

Understanding Employment Law

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Introduction

- LO1: Understand the purpose of employment regulation and the way it is enforced.
- LO2: Know how to manage recruitment and selection activities lawfully
- LO3: Know how to manage change and reorganisation lawfully
- LO4: Know how to manage issues relating to pay and working time lawfully



LO1: Understand the purpose of employment regulation and the way it is enforced

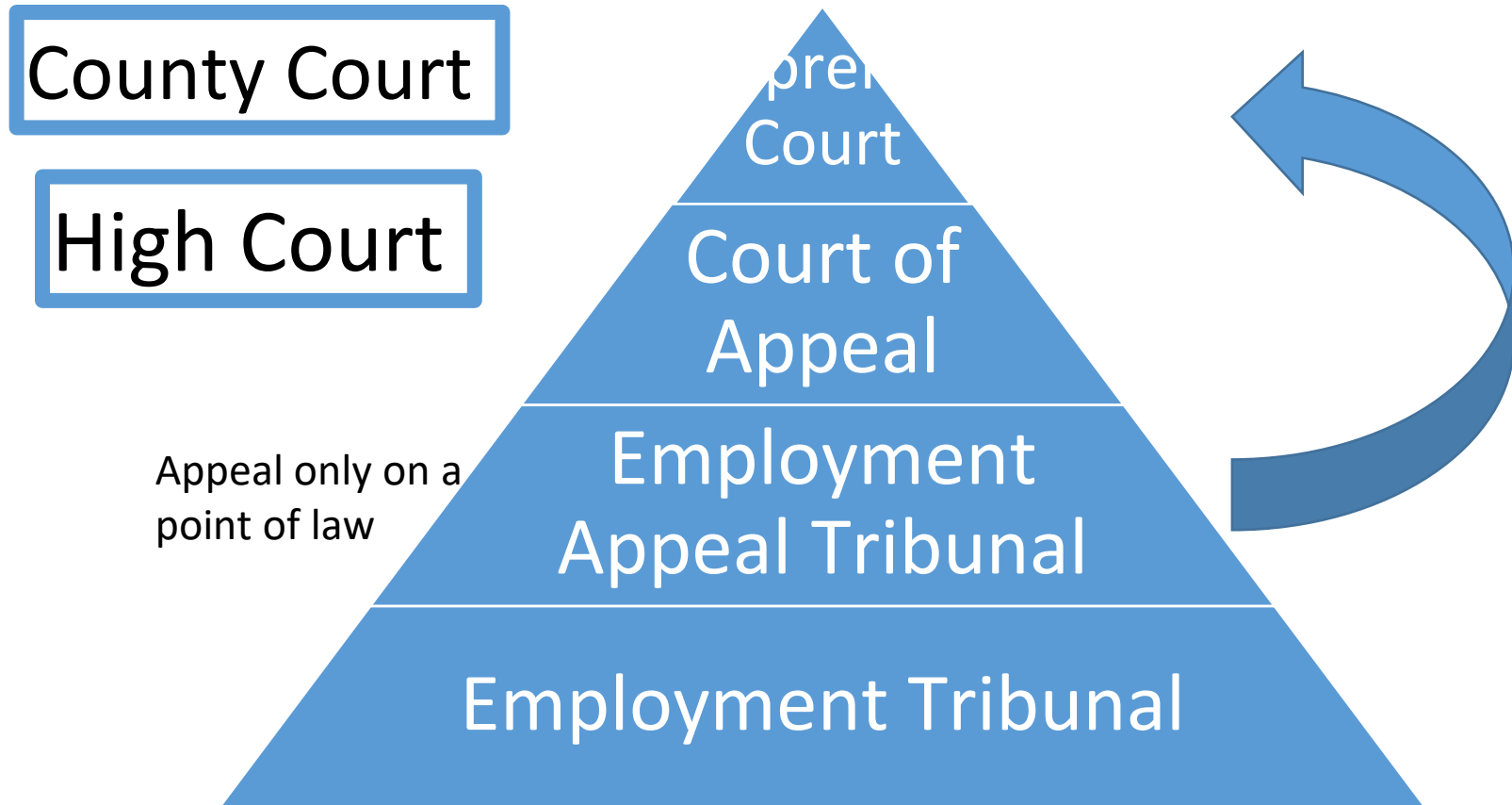


The History of the Employment Tribunals

- Employment tribunals (before 1998 called “industrial tribunals”) were created in 1964, initially to deal with appeals by employers against industrial training levies.
- From that very small beginning their jurisdiction has been greatly extended.
- Notable additions were claims for statutory redundancy payments (in 1965), for unfair dismissal (introduced by the Industrial Relations Act 1971), and for various types of discrimination in employment, now brought together in the Equality Act 2010.



The Employment Court Hierarchy



ECJ: Historical influence

- 1973 - 2020:
 - EU membership → ECJ supremacy over UKSC for EU law.
- 2020 Brexit Agreement:
 - UK free to amend laws, but major deregulation risks tariffs.
- Post-2021: ECJ rulings no longer binding (except some NI discrimination laws).
 - UKSC fully supreme.



