

HR Compliance Navigator Report Q1/Q2 2022

UK Employment Update:
Laws, Regulations, Compliance
and Best Practice to Know During 2022



Introduction



The world of work in the UK and elsewhere has adapted to change over the last two years like never before. The pandemic has brought many challenges to HR departments, which have been seen as the key adviser, planner and implementor for a range of workplace initiatives. The ever-changing agenda creates more pressure to be creative, flexible and proactive. HR, however, must be certain to remain compliant with relevant changes to legislation, case law and best practice whilst reflecting upon the key developments in HR over the last 12 months. This allows each organisation the best chance of recruiting, retaining and developing the skills that it needs to run its business whilst at the same time identifying and minimising risk.

If businesses do not keep abreast of these changes, then they risk more than fines, Employment Tribunal cases and regulatory investigations. They also miss out on the opportunity to reduce turnover and absenteeism, both of which can cost an employer a significant amount in terms of finding and training replacement staff. It makes good business sense to create workplaces where workers want to spend their time. With employee

well-being now a key driver for retention and employee performance indicators, workers want to spend their time with employers who focus on compliance and best practice.

This report delves into a whole range of topical, legislative and practical steps that employers and HR departments will be focusing on for 2022. It is written with a view to act as a reference point for clients who need accessible and accurate advice to determine HR plans and strategy for the year. With a summary of where we are now and where we might be heading after new employment laws might be adopted, we aim to be the first point of reference for overloaded HR departments who need direction.



— Paul Kramer
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Contributing Author



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Employment Data

January 2022
Unemployment
Rate in the UK

4.1%

Percentage of
economically
active employed

75%

Rate of economic inactivity

21.3%

of those aged 16 to 64 (does not include those actively seeking work).

- The rate of economic inactivity is at a record low.
- The rate of economic activity due to sickness has increased.
- The number of part-time roles reduced significantly at the beginning of the pandemic.
- The current growth in the number of part-time roles is responsible for the overall rate of employment growth.
- Unemployment rate for 16- to 24-year-olds is back to pre-COVID-19 rates.
- Economic inactivity rates are back to pre-COVID-19 rates for men but has increased for women.

Number of vacancies
Sep. to Dec. 2021:

1.4 m

Largest increase in vacancies was seen in health and social care sectors.

Consumer Price Index:

5.1%

in 12 months to December 2022.

Rate of inflation:

Expected to be 7%

by Spring 2022 followed by drops during 2022 and beyond.

Median predicted pay award for 2022:

2.5%



Increases to National Minimum Wage

The government has announced the following rises to the compulsory National Minimum Wage (NMW) hourly rates, which takes effect from 1 April 2022 and are payable to all workers:

	22/23 Rate	21/22 Rate	Increase %
National Living Wage	£9.50	£8.91	6.6%
21-to-22-Year-Old Rate	£9.18	£8.36	9.8%
18-to-20-Year Old Rate	£6.83	£6.56	4.1%
16-to-17-Year Old Rate	£4.81	£4.62	4.1%
Apprentice Rate	£4.81	£4.30	11.9%
Accommodation Offset*	£8.70	£8.36	4.1%

*(*Employers should be aware of the effect that the accommodation offset has on the payment of the National Minimum Wage as this is relevant whether the employee pays for their accommodation or not.)*

The percentage increases are significant for many workers this year, and the government is keen to highlight a raise of 59p per hour to the lowest paid.

Those operating in the care sector will be mindful of last year's Supreme Court Judgement (Royal Mencap Society v Tomlinson-Blake), which confirmed that the NMW was not applicable to the time that night-time carers were asleep. The NMW only applies if the worker is required to undertake work.

Each year the Low Pay Commission makes recommendations to the government on the level of wage increase for each type of worker. They produce a report to explain and justify those recommendations. The last two years have given the Commission many additional statistical considerations—including the effect of furlough, self-isolation payments and changes to the number of unemployed. The report makes interesting reading for those who wish to understand in more detail how the process works. The Commission's current objective is to ensure that employees are paid a minimum of 66% of the median earnings of all workers by 2024.

Many workers are already paid in excess of the NMW and the number of employers looking to pay their staff more than the minimum is slowly beginning to rise. Over the course of the pandemic, some retailers altered their pay strategy to reflect pressures on the labour market and their ability to recruit and retain staff. They have decided to offer £10 an hour to their lowest paid staff to keep ahead of the game.



National Living Wage & Health and Social Care Levy

National Living Wage

UK employers will be aware of the voluntary Real Living Wage (as opposed to the government's National Living Wage). The voluntary Real Living Wage is paid by over 9,000 employers in line with the recommended rates published by the Living Wage Foundation. The Foundation announces its increases in November each year and calculates recommended wage rates in line with the cost of living. For that reason, the Living Wage recommended rates are higher than the government's minimum recommended wages.

The new hourly rates for 2022 come into effect from 15 May 2022 at the latest. These changes were announced in November 2021. Employers are urged to pay these rates in advance of that date to all workers aged over 18 if they can:

	21/22 Rate	20/21 Rate
National Living Wage	£9.90	£9.90
21- to-22- Year Old Rate	£11.05	£10.85

Introduction of the Health and Social Care Levy

The government is introducing a 'Health and Social Care Levy' to help fund health and social care in the UK. This is seen as a long-term solution to a financial headache for governments witnessing increased demands on those services over many years. The levy will be introduced as follows and will affect all workers:

- From 6 April 2022, National Insurance (NI) contributions will increase by 1.25%.
- From 6 April 2023, NI contributions will be reduced back to their original rate (pre-6 April 2022) and then the 'Health and Social Care Levy' of 1.25% will apply instead.

The two-stage introduction allows for payroll software to be updated to show where the levy has been deducted. Employers may wish to think of ways to notify staff of the temporary raise to NI in April 2022—some payroll software allows for suitable messaging to explain the rise.

The government has also announced changes to tax allowances for company vans and company car drivers, which is likely to affect around 150,000 employees in the UK. Mileage rates, where the employee uses their own cars for business purposes, do not change.

