

YOUR GUIDE TO THE LATEST CHANGES IN

# EMPLOYMENT LAW & HR LEGISLATION (UK & IRELAND)

August/September 2020 Edition

Making payroll & HR easy



## FOREWORD

Welcome to the August - September edition of the Moorepay employment law & HR legislation guide.

The effects of the COVID-19 pandemic continue to shape the changes to employment law.

In this month's edition we've summarised the new legislation that protects redundancy payments for furloughed employees. We've also included the new rules that ensure family-related statutory rates of pay are not affected if employee earnings are lower than normal as a result of being furloughed.

In the Key Trends section, we share key considerations on how the Job Retention Scheme affects the redundancy process. Finally, we've examined two important cases handed down from the Supreme Court on discrimination.

We hope you find this guide useful. We're always looking for ways to improve it, so if you have any feedback or ideas, please share your thoughts with our Communications Manager, Amy Morrison. You can email her at [amy.morrison@moorepay.co.uk](mailto:amy.morrison@moorepay.co.uk).

All the best.



**“STAFF SHOULD NOT BE SELECTED FOR REDUNDANCY SOLELY BECAUSE THEY ARE ON FURLOUGH. DOING SO MAY GIVE RISE TO DISCRIMINATION CLAIMS...”**

## ABOUT THE AUTHOR



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Kat has a wealth of experience in advising and representing clients in all aspects of Employment Law. She works in our Advice Line and Advocacy team who provide Employment Law advice to our clients 24 hours a day, 365 days a year and support our clients in presenting defences at Employment Tribunals throughout the UK & Ireland.

## KEY UPDATES



## 1 AUGUST

Job Retention Scheme: From 1 August employers need to start contributing to the employee's wage costs and employers will no longer be able to claim Employer's NI or Pension contributions.

Legislation	Due Date	Summary
Redundancy Payments for Furloughed Employees	31 July 2020	<p>All employees are entitled to receive statutory redundancy pay if they have been working for their current employer continuously for at least two years. The payment is based on length of service, age and pay, up to a statutory maximum.</p> <p>The government has brought in a new law to ensure furloughed employees receive statutory redundancy pay based on their normal wages, not their reduced furlough rate.</p> <p>The changes introduced will also apply to Statutory Notice Pay, which is the notice period employees are given before their employment ends which can range from one week to 12 weeks, depending on length of service. During this notice period, employees must be paid based on their normal wages.</p> <p>Furthermore, new legislation also covers other employment rights that rely on average weekly pay, including unfair dismissal remedies, and short-time working.</p> <p>Note there is no indication this new legislation has a retrospective effect.</p>
Employees Returning from Travelling Abroad	July 2020	<p>The government announced that (from 26 July) Spain and (from 31 July) Luxembourg are no longer on the list of countries that are exempt from quarantine requirements. Anyone returning from these countries to the UK will need to self-isolate for 14 days. The Foreign &amp; Commonwealth Office is also advising against all but essential travel to the Balearic Islands and Canary Islands.</p> <p>Anyone arriving into England, Wales and Northern Ireland from more than 60 'travel corridor' countries, including popular destinations such as France, Italy, Greece, are exempt from the quarantine rules.</p> <p>Employers can suggest that employees work from home whilst in quarantine, if possible. It is important to remember that anyone who self-quarantines, but does not have any COVID-19 symptoms, will not be entitled to receive statutory sick pay.</p> <p>Employers can discourage staff from going on holiday abroad and inform them that time for self-isolation will not be paid for.</p> <p>In some cases, it is possible to cancel holiday leave that has already been authorised. However, if an employee has already made travel arrangements, he/she may request you to compensate them for any financial detriment and they could claim that the employer is in breach of mutual trust and confidence.</p>

