- have a child under six, or a disabled child under 18; or
- care for a spouse, civil partner, partner (who you live with), relative or live with the adult in need of care.

The right to request time off work is just that: the right to request, not the right to have your request accepted. It is at the employer's discretion to consider the request and accept or deny it. A carer can make one request a year that should be in writing, confirm their eligibility and set out their proposed working pattern and how it will or will not affect their job.

Whilst both dependants' leave and the right to request flexible working provide some recourse for employees who are carers, it is regularly suggested that carers are not afforded sufficient protection and flexibility in terms of how their caring responsibilities might affect their employment. Carers can bring qualities, skills and values to the workplace that some other employees may lack and employers may miss out on talent if carers do not apply for or stay in jobs due to their caring responsibilities.

Earlier this year, the government launched a consultation about the provision of unpaid leave for carers. Approximately 5 million people in the UK provide unpaid care. The government has recognised that carers face particular challenges in terms of balancing their career and caring responsibilities which may warrant new employment rights, particularly female carers who are disproportionately impacted as women are the main providers of unpaid care. Many employers recognise that a healthy work life balance can reap benefits in the

workplace, particularly in terms of staff morale. When employees feel that their personal circumstances and responsibilities are appreciated by their employer, they might well be more loyal and productive employees.

Amongst other questions, the consultation sought views on:

- how to best design a new entitlement to one week's unpaid leave to support employees who are carers;
- the definition of "carer";
- how the leave could be taken;
- the notice requirements for taking carer leave;
- the qualifying criteria to be met; and
- the costs and benefits to both employers and employees.

Under the proposals, carers would be entitled to one week of unpaid leave each year to allow them to provide care flexibly during regular working hours. This right would be in addition to existing entitlements outlined above and could help carers balance work and caring responsibilities better. The consultation closed on 3 August. We look forward to seeing the developments.

IN THE PRESS

In addition to this month's news, please do look at publications we have contributed to:

[Scottish Grocer](#) – **Laura Morrison** analyses the effect the changes to statutory sick pay resulting from Covid-19 will have on businesses.

[Society for Human Resource Management](#) – **Laura Morrison** explains how the extension of the UK's job retention scheme will support businesses and employees.

If you have an idea of a topic you'd like us to cover in a future round-up or seminar, please provide your comments – [here](#).





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