Statutory Payments

From 6 April 2022 the rate of SSP will increase from £96.35 to £99.35 per week.

Increase to Statutory Sick Pay (SSP)

The new rate will apply to employees who are already on sick leave and whose period of sick absence continues past 6 April 2022, as well as those who start a period of sick absence after that date.

It is of course important to remember to pay SSP when an employee is off sick even if SSP is topped up to full pay as Company sick pay. This is because SSP is only due for 28 weeks, and the starting date for that calculation will only start when the payment is recorded.

There have been calls for an increase in the rate of SSP in response to the hardship felt by many during the pandemic who were not lucky enough to receive Company Sick Pay.

The Chartered Institute of Personnel and Development (CIPD) highlights the low rate of SSP payable in the UK. The rate is lower than that paid in many European countries. The CIPD recommends:

- That the rate of SSP should at least equal that of the NMW
- That the lower earnings limit should be removed
- Removing the three waiting days
- Allowing phased return to work.

The report highlights the need for income protection for the lowest-paid members of the workforce. A senior employment relations adviser stated:

“The UK’s SSP system has been broken for a long time, and the pandemic has only highlighted its failure to protect the lowest-paid and most vulnerable members of our society. However, despite several government consultations proposing reforms to SSP, there are currently no real plans to improve the system”.

Employers can of course opt to pay Company Sick Pay at full pay to reduce the likelihood of employees suffering financially due to sick absence. Company Sick Pay schemes vary enormously even within the same industry sectors.

Changes to Statutory Payments in April 2022

Statutory rates for maternity pay, paternity pay, shared parental pay, adoption pay and parental bereavement pay will increase with effect from 3 April 2022:

2022/2023 rate – £156.66

2021/2022 rate – £151.97

Workers will receive 90% of average earnings for the first six weeks of their leave period and then the lower of 90% of their average earnings or £151.97 per week. Employers should remember to recalculate Average Weekly Earnings if a pay award is made during the time that a woman is on maternity leave or within the eight-week period of the employee starting maternity leave.

Employers should plan carefully if payments are likely to be affected by redundancy or a transfer under TUPE to another employer and take time to understand fully the employee’s rights should either event apply.

The increase applies to those starting leave before 3 April 2022. They should be written to prior to that date and advised change to their income. The increase will also apply to any employee commencing leave on or after the increase date.

Redundancy Rates and Bank Holidays for 2022

Redundancy Rates

A 'week's pay' for the purpose of calculating redundancy payments is now £571 with effect from 6 April 2022. From that date, the maximum redundancy payment for those with over 20 years' service whilst aged over 41 is £17,130. The government's online redundancy calculator allows both employees and employers to work out any payment due.

A redundancy payment up to £30,000 may be paid tax free. However, a payment in lieu of notice (PILON) must be treated as a taxable payment, as must a payment for any outstanding accrued holidays that are paid to the employee on termination.

Redundancy exercises and terminations as a result of redundancy are now at a very low level compared to both at the beginning of the pandemic and the end of the Coronavirus Job Retention Scheme in September 2021.

Bank Holidays

2022 is the year of the Queen's Platinum Jubilee, and to celebrate this occasion the government has announced an additional Bank Holiday. This will take place on Friday, 3 June 2022. The Spring Bank Holiday be moved from its usually late May date to Thursday, 2 June 2022, which gives workers a four-day break.

Whether employers are obliged to grant the extra day off depends on the wording of their employees' contracts of employment. If they refer to the number of Bank/Public Holidays as being the usual number of eight, then there is no requirement to grant the extra day. If the employer states that employees will be entitled to take Bank/Public Holidays but not specify a number, then the employee has the contractual right to take 3 June 2022 as an extra holiday.

Employers who are granting this extra day off will need to consider the effect that this will have on their part-time employees. Those employees have the right to take off a compensatory proportional number of hours if they do not usually work on a Thursday. Calculation for starters, leavers and those on maternity leave also needs to consider the extra day if the employer is giving their other staff the day off.

Employers are advised to give employees plenty of notice of their intention to grant (or not) the extra day for 2022.



Managing Employees with Long COVID

'Living with COVID' and sick absence payments for COVID-19 positive employees

The UK is now learning 'to live with COVID'. The government's rules on wearing face masks, routine contact tracing, mandatory self-isolation and lateral flow testing (in most circumstances) have changed. Employers who provide services in the health and care and certain other sectors may still need to follow sector specific guidance. Employees no longer have to let their employer know if they are COVID-19 positive. Changes that take effect during March and April 2022 are:

On 17 March 2022 the SSP rebate scheme will close for employers. Employers will meet the cost of all sick-related payments for their staff from that date. As from 24 March 2022 employees will no longer be entitled to SSP from the first day of any absence due to testing positive for COVID-19. SSP payments will instead be made in line with pre-pandemic rules. This means that days one to three of any COVID-19 related absence will be unpaid unless the employer chooses to pay company sick pay.

As from 1 April 2022 employers will no longer need to consider the risk of COVID-19 when drawing up their risk assessments.

At this point, free testing will no longer be available to the public. The tests will however be available for purchase.

Some employers may wish to continue to encourage COVID-19 positive employees to stay at home, especially if they have symptoms. A problem may however arise if the employee would rather be at work. The employer needs to consider the legality of preventing an employee from attending work who does not report as being sick for the purposes of SSP payments. The Fit Note system allows the employee to decide whether they are 'fit for work'—not the employer. So, an employer who wishes to ensure that infected employees stay away from work might need to consider suspension at full pay. Home-working whilst COVID-19 positive may remain an option for some employees.

A business can with the agreement of its employees continue to offer testing for staff, but this would of course be at the employer's expense. It would be difficult to keep a testing regime in place without

that consent. As there would be no legal basis for testing, an employee who did not agree to a test could not be prevented from attending for work/ being paid for work. Some employees will be reluctant to return to the workplace, and employers will need to consider the most appropriate course of action in resolving any potential disputes.

