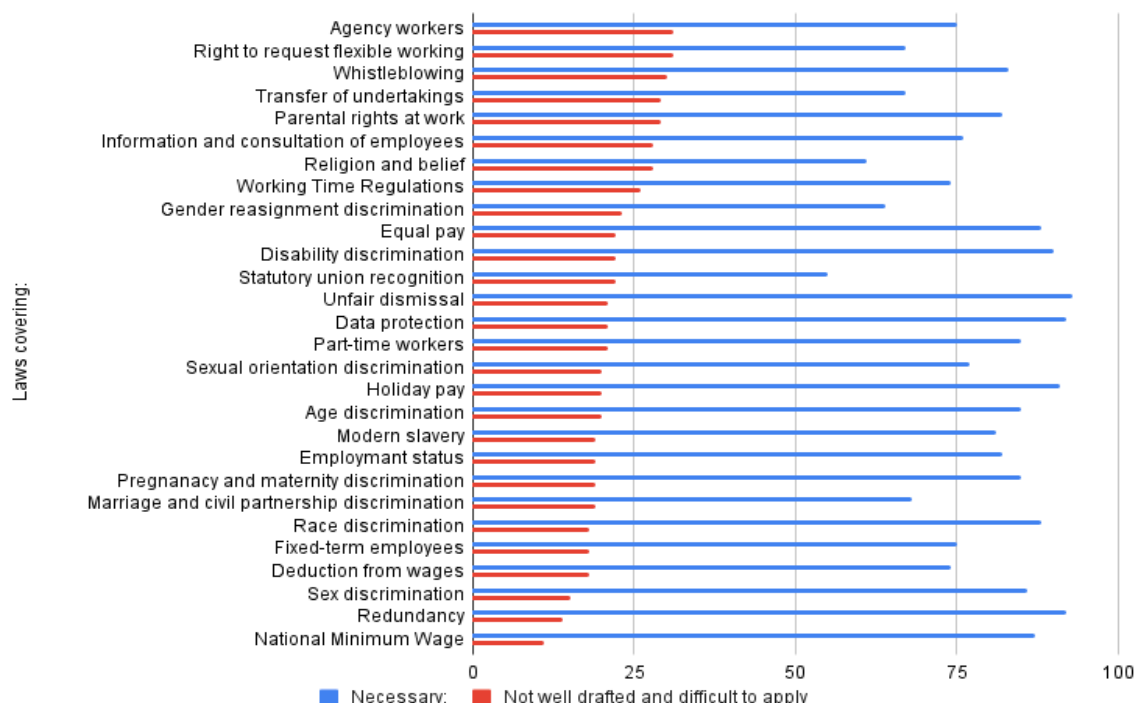


The aims and objectives of employment regulation (AC1.1)

Employment regulation in the UK are policies and laws that are central to governing, shaping and protecting the employment relationship (EHRC, 2011) and includes, for example, the Employment Rights Act (ERA) 1996 (GOV.UK, 2024a); the Equality Act (EA) 2010 (GOV.UK, 2024b) and The Agency Workers (Amendment) Regulations (AWAR) 2019 (GOV.UK, 2024c). The 'Act's' create legal regulations clarifying employers obligations and employees statutory rights. Employers who do not abide by statutory recommendations face potential legal claims (CIPD, 2024a). The main aims and objectives of employment regulation are to ensure the fair treatment and protection of workers and safe and healthy working conditions (Michael, 2023) through a framework which provides '*sufficient flexibility for employers*' (CIPD, 2017)

The CIPD (2017) reports that laws on working time, the National Minimum Wage, and age discrimination, for example, contribute positively to the business and sight '*a compelling case*' that when employment regulation is if 'approached holistically' it enhances employees wellbeing, engagement, commitment and loyalty which encourages a '*potentially far greater return on investment*' from people. Whilst many employers recognise that employment regulations are necessary many find the legislation a 'complicated, time consuming burden' as the chart below shows:

Employers regarding areas of employment law as 'necessary' compared with 'not well drafted and difficult to apply' (% of all employers surveyed)



Source: Employment regulation in the UK: burden or benefit? CIPD Survey Report 2017

Employers have to stay abreast of changes as the regulatory context has to be amended and adapted to align with the constant changes in the wider environment. The increase in 'gig economy workers' for example and clarifying employment status of e.g. employee,

worker or self-employed is essential to determine which employment rights apply to the individual concerned (CIPD, 2017). The Government's consultation response to *The Taylor Report* (GOV.UK, 2017) recommended reforming the definition but failed to provide consensus on how this should be achieved which has left it to the courts to decide (CIPD, 2024a).