REUL

- Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023 (RUEL)
- Most EU laws retained unless amended/repealed by future governments.
- Key retained provisions:
 - Working Time records, rolled-up holiday pay, 12.07% holiday accrual for irregular workers.
 - Adjusted TUPE consultation rules.
 - Definitions for leave carryover and "normal" pay rate for statutory leave.

Post-2024

- **Key Changes from 1 January 2024:**
 - ECJ rulings on points of principle are now challengeable in UK courts.
- **Referral Process:**
 - Employment Tribunals/EAT → Court of Appeal/UKSC.
 - Courts may affirm, amend, or abolish European precedents.
- **Judicial Obligation:**
 - Legacy EU rulings must align with UK law in new interpretations.
- **Potential Areas for Change:**
 - Justifying **direct age discrimination** as proportionate to a legitimate aim.
 - Determining where **TUPE regulations** apply.
 - Rules on **holiday pay accrual** during sickness and employer record-keeping requirements.

Employment Regulation

In favour

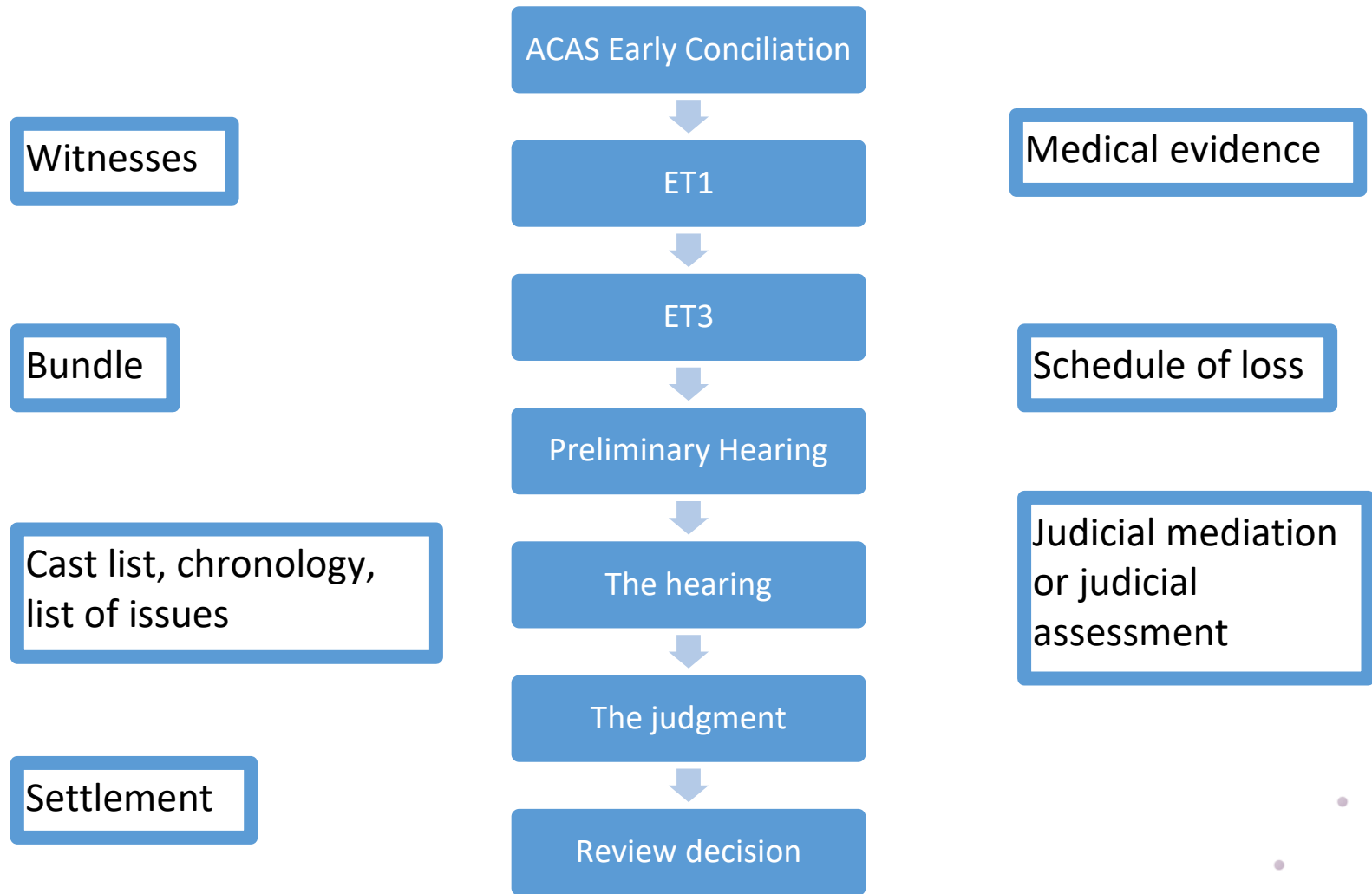
- It balances the power between employers and employees
- It deters employers from exploiting their power unreasonably
- Minority groups need protection and encouragement to achieve more equality
- Trade unions would often be powerless without legal support
- It encourages people to work in the UK when they might otherwise choose to retire or work overseas

Against

- It raises unemployment and slows economic growth
- It raises costs for employers and makes our economy less competitive internationally
- It deters inward investment
- It reduces employment opportunities for minority groups