ACAS advise employers to work on the basis that 'Long COVID' is defined as a disability under the Equality Act, rather than attempting to justify that it might not be a disability. This will focus employers on accommodating the needs of Long COVID sufferers in terms of their successful return to work.

As Long COVID is also more likely to be experienced by women, those from ethnic backgrounds and older people, employers need to consider the impact of potential discrimination claims when managing sufferers.

Managing Employees with Long COVID (Cont.)

Long COVID is the name given to the longer-term effects of catching COVID-19, which can include extreme exhaustion and aching limbs. It can be highly debilitating. As this is a new medical condition there is much still to understand about its treatment and long-term impact. Some people suffer the consequence of the virus for weeks or months after they are no longer testing positive and may also present with other complications.

Individuals may feel better for a few days and then report that their symptoms have returned, and so committing to full-time, regular work may be difficult.

As is always the case when dealing with disabilities, both employee and employer should explore any 'reasonable adjustments' to the role that allows the employee to continue to work. An Occupational Health Adviser will also add value to that exercise in suggesting ways that work can be more accessible and comfortable for employees. Employers are advised to be as flexible as they can be in offering working patterns which allow affected employees to undertake some work when they feel well enough. This might include a temporary reduction to working

hours with the employee's agreement, working from home, changes to duties or allocating some duties to other staff. The employee should also be given access to any mental health support that the company can provide such as an Employee Assistance Programme (usually a telephone helpline), Mental Health First Aid or counselling.

Income Protection insurance may assist the employer in being able to support any worker who is unable to attend work on a longer-term basis. Any claim would of course be subject to the terms of the policy, a doctor's report on the extent of disability and an assessment as to whether the employee can undertake some work or no work at all. If all fails, the employer may need to consider dismissal for an employee who is unable to fulfil their contract of employment in terms of attending for work.



COVID-19: Effects on Employment for 2022

The NHS will be coping with the need to dismiss or redeploy its 70,000 patient-facing staff who did not get vaccinated against COVID-19 in line with the government's deadline of April 2022. Some hospitals may need to dismiss as many as 10% of their staff as could GP practices and other providers of healthcare. Care homes had to comply with a similar ruling last year (see more details of this below).

Some of these workers will be employed by third parties under outsourced contracts, and so the number of employers who will be involved in these dismissals is considerable. The government has made it clear that it does not intend to extend this deadline for employees to have had all three vaccinations.

Employers will have to consider the process that they use to undertake these dismissals fairly. That process will include looking for redeployment possibilities for affected staff. Redeployment could entail pay cuts or changes to working hours for employees who choose to take that option.

It is important that the employer makes any process clear which may lead to redeployment or termination of their employees. On termination they need to be

clear on the reason for the dismissal in writing. The possibility of redeployment will not apply to all NHS workers due to a lack of vacant posts which may be suitable for them.

Employers in all businesses are advised not to differentiate between vaccinated or non-vaccinated staff due to potential discrimination claims. They are also advised not to ask for proof of COVID-19 vaccination unless they have strong reasons and where the employee agrees to that request. This might be necessary where an employee needs to travel abroad for business.

Businesses that are storing, archiving, deleting and/or giving access to vaccination records will need to comply with the GDPR. They should be aware that medical information is classed as 'special category data' under the Act and therefore subject to tighter control. The Information Commissioner's Office (ICO) runs a helpline which is extremely helpful to those with queries, in addition to its comprehensive online guidance.

The government has reversed its decision that non-vaccinated staff cannot work in the care sector. Many employees were dismissed as a result of not receiving the vaccination for COVID-19 in October 2019. However, on 1 March 2022 the government stated that those wishing to work in care homes no longer needed to have had the jab, no doubt partly as result of recruitment difficulties in that sector.

Changes to 'Right-to-Work' Checks

Employers are currently asking non-UK prospective staff for their 'share code' when undertaking right to work checks. This share code allows the prospective employer to access an online portal which gives information around the candidate's right to work and whether there is any time limit on that right. Employers will need to continue to ask for a date of birth and share codes for non-UK staff from April 2022 and will not be able to revert to physical checks of passports and other documents. Share codes last for 30 days so employers need to make sure this time frame is incorporated into their recruitment procedures.

Employers will, however, need to continue to check (either in person or via video link) the likeness of the individual to their passport photograph (or that held in other permissible documents).

It is possible that right to work checks for other workers, such as UK citizens, will also be available online. At the time of writing, we have no firm details on the process for this and whether any fee is likely to apply.



Round-Up of 2021: Case Law

Employment Tribunal cases which became significant to employers last year include:

Collective Bargaining

Kostal UK Ltd v Dunkley and others: This case was heard at the Supreme Court and reminded employers that the collective bargaining process between employers and unions must be exhausted before employers can approach individual employees directly to resolve a dispute. Two Unite members were offered pay settlements as the collective process was still ongoing, and it was decided that this was unlawful.

Status of workers

Uber BV and others v Aslam and others: This Supreme Court case was significant for those working in the 'gig economy' as it confirmed that the firm's taxi drivers are workers and so entitled to the National Minimum Wage and paid annual leave. Uber had tried to argue that those undertaking work as taxi workers via its app were self-employed. This judgement did not come as a surprise to those who had been watching the case throughout as the lower courts ruled in favour of the claimants throughout the process.

Discrimination

Bayfield and another v Wunderman Thompson (UK) Ltd

In this case the two claimants were also Directors. They were selected for redundancy on the basis that they were male. The redundancies had taken place to reduce the number of men on the board of their employer. The employer was keen to demonstrate a more diverse board membership—the board was all male. The courts ruled in favour of the dismissed directors. This case supports the long-established principle that it is not acceptable for UK companies to work to any 'quota' when looking at diversity issues/employment opportunities.

We were also reminded in the long-running dispute between Asda and its shop workers that the latter can use depot staff as comparators in their pay dispute, which continues to rumble on. The judgement as to whether depot work and shop work is actually of equal value is yet to be made. HR practitioners and businesses remain astounded at the complexity and length of equal pay claim cases.