Legislation	Due Date	Summary
<p>The Coronavirus Job Retention Scheme</p>	<p>1 July 2020</p>	<p>On Friday 20 March 2020, Chancellor Rishi Sunak set out a package of temporary measures to support UK businesses through this period of disruption caused by the COVID-19 / Coronavirus outbreak. One of those packages announced was the Job Retention Scheme. Initially running until the end of May and then June. On 12 May 2020, the Chancellor extended the scheme for until the end of October, with claims backdated to 1 March 2020.</p> <p>On Friday 29 May 2020, the Chancellor set out more details on how the Coronavirus Job Retention Scheme will continue to support jobs and businesses as people return to work.</p> <p>This included detail of new flexibilities allowing employees to work part time while still being eligible for furlough grants, and the introduction of employer contributions.</p> <p>The current scheme ends on 30 June 2020 and the new scheme opens on 1 July 2020.</p> <p><b>Eligibility</b></p> <ul style="list-style-type: none"> <li>• The scheme closes to new entrants on 30 June. This means that employees must have been furloughed (for whom employers have successfully claimed a grant) on or before the 10 June if they are to be furloughed on or after 1 July. This will apply to anyone who has been on furlough for at least three consecutive weeks between 1 March and 30 June 2020.</li> <li>• There is no requirement for an employee to be on furlough on 30 June to be eligible, as they could have been furloughed previously but later brought back to work.</li> <li>• Note the requirement to have previously been furloughed does not apply to any employee returning from statutory parental leave after 10 June 2020 (including maternity, paternity, shared parental, adoption or parental bereavement leave).</li> <li>• Furlough claims for periods up to and including 30 June must be made by 31 July.</li> <li>• New guidance confirms that, although employees must agree to be furloughed, agreement can only be confirmed in writing and employees do not need to provide a written response.</li> </ul>

Legislation	Due Date	Summary
<p>The Coronavirus Job Retention Scheme</p> <p><i>(continued)</i></p>	1 July 2020	<p><b>Details of the new scheme</b></p> <ul style="list-style-type: none"> <li>The new scheme allows employees to work part-time while being furloughed for hours not worked. Employers are responsible for the cost in full for any hours worked by furloughed employees and can claim a furlough grant to cover the balance between hours worked and the employee’s “usual hours”.</li> <li>It will continue to be possible to fully furlough employees or to rotate employees on and off furlough. If employees are fully furloughed, they are still not able to do any work for their employer.</li> <li>From 1 July, the minimum three-week period for furlough has been removed and there is no minimum period.</li> </ul> <p><b>Making a claim</b></p> <ul style="list-style-type: none"> <li>From 1 July any HMRC claim submitted to CJRS portal should be referring to a minimum one-week period. An exception is when the period claimed for includes either the first or last day of the calendar month, and an employer is claiming for the period ending immediately before it. In these cases, the claim can be for fewer than seven days.</li> <li>Employers can only make one claim for any period, so they must include all furloughed or flexibly furloughed employees in one claim, even if they are paid at different times. Overlapping claims are not going to be accepted.</li> <li>When an employer wishes to flexibly furlough employees, for every claim period they will need to work out and submit for each employee:             <ul style="list-style-type: none"> <li>» the employee’s usual working hours (for employees on variable hours, usual hours are based on the higher of the average number of hours worked in the tax year 2019 to 2020, or the corresponding calendar period in the tax year 2019 to 2020, including periods of paid annual leave or non-discretionary overtime);</li> <li>» the actual hours they work; and</li> <li>» their furloughed hours</li> </ul> </li> </ul>

Legislation	Due Date	Summary
<p>The Coronavirus Job Retention Scheme</p> <p>(continued)</p>	1 July 2020	<ul style="list-style-type: none"> <li>From 1 July 2020 the number of employees an employer can claim for in any claim period cannot exceed the maximum number of employees on furlough at the same time in any period prior to 30 June. The exception to this cap is in relation to employees returning from statutory parental leave. This restriction is likely to create issues for businesses who previously rotated employees on and off furlough, but who might now wish to have everyone working part time.</li> </ul> <p><b>Employer contributions</b></p> <ul style="list-style-type: none"> <li>From 1 August, employers will need to start contributing to the employee’s wage costs and employers will no longer be able to claim Employer’s NI or Pension contributions.</li> <li>From 1 September employers will only be able to claim 70% of normal pay but will have to pay employees 80%, funding the extra 10% themselves.</li> <li>From 1 October employers will only be able to claim 60% of normal pay but will have to pay employees 80%, funding the extra 20% themselves.</li> </ul>
<p>Maternity and Parental Leave Pay: Average Weekly Earnings Calculations for Furloughed Employees</p>	25 April 2020	<p>Where an employee was on furlough and paid with the help of the Coronavirus Job Retention Scheme (CJRS), and they started a period of family-related statutory pay on or after 25 April 2020, new rules apply to the calculation of their average weekly earnings (AWE). The earnings used to calculate AWE for that period will be the higher of:</p> <ol style="list-style-type: none"> <li>What they actually receive from their employer; or</li> <li>What they would have received from their employer had they not been on furlough</li> </ol> <p>This is to ensure the statutory rates of pay are not affected if employee’s earnings are lower than normal as a result of being furloughed.</p>

