

Specialist Employment Law

Email 1 (AC 1.1)

I do understand that there are many regulations that we must abide by in relation to employment law, it is sometimes referred to as the burden of employment law due to how much of people's time it consumes (CIPD, 2017). However, it is important to ensure we are being compliant with any legislations. In the UK, recruitment, pay, discrimination and health and safety are the four areas of employment legislation that form the basis of employee rights in the workplace (Daniels, 2025c). The employment law regulates the relationship between employers and employees, outlining expectations between the employee and employer and the employee's rights at work (CIPD, 2025c).

Whilst I can understand that you would prefer to spend your time improving the employment experience that the Trust provides, that shows how much you care about the Trust and the employee's. However, a factor in ensuring that we are improving the employment experience of employees will be ensuring that as Trust, we abide by employment law. For example, if it wasn't for employment regulations, then regulations such as minimum wage and equal pay wouldn't exist, and these are regulations that more than likely have helped improve employee's employment experience (ACAS, 2024b).

The repercussions of not being compliant with these legislations can put employee's and the trust at risk. In 2021, British Airways were fined after an employee was seriously injured in a collision. The Health and Safety Executive found that the worker was at the centre of the roadway between the two lanes, which had become used as a walking route despite the safety risks. There were further Significant failings were also found within the general management of health and safety in the airport workplace, with there being a lack of training, proper risk management and supervision/monitoring (HSE Network, 2021).

However, I do understand that there are drawbacks because of the amount of time that employment law consumes. As we are having to spend large amounts of time ensuring we are abiding by the regulations, then it can slow the economic growth (Daniels, 2025). It also raises the cost for employers and makes our economy less competitive internationally (Daniels, 2025). However, on the flip side, due to our regulations being so thorough and producing suitable working environments, it does also encourage people to work in the UK as other countries don't have these thorough regulations (Daniels, 2025).

Although the regulations may take up a lot of time, in the long run, the benefits greatly outweigh the drawbacks, and they are there to ensure a safe working environment for all.

Email 2 (AC 1.2)

Employment law is one of the fastest changing areas of law in the UK (Daniels, 2025). From 1973 – 2020, we were part of the EU and therefore the European Court of Justice (ECJ) had supremacy over the UK Supreme Court for EU law except in some discriminate laws (Belton, 2025).

In 2020, due to Brexit, the UK left the European Union (EU), but this did not bring on immediate change because all legislations had been introduced previously owing to the UK being part of the EU remained at the point of Brexit. The UK are free to amend laws, but the UK understood that any major deregulation risks tariffs (Belton, 2025).

There, although has had allowed the UK more freedom to make changes to legislation, most EU laws retained since Brexit unless they have been amended or repealed by future governments (Daniels, 2025). There have been key retained provisions, including, the Working Time records, rolled up holiday pay and 12.07% holiday accrual for irregular workers, adjusted TUPE consultation rules and definitions for leave carryover which remain good law (Belton, 2025).

During 2023, there was an escalation in the changes in employment law with there being new bills relating to a variety of topics, including the introduction of unpaid carers' leave, changes to rules about flexible working and the introduction of a right to request a predictable working pattern (Daniels, 2025). Some of these changes came about because of the Good Work Plan (Daniels, 2025).

There are some changes from 2024 onwards which have been key. The ECJ ruling on points of principle are now challengeable in UK courts (Belton, 2025) and any appeals cannot be made to the Court of Justice and the final appeal court in the UK is the Supreme Court (Daniels, 2025). In addition, courts also may affirm, amend or abolish European precedents and Legacy EU ruling must align with UK law in interpretations (Belton, 2025).

Email 3 (AC 2.1)

The Equality Act (2010) outlines nine protected characteristics, one of which is sex (Employment Code of Practice, 2015). It is unlawful for companies to discriminate based upon sex. To avoid discrimination in recruitment, when advertising for jobs, questions should not be asked around the candidate's gender, except when there are occupational requirements (CIPD, 2025b).

The Equality Act 2010, schedule 9, part 1 outlines that there are specific situations in which you can be specific about whether a male or female will be required (Employment Code of Practice, 2015). For example, a female can be hired over a male if the job requires a special level of care, such a personal care, and it would be inappropriate for that care to be given by a member of the opposite sex (Daniels, 2025). In addition, in certain situations, males can be hired for the job if the job involves working outside the UK countries where laws or customs would mean that the duties cannot be carried out by a woman (Daniels, 2025). Both examples are Genuine Occupational Requirements and for it be a considered an occupational requirement, the protected characteristics is essential for and relates to the main tasks of the job and there is an objective justification (ACAS, 2024). From a law perspective, the employer must be able to prove that there is a legitimate aim and the discrimination is proportionate, appropriate and necessary (ACAS, 2024c).