The fact that those with symptoms of the menopause are likely to be successful in making claims based on discrimination is becoming established via case law. Those with a range of symptoms associated with the menopause are likely to remain with their condition for more than a year and those symptoms will quite plausibly influence their day-to-day activities.

Both of those factors are likely to lead to the menopause being classed as a disability under the Equality Act. Those who are dismissed, harassed or bullied due to their menopausal symptoms will have greater confidence that their claim will be successful. See below further information regarding the menopause at work.

Redundancy

Gwynedd Council v Barratt and another: In this case the Court of Appeal stressed that the lack of an appeal as part of a redundancy process does not in itself make a dismissal on the grounds of redundancy unfair.

However, having an appeal for redundancy is quite common as part of the overall process and most employers would probably include that step to any dismissal process.

This case is also interesting because the employee was expected to 'apply for her own role'; an approach which does not involve consultation on the lines that a selection criteria model would.

Use of the selection criteria model allows for meaningful consultation to take place—both in the selection criteria used and the application of that criteria.

2022 Forthcoming Changes

Gender pay gap reporting

This applies to businesses with over 250 employees, and the deadlines for this year are as follows:

- Public Sector: deadline is 30 March 2022 with a snapshot date of 31 March 2022
- Private Sector: deadline is 4 April 2022 with a snapshot date of 5 April 2022

Other potential changes

There are lots of other legislative changes in the pipeline which might be introduced 'when Parliamentary time allows'. There is no certainty that we will see this legislation passed this year, but nonetheless it is worth looking ahead:

- **Workplace sexual harassment:** This is largely a response to the issue of so-called gagging clauses that women have been persuaded to sign in order to silence them on the basis of sexual harassment claims. The 'MeToo' movement also made governments sit up and listen to issues facing individuals in the workplace. Sexual harassment does not, of course, have to refer to men harassing women. There will be new protections from harassment from third parties, which are particularly challenging to handle from an HR

perspective. The time limit on bringing a claim may extend to six months from the current three months, which will be unpopular with employers. This extension will of course be welcomed by anyone who has suffered from harassment at work. There may be a new code of practice around the duty to prevent sexual harassment at work, along with guidance for employees to access. This will help support an employer facing a claim—in that they had taken 'all reasonable steps' in preventing harassment from taking place.

- **New right to carer's leave.** This may become a 'day one' right; meaning that there is no length of service requirement for an employee to assert this right. Employees could take up to five days per year in half or full days to care for someone with long-term care needs, such as elderly people or those who have had illness or an injury. This leave will be unpaid. Employees will need to give notice to take this, so it does not mirror the current Time Off for Dependents ('emergency leave'). Notice will need to be twice as long as the amount of time needed plus a day.

- **There will be regulation around tips in the hospitality sector, including a Code of Practice.** This is a move to ensure that workers keep their tips using a transparent process and keep records to show that they have adhered to their policy. The way that tips are dealt with in that sector has been a matter of debate and disagreement for many years.
- **Parents will be able to take a maximum of 12 weeks neonatal care**—for the time that their baby is in neonatal care. It is likely that the leave will be taken in one block. Those with more than 26 weeks' service will receive statutory pay for their time on neonatal leave. This will be welcomed by anyone who has to work through the difficulties that an early birth can lead to.
- **A right to request flexible working from day one.** This has been given a lot of support in the press and will be of interest to many who champion home working. The right will only be to make a request, in line with the current provisions in place for those who have six months service or more. It is recognised by the government that not a lot of businesses will be able or want to accommodate requests for flexible working.

2022 Forthcoming Changes (Cont.)

- **Redundancy protection extended to women** who are pregnant (from the date that they notify their employer of their pregnancy) and for six months after they have returned from maternity leave. They will receive the same protection enjoyed by those who are currently on maternity leave. Remember that it is a myth that a woman on maternity leave cannot be made redundant. They can be, but there are measures in place to ensure that those on maternity leave are given every opportunity to secure an alternative role rather than be dismissed on the grounds of redundancy. This will also apply to those on shared parental leave and on adoption leave.
- **Right to request more predictable hours of work** and a stable contract of employment after 26 weeks. This was referred to in the Good Work Plan which was published in April 2019. This potential right is again only a right to request, in the same way that there is a right to request flexible working. Other measures from the Good Work Plan have already been introduced, such as the updated contract of employment that was implemented in April 2019.