# CURRENT LEGISLATION – RECENTLY IMPLEMENTED OR DUE IMMINENTLY

Legislation	Due Date	Summary
Carrying Forward Annual Leave	26 March 2020	<p>The government has passed emergency legislation to relax the restrictions on carrying leave between leave years.</p> <ul style="list-style-type: none"><li>• Where it has not been reasonably practicable for a worker to take some or all of their holiday due to the effects of COVID-19, the untaken amount may be carried forward into the following two leave years.</li><li>• This does not apply if workers are still able to take leave; in these circumstances, you still need to facilitate leave being taken in the leave year to which it normally relates.</li><li>• Examples of where it may not be reasonable to take holiday include:<ul style="list-style-type: none"><li>» Where the business has faced an increase in demand due to COVID-19 that would reasonably require the worker to continue to be at work</li><li>» The health of the worker and how soon they need to take a period of rest and relaxation</li></ul></li><li>• You should do everything reasonably practicable to ensure that the worker is able to take as much of their leave as possible to prevent burn out.</li><li>• Note that any leave outside of the 5.6 weeks' statutory entitlement is outside the scope of legislation.</li></ul>
The Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020	13 March 2020	<p>The Department for Work and Pensions confirmed that all those advised to self-isolate will be entitled to statutory sick pay, even if they have not presented with symptoms.</p> <p>Statutory Sick Pay (SSP) will be paid to all qualifying employees from day one for COVID-19 / Coronavirus related sickness, including self-isolating.</p> <p>This took effect from 13 March 2020 and the measure will last for at least eight months. The emergency legislation (2020 no 287) was passed via a statutory instrument to amend the Statutory Sick Pay (General) Regulations 1982. This confirms that a person who is self-isolating to prevent infection or contamination with the coronavirus disease, is deemed unable to work.</p>

Legislation	Due Date	Summary
Emergency Volunteering	19 March 2020	<p>The Coronavirus Act 2020 introduces the right for workers to take up to four weeks of leave from work to carry out emergency volunteering in the health and social care sector during the COVID-19 pandemic. Workers can take emergency volunteering leave once in each 16-week volunteering period designated by the government.</p> <p>The Act states that the Secretary of State must make arrangements for making payments to emergency volunteers by way of compensation for loss of earnings, and for travelling and subsistence.</p> <p>A person is entitled, in respect of acting as an emergency volunteer, to receive payments by way of compensation in accordance with arrangements made under this section. But a person is entitled to receive payments by way of compensation for loss of earnings only if, in consequence of acting as an emergency volunteer, the person has suffered a loss of earnings that the person would otherwise not have suffered.</p> <p>The arrangements made under subsection (1) may include:</p> <ul style="list-style-type: none"> <li>• conditions that a person must satisfy in order to be entitled to receive payment by way of compensation;</li> <li>• different provision for different cases;</li> <li>• provision about the procedure for making a claim;</li> <li>• provision about how the amount a person is entitled to claim is to be determined;</li> <li>• provision about the manner in which payments are to be made by the Secretary of State;</li> <li>• provision specifying limits on the amount that a person is entitled to claim.</li> </ul> <p>Sums required for the payment of compensation in accordance with this section are to be provided by the Secretary of State out of money provided by Parliament. The reference in subsection (1)(b) to payments by way of compensation for subsistence includes a reference to vouchers and other benefits which may be used to pay for subsistence, whether or not their use is subject to any limitations. Employers may consider encouraging their employees to undertake emergency volunteer work to boost employee moral across their workforce.</p>



# CURRENT LEGISLATION – RECENTLY IMPLEMENTED OR DUE IMMINENTLY

Legislation	Due Date	Summary
National Minimum Wage, Sick Pay and Statutory Family Pay	1 April 2020	<p>The rates for National Minimum Wage, Sick Pay and Statutory Family Pay will change in April 2020 to:</p> <p>NMW</p> <ul style="list-style-type: none"><li>• £8.72 for 25 year olds and over</li><li>• £8.20 for 21-24 year olds</li><li>• £6.45 for 18-20 year olds</li><li>• £4.55 for under 18 year olds</li><li>• £4.15 for apprentices</li></ul> <p>SSP</p> <ul style="list-style-type: none"><li>• The weekly amount will increase to £95.85</li></ul> <p>SMP, SAP, SPP</p> <ul style="list-style-type: none"><li>• The weekly rate for Statutory Family Pay is due to increase to £151.20</li></ul>
State Pension	6 April 2020	<p>The new flat rate full state pension has been announced (but is subject to Parliamentary Approval). It is set to increase from £168.80 to £175.20 per week.</p>