Process of Employment Tribunals



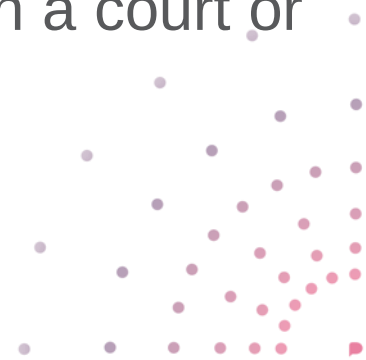
Early Conciliation

- Acas allow the Claimant and the Respondent to reach an agreement without having to go to an employment tribunal.
- A claim to an employment tribunal must usually be made within 3 months less 1 day (this is the 'limitation date').
- When Acas receive the early conciliation notification, the limitation date gets extended so there is enough time for early conciliation to take place.
- EC lasts for 6 weeks
- If the parties reach an agreement, the terms can be recorded in a COT3 form.



Settlement Agreements

- Legally binding contract that can be used to end the employment relationship on agreed terms.
- Must be in writing.
- Voluntary process so parties do not have to agree or enter into discussions if they do not wish to do so.
- Main feature is they waive an individual's right to make a claim to a court or employment tribunal.
- Employee must have received advice from a relevant independent adviser on the terms and effect of the proposed agreement.
- Discussions that take place to reach a settlement agreement are often done on a 'without prejudice' basis, so statements made in relation to the settlement cannot be used in a court or tribunal as evidence.



MCQ's

1. What is the person who brings a claim to the Employment Tribunal called?

- a. Respondent
- b. Claimant
- c. Appellant
- d. Applicant

2. What is the person who defends a claim in the Employment Tribunal called?

- a. Respondent
- b. Claimant
- c. Appellant
- d. Applicant

3. What were Employment Tribunals first called?

- a. Employment Courts
- b. Employment Appeal Tribunal
- c. Industrial Tribunal
- d. Donovan Tribunals

4. What form is used to bring a claim to the Employment Tribunal?

- a. ET1
- b. ET2
- c. ET3
- d. ET4



LO2: Know how to manage recruitment and selection activities lawfully



Types of staff

Employees

Self-employed

Workers



How to determine status?

- What is written in the contract?
- Multiple test:
Ready-Mixed Concrete v Minister of Pensions
(1968) ER 433
- Mutual obligations test:
Carmichael v National Power (2000) IRLR 43



Equality Act 2010

- Replaced 9 major pieces of discrimination legislation
- Replaced 100 pieces of smaller legislation
- Harmonisation
- More straightforward



Who is protected?

- Employees
- Workers
- Job applicants
- Ex-employees



The protected characteristics

- Age (section 5 EqA 2010).
- Disability (section 6 EqA 2010).
- Gender reassignment – proposes to, starts or has completed a gender reassignment process (section 7 EqA 2010).
- Marriage and civil partnership (Section 8 EqA 2010).
- Pregnancy and maternity (section 18 EqA 2010).
- Race – colour, nationality and ethnic or national origins (Section 9 EqA 2010).
- Religion, religious or philosophical belief (Section 10 EqA 2010).
- Sex (Section 11 EqA 2010).
- Sexual orientation (Section 12 EqA 2010).



Disability

- “physical or mental impairment that has a substantial and long-term adverse effect of a person’s ability to carry out normal day-to-day activities”
- Deemed disabilities (cancer, HIV, MS)
- Section 6 EqA 2010



Types of discrimination

- Direct discrimination (Section 13 EqA 2010).
- Associative.
- Perception.
- Indirect discrimination (Section 19 EqA 2010).
- Harassment (Section 26 EqA 2010).
- Victimisation (Section 27 EqA 2010).
- Discrimination arising from disability (Section 15 EqA 2010).
- Failure to make reasonable adjustments (Section 21 EqA 2010).



Direct discrimination

- Direct discrimination occurs where "because of a protected characteristic, A treats B less favourably than A treats or would treat others".
- Section 13 EqA 2010



Associative discrimination

- The discrimination need not be because of B's protected characteristic, except in marriage and civil partnership cases.
- Therefore, less favourable treatment because of an employee's **association** with someone who has a protected characteristic is covered.



Perceptive discrimination

- An employee who is wrongly **perceived** to have a protected characteristic (other than marriage or civil partnership) will be protected against any less favourable treatment they receive for that reason.



Indirect discrimination

- A discriminates against B where:
 - A applies to B a provision, criterion or practice (PCP).
 - B has a protected characteristic.
 - A also applies (or would apply) that PCP to persons who do not share B's protected characteristic.
 - The PCP puts or would put persons with whom B shares the protected characteristic at a particular disadvantage compared to others.
 - The PCP puts or would put B to that disadvantage.
 - A cannot show the PCP to be a proportionate means of achieving a legitimate aim.
- Section 19 EqA 2010



Harassment

- A harasses B if A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of either:
 - Violating B's dignity, or
 - Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- Section 26 EqA 2010
- **Sexual Harassment**



Victimisation

- Protected acts:
 - Bringing proceedings under EqA2010.
 - Giving evidence or information in connection with those proceedings, regardless of who brought those proceedings.
 - Doing any other thing for the purposes of or in connection with EqA2010.
 - Alleging that A or another person has contravened EqA2010.
- Victimisation occurs where A subjects B to a detriment because either:
 - B has done a protected act.
 - A believes that B has done, or may do, a protected act.
- Section 27 EqA 2010