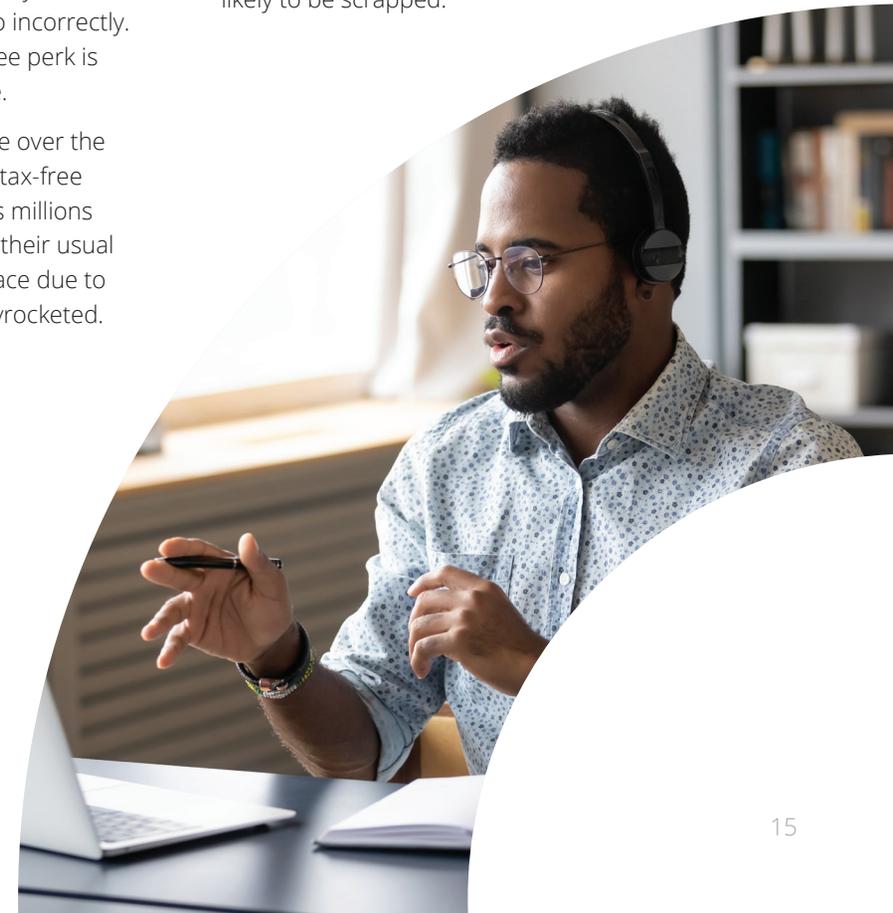
Home-Workers Allowance

Home-workers can currently claim an allowance from the government towards the cost of their utilities. This allowance is not available to those who choose to work from home but only to those who are told to work from home by their employer.

With the government now encouraging employees to return to the office, it is possible that employers who are paying this allowance may be doing so incorrectly. Employers need to ensure that this tax-free perk is being claimed in line with HMRC guidance.

Due to the cost of providing this allowance over the pandemic, the government are reviewing tax-free help towards the cost of homeworking. As millions of employees were being kept away from their usual place of work due to the restrictions in place due to COVID-19, the cost to the government skyrocketed.

Nearly 5 million people have benefited from this allowance since the introduction of COVID-19 related lockdowns. Higher earners made savings of £125 a year as a result. As most employees save money on transport costs when they work from home, the argument that the taxpayer should support home-workers may be seen as weak. Stories in the press suggest that the allowance is likely to be scrapped.



Four-Day Working Week Trial

Having a four-day working week is not a new idea. Employees in France have been enjoying a shorter working week for 20 years, and employers in other European countries have also been experimenting with fewer hours for their workers.

The principle is that employees work a four-day working week but get paid as if they work for five days. This is different to part-time working, where an employee's salary would be adjusted pro rata to the number of hours/days that they work.

To assess whether productivity can stay at 100% with employees working a four-day week, a trial is taking place in the UK. This is being run by a group of academics and pressure groups. Thirty or more companies are taking part in the trial, which started in January 2022 and will run for six months. Similar trials are taking place in other countries. The outcome of this trial will be of interest to HR leaders, commentators, businesses and workers alike.

There is already evidence that a shortened working week can increase productivity: as employees feel better, feel less stressed, and are in better physical and mental shape to cope with the demands of their role. Workers in Germany, Iceland and the Netherlands already work fewer hours than those in the UK, and these countries are applauded for their productivity. Could our long hours culture finally be put to rest?

There is no suggestion that four-day working weeks will become compulsory in the UK as a result of the trial. Any changes to work patterns would be entirely at the employer's discretion.

Some UK employers have already adopted four-day weeks, but others have dropped the idea. The Wellcome Trust, for example, did its own study and decided in 2019 that introducing the new pattern would cause too many operational problems.

Employees are keen to see a four-day working week. The advantages that they see include more flexibility for child-care and other caring responsibilities, more free time and reduced commuting costs. Employers will undoubtedly find that offering such an arrangement helps with recruitment, retention and other HR metrics.

Some of the factors which need to be considered when looking at the practicalities of four-day weeks include:

How the work will be undertaken in relation to your current organisation structure. Can the same amount of work be condensed into four days, or does the reduction in working days require an increase in headcount?

Structure: can the organisation work with all employees taking off the same day each week, or will employees need to work in line with a rota?

Fairness: can all workers participate equally, or will the arrangement disadvantage staff in some departments? Is it possible to allow four-day working for some roles but not others?

Flexibility: are employees able to work outside of the usual 9 to 5 on the days that they are working?

Communications: will there be problems in maintaining a five-day service to customers? How will employees keep up with who they can contact on which day?

Culture: will employees maintain the belief that long hours show commitment and therefore continue to work for five days? Will they struggle with disciplining themselves to working to the new pattern?

Overtime costs: might an employer find themselves paying overtime rates to those who work on day five due to workload issues?

Affordability: are there costs in implementing this arrangement that the business can justify?

Managerial buy-in: without 100% agreement from managers, any changes to work patterns could lead to stress and frustration for those leading teams, setting work and running projects.

There is undoubtedly a lot to think about for any employer looking to introduce a four-day working week. Is this just too much change hot on the heels of hybrid working, homeworking and other significant shifts to working life?