Legislation	Due Date	Summary
Provision of Statement of Main Terms	6 April 2020	<p>Section 1 of the Employment Rights Act 1996 requires employers to provide a Statement of Main Terms of Employment to employees within the first eight weeks of employment.</p> <p>In reality it has always been good practice to do this on or before the start of employment. It ensures there is a clear written record of obligations of both the employer and employee.</p> <p>The legislation is being amended and from April 2020 employees will be entitled to this statement from the very first day of their employment. It will also be a right of a 'worker' (as opposed to an employee) to receive a statement of main terms which was not previously the case.</p>
Worker's Contracts	6 April 2020	<p>The information that employers need to provide in the Statement of Main Terms (often referred to as an 'SMT') is also being expanded and will need to include:</p> <ul style="list-style-type: none"><li>• How long a job is expected to last</li><li>• Specific days and times that staff are expected to work</li><li>• The duration and conditions of any probationary period</li><li>• The length of the notice period</li><li>• Details of eligibility for sick leave and pay</li><li>• Details of other types of paid leave e.g. maternity leave and paternity leave</li><li>• All remuneration (not just pay) e.g. vouchers, lunch, health insurance</li><li>• Any training entitlement provided by the employer</li></ul>

Legislation	Due Date	Summary
Changes to Holiday Pay Calculations	6 April 2020	<p>When you calculate holiday pay for workers without fixed hours or pay, the current reference period is 12 weeks. From April 2020, the government is increasing the holiday pay reference period to 52 weeks.</p> <p>The only exception to this is during a worker’s first year of employment. For example, if an employee had been employed for 30 weeks at the time of their leave, the previous 30 weeks would be used to calculate their holiday pay.</p> <p>The primary reason for the change is inconsistent payment of holiday pay. This is often due to fluctuations in pay because of seasonal variations. Leave following a busy period could be paid at a higher rate than leave following a quieter period. The new change should even out these peaks and troughs.</p>
Removal of Swedish Derogation	6 April 2020	<p>In Matthew Taylor’s ‘Good Work Plan’, published in December 2018, the government committed to abolishing a legal loophole known as the ‘Swedish derogation’ in the rules governing the use of agency workers.</p> <p>Swedish derogation allowed agencies to opt out of paying agency workers the same rate of pay as comparable permanent workers when they have been with the same employer for more than twelve weeks, provided the workers were paid between assignments.</p> <p>It has been estimated that around 120,000 workers are currently affected by the rules.</p> <p>From April 2020, all agency workers will have a right to pay parity after twelve weeks, irrespective of whether they are paid between assignments.</p>
Parental Bereavement Pay and Leave: Jack’s Law	6 April 2020	<p>“Jack’s Law” is named after 23-month-old Jack Herd who died in 2010. His mum Lucy has since been fighting for new government rules to extend bereavement leave for parents who lose a child.</p> <p>To recognise that losing a child has such a devastating impact on the family, the Government introduced a new piece of legislation – the Parental Bereavement (Leave and Pay) Act 2018. Parents who lose a child will be entitled to two weeks’ paid bereavement leave, as of 6 April this year.</p> <p>This new statutory entitlement for bereaved parents, will be paid at the same statutory rate as other family leave such as maternity, paternity, adoption and shared parental leave.</p>

Legislation	Due Date	Summary
<p>Parental Bereavement Pay and Leave: Jack’s Law</p> <p><i>(continued)</i></p>	<p>6 April 2020</p>	<p>Definition of a child:</p> <p>There are two areas covered by Jack’s Law:</p> <ul style="list-style-type: none"> <li>• A child, defined as a person who is under the age of 18</li> <li>• A stillborn baby at 24 weeks or more into pregnancy</li> </ul> <p>The legislation, originally to be natural parents, has been extended to include primary carers as well.</p> <p>In order to receive paid time off, the employee must have been employed for a minimum of 26 continuous weeks.</p> <p>Employees with less than 26 weeks’ continuous service will receive the time off unpaid.</p> <p>Parental bereavement leave is either one continuous block of two weeks, or two separate one-week blocks. The time can be taken immediately after the death, or at any time up to 56 weeks after the death of the child.</p> <p>Further, the leave can be taken immediately after the death of the child without having to give a period of notice. However, if the leave needs to be taken at a later time, the employee must provide one week’s notice.</p> <p>This recognises that it isn’t just the immediate aftermath of the death that is difficult. Leave may also be needed later to attend an inquest or to mark the first anniversary of the death of the child.</p>