Both current and future employment regulations, policies and laws require careful and regular inspection to ensure they are fit for purpose. For example, The government announced proposals to reduce net migration (CIPD, 2024a) which will have a significant impact on the jobs market. In addition, there has been increased media focus on potential changes with the Labour party promising significant employment law reforms if wins the next UK general election (Gillen, 2024.1)

The role played by the tribunal and courts system in enforcing employment law/regulation (AC 1.2)

There are deliberately distinct characteristics and procedural rules between the 'less formal' employment tribunals (ET) and civil courts. Employees can make a claim to a civil court in regard to contract breaches, restrictive covenants and accidents at work up to 6 years after employment ends; however starting a claim in the civil courts bears legal cost risks (Law Commission, 2018).

Hearing employees' claims of potential unlawful treatment from employers is the primary purpose of ET's. Claims commonly include discrimination, equal pay, unlawful deduction of wages and unfair/wrongful dismissals (Ayling & Suff, 2023) and must typically be made within 3 months of the 'treatment'. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (GOV.UK, 2024d) details the procedures required to present a claim to an ET.

ET's were created by statute and have jurisdiction to determine disputes and to make financial awards; however they have no power to enforce their own judgments (Law Commission, 2018). Tribunals and the courts provide authority derived mainly from case law and acts of parliament (Taylor, 2023a). There is a duty on tribunals and courts under the Human Rights Act 1998 (EHRC, 2011) to interpret case law, primary legislation (including the EA 2010 and the ERA 1996) and secondary legislation (Statutory instruments including EA 2010 (Gender Pay Gap Information) Regulations 2017 (GOV.UK, 2024e) and the Agency Workers (Amendment) Regulations 2019 (GOV.UK, 2024c)) in a way that is compatible with the rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 2013). Statutory Code's approved by the Secretary of State are laid before Parliament but do not impose legal obligations; however courts and tribunals must take into account any relevant part of the Code as evidence (Taylor, 2023b).

Cases can be appealed through a '**hierarchy of courts**':



Common law evolves as cases are appealed through the courts and the '*principles and precedents*' as set out by the higher court (Taylor, 2023b) must then be applied to similar cases appearing in the lower courts. A recent example of the importance of such judgments is the case involving Uber drivers (The Supreme Court, 2021) and subsequent 'worker test' case law.

Settling Claims (AC 1.3)

The role of Acas (Advisory, Conciliation and Arbitration Service) in encouraging out-of-court settlements in the ET system is considerable (Taylor, 2024). Before bringing a claim employees (with 2 years service in the case of unfair dismissal) and employers must try to resolve matters informally and follow the Acas Code of Practice on discipline and grievance and procedures (ACAS, 2024a) to avoid litigation. At this stage an employee may request to obtain information (the questions procedure) they believe is relevant to the unlawful alleged conduct (EHRC, 2018). Employers are advised to completely investigate any complaints and determine whether a resolution can be achieved. A failure to resolve the complaint would then resort in contacting Acas to attempt voluntary 'early conciliation'.

Alternative dispute resolution is encouraged and can be achieved through mediation (either internal or external) or the conciliation service offered by ACAS. Conversations held (without prejudice) which are attempting to settle a dispute cannot normally be referred to in proceedings (Gillen, 2024). Settlement (previously compromise) agreements can be agreed between the parties directly or through Acas conciliation (a 'COT3') (ACAS, 2024b). Employees must be given independent advice and made aware of the legalities of the terms of the agreement which would include an inability to bring a future tribunal claim.