It is unlawful to have no justification in which you have chosen to hire a man or a woman for a particular job and can lead to employment tribunal (Daniels, 2025). For example, you cannot hire a female to be a cleaner because 'women are better cleaners than men'. Therefore, ensuring that the occupational requirement is outlined in the job description ensures that the people who apply will be justified in why their application is rejected, should it be required too. De Belin vs Eversheds (2011) is a case law example of a sex discrimination. Within the company, one person had to be selected for redundancy, it was between De Belin and a female candidate who was on maternity leave. A matrix was used to assess a range of abilities including the ability to swiftly secure 'lock up' payments from clients. This was assessed whilst the woman was on maternity leave and therefore, she was given maximum notional score. De Belin scored half a point less than the female and therefore was selected for redundancy and it was successfully argued that giving the woman full marks for the 'lock up' payments was sex discrimination, and the process favoured the woman instead of ensuring fairness (Daniels, 2025)

Email 4 (AC 2.2)

By law, men and women must get equal pay for doing 'equal work' and someone must not get less pay compared to someone who is the other sex to them or/and doing equal work for the same employer or an 'associated' employer (ACAS, 2024a).

Equal work is sometimes referred to as 'like work' which is work of the same or broadly similar nature (Daniels, 2025). It is not about work being identical, but an overall similarity in the work that is being done and what happens regularly in the job, not the small tasks (Daniels, 2025).

Capper Pass v Lawton (1977) is a case law example of when the employee successfully claimed that Lawton, the cook did 'like work' of two, male assistant chefs. Although there were differences in the work, they were largely trivial (Daniels, 2025). Therefore, if there is little or no difference in the work between the Grade A and Grade B HCA's, then it is unlikely that a pay increase can be granted.

To try and reduce any discrimination, is there a criterion in which staff members need to meet, to be considered for the increase from B grade to A grade? Having a criterion will ensure that there is a fair and consistent procedure for the pay increase.

If there is no justified reasoning for the increase, then we would not be able to approve the upgrade. 80% of the trust are female, and if we choose to increase the salary for two males, without a justified reason, then we could be seen as being in breach of the equal work, equal pay that is covered by the Equality Act 2010 (ACAS, 2024a).

However, difference in pay may be allowed if the one person is better qualified, there is a difference in location (for example, in London where the cost of living is higher) or they do different shifts and the employer has a good reason to pay one shift more than another (ACAS, 2024). If any of these reasons apply, then there may be a pay increase. Though, it is important

to consider that you are looking to use the surplus money that is left over from your research project, so if there was a pay increase, would this be sustainable?

Email 5 (AC 3.1)

For a constructive dismissal claim to be successful, the employee needs to show the following three things:

- 1) That you, as the employer, was in breach of the contract
- 2) That the employee resigned in response to that breach and;
- 3) The employee did not delay too long before resigning in response to the breach.

(Belton, 2025)

One of the important factors in determining whether constructive dismissal has taken place is whether the actions or lack of action have amounted to a breach of contract (Belton, 2025). For example, when you make a contract change, this must be agreed by the employee and employer via a contract consultation with either the employee or the representative. During the consultation, you would need to explain the reasons for the changes and listen to alternative ideas from the employees (ACAS, 2025a). If this is what you have done as an employer, and the employee has agreed the changes, then it is less likely that a constructive dismissal claim can be made in this situation

It is also important to note, that in the employee's letter, they have to state the reasons why they have resigned (ACAS, 2025a), and in this case, this will need to be linked to the contract change in order to start a constructive dismissal claim. The reason why the employee resigns must be deemed as serious, so depending on what the change within his working hours were, will then decide whether this is classed as 'serious' (ACAS, 2025a).

The employee will have three months, less one day to bring an employment tribunal claim against you and must have worked for the company for 2 years (ACAS, 2025a). If they are successful, then the basic award provided will be the length of continuous service multiplied by age, multiple by a week's pay as at the effective date of termination (Belton, 2025). There also may then be a compensation award on top which has a cap on 12 months' pay or statutory cap, whichever is lower (Belton, 2025).