Legislation	Due Date	Summary
Reintroduction of Employment Tribunal Fees	To be confirmed	<p>The Ministry of Justice has confirmed it may reintroduce fees for employment tribunal claims, insisting it can find a balance that helps fund the court system while being ‘proportionate and progressive’. Richard Heaton, Secretary at the Ministry of Justice, stated that although nothing is set in stone, he believed a fee system can be found that will ensure access to justice.</p> <p>In July 2017, tribunal fees were abolished following the Supreme Court’s decision.</p> <p>It is possible that a new fees regime, with fees at a lower level and also involving a fee payable by the employer when submitting an ET3 response, may be introduced within the next 18-24 months.</p> <p>It has been confirmed that the Ministry of Justice has asked the Law Commission to provide recommendations for creating a coherent system. The Law Commission is an independent body that revises the law in England and Wales and recommends changes where needed.</p> <p>It has also been reported that the Law Commission is recommending the power of Employment Tribunals increases. The Law Commission is seeking to improve how employment law disputes are decided.</p> <ul style="list-style-type: none"> <li>• Employees should be able to bring claims for breach of contract while they are still employed.</li> <li>• The time limit for bringing all types of employment tribunal claims should increase from three months to six months (currently it is three months for some types of claims).</li> <li>• Employment tribunals should have the power to give damages in breach of contract claims of up to £100,000 (currently the limit is £25,000).</li> <li>• There should be improvements made to the procedures for enforcing employment tribunals’ awards to ensure employees receive the compensation in a timely fashion.</li> </ul> <p>Law Commissioner, Nicholas Paines QC stated: “The reforms that we have recommended will bring real benefits for the courts and tribunals system and its users. The adjustments will improve employment tribunals’ ability to resolve employment disputes as effectively and justly as possible in one place.”</p>

Legislation	Due Date	Summary
Job Retention Scheme Bonus	February 2021	<p>The government has introduced that businesses can apply for a Job Retention Bonus of £1,000 for every furloughed employee who remains continuously employed through to the end of January 2021.</p> <p>Employees must, on average, earn above the Lower Earnings Limit (£520 per month) between the end of the Coronavirus Job Retention Scheme and the end of January 2021. Payments will be made from February 2021.</p>
Postponement of Off-Payroll Working in the Private Sector	6 April 2021	<p>Off-payroll working in the private sector has been postponed. This is in response to the ongoing spread of COVID-19. The legislation is now expected to take effect on 6 April 2021, rather than 6 April 2020.</p> <p>Financial Secretary to the Treasury Jesse Norman said: “We will do whatever it takes to support the British economy through Covid-19. That is why, as well as the current support measures we have announced, we have delayed the off-payroll working reforms to April 2021”.</p> <p>You may remember that in April 2017, the government reformed the off-payroll working rules in the public sector. This shifted the responsibility for determining employment status from the individual working through the intermediary to the public authorities engaging them. In addition, the reform made the public authority or agency that pays the worker’s intermediary responsible for accounting for and paying income tax and NICs under PAYE to HMRC, on behalf of the worker.</p> <p>In 2018 the government announced the reformed rules would also be extended to medium and large organisations in the private sector in April 2020 which has now been postponed to April 2021.</p> <p>From 6 April 2021, medium and large-sized private sector businesses that employ the services of a contractor through an intermediary, often known as a personal service company (PSC), will be responsible for determining their employment status and paying income tax and NICs under PAYE to HMRC.</p>

Legislation	Due Date	Summary
Taxation of Termination Payments	Postponed from April 2019 to April 2020 (yet to be confirmed)	The government is consulting on changes to termination payments which will see a widening of payments which qualify for Income Tax and National Insurance. Termination payments in excess of £30,000 will be subject to employer Class 1A National Insurance contributions. Employee payments in excess of £30,000 will still attract tax and no National Insurance contributions, as they do now. The abolition of Class 2 NICs and changes to Sporting Testimonials have also been postponed.
Employee Burnout	2020	<p>In May 2019 the World Health Organisation (WHO) recognised burnout as an “occupational phenomenon” and stated that from 2020 burnout will become a recognised medical condition.</p> <p>A recent Gallup study of 7,500 full time workers found that 23% were often in “burnout mode” and about 44% “sometimes” entered a burnout mode. So, what is burnout and how is it different from stress? Mental health professionals define burnout as a state of emotional, physical and mental exhaustion caused by excessive and prolonged stress at work. Employers are encouraged to manage burnout in their workplace and support employees that have symptoms of burnout.</p> <p>Signs that employees may be in burnout mode include:</p> <ul style="list-style-type: none"> <li>• An unexplained drop in performance</li> <li>• A change in mood</li> <li>• Poor motivation and concentration</li> <li>• Frustration and irritability</li> </ul> <p>To prevent employee burnout, employers should have policies and procedures in place that promote wellbeing and help prevent stress. Managers should be appropriately trained to ensure any imposed deadlines are reasonable and workloads are being shared fairly between employees.</p> <p>Businesses may need to review their internal policies and include burnout as a mental health condition. If an employee’s ability to carry out day to day activities have been affected by burnout, he/she may be protected by the Equality Act 2010 and be deemed disabled for the purposes of this Act.</p>