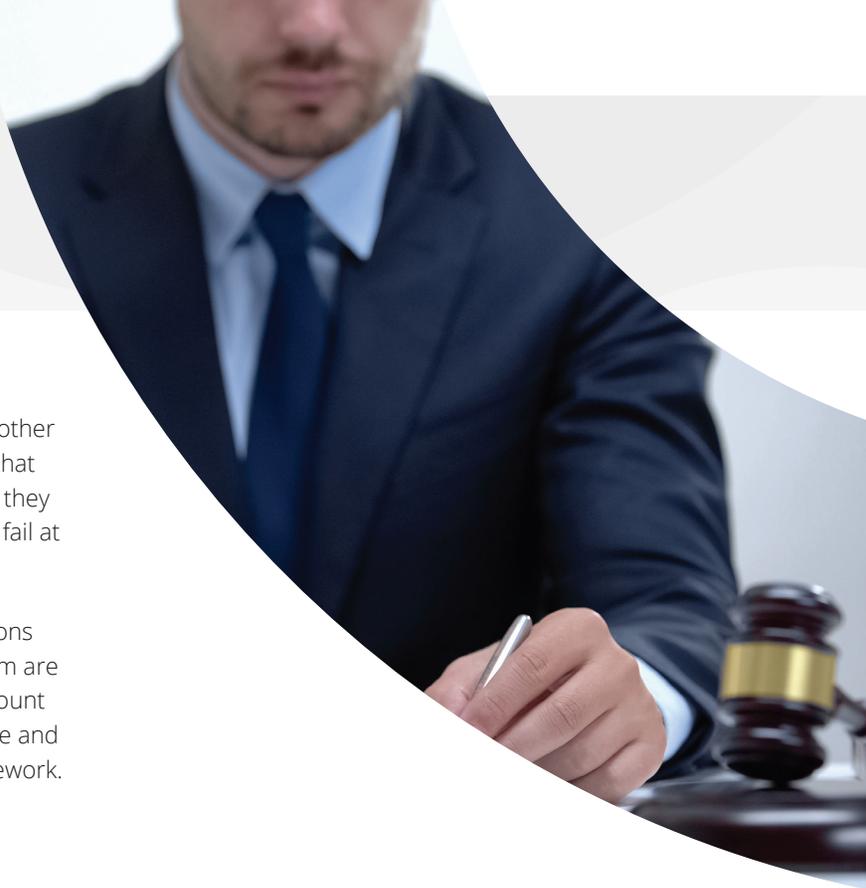
Employment Tribunals

The number of Employment Tribunal claims relating to Flexible Working requests has increased significantly. This is hardly surprising given the renewed demand for flexibility and homeworking from employees because of COVID-19. It is likely that employees may win their cases where the correct procedure was not followed by their employer when handling their request. There will also be several cases due to dismissals and redundancies working their way through the system.

There are long waits for cases to come before the Tribunals—two years is not unheard of. The back log is due to the restrictions during COVID-19 around the

courts' capacity to hear cases and deal with other issues. It should be remembered of course that many cases are withdrawn or settled before they reach the court room, and a fair percentage fail at a full hearing.

Either party wishing to appeal against decisions made within the Employment Tribunal system are asked to do so online. This is to limit the amount of paperwork which is received by the service and allow greater efficiencies in dealing with casework.



The Menopause at Work

The menopause remains a 'taboo' subject within the workplace, with around half of employees saying that they would not feel comfortable having discussions around their symptoms and the effect that they had on their work. However, case law is being reported in support of those claiming that their menopausal symptoms were discriminatory factors and that they could therefore claim for discrimination under the Equality Act. This does not mean that the menopause itself is a protected characteristic.

The claims that an employee might make relate to:

- Sex
- Age and/or
- Gender reassignment
- Disability

Trade unions have been campaigning for greater awareness of the impact that the menopause has on a significant portion of the workforce for some time. ACAS have updated their website to give advice to employers around the issue. Overall, the principle of giving more support to those with menopausal symptoms is therefore beginning to gain traction in the UK.

Although the rise in the number of cases brought to the attention of the Tribunal service has been called 'dramatic', the number of cases is still relatively small. However, cases which come to court tend to receive press attention due to the public's interest in these cases. One such case revolves around the experiences of Leigh Best, 52, who worked at a pet food business called Embark on Raw. Mrs Best was successful in claiming for harassment on the grounds of sex and age. The owner of the business, Mr Fletcher, had shouted: "She must be in her menopause" when Mrs Best mixed up an order. Mrs Fletcher, married to Mr Fletcher, told Mrs Best to "stop moaning" when she complained about Mr Fletcher's conduct, amongst other examples put forward by Mrs Best. (Case reported by the Mail Online, 17 January 2022).

Some commentators have argued that in most cases, the use of hormone replacement therapy (HRT) by women can significantly reduce the effects of menopausal symptoms, which means that most of the population can sail through the menopause with little or no impact on their work. HRT is free in Scotland and Wales, although it is still charged for when prescribed in the UK. Timpson, the familiar high street employer, is now paying for HRT prescriptions

for any of its staff who need it. There is also a Private Member's Bill (PMB) working its way through Parliament to abolish prescription costs for HRT that has been put forward by Labour MP Carolyn Harris. The bill is receiving cross-party support. HRT is not, however, suitable for all women and does not always tackle all symptoms successfully.

Discrimination and/or a lack of support for those with menopausal symptoms goes some way to account for the number of women who remain working after their early/mid 40s. Given the range and severity of symptoms that may affect workers and relate to the menopause, this is not surprising. Symptoms include poor sleep, depression, hot flushes and issues with concentration/memory or 'brain fog'. Those symptoms can make attendance and performance at work extremely challenging for some employees, including women in professional roles, those in customer-facing roles and sufferers whose work involves an element of physical activity.

The Menopause at Work (Cont.)

Employers should also be mindful that younger workers can also suffer menopausal symptoms. Some employees may be subject to surgical menopause, which may lead to symptoms developing earlier than might otherwise have been the case. The number and severity of symptoms associated with the menopause vary considerably.

Employers need to consider the effect that their approach to supporting those undergoing the menopause might have on:

- The employee experience and employer branding
- Attendance and turnover
- The need to remove barriers to career development
- Inclusion and diversity for all workers
- Well-being at work and a holistic approach to supporting employees at all stages
- Efforts to stay legally compliant.

The practical support that sufferers require may range from:

- Better access to toilet facilities
- Control over workplace temperature or air conditioning
- More flexibility in terms of length of shifts or employer expectations
- Changes responsibilities/job design
- More control over the clothing that they are expected to wear.

Employees should be able to have frank and regular discussions with their employers over any adjustments that they need to make to their job role. Without these adjustments, workers can be subject to additional levels of stress, feelings of isolation and a lack of confidence or eventually may decide that they can no longer continue in their job role.

Other useful initiatives for employers to consider include:

- Workplace awareness: this helps to breakdown the stigma of discussing the menopause at work. Employers should however be sensitive to those who do not wish to discuss their experiences
- Workplace training: as many men as women have found this invaluable. Men have said that a greater understanding of the issues has led them to become more supportive to their colleagues and their partners at home
- Management training: managers need to be able to undertake discussions with the staff knowledgeably and confidently, and training will allow them to do so
- Supporting employees: signposting sources of support and information such as an EAP, Occupational Health support or website material
- Highlighting World Menopause Day on 18 October each year.