Discrimination arising from disability

- A treats B unfavourably because of something arising in consequence of B's disability.
- A cannot show that the treatment is objectively justified as a proportionate means of achieving a legitimate aim.
- Section 15 EqA 2010



Reasonable adjustments

- Where a **provision, criterion or practice** applied by the employer puts a disabled person at a substantial disadvantage in comparison with those who are not disabled.
- Where a **physical feature** of the employer's premises puts a disabled person at a substantial disadvantage in comparison with those who are not disabled.
- Where a disabled person would, but for the employer's provision of an **auxiliary aid**, be put at a substantial disadvantage in comparison with those who are not disabled.
- Section 20 EqA 2010



MCQ 1

Derek makes it clear to his manager Matthew that he finds the way his colleague Kevin refers to the female members of the team as "the floozies" offensive. Which of the following is correct?

- a) Matthew has investigated the complaint but been assured by Kevin that the term is not meant to be offensive, so he need take no further action
- b) As Derek is a man complaining that he finds a term used to describe his female colleague's offensive, there is no need for Matthew to take any further action - the comments don't relate to Derek's sex
- c) As the rest of the team members find the term amusing it is obvious that Derek is simply being oversensitive, so no further action is necessary
- d) Matthew should take immediate steps to put a stop to Kevin referring to his female colleagues in this way

MCQ 2

A white employee who sees a black colleague being subjected to racially abusive language could have a case for harassment if the language also causes an offensive environment for her.

True or False



Recruitment and selection

- “A job that would suit a teacher in their first five years of their teaching career”
- “Male recruit needed for hard manual labour”
- “Clean-shaven person needed for construction company”



Discrimination in employment: Exceptions

- Positive action.
- Occupational requirements.



Positive action

Employer reasonably thinks that either:

- Persons who share a protected characteristic suffer a disadvantage connected to the characteristic.
- Persons who share a protected characteristic have needs that are different from the needs of persons who do not share it; or
- Participation in an activity by persons who share a protected characteristic is disproportionately low.
- Section 158 EqA2010



Positive action in recruitment and promotion

- Employer can (but not obliged to) take any action which is proportionate means of achieving a legitimate aim of:
 - Enabling or encouraging persons who share the PC to overcome or minimise the disadvantage
 - Meet the needs identified
 - Enable or encourages persons to participate



Occupational requirements

- The EqA 2010 sets out several occupational requirement (OR) exceptions that employers might rely on when facing discrimination claims.
- An employer is only entitled to apply an OR where doing so is a "**proportionate means of achieving a legitimate aim**".



General occupational requirement

- Available where being of a particular sex, race, disability, religion, belief, sexual orientation, age, or pregnant is a requirement due to the nature or context of the work (EqA 2010, Schedule 9, paragraph 1).
- May only be used where the employer insists on someone having a protected characteristic, or not being trans, married or a civil partner.
- Only applies in cases of direct discrimination (paragraph 6(2), Schedule 9, EqA 2010).



General occupational requirement: Examples

- Same sex carer for intimate personal care.
- Considerations of privacy or decency might require a public changing room or lavatory attendant to be of the same sex as those using the facilities.
- An organisation for deaf people might legitimately employ a deaf person who uses British Sign Language (BSL) to work as a counsellor to other deaf people whose first or preferred language is BSL.
- Unemployed Muslim women might not take advantage of the services of an outreach worker to help them find employment if they were provided by a man.
- A counsellor working with victims of rape might have to be a woman to avoid causing them further distress.

Liability

- Employer if it discriminates
- Employee if it discriminates
- Employer for acts of employees (vicarious liability) unless it took reasonable steps to prevent the employee from doing the discriminatory act or it wasn't done in the course of employment.



Remedies

- Declaration
- Recommendation
- Compensation for injury to feelings (*Vento*):
 - A lower band of £1,200 to £11,700
 - A middle band of £11,700 to £35,200
 - An upper band of £35,200 to £58,700 (for the most severe cases). In exceptional circumstances, awards can exceed £58,700)



Group Exercise: Vento bands



LO3: Know how to manage change and reorganisation lawfully



Constructive Dismissal

- For a constructive dismissal claim to succeed the employee needs to show that:
 - Their employer was in repudiatory breach of the employment contract;
 - They resigned in response to that breach; and
 - They did not delay too long before resigning in response to their employer's breach.
- The reasons the employee leaves their job must be serious, for example, the employer:
 - Does not pay the employer or suddenly demotes for no reason
 - Forces the employer to accept unreasonable changes to how they work - for example, require employees to work night shifts when their contract is only for day work
 - Breach of trust and confidence.
- 3 month less 1 day to bring an ET claim.
- S 95(1)(c) ERA1996



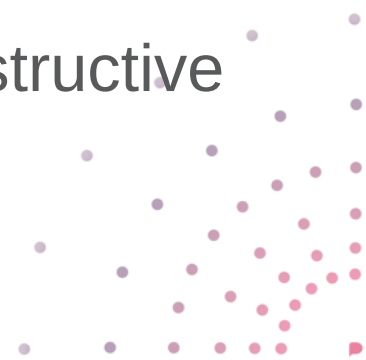
Defence

- **No Fundamental Breach:**
 - Changes were minor or reasonable under the contract.
- **Implied Consent:**
 - Employee accepted changes through conduct or delay.
- **Justified Action:**
 - Changes were necessary due to business needs.
 - Proper consultation and notice provided.
- **No Resignation Due to Breach**
 - Employee resigned for unrelated reasons.