Legislation	Due Date	Summary
Mandatory Employee References	To be confirmed	<p>The government is considering changing the rules on employee references to force employers to provide a reference for any former employee. At present, there is no requirement to provide references unless a business operates within certain regulated sectors or it's in writing that an employer has agreed to provide one. The government proposal was announced by business secretary Andrea Leadsom and forms part of the government's response to a parliamentary inquiry into the use of non-disclosure agreements (NDAs) in discrimination cases.</p> <p>Business secretary Andrea Leadsom said: "The overwhelming majority of businesses comply with the law, treating their employees with respect and fairness. But we cannot tolerate the small minority that use nasty tactics like non-disclosure agreements and withholding references to pressure employees into silence, often in cases of serious wrongdoing. These proposals ensure individuals are protected, striking a fair balance between the interests of employers and workers."</p> <p>When providing a reference, employers should ensure that information provided is accurate and fair to avoid any claims from ex-employees.</p>
Proposals to Reduce Ill Health-Related Job Loss	To be confirmed	<p>The government has introduced 'proposals to reduce ill health-related job loss'. The consultation builds a case for employers to do more to support employees with health conditions. In return the government is committed to providing more help for employers.</p> <p>The plan includes:</p> <ul style="list-style-type: none"> <li>• Changing the legal framework so that employees would be able to request workplace modifications for health reasons without being disabled within the definition of the Equality Act 2010 (employers would be able to refuse such requests for business reasons)</li> <li>• Extending SSP to those below the Lower Earnings Limit by paying it as a proportion of employees' wages, paying a proportion of SSP during a phased return to work, and increasing fines for non-payment of SSP</li> <li>• Increasing market capacity for, and improving the quality and value of, occupational health provision</li> </ul> <p>Employees will be encouraged to raise issues, and employers should accommodate these where possible. This will enable businesses to retain talent and build workplaces that support employee's physical and mental health needs.</p>



Legislation	Due Date	Summary
New Legislation to Tackle the Misuse of Non-Disclosure Agreements (NDAs)	In Consultation	<p>According to the House of Commons Women and Equalities Committee, the Government should end the cover-up culture in respect of discrimination and harassment.</p> <p>The Committee has published a report on the use of non-disclosure agreements in discrimination cases. The report recommends restrictions should be placed on the usage of NDAs to ensure they don't prevent the victim from ever being able to talk about what has happened to them.</p> <p>The Committee suggested that a statutory code of practice is implemented to set out restrictions on confidentiality clauses and provide a range of measures for settling employment disputes.</p> <p>This code of practice should:</p> <ul style="list-style-type: none"> <li>• Place a mandatory obligation on employers to put measures into place to protect employees from being discriminated and/or harassed</li> <li>• Ensure NDAs do not prevent legitimate discussion about unlawful discrimination</li> <li>• Stop NDAs from being used to cover up allegations of unlawful discrimination and harassment</li> <li>• Ensure that plain English is used when drafting confidentiality, non-derogatory and similar clauses to make it clear what information can and cannot be shared, and with whom</li> <li>• Ensure senior managers are involved in overseeing anti-discrimination policies in the workplace</li> </ul>
Proposal to Implement a Statutory Code of Practice on Sexual Harassment	Ongoing	<p>The Government has committed to developing a Statutory Code of Practice on Sexual Harassment via the Equality and Human Rights Commission (EHRC) and commence a consultation on the introduction of a duty on employers to protect workers from sexual harassment.</p> <p>In addition, consideration would be afforded to the regulation of non-disclosure agreements where allegations of sexual harassment are apparent.</p>