Flexible and Hybrid Working

Flexible Working Requests

Employers are facing an increasing number of requests for Flexible Working from their staff. There is a statutory process for dealing with any formal Flexible Working requests, and such requests must be made in writing by the employee.

The process includes the employer inviting the employee to a meeting at which their request will be formally considered. The employee has the right to be accompanied to that meeting. Employees also have the right of appeal if they are not satisfied with their employer's decision.

Employers sometimes forget to refer to the list of 'acceptable reasons' which form part of the process when they outline their decision. Unless the reason for refusing the request refers to one of the legally prescribed reasons, then the process would not have been followed in full.

Employers might also decide not to follow the process at all, believing wrongly that the consequences for not doing so will lead to little risk of legal challenge. The number of claims in Employment Tribunals has however recently increased because of the pandemic. This is because employees have a renewed interest in flexible

working patterns and working from home. It is likely that many of these claims will be prompted in part by a failure to follow the correct process or by the employer following no process at all. Employers may find it too easy to dismiss a request from an employee to work from home without giving it sufficient consideration in line with the process.

Employers are therefore reminded to make sure that they have in place a Flexible Working policy and to make sure that both employees and managers have access to it. The policy should give both parties the information that they need for the process to be followed in line with the statutory process. There are various letters that are available online via the ACAS website to assist an employer in dealing with any requests under the Flexible Working legislation.

Hybrid Working

Hybrid working has become a feature of working life for many employees as COVID-19 restrictions ease. This term is given for working patterns where the employee works for part of the week at home and part of the week in the office. A typical pattern, for example, might allow employees to work from home each Monday and Friday. The advantages of homeworking were well publicised throughout the pandemic. A hybrid approach allows the employer to

fill the gaps that homeworking by itself may leave open in terms of social isolation and lack of team interaction, employee engagement and mental health support.

Not all employees or businesses have an interest in adopting this pattern of working. Some employees may remain as home-workers with their employer's full support, whilst other businesses and employees have agreed that a full return to the office is the way forward. Some businesses are simply not conducive to having employees outside of the office due to the type of work they undertake or services they provide to their customers. Some organisations are worried about the perceived long-term division between parts of their workforce who can work from home and those who cannot for operational and other reasons.

Many employers were forced into allowing their employees to work from home during the lockdowns in 2020 to early 2022. Some of these employers were those who had not seen homeworking as practical or desirable for their businesses. Perhaps due to reluctance to embrace technology, trust their staff or manage employees in a different way, homeworking was never high on their agenda. They had not necessarily been put under pressure by their employees to allow homeworking so did not see any reason to consider

Hybrid Working (Cont.)

its merits. Having now experimented with this approach, they are delighted with its results. Whole offices have been closed or slimmed down, saving businesses a small fortune in the process.

Employers who wish to remain compliant need to treat formal requests for hybrid working under the Flexible Working rules. Currently many employees remain under an informal arrangement with their employer, which gives both parties a degree of flexibility when it comes to defining the longer-term working relationship. Employers are aware that Flexible Working requests cannot be submitted on anything other than an individual basis to keep on the right side of Flexible Working legislation. Because of that, it makes more sense to allow for as much flexibility as the business can, to reduce the risk of receiving multiple Flexible Working requests.

Flexible working, hybrid working and/or homeworking remain some of the tools available to employers to aid and promote:

- Recruitment campaigns
- Retention and reduced turnover
- Attendance at work

- Inclusion and diversity
- Employee experience
- Employee branding.

Specifically, homeworking may help the following workers manage workloads, meet objectives and stay focused:

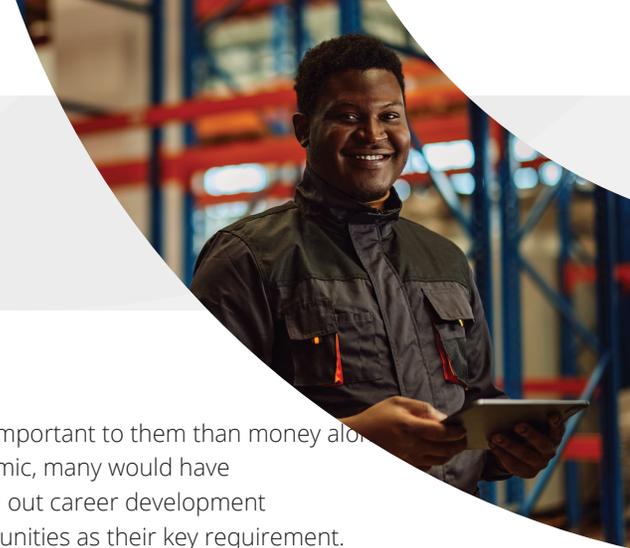
- Those experiencing menopausal symptoms and other conditions
- Individuals with mobility problems and other disabilities
- Employees with Long COVID
- Those with caring responsibilities for relatives
- People who need to undertake child-care during some part of the day

- Those unable to afford expensive commuting charges
- Workers with neurodivergent differences who may struggle with the office environment.

The business case for hybrid working is here to stay and will remain long after COVID-19 fades from prominence in our working lives. It is too early to say how many employers will continue to allow homeworking as part of a hybrid model on a permanent basis.



Employee Experience



Any business wanting clear direction regarding their HR activity over the coming year will be looking at employee experience within their organisation. Closely aligned with engagement, employee experience is the way that employees view their organisation because of the interactions that they have with it. Positive employee experience leads to greater engagement with the employer, and this ultimately leads to an increase to the bottom line.

Businesses can measure employee experience throughout their employees' lifecycle. This allows them to understand the effect that their efforts are having in attracting, retaining, recruiting and exiting people for their businesses. Sophisticated software tools allow employers to undertake surveys with their employees during significant points along their employee journey to understand how they felt at that juncture. Over time, the employer can track overall improvements in employee satisfaction to understand how they are doing.