Compensation

- Constructive Unfair Dismissal
 - Basic award
 - Length of continuous service x age x a week's pay as at the effective date of termination (EDT). Same as statutory redundancy pay calculation.
 - Compensatory Award:
 - past loss and future loss
 - Subject to duty to mitigate
 - Cap of 12 months' pay or statutory cap whichever is lower.
- 2 years' service requirement to bring Constructive Unfair Dismissal claim



Redundancy

- Employer has ceased, or intends to cease, to carry on the business for the purposes for which the employee was employed
- Employer has ceased, or intends to cease, to carry on that business in the place where the employees were employed (note mobility clause)
- The requirement of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where they were employed, has ceased or diminished or is expected to
- S139 ERA 1996



Consultation

- 100+ employees = 45-day consultation + HR1
- 20-99 employees = 30-day consultation + HR1
- Consultation with TU or elected representatives
- Failure to do so = protective award and reasonableness?
- TULRCA 1992
- <20 –?



What information must be given to staff?

- Reason for redundancy
- Number and description of each type
- Total number of redundancies
- Proposed selection method
- Procedure
- Redundancy pay calculation



Redundancy pay

- >2 years
- 1.5 weeks' pay for each year of employment between the ages of 41 and 64
- 1 week's pay for each year when the employee was between 22 and 40
- 0.5 week's pay for year under 21 years of age
- + notice pay



Statutory Redundancy Pay table

Age	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
17	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18	1	1½	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
19	1	1½	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20	1	1½	2	2½	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21	1	1½	2	2½	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22	1	1½	2	2½	3	3½	-	-	-	-	-	-	-	-	-	-	-	-	-
23	1½	2	2½	3	3½	4	4½	-	-	-	-	-	-	-	-	-	-	-	-
24	2	2½	3	3½	4	4½	5	5½	-	-	-	-	-	-	-	-	-	-	-
25	2	3	3½	4	4½	5	5½	6	6½	-	-	-	-	-	-	-	-	-	-
26	2	3	4	4½	5	5½	6	6½	7	7½	-	-	-	-	-	-	-	-	-
27	2	3	4	5	5½	6	6½	7	7½	8	8½	-	-	-	-	-	-	-	-
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½	-	-	-	-	-	-	-
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10½	-	-	-	-	-	-
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11	11½	-	-	-	-	-
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12	12½	-	-	-	-
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13	13½	-	-	-
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14	14½	-	-
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15	15½	-
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16	16½
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½
61+	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

Group Exercise: Redundancy



TUPE: When does it apply?

- Transfer of an economic entity that retains its identity i.e. pub being sold and buyer will continue to run it as a pub
- Change in service provider
 - Activities carried out by 1 person and transfer to another person (outsourcing)
 - Activities are currently carried out by one contractor and transferred to another contractor (second + generation outsourcing)
 - An organisation decides to carry out activities itself that are currently being done by a contractor (insourcing)



TUPE: When does it not apply?

- One off single event or event of short duration
- Where the customer changes
- Where there is no economic entity change e.g. just a sale of assets
- Transfer of shares



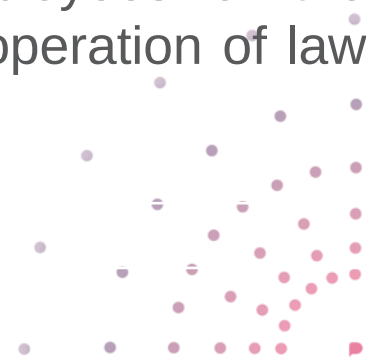
Automatic transfer principle

The contracts of employment of those employees employed by the seller/outgoing provider and "assigned to the organised grouping of resources or employees that is subject to the relevant transfer" automatically transfer to the buyer/new service provider on their existing terms.

The transferee effectively steps into the transferor's shoes with regard to the transferring employees.

All of the transferor's rights, powers, duties and liabilities under or in connection with the transferring employees' contracts and collective agreements pass to the transferee and any acts or omissions of the transferor before the transfer are treated as having been done by the transferee.

Employees who object to the transfer do not become employees of the transferee. Instead, their contracts of employment terminate by operation of law on the transfer date. There is no dismissal.