Legislation	Due Date	Summary
Courts and Tribunals (Online Procedure) Bill	To be confirmed	<p>The Courts and Tribunals (Online Procedure) Bill has been published and had its first and second reading in the House of Lords. It will create a committee to provide rules of court for online proceedings in Civil and Family Courts and Tribunals. The Bill increases the use of technology which will allow for online and digitised procedures in the Courts and Tribunals system.</p> <p>Around £1bn is being invested in transforming the courts and Tribunal service, making the justice system more accessible and enabling legal disputes to be resolved more efficiently.</p> <p>The new procedure will use a mix of technology, conciliation and judicial resolution to create a quick dispute resolution process.</p> <p>The Bill:</p> <ul style="list-style-type: none"><li>• Creates a new Online Procedure Rules framework</li><li>• States that the Online Procedure Rule Committee will be independent and will be made up of members of the judiciary and members with expertise in the lay advice sector and IT</li><li>• Suggests the process for making Online Procedure Rules</li><li>• Allows the Lord Chancellor or Secretary of State to amend legislation to facilitate the making of Online Procedural Rules</li></ul>

Legislation	Summary
<p>An important case on the topic of sex discrimination was decided by the Employment Appeal Tribunal on 5 June 2020.</p> <p><i>Recent Development in Sex Discrimination - Adrienne Liebenberg v DS Smith Packaging Ltd</i></p>	<p><b>Adrienne Liebenberg v DS Smith Packaging Ltd</b></p> <p>The Claimant, Adrienne Liebenberg, commenced her employment with DS Smith as a commercial director in November 2016. Her remuneration package was a basic salary of £200,000 per annum, a discretionary bonus of up to 50% of her salary, and participation in a performance share plan (“PSP”) of up to 50% of her salary.</p> <p>In December 2018, her employment was terminated after being told her “leadership style” wasn’t working. She took the company to an employment tribunal stating that she had been dismissed because of her gender and due to fact that she didn’t socialise with her male colleagues and refused to talk about football.</p> <p>Ms Liebenberg stated that her manager’s, Mr Stefano Rossi, modus operandi was to connect with his team over wine, dinner and football and that she had been referred to as “little lady” and “girlie.” She further claimed: “Because I did not embrace those things in the way that my male colleagues did, I was perceived – by Stefano and others – as not being a ‘team player’ or ‘one of the gang’.”</p> <p>In response, DS Smith claimed that Ms Liebenberg’s employment was terminated due to her poor performance and her “dictatorial approach” and “lack of respect for senior colleagues”. The respondents also accused her of apportioning blame when things went wrong.</p> <p>The Tribunal did not find that the Claimant’s leadership style, and not working collaboratively with the management team, related in any way to her not bonding with them.</p> <p>The Employment Tribunal further stated that Mr Rossi’s concerns were about how she worked with the Regional MDs and the others in the management team. The Tribunal accepted that Ms Liebenberg apportioning blame on others when things went wrong rather than working together to resolve the problem was the main reason for her dismissal.</p> <p>Employment Judge, Harjit Grewal, dismissed claims for both direct and indirect sex discrimination and said that Liebenberg’s approach was “haughty” towards junior staff, in that she often talked about her large property and swimming pool.</p> <p>However, the Tribunal summarised that: “Although it is common for the manufacturing industry to be male dominated and it is accepted that male engineering graduates significantly outnumber female engineering graduates in many countries, the extent of the lack of gender diversity at the senior levels of DS Smith is unacceptable and needs to be addressed”.</p>

Legislation	Summary
<p>An important case on the topic of religion or belief discrimination was updated on 19 April 2020.</p> <p><i>Recent Development in Discrimination – Ms T Bond v Mrs J Large T/a Lads’ and Dads’ Barbers</i></p>	<p><b>Ms T Bond v Mrs J Large T/a Lads’ and Dads’ Barbers</b></p> <p>Ms Bond was employed by Lads and Dads’ Barbers in Colwyn Bay since August 2016. She attended work regularly until 8 February 2017, thereafter through to her dismissal on the 11 July 2018, she remained an employee, though absent through ill-health. Ms Bond’s Greek and Yemeni background was known to her employer.</p> <p>Ms Bond claimed that salon owner, Mrs Joanne Large and her daughter Miss Leanne Large, repeatedly discriminated against her, after she described herself as Muslim in the presence of her colleagues.</p> <p>Following that disclosure, the claimant said she was treated unfavourably. She was given shortened notice of her shifts and her duties were altered. Ms Bond claimed that on a couple of occasions, she was asked to remove rubbish from the salon and clean up dog excrement in the car park. Ms Bond also stated that her employer failed to pay her accrued holiday during her sickness absence and was filmed on a mobile phone by Miss Leanne Large whenever she walked past the respondent’s salon.</p> <p>In response, Miss Large stated that Ms Bond had become more distant and less talkative. The employer alleged that a customer, a boy, had made anonymous allegations of improper conduct against Bond. The Employment Tribunal then established that the allegations could have related to a different employee of the Lads and Dads’ Barbers.</p> <p>The Tribunal stated that because Miss Large failed to attend the tribunal to confirm the accuracy of her statements, it hadn’t sufficient evidence to counter the Claimant’s account: “For those reasons we have concluded that Miss Large exaggerated the content of the anonymous letter”.</p> <p>In addition, the Tribunal was informed by one of Lads and Dads’ Barbers’ customer that Miss Large told him that she “had recently learned that [Bond] was a Muslim and that she couldn’t have that”.</p> <p>Judge R Powell concluded that: “In the absence of any contrary evidence, we find on the balance of probabilities that the direction to take out the rubbish and clean up dog excrement were acts of direct discrimination on the grounds of perceived religion.”</p> <p>He further said: “The discriminatory conduct of the respondent led to the claimant’s disability, her extended sickness absence, her continuing ill-health and aggravated an existing mental health vulnerability and the respondent is ordered to pay compensation to the claimant, in respect of injury to feelings and interest, in the gross sum of £19,352.00.”</p>