Email 6 (AC 3.2)

Whilst, from a business perspective it is important for this process to be completed effectively, there are certain processes that need to be followed. As there are more than 20 potential redundancies, but less than 100 redundancies, a 30-day collective consultation is required (CIPD, 2024a).

When completing the redundancies, it is important to ensure that the employees know the reason for redundancy, the total number of redundancies, proposed selection method, procedure and the redundancy pay calculation (CIPD, 2024a).

A proposed selection method could be a scoring criterion and those who score the lowest on the selected criteria would then, potentially be made redundant. To avoid discrimination, you should, in consultation with a trade union, create a selection matrix containing several separate, objective selection criteria (Employment Code of Practice, 2015). This selection matrix can then be used to score the employee's, with the lowest scoring employee's then being selected for redundancy.

The redundancy pay will vary depending on age and experience. Employees who have worked for the company less than two years are not entitled to statutory redundancy pay. Those who have worked for two years or more will receive 1.5 weeks' pay for each year of employment if the employee is between the ages of 41 and 64 and 1 weeks' pay for each year if the employee is aged between 22 – 40. If the employee is under 21, then they get paid 0.5 weeks' pay for every year of employment (Employment Code of Practice, 2015).

In addition, protection from Redundancy (Pregnancy and Family Leave) Act 2023, explains that if there are any females who are on ordinary or additional maternity leave, they are entitled to be offered a suitable available vacancy (CIPD, 2024a).

However, it is important to note, if in the last 90 days or the next 90 days, there were further redundancies, then if this is over 100 redundancies, then this would be a 45-day collective consultation process (CIPD, 2024a).

You should be aware that if the company fails to consult properly, the protective award requires employers to pay employees their normal week's pay for what's called the 'protected period' up to a maximum length of 90 days (CIPD, 2024a). It is important to ensure that you complete this process right. Larkin vs Liz Earle Beauty (2020), the tribunal found that Larkin's redundancy dismissal was unfair and discriminatory on the ground of pregnancy and maternity and Larkin was awarded £17,000 as a result.

Email 7 (AC 3.3)

The Transfer of Undertakings (TUPE) regulations are defined as an economic entity that retains its identity (Daniels, 2025). There are three ways in which TUPE can apply, one of which is when activities are currently carried out by one contractor and transferred to another contractor, which sounds like the situation you are currently in (Daniels, 2025).

TUPE will protect the employees who work in the Trust and will be transferred over. Those employees will have the same contractual rights, including continuity of services, contracts of employment, trade union recognition and collective agreements (CIPD, 2024b). If there are any dismissals because of the transfer, then you are at risk of an unfair dismissal claim for

anyone who has worked for your Trust for two years or more (Daniels, 2025). For example, in the Taylor vs Connex Southeastern Ltd case, although 2 years had passed since the transfer had taken place, there was a minor proposed change to a contract related to the TUPE, the employee did not agree to it and as a result was dismissed. As a result, this was ruled as an unfair dismissal because the contract change had related to the transfer (Daniels, 2025).

However, a variation to the contract of employment can be acceptable if the reason entailing the changes is economic, i.e. reasons relating to profitability, **technical**, i.e., reasons relating to change of equipment or **organisational reason**, i.e. reasons relating to organisation structure (Belton, 2025).

The employees also have a right to a consultation via their representatives if there are over 50 employees that will be affected. During the consultation, the employees must know that the transfer is taking place, the reason for the transfer and when it is expected to take place, the implications for the employee's, the measures that the employer expects to take in relation to the employees and the measures that the transferee expected to take in relation to the employees. If the consultation does not take place or does not take place correctly then up to 13 week's' pay may be awarded to each employee effected (Belton, 2025).

If there are any employees that object to the transfer, their contract of employment is terminated by operation of law but there is no dismissal (Belton, 2025).

Email 8 (AC 4.1)

Holiday pay can be a little bit tricky, and I appreciate your enthusiasm to ensure that the employees holiday pay is calculated fairly and lawfully. Bank staff are on a zero-hours contracts, which can be a flexible option for both employers and workers (ACAS, 2025b). The definition of 'bank staff' are those who do not work consistently but rather as and when required by the business (ACAS, 2025b). For example, as you have explained, your bank staff mainly cover shifts when permanently employee's colleagues are absent.