Consultation

- No requirement to consult with elected reps for:
 - businesses with fewer than 50 people or
 - employers of any size with transfers affecting less than 10 employees.
- Information:
 - That a transfer is taking place
 - The reason for the transfer and when it is expected
 - The legal, social and economic implications for the employees
 - The measures that are envisaged (this triggers requirement to consult)
- Failure to inform and consult = 13 weeks' pay per affected employee

MCQ's

- 1. What is the minimum consultation period if there are to be 20-99 redundancies?**
 - a. There is no minimum
 - b. 30 days
 - c. 45 days
 - d. 90 days
- 2. Which of the following is not an example of a transfer of a service provision?**
 - a. An organisation sells part of its business
 - b. A service provided by contractor A transfers to transfer B
 - c. An employer decides to ask another organisation to provide its catering
 - d. An employer decides to stop using a contractor to do its catering and do it itself
- 3. What is the maximum compensation awarded if there is no consultation in a transfer situation?**
 - a. 6 weeks
 - b. 12 weeks
 - c. 13 weeks
 - d. 15 weeks
- 4. Who is the transferor?**
 - a. The old employer, who is selling a business
 - b. The new employer, who is taking over the business
 - c. The employee who transfers
 - d. The employees who do not transfer

Contractual variation

- Void unless it is for “an ETO reason entailing changes in the workforce”
 - Economic – e.g. reasons relating to profitability
 - Technical – e.g. reasons relating to a change in production processes
 - Organisational e.g. change in management structure
- Changes include the place where employees work the work they carry out.



Dismissal

- Dismissal automatically unfair if the sole or principal reason for the dismissal is the transfer itself.
- Resignations in response to breach of contract or substantial change in working conditions to employee's material detriment = deemed dismissals.
- If employees are dismissed immediately before the transfer for a reason relating to the transfer = unfair



LO4: Know how to manage issues relating to pay and working time lawfully

Working Time: Who is a worker?

- A worker includes anyone who has entered into or works under (or where the employment has ceased, worked under):
 - A contract of employment;
 - Any other contract, whether express or implied and (if it is express, whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party
- Who is not included?



Working Time

- 48 hours' work per week (17-week reference period) subject to opt-out
- 5.6 weeks - 28 days paid annual leave each year
- 20 minutes' rest in any period of work lasting six hours or more
- 11 hours' rest in any one 24-hour period
- 24 hours' rest in any seven-day period (or averaged over 14 days)
- Night workers
- Young workers



Payment of wages

- Right to an itemised pay statement (section 8 ERA 1996)
- Lawful deductions from wages
 - where it is authorised by legislation
 - where it is authorised by contract
 - where there is an agreement in writing
- Guarantee payments
- National Minimum Wage and National Living Wage

The rates which will apply from 1 April 2024 are as follows:

	NMW Rate	Increase in pence	Percentage increase
National Living Wage (21 and over)	£ 11.44	£ 1.02	9.8%
18-20 Year Old Rate	£ 8.60	£ 1.11	14.8%
16-17 Year Old Rate	£ 6.40	£ 1.12	21.2%
Apprentice Rate	£ 6.40	£ 1.12	21.2%
Accommodation Offset	£ 9.99	£ 0.89	9.8%



Holiday pay: how to calculate a week's pay

- For calculating holiday pay, a week usually starts on a Sunday and ends on a Saturday.
- An employee's holiday pay should be calculated from the last full week that they worked. This can end on or before the first day of the employee's holiday.
- Another 7-day period should only be used if that's how the employee's pay is calculated.
- For example, an employee's pay is calculated by a week ending on a Wednesday. They should treat a week as starting on a Thursday and ending on a Wednesday.

Holiday pay for different working patterns

Fixed hours

- If an employee's working hours do not vary, their holiday pay will be calculated using their usual pay rate. This is the case whether they work full time or part time.
- For example, an employee works 37 hours every week and gets paid £500 a week. When they take a week's holiday, they must get paid £500.

Irregular hours workers and part-year workers

- Based on average pay over the previous 52 weeks. This rule applies regardless of when the worker's leave year starts.
- If a worker has not yet been employed for 52 weeks, their employer should look at how many full weeks they've been employed for.



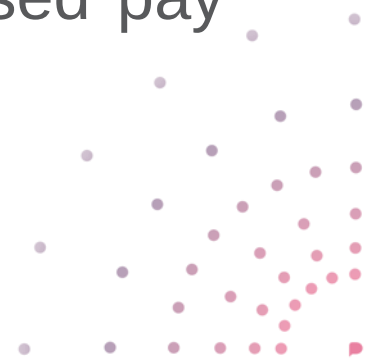
What **MUST** holiday pay must include?

- Payments linked to doing tasks required in the contract, for example commission
- Payments related to professional or personal status, for example for length of service, seniority or professional qualifications
- Other payments, for example overtime payments, if an employee has regularly been paid these during the last year



Rolled-up holiday pay

- Must include an uplift of 12.07% of remuneration for work done (Reg. 16A(2) WTR 1998).
- Paid at the end of the pay period in which holiday was accrued (Reg. 16A(3) WTR 1998).
- Adjust percentage for workers receiving contractual leave above the 5.6 weeks statutory minimum to comply with pro-rata principles.
- Legalised for Part-Year and irregular hours works. Still unlawful for workers outside these categories.
- The amount of rolled-up holiday pay paid in any pay period must be set out on the worker's itemised pay statement (Reg. 16A(7) WTR 1998).



Equal Pay: What is equal pay?

- The law gives a woman the right to be paid the same as a man (and vice-versa) for
 - **like work:** two employees who are doing the same or broadly similar roles, or
 - **work rated as equivalent by analytical job evaluation study:** could be totally different jobs which have been given the same rating as the result of an analytical job evaluation, or
 - **work of equal value:** when there are two jobs that are very different, but the employee claims that they require a similar level of skill and ability.