Legislation	Summary
Republic of Ireland Gender Pay Gap Reporting	The Government is looking to pass the Gender Pay Gap Information Bill which will force employers to reveal salaries in the interests of assessing the progress of gender pay equality in the Republic. The legislation is expected to have completed its passage by the autumn.
Republic of Ireland Parental Leave Act	<p>Parental Leave Amendment Bill (2017) which is now The Parental Leave Act 2019 was signed into law on 22 May 2019 and provides a phased extension of parental leave from 18 weeks to 26 weeks from 1 September 2019.</p> <p>From this date parents will be entitled to 22 weeks unpaid parental leave which will increase to 26 weeks from 1 September 2020. The qualifying age for children will increase from eight to twelve years. Employers will be required to keep records of parental leave for a period of twelve years.</p>
Republic of Ireland Parent's Leave and Benefit Act	<p>This new statutory provision allows working parents to spend more time with their baby or adopted child during the first year. It is additional to maternity and paternity provisions and applies to births and adoptions on or after 1 November 2019.</p> <p>Each parent is now entitled to two weeks' parent's leave. Somewhat confusingly, this is a different statutory provision from "parental leave". The leave must be taken within 52 weeks of the child's birth. For adoptive parents, this is 52 weeks from the placement date. Leave is unpaid but there is a statutory parent's benefit for those with qualifying social insurance contributions.</p>

Legislation	Summary
<p>Republic of Ireland The Employment (Miscellaneous Provisions) Act 2018</p>	<p>This Act came into force in March 2019. Its stated objective is to improve the security and predictability of working hours for employees on insecure contracts or working variable hours.</p> <p>Of significant impact to all clients operating in the Republic of Ireland is a new obligation to issue all employees with a mini-statement of core terms of employment within five days of starting work.</p> <p>The Act also significantly restricts the use of “zero hours” contracts. However, genuine casual work (where there is no mutuality of obligation) is still possible but documentation must be carefully constructed.</p> <p>The top-up payment provisions for variable hours staff have been further enhanced. This is a complex matter and Moorepay customers should take advice from us for staff working variable hours in the ROI.</p> <p>There is also a new “banded hours” provision where an employee can ask to be placed in a specific band reflecting their actual (rather than contractual) hours of work.</p> <p>A guidance document on all of these matters is available for Moorepay customers. Please email <a href="mailto:policy.team@moorepay.co.uk">policy.team@moorepay.co.uk</a> for a copy or for further support.</p>



### Guidance Document for Moorepay customers

A guidance document is available for Moorepay customers.  
Please email [policy.team@moorepay.co.uk](mailto:policy.team@moorepay.co.uk) for a copy or for further support.

Topic	Summary
<p>How the Job Retention Scheme Affects the Redundancy Process.</p>	<p>How does the Coronavirus Job Retention Scheme (CJRS) scheme affect the redundancy process? Can staff be made redundant because they have been on furlough? And should employers be using the new, flexible furlough scheme before contemplating the redundancy process?</p> <p><b>Key considerations</b></p> <ul style="list-style-type: none"><li>• Staff should not be selected for redundancy solely because they are on furlough. Doing so may give rise to discrimination claims in addition to unfair dismissal claims. For example, dismissing a selection of staff placed on furlough because they are shielding for health reasons.</li><li>• It's not uncommon for claims to the Employment Tribunal to include challenges based on whether a genuine redundancy situation exists and whether the dismissal could have been avoided through other means. The fairness of a redundancy dismissal depends on the circumstances at the time. It is not necessarily unfair