After exhausting all of the employers 'grievance procedures' and conciliation attempts and failing to 'broker a settlement' the employee must get a 'conciliation certificate' from ACAS and complete an ET1 Form to submit to the ET (ACAS, 2024b). There are proposed plans to introduce a '*proportionate and affordable*' fee of £55 to discourage '*vexatious litigants*' (CIPD, 2023) and encourage claimants and employers to reach a settlement early through Acas without the need for claims to be brought to an ET (Machel, 2024). The employer then must follow the 'steps' to defending an ET claim.

Unless the unlawful act relates to an equality clause, a claim must be started with the ET within three months (less one day) of the alleged unlawful act however (EHRC, 2011) if the alleged conduct is a 'continuing state of affairs' it should be treated as being done at the end of the 'period'. An additional one month is allowed for Acas conciliation.

Discrimination law in recruitment, selection and employment (AC 2.1)

When recruiting employees, you must ensure that you comply with The Equality Act (2010) and follow the authoritative guidance of The EHRC Code of Practice (EHRC, 2011). The Act combined previous legislation to increase protection against discrimination and clarify the rights, responsibilities and behaviour of employers, organisations and employees (EHRC, 2018). Failing to follow the code, whilst not legally binding, is taken into account by tribunals or courts (McCartney, 2023). Claims for discrimination have a normal time limit of three months less one day from the last act of discrimination (CIPD, 2024b). In January The EA 2010 (Amendment) Regulations 2023 (GOV.UK, 2024f) came into force ensuring preservation of previous EU derived discrimination protection rights (Gillen, 2024).

The Act covers discrimination against 9 'protected characteristics' (EHRC, 2011) for 'employees' which, for the purpose of the Act includes; workers, job applicants; and those employed under a contract for services (self-employed) amongst others (CIPD, 2024c). The 'characteristics' protected by the act are:

- **Race and Ethnicity**
- **Pregnancy and maternity**
- **Age**
- **Disability**
- **Sexual orientation**
- **Gender reassignment**
- **Sex**
- **Religion or beliefs**
- **Marriage and civil partnerships**

There is no qualifying period of employment for a discrimination claim (CIPD, 2024c). Discrimination against people who possess a protected characteristic in, or when seeking employment, or engaged in work related activities can be indirect, direct, by association or by perception (EHRC, 2011). Recruiting only young men results in less favourable treatment of applicants because of reasons relating to their age (e.g. retirement) and/or sex (e.g. women of childbearing age) and is therefore both direct and indirect discrimination if it cannot be objectively justified as a legitimate business aim (McCartney, 2023.1)

Employers cannot discriminate against or victimise job applicants in the criteria, policies, or practices used in their recruitment process (EHRC, 2011) Throughout the recruitment and selection process it is important to avoid bias and potential discrimination against anyone with a protected characteristic by ensuring fair recruitment processes (McCartney, 2023). You should only include job related criteria (e.g. skills and abilities) and avoid asking irrelevant 'personal information' which is not necessary to the role and could lead to a risk of unlawful discrimination if factored into any processing or decision making (CIPD, 2023)

Equal pay (AC2.2)

Employers can not directly or indirectly discriminate when setting rates of pay or offering benefits to workers (EHRC, 2011). The EA (2010) provides provisions relating to equal pay between men and women which states unless there is justification for any difference '*men and women in the same employment performing equal work must receive equal pay*' (EHRC, 2018). The provisions create an '*implied sex equality clause*' (EHRC, 2011) in employment contracts.

To make an equal pay claim, employees must specify 'a comparator' of the opposite sex (ACAS, 2024c) who is receiving better terms and conditions for 'like work', 'equivalent work' or 'work of equal value' (CIPD, 2024b). Claims are complex however Charlotte and Kit are in the same type of job, requiring the same skills. Charlotte therefore has the potential to make a claim for equal pay and sex discrimination (ACAS, 2024c) using Kit as a direct comparator who is receiving better pay because he's male.