Equal Pay: Claims

- To bring an equal pay claim, the person bringing the claim must point to a 'comparator'. A comparator is a person of the opposite gender, working for the same employer, doing like work (or work rated as equivalent, or work of equal value) who is paid more, or has more beneficial terms and conditions of employment, than the claimant.
- The comparator can be someone working for the employer at the same time or in the past (a predecessor) but not someone employed afterwards (a successor).
- The law doesn't allow consideration of the equality of a contract of employment as a whole.



Equal Pay: Employers Defence

- To defend a claim, an employer must be able to show that:
 - the person bringing the claim and the comparator are not engaged in 'like work', or
 - a bona fide and non-discriminatory job evaluation scheme has been conducted, and the work is not 'rated as equivalent', or
 - the work is not of 'equal value', or
 - any difference in pay is due to a material factor, or difference other than the difference of gender.



Family friendly rights

- Maternity and antenatal
- Paternity
- Adoption
- Shared parental leave
- Parental leave
- Time off for dependants
- Parental bereavement leave
- Carer's Leave



What do these terms mean?

- Maternity leave
- EWC
- MATB1
- Qualifying week
- Childbirth
- Compulsory maternity leave
- OML
- AML
- SMP
- KIT days



Maternity leave: Rights during OML & AML

- The contract of employment continues throughout OML and AML, unless either party expressly ends it.
- During statutory maternity leave, an employee "is entitled... to the benefit of the terms and conditions of employment which would have applied if she had not been absent", except for the terms as to remuneration (section 71(4)(a), ERA 1996 and regulation 9, MPL Regulations).
- Since the contract of employment is not broken, continuous employment will continue to accrue during OML and AML.



Maternity leave: Right to return to the same job

- If the employee takes only OML, returns before the end of OML, or combines maternity leave with a period of shared parental leave where the total leave is 26 weeks or less, she is entitled to return to the "same job in which she was employed before her absence" (regulation 18(1), MPL Regulations).
- Her terms of employment must be the same as, or not less favourable than, they would have been had she not been absent (regulation 18A(1)(b)). She will be entitled to benefit from any improvements as if she had not been away, such as a pay rise or any other changes to her terms and conditions for her grade or level.



Maternity leave: Right to return to a suitable alternative job

- Where the employee has taken any period of AML, has taken shared parental leave which when combined with maternity leave amounts to total leave of more than 26 weeks or has taken a period of at least four weeks' parental leave on top of her OML, **and** there is some reason why it is not reasonably practicable for the employer to permit her to return to the same job:
- The employee is entitled to return to a different job which is both suitable for her and appropriate in the circumstances (regulation 18(2), MPL Regulations).
- The terms and conditions must not be less favourable than they would have been had she not been absent (regulation 18A(1)(b)).



Statutory Maternity Pay

- An employee will be entitled to SMP where she has both:
 - 26 weeks' continuous employment with the employer up to and including the 15th week before the EWC.
 - Average earnings of at least the lower earnings limit for National Insurance during the eight-week period ending with the 15th week before EWC.
- SMP is payable for 39 weeks at the following rates:
 - The "earnings-related rate" (90% of average earnings) for the first six weeks.
 - The "prescribed rate" (or earnings-related rate if lower) for the remainder of the period.
- A woman who does not qualify for SMP may qualify for maternity allowance or other social security payments.

Statutory Paternity Leave - Eligibility

- OPL is available only to eligible employees, not to other types of worker or the self-employed.
- To be eligible to take OPL, an employee must:
 - have been continuously employed by their employer for a period of not less than 26 weeks ending with the Qualifying Week. (regulation 4(2)(a), PAL Regulations).
 - be either the child's father or be the spouse, civil partner or partner of the child's mother. (Regulation 4(2)(b), PAL Regulations.)
 - have responsibility for the child's upbringing (or an expectation that they will do so).
 - not have already taken shared parental leave in respect of the same child.
 - give the employer the required notice and (where requested) the necessary evidence of entitlement. (regulation 4, PAL Regulations.)

Statutory Paternity

The amount of OPL

- The statutory entitlement to OPL is to one period of leave and the employee is entitled to choose between taking that period as **either** one week **or** two non-continuous weeks' leave (regulation 5(1), PAL Regulations)

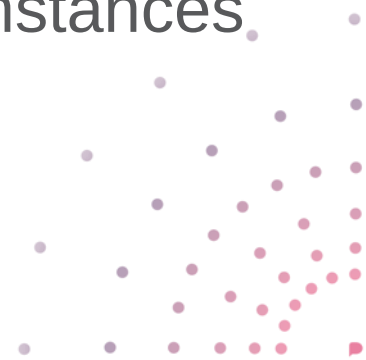
When OPL can be taken

- The employee's one or two-week period of OPL must normally be taken between the date on which the child is born and 12 months after that date (regulation 5(2)(a), PAL Regulations).
- Within the applicable 12-month period, it is for the employee to choose when they wish to take their OPL.