For leave years that started on or after the 1st April 2024, you can choose to pay your bank staff rolled up holiday-pay (ACAS, 2025b). This is when an additional amount is added to the employee's pay which represents the holiday pay, they have earned during that pay period (ACAS, 2025b).

The amount of holiday pay depends on how often the employee's get paid and how many hours they worked in a pay period (Government Digital Service, 2024). Their entitlement will be 12.07% of the employee's total pay in a pay period (Government Digital Service, 2024). For example, if an employee has earned £1,000, then they should earn £120.70 rolled-up holiday pay in addition to the £1000. The holiday pay should be shown separately in the payslip (ACAS, 2025b).

However, in the workplace, often bank staff can end up working all the time, therefore, it may be better to give those employees accrued leave instead. Their entitlement will be 12.07% of the hours they worked in a pay period. It must be rounded up to the nearest hour if the

entitlement is 0.5 of an hour or more (Government Digital Service, 2024). For example, if they worked 20 hours and are paid weekly, they'll have earned 4 hours leave ($20 \times 12.07 \div 100 = 2.414$). This can then be taking this leave from their next pay period (Government Digital Service, 2024).

The bank staff are entitled to a week's pay for each week of statutory leave that they take. As the bank staff class as irregular-hours, then they would be paid their average pay from the previous 52 weeks, only counting weeks in which they were paid (ACAS, 2025b).

Email 9 (AC 4.2)

I'm more than happy to provide information about Statutory Maternity Leave and Shared Parental Leave to help you decide.

Statutory Maternity Leave entitlement are the 52 weeks of leave that you may take after having your child (Daniels, 2025). For the first six weeks, you are paid 90% of their average weekly earnings and the remainder at the lower statutory level, which as of today is £187.18 or 90% of your average weekly earnings, whichever is lower (CIPD, 2025a). You would need to refer to the company policies to see if the company contributes any further than statutory.

Shared Parental Leave is when the shared leave available to either or both parents. During Shared Parental Leave, you and your partner can choose how to share the, whether this be spent together or taking it in turns. Both, your company and your partners company must be able to qualify for shared parental leave before applying and the leave must be taken for more than a week at a time (Daniels, 2025)

Shared Parental Leave is only paid at statutory pay level and cannot be contributed further by companies (CIPD, 2025a). Therefore, if the company's policy is to contribute further than statutory Maternity leave, you will not be entitled to this for Shared Parental Leave.

With Maternity leave, there is no qualifying period, but with Shared Parental Leave, you and your partner must have worked for the employers continuously for at least 26 weeks up to the 15th week before the expected week of childbirth (Belton, 2025).

With Maternity leave, this is only given to the mother who birthed the child, but with shared parental leave, this is for both parents, regardless of who gender and who birthed the child (reference) which can offer the family more flexibility.

Since 6 April 2024, the Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 extend redundancy protection to cover the entire pregnancy, and 18 months after the birth or placement of a child (CIPD, 2025a).

I hope that the information helps but I don't think it would be appropriate for me to decide which, if any, would be most beneficial to you and your partner as it does depend on individual circumstances.

Email 10 (AC 4.3)

A flexible working request may be a request to reduce or vary working hours, reduce or vary the days that you work and/or to work from a different location (ACAS, 2024d). In your circumstance, the employee is wanting to change her location to working from home for three days a week.

First, we need to ensure that the employee meets the requirements to consider a flexible working request, so can I check that the employee has not made two flexible working requests during the last 12 months? (Daniel, 2025)

We then have two months to accept, complete a trial period or reject the request (Daniels, 2025). However, if you are only looking to reject the request based on the fact other administrative staff will request this and that this will reduce the quality of the service, then this is unlikely to be sufficient.

You can deny the request if one or more of the below apply:

- 1) The burden of additional costs
- 2) Detrimental effect on the ability to meet customer demand
- 3) Inability to reorganise work among existing staff
- 4) Inability to recruit additional staff
- 5) Detrimental impact on quality
- 6) Detrimental impact on performance
- 7) Insufficiency of work during the periods you purpose to work; or
- 8) Planned changes

(Daniels, 2025)

Whilst you may be able to argue that there may be detrimental impact on the quality, you don't have any evidence of this. In fact, the data shows that there are many positives to remote working, which incline increase in wellbeing, the potential to reduce estate and facilities costs, reduce absence from work and improved productivity (CIPD, 2020).