Kit is a 'legally valid comparator' and there appear to be no 'material factors' (CIPD, 2024b) for your refusal to increase Charlotte's pay therefore to defend against a potential claim you must show there is an 'objective justification' for the pay difference (ACAS, 2024c). Charlotte has six months from the date on which 'she discovered the less favourable treatment' to bring a claim in a tribunal; however, despite greater financial risk, equal pay claims can also be heard in the civil courts as breach of contract claims. Following the decision in the case of *Abdulla v Birmingham City Council* [2012] UKSC 47 (SC, 2012), claims can be raised in the civil courts by employees up to six years after their employment ends (CIPD, 2024b)

You will be required to explain how pay is determined and justify why there is a difference in pay. If you have no objective justification for Kit's 'more favourable' pay then you must explain to Charlotte that you agree you have not provided equal pay and you will review her pay package to remedy the discrepancy.

Redundancy (AC 3.1)

Redundancy occurs when a role is no longer needed or there is a genuine reduced requirement for employees to carry out a particular kind of work (CIPD, 2024c). Employees 'dismissed' through redundancy have certain rights and protections under the ERA 1996 (GOV.UK, 2024g). Any breach of rights or failure to follow a fair process could lead to a potential claim for unfair dismissal (ACAS, 2024d) .

As less than 20 employees are at risk you must '*genuinely and meaningfully*' (CIPD, 2024c) consult individually with each employee at risk and confirm in writing (ACAS, 2024e):

- an outline of your consultation plan
- how/why they have been selected
- whether there are other options for avoiding dismissals such as voluntary redundancy, recruitment freeze, flexible working; suitable alternative employment
- notice periods
- redundancy pay calculation (where applicable)
- appeals process.

Your employees are entitled to any qualifying statutory redundancy pay, notice period/pay in lieu of notice and any holidays owed (ACAS, 2024e). Your contracts give 2 weeks notice period which is above the statutory minimum for employees under 2 years (ACAS, 2024d) however the minimum statutory notice periods apply to any employees with over 2 years service and are shown below (ACAS, 2024f).

Statutory redundancy pay is calculated based on age and length of service (GOV.UK, 2024g):

Notice Period		Redundancy Pay	
Length of employment	Weeks notice:	Age:	Weeks pay: (for each full year they have worked)
1 month to 2 years	1	17 - 21	0.5
2 to 12 years	1 for each full year they have worked	22 - 40	1
Over 12 years	12	41+	1.5

The maximum statutory rate for calculating redundancy is £700pw and capped at 20 years Length of service. (CIPD, 2024c). Redundancy pay under £30,000 is not taxable (GOV.UK, 2024g).

Based on the statutory requirements the table below shows what your employees are entitled to:

	Age:	Length of service: (Years)	Notice period required: (weeks)	Salary: (per week)	Notice pay if PILON:	Redundancy payment:
Angelica	53	8	8	£700	£5,600	£7,716 (12.0 weeks)
Saffron:	30	5	5	£350	£1,750	£1,750 (5.0 weeks)
Chip, Cherry, Reese and Carmel	18/19	1	2 (as per contract)	£225	£450	N/A

Transfers of undertakings (AC 3.2)

When a business or service provision is bought by another business or service provider a transfer of undertakings happens and all employees will automatically transfer to the buyer (Suff, 2024). The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE Regulations”) (GOV.UK, 2024h) protects employees rights when the business they work for is legally transferred to another (Law Commission, 2018).

TUPE applies to the takeover as the two businesses are the same ‘type’, the activities to be carried out by Peachy Dessert’s are of a ‘high degree of similarity’ to those performed at Crumbly Cakes and there is to be a transfer of ‘tangible assets’ and employees (Suff, 2024). Under employment protection legislation, you will therefore be responsible for the statutory and contractual rights (e.g. redundancy payments, arrears of pay including holiday and sick pay, accrued holiday entitlement) and liabilities (including liability for unfair dismissal and discrimination) of the transferring Crumbly Cakes’ employees (CIPD, 2024d). In addition, you have record keeping and consultation obligations. Both companies are obligated to inform and consult ‘meaningfully’ with representatives of the affected employees (Gillen, 2024). It is important to also confirm if any of the employees require reasonable adjustments and check RTW status.