Statutory Paternity Leave: The right to return

- An employee who has exercised their right to take OPL usually has the right to return to the same job that they were employed to do immediately prior to taking the leave (regulation 13(1), PAL Regulations).
- Where the OPL is used alongside parental leave or other statutory leave of more than four weeks **and** it is not reasonably practicable for the employer to return the employee to the job they were doing before their OPL, the employer is entitled to propose an alternative job for the employee to return to which is both suitable for them and appropriate for them to do in the circumstances. (regulation 13(2)).



Statutory Adoption Leave: The key rights

- Up to 52 weeks' statutory adoption leave (SAL), split into 26 weeks' ordinary adoption leave (OAL) and 26 weeks' additional adoption leave (AAL).
- Statutory adoption pay (SAP) for up to 39 weeks (the adoption pay period or APP).
- The right to return to the same job (or, in certain circumstances, to return to a suitable and appropriate alternative job).
- The statutory framework for adoption leave and pay is similar to that for maternity leave and pay. However, the key trigger points for eligibility for SAL and SAP (other than in surrogacy cases) do not relate to an expected or actual date of childbirth, but to stages of the process by which a child is matched and placed with an adopter.
- The rights and obligations during OAL and AAL and the right to return to work are the same as with maternity leave.

Shared Parental Leave

- Shared Parental Leave enables eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed for adoption.
- Parents can share up to 50 weeks of leave and up to 37 weeks of pay and choose to take the leave and pay in a more flexible way during the child's first year.
- Eligible parents can be off work together or alternatively stagger their leave and pay so that one of them is always at home with the baby in the first year and alternate.



Shared Parental Leave: Eligibility for birth parents

To be eligible for Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP), both parents must:

- share responsibility for the child at birth
- meet work and pay criteria - these are different depending on which parent wants to use the shared parental leave and pay

Note – different for adoption



If both parents want to share the SPL and ShPP

- Both parents must meet the same eligibility criteria to get SPL and ShPP. They must:
 - have been employed continuously by the same employer for at least 26 weeks by the end of the 15th week before the due date
 - stay with the same employer until they start your SPL
- To be eligible for SPL, they must be 'employees' (not 'workers'). If either of them is a 'worker', they might be able to share ShPP but not SPL.
- To be eligible for ShPP, they must each earn on average at least £123 a week.



If the mother's partner wants to take the SPL and ShPP

- For the mother's partner to take SPL and ShPP, both the mother and the mother's partner must meet some eligibility requirements.
- The mother must:
 - have been working for at least 26 weeks out of the 66 weeks before the week the baby's due (the 26 weeks do not need to be in a row)
 - have earned at least £390 in total across any 13 of the 66 weeks (add up the highest paying weeks - they do not need to be in a row)
- The mother's partner must:
 - have been employed continuously by the same employer for at least 26 weeks by the end of the 15th week before the due date
 - stay with the same employer until they start their SPL
- To be eligible for SPL, the partner must be:
 - an 'employee' (not a 'worker'). If the partner is a 'worker', they might be able to get ShPP but not SPL.
 - earn on average at least £123 a week.

Flexible Working Request

- A flexible working request may be a request to:
 - (a) reduce or vary your working hours;
 - (b) reduce or vary the days you work;
 - (c) work from a different location (for example, from home).



Flexible Working: Eligibility

- To be eligible to make a flexible working request, the person must be:
 - (a) an employee; and
 - (b) not have made two flexible working requests during the last 12 months.



Flexible Working: Process

- An employee making a flexible working request, must:
 - put the request in writing to the employer
 - say it's a 'statutory request' for flexible working
- The request must also include:
 - the date of the request
 - the change they are requesting – for example the change in hours or place of work
 - when they would like the change to start
 - if they have made any previous statutory flexible working requests to the employer
 - the date of any previous requests



Flexible Working: Decision

- 2 months
- Accept
- Trial period
- Rejection:
 - (a) the burden of additional costs;
 - (b) detrimental effect on ability to meet customer demand;
 - (c) inability to reorganise work among existing staff;
 - (d) inability to recruit additional staff;
 - (e) detrimental impact on quality;
 - (f) detrimental impact on performance;
 - (g) insufficiency of work during the periods that you propose to work; or
 - (h) planned changes.



Flexible Working: Liability

- Employees can complain to an employment tribunal if the employer:
 - did not handle the request in a 'reasonable manner';
 - wrongly treated the employee's application as withdrawn;
 - dismissed or treated an employee poorly because of their flexible working request, for example refused a promotion or pay rise; or
 - refused an application based on incorrect facts.
- An employee should complain to the tribunal within 3 months of:
 - hearing their employer's decision on their application or appeal;
 - hearing their request was treated as withdrawn; or
 - the date the employer should have responded to their request (but failed to do so).



Flexible Working: Remedy

Procedural failings by the employer (s.80(H)(1) ERA 1996)

- An order for reconsideration of the request.
- An award of compensation to be paid by the employer to the employee, up to the permitted maximum of eight weeks' pay.

Unlawful detriment (s.47(E) ERA 1996)

- the tribunal may make an award of compensation having regard to the infringement to which the complaint relates and any loss suffered by the claimant which is attributable to the act or failure to act

Automatic unfair dismissal (s.104(C) ERA 1996)

- Reinstatement, reengagement, or compensation
 - Basic award (statutory redundancy payment)
 - Compensatory award (loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer)



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