If you are concerned about the impact on performance and quality, then you could offer a trial period and measure the employee's performance based on outcomes, objectives and results which should be reflected in your policies or management training. You can also schedule one-to-one time with the employee on a regular basis to discuss performance and provide feedback.

It is also important to note that just because you accept one flexible working request, it doesn't mean that you need to accept all. Each flexible working request should be accepted and rejected on a case-by-case basis, with clear reasons if rejected (ACAS, 2024d).

In the *Commotion Ltd vs Ruddy* 2006 case, the employer said no to working from home three days a week, but it was found that the reasons given were not reasonable ground for the refusal (Daniels, 2025).

References

ACAS (2024a) *Equal pay and the law*, Acas. Available at: <https://www.acas.org.uk/equal-pay/equal-pay-law> (Accessed: 16 May 2025).

ACAS (2024b) *Understanding the working time regulations – Working Time Rules*, Acas. Available at: <https://www.acas.org.uk/working-time-rules> (Accessed: 16 May 2025).

ACAS (2024c) *Using protected characteristics – recruitment*, Acas. Available at: <https://www.acas.org.uk/recruitment/using-protected-characteristics> (Accessed: 16 May 2025).

ACAS (2024d) *What flexible working is – statutory flexible working requests*, Acas. Available at: <https://www.acas.org.uk/statutory-flexible-working-requests> (Accessed: 19 May 2025).

ACAS (2025a) *Consulting – changing your employees' contracts*, Acas. Available at: <https://www.acas.org.uk/changing-an-employment-contract/employer-responsibilities/consulting-about-employment-contract-changes> (Accessed: 20 May 2025).

ACAS (2025b) *Calculating holiday pay – holiday entitlement*, Acas. Available at: <https://www.acas.org.uk/checking-holiday-entitlement/calculating-holiday-pay> (Accessed: 20 May 2025).

Belton, H. (2025) *Understanding Employment Law*. Understanding Employment Law, Carmarthenshire, 2 April.

CIPD (2020) *Recruitment law guidance*, CIPD. Available at: <https://www.cipd.org/uk/knowledge/employment-law/recruitment/> (Accessed: 19 May 2025).

- CIPD (2024a) *Managing the redundancy process*, CIPD. Available at:
<https://www.cipd.org/uk/knowledge/guides/managing-the-redundancy-process/#8-arrange-redundancy-payments> (Accessed: 20 May 2025).
- CIPD (2024b) *Transfer of undertakings (TUPE): Factsheets*, CIPD. Available at:
<https://www.cipd.org/uk/knowledge/factsheets/tupe-factsheet/> (Accessed: 20 May 2025).
- CIPD (2025a) *Maternity, Paternity and Adoption Rights*, CIPD. Available at:
<https://www.cipd.org/uk/knowledge/factsheets/maternity-paternity-rights-factsheet/> (Accessed: 20 May 2025).
- CIPD (2025b) *Recruitment law guidance*, CIPD. Available at:
<https://www.cipd.org/uk/knowledge/employment-law/recruitment/> (Accessed: 16 May 2025).
- CIPD (2025c) *UK employment law round-up: April 2025*, CIPD. Available at:
<https://www.cipd.org/uk/views-and-insights/thought-leadership/insight/employment-law-changes-april-2025/> (Accessed: 16 May 2025).
- Daniels, K. (2025) *Introduction to employment law fundamentals for HR and business students*. 7th edn. London: KoganPage.
- Employment: Code of practice (2015) *Employment: Code of practice* | EHRC. Available at:
<https://www.equalityhumanrights.com/equality/equality-act-2010/codes-practice/employment-code-practice> (Accessed: 16 May 2025).
- Government Digital Service (2024) *Holiday entitlement*, GOV.UK. Available at:
<https://www.gov.uk/holiday-entitlement-rights/calculate-leave-entitlement> (Accessed: 20 May 2025).
- HSE Network (2021) *Latest Health and Safety Court cases: Case summaries: HSE, HSE Network*. Available at: <https://www.hse-network.com/category/health-and-safety-court-cases/> (Accessed: 16 May 2025).
- Larkin vs Liz Earle Beauty* (2020). Available at:
https://assets.publishing.service.gov.uk/media/5e8352ced3bf7f1348a733b8/Mrs_H_Larkin_v_Liz_Earle_Beauty_Limited_1403400.2018.Reasons.pdf (Accessed: 20 May 2025).