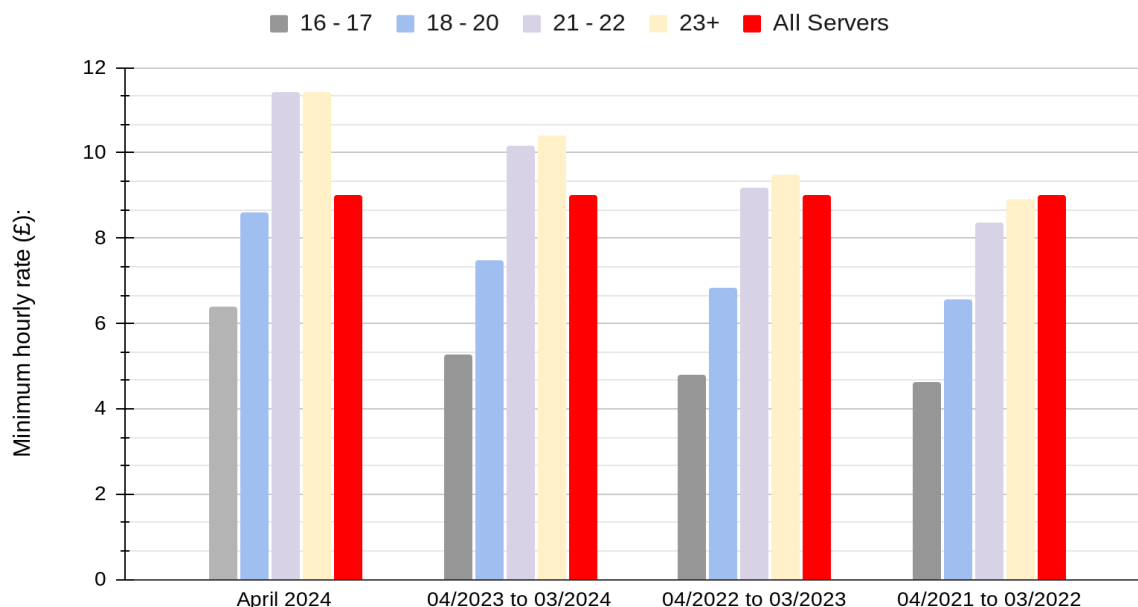
TUPE Regulations protect employees continuity of employment and their entitlement to the existing contractual terms and conditions they had before the transfer (Suff, 2024). Limited changes to T&C’s are permitted if there is an ‘ETO’ reason for changes in the workforce however they cannot be varied if the only or principal reason for the variation is the transfer (CIPD, 2024d). You can ‘freeze’ the transferring employees pay (‘red circling’) until your equivalent existing employees reach the same level (CIPD, 2024d) however your approach of ‘*harmonising*’ (changing) terms and conditions or for example using ‘*dismissal and re-engagement*’ (Gillen, 2024) exposes you to an automatic unfair dismissal claim from employees with over two years’ qualifying service (CIPD, 2024d). Rights given by statute (TUPE Regs) supersede any contractual agreements therefore any variations are legally

void even if the employee appears to agree to the changes and so they could seek a contractual remedy in the civil courts (Law Commission, 2018).

Pay (AC 4.1)

All of your employees are entitled to payslips from their first payday on or before the day they get paid (ACAS, 2024g) showing the 'gross and net amount' (before/after deductions), fixed/variable deductions (e.g, tax, NI, trade union subscriptions), and student loan repayments and pension contributions where applicable. Records of any hours worked or payments made must be kept for 6 years. The payslips, must show the rate they're getting paid (fixed/variable hours) for a specified time period. Minimum hourly statutory wage rates apply to all employment or worker contracts and are set annually by the government in compliance with The National Minimum Wage (NMW) Act (1998) (GOV.UK, 2024i). Other statutory rates include pay relating to sickness (SSP), shared parental (ShPP), parental bereavement (SPBL) and notice Pay (SNPP).