A business offering a poor employee experience may have that fact freely available to jobseekers online. Sites such as Glassdoor allow potential recruits to make judgements about whether you are likely to offer them what they are looking for. A good employee experience will naturally be reflected online. Comments stay around for a

long time, and so it is important for the employer to understand fully the consequences of that. Businesses are subject to a form of external survey over what it is like working for them, whether they want that information in the public domain or not. It pays to make sure that where possible the overall message from that external survey is positive.

The way we work has changed and is continuing to change. The pandemic has exacerbated this change as many individuals work to different patterns in different locations. Technology allows us all a more flexible approach to delivering our work. The current challenge to recruit and retain the best staff is where employers need to focus their efforts. Employee experience matters as it gives the business the opportunity to make a difference in meeting its performance indicators over recruitment lead times, successful appointments, attendance and turnover.

Providing attractive reward packages and healthy bonus payments is not enough in providing solutions to staffing problems. The employer who offers the best salaries is not necessarily going to be ranked as the best place to work. In fact, they have no hope of winning that accolade if they are not offering an employee experience to match the high level of engagement that they will be seeking. Many people say that opportunities for flexible working are now

more important to them than money alone. In the pandemic, many would have singled out career development opportunities as their key requirement. Employers need to keep up with the demands of the employees that it needs to attract and keep.

The wise employer now thinks carefully around **recruitment** in terms of:

- Employer branding externally to make people want to work for them
- Attracting the right employees to work for them
- Having processes in place that make the recruitment process a positive experience
- Keeping their favoured candidates on side as they work through the recruitment process to make starting work something that the individual is looking forward to
- Considering the needs of those who were not successful.

Onboarding becomes the first major interaction with the individual as an employee. A clean desk and directions to the nearest fire exit with little else are no longer standard practice for inducting new employees. The process is stretched over the first three to six months as the challenge is to reduce the number

Employee Experience (Cont.)

of employees who might otherwise leave their employer during this critical time. Staff will walk away if they find that the new job is not meeting their expectations. Onboarding processes are now far more sophisticated and utilise technology to allow for a smooth introduction and welcoming first few weeks. Form-filling is reduced, and information about the Company and role is provided in a variety of engaging ways. Researching what your competitors do is a good start at getting this part of the journey right.

The experiences that your employees have are affected by the way that they are managed and the efforts that are in place to retain them. Therefore, HR departments are keen to ensure that:

- Processes are fair and managers are trained
- Equality, diversity and inclusion is kept at the top of the agenda
- Employee benefits are accessible and reflect what people want
- Effective communications take place
- A raft of other factors have been thought through and are appropriate to the workforce.

People want to work in a pleasant working environment and one where they have a voice, some prospect of career and personal development, and the well-being support that have now become standard in all good workplaces.

Everyone expects working life to have its problems and challenges from time to time, but it is the way that problems are addressed, rather than the problems themselves, that can set a good employer apart from the rest.

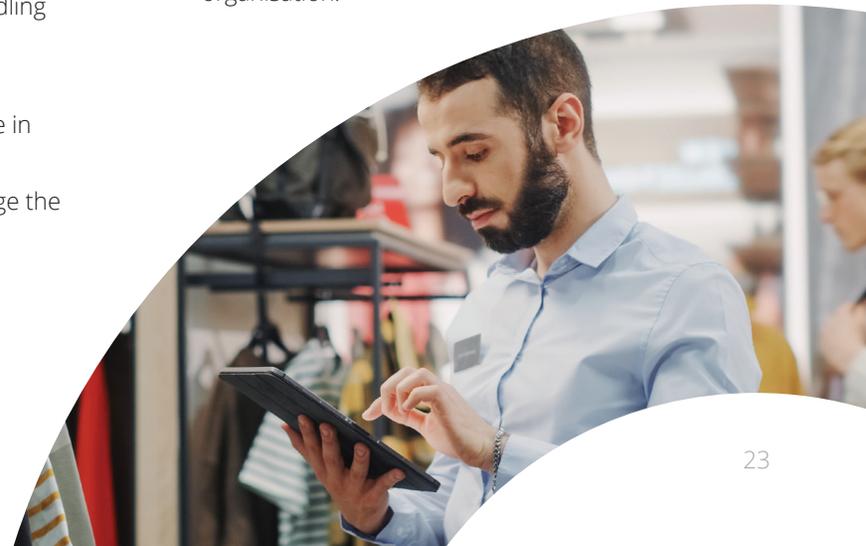
Everyone will leave your organisation at some point, and how **exiting** is dealt with impacts current and future employees. As the final part of their employee journey, this will be the last opportunity that the employer has in maintaining a positive employee experience. It will be at the forefront of their minds as they think about that Glassdoor review. It is so easy for the employer to fail at the very last hurdle in keeping things as amicable as they can. In handling any resignation, the employer might:

- Find out why the employee is leaving
- Offer to make changes to keep the employee in post
- Consider making a counter-offer to encourage the employee to stay
- Deal with any complaints effectively and with careful consideration.

Employers can also plan any forced exit to allow the employee a voice, give them dignity and provide support.

The top employers now invest considerable time and resources in crafting the best employee experience that they can. They know that the investment that they put into their employees is likely to be met with an investment in return by their workers. Those workers will demonstrate higher levels of engagement, performance, loyalty and commitment. Employees are far more sophisticated now in terms of what they want and when they expect to get it—and employers must be responsive to those needs in providing a favourable experience.

And remember that everyone matters—from your temporary workers, who might end up gaining permanent employment with you, to the next CEO, who might currently already be in place within your organisation.



About WorkForce Software

WorkForce Software is the first global provider of workforce management solutions with integrated employee experience capabilities. The company's WorkForce Suite adapts to each organisation's needs—no matter how unique their pay rules, labour regulations and schedules—while delivering a breakthrough employee experience at the time and place work happens.

Enterprise-grade and future-ready, WorkForce Software is helping some of the world's most innovative organisations optimise their workforce, protect against compliance risks and increase employee engagement to unlock new potential for resiliency and optimal performance. Whether your employees are deskless or office workers, unionised, full-time, part-time or seasonal, WorkForce Software makes managing your global workforce easy, less costly and more rewarding for everyone.

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