The NMW is one of limited circumstances that allows lawful treatment of differences in age (ACAS, 2019). The NMW applies to anyone (other than apprentices) from school leaving age. The National Living Wage (NLW) for the first time now applies to all those over 21 (CIPD, 2024e). There are separate rates for apprentices. It is unlawful to pay all of your sales assistants £9 per hour because the NMW/NLW are age related therefore older employees entitled to a higher rate must be paid at the higher rate. It is a criminal offence not to pay someone the statutory rate (GOV.UK, 2024j) and your contracts for any employees whose payments fall below the minimum wage are not legally binding. The chart below shows the NMW/NLW rates that employees have been entitled to since April 2021 compared to what you have been paying all servers:



Source: GOV.UK - National Minimum Wage and National Living Wage rates (2024)

As can be seen from the chart above you have been underpaying any servers over the age of 21 since April 2022 and subsequent underpayment of arrears must be resolved. This also applies to any employees who have left in the interim (ACAS, 2024h). To check what your employees should have correctly been paid you can use the National Minimum Wage and National Living Wage calculator (GOV.UK, 2024j). If you do not resolve the arrears informally you risk employees raising a grievance, making a complaint to HMRC or bringing claims (going back 2 years) in either employment tribunals for unauthorised deduction from wages under the ERA 1996 (Law Commission, 2018) or county courts through a breach of contract claim (NMW Act) to recover underpayments.

Work time and rest breaks (AC 4.2)

The Working Time Regulations (WTR) 1998 (GOV.UK, 2024k) and the Working Time (Amendment) Regulations 2003 (GOV.UK, 2024l) ensure that all employees and workers are afforded basic rights and protections in relation to night working, rest breaks, paid holidays and weekly working hours (Law Commission, 2018). There are also special protections for young workers and night workers and protection from unfair dismissal or detriment for asserting the rights. Recent changes have been implemented regarding travelling time and holiday pay (CIPD, 2017)

Under the WTR (1998) directive your employees are entitled to 5.6 weeks/28 days (20 days + 8 UK bank holidays) paid annual leave in each leave year (pro rata); at the same pay as they normally receive. There are special rules for irregular hours/part-year workers (GOV.UK, 2024k). Employers can provide increased contractual paid holiday beyond the statutory minimum. There are specific rules governing holiday and sickness absence, family leave, religious holidays and carry-over of holiday.

Employees can work more than 48 hours in one week, as long as the average is less than 48 hours pw over 17 weeks (GOV.UK, 2024k). Under the directive Kit could be entitled to an in-work rest break of 20 minutes (if working 6+ hours); rest periods from work, including 24/48 hours rest in any 7/14 day period and 11 hours' rest a day.

Kit is entitled to not work more than 48 hours a week on average over a 17 week period (subject to an 'opt out' agreement). The Health and Safety Executive (HSE) is responsible for the enforcement of the maximum weekly working time limit (HSE, 2024) and WTR (1998) are enforced either through a tribunal claim or the civil courts (contractual rights) (Law Commission, 2018). Kit consistently works in excess of the 48 hours and when he is required to cover he may also not be getting the 24 hours/7 day rest period entitlement.

The 'opt-out' however allows you to ask Kit (without pressuring) to agree not to be subject to the 48-hour limit (CIPD, 2017) for either a specified period or indefinitely however agreement from Kit must be voluntary, in writing and can be cancelled (with notice) at any time (GOV.UK, 2024k). You can ask Kit to opt out, but he cannot be sacked, treated unfairly or victimised if he refuses. Working excessively long hours can pose a risk to his/others health and safety. It is your general duty to protect workers' health and safety and take 'all reasonable steps' (GOV.UK, 2024k) to ensure that each worker's average working time (including overtime) does not exceed 48 hours a week.

Maternity, paternity and adoption rights (AC 4.3)

Provisions dealing with maternity, paternity, adoption and parental leave and rights are governed by a mixture of contractual rights and legislation (EHRC, 2011). Recent reforms of 'family-related rights' includes the extension of redundancy protection to pregnant employees and those returning from family leave and new rights to carer's leave and neonatal leave (Gillen, 2024).

When dealing with a request for leave and/or pay you are obligated to ensure employees do not suffer detrimental treatment (CIPD, 2023) or discrimination because of a protected characteristic. Under the (Equality) Act pregnancy and maternity are explicitly protected against discrimination (EHRC, 2011). As employees, new, nursing or expectant mothers have rights to specific health and safety protections (GOV.UK, 2024m). As an employer you have a legal responsibility to carry out and maintain a workplace risk assessments and make adjustments accordingly (Wyatt, 2024)

Employees rights are protected while on SML, SPL and SAL. This includes a statutory right to: pay rises, accrue holiday and to return to the same job after 'ordinary' leave' (GOV.UK, 2024m). Employees can choose not to take all statutory leave however under the (Maternity) legislation Coco is legally required to take a 'compulsory' minimum 2 weeks leave after the birth of her baby.

The table below shows a brief overview of statutory leave and pay rights:

	Maternity	Paternity	Adoption
Leave:	Up to 52 weeks (26 weeks 'ordinary' and 26 weeks 'additional')	2 weeks	Up to 52 weeks
Qualifying service requirement:	No	employment for 26 weeks ending with the 15th week before the baby's due.	No
Eligibility requirements:	Pregnancy	Biological father or partner	Adopter or partner
Paid time off for appointments:	Antenatal care appointments	2 appointments (unpaid)	5 appointments
Proof required:	None	None	No (unless employer requests)
Notice required:	15 weeks before due date	15 weeks'	Within 7 days

Pay:			
Qualifying service requirement:	employment for 26 weeks ending with the 15th week before the baby's due.	be employed up to the date of birth;	26 weeks' continuous employment
Notice Required:	Within 21 days of SMP start date	15 weeks'	Within 7 days (SC4 Form)
Proof required:	MAT B1 Form	SC3 Form	SC4 Form
Total weeks paid:	39	2 (does not have to be taken consecutively)	39
First 6 weeks:	90% of AWE	N/A	90% of AWE
Following 33 weeks	90% of AWE or £184.03 pw**	N/A	90% of AWE or £184.03 pw**

*AWE - Average weekly earnings

**whichever is lower

To claim leave or pay the employee must be legally classified as an employee and provide any applicable notice (Ayling & Suff, 2024). The employee must also earn an average of at least £123 a week, before tax (GOV.UK, 2024n). As an employer you can pay more but cannot pay less than the statutory amounts.

Flexible working requests (AC 4.4)

Whilst there is no statutory right entitling Chelsea to move from working full-time to part-time, any employee has a right to make a request and failure to give 'adequate consideration' could result in a claim for compensation (CIPD, 2024c). The Flexible Working (Amendment) Regulations 2023 (GOV.UK, 2024p) updated employees' rights and employers responsibilities when flexible working requests are made. In addition, a new Code of Practice (GOV.UK, 2024i) came into effect which must be followed when an employee makes a request. The Code defines a flexible working request as '*a statutory request for a change to an employee's terms and conditions relating to their hours, times or place of work*' and can include, amongst others, a request to work: part-time, flexitime or compressed hours.

The legislation changes make the right to request flexible working a '*day-one*' right removing the previous requirement for employees to have 26 weeks' continuous service (Gillen, 2024). It provides that as an employer, you have a duty to consider and respond - within 2 months

(previously 3 months) - to up to two (was previously 1) requests for flexible working in any 12 month period (CIPD, 2024c).

As an employer you must seriously consider and agree to flexible working where you can accommodate the request (ACAS, 2024j) however, a request can be refused if justified. To refuse a request you must evidence and prove that the refusal is due to a genuine business need. The permitted business reasons are specified in the ERA (1996) (GOV.UK, 2024i) and include an inability to reorganise work among existing staff, the burden of additional costs and a detrimental effect on the business' ability to meet customer demand. (EHRC, 2011) The refusal must be in writing and include a sufficient explanation of the decision, based on correct facts.

Failure to comply with these statutory procedures risks Chelsea bringing a claim to the ET for a '*procedural failing*'. There is also potential for other claim's if rigid working patterns result in indirect discrimination or you fail to make reasonable adjustments to working hours for disabled workers (EHRC, 2011). Whilst not binding, there have been ET cases pertaining to an employers' insistence on full-time working. An employee won an indirect sex discrimination claim in the case of *Thomas v Arts Council of Wales* (2009) when the employer refused a request for part-time working on her return from maternity leave (CIPD, 2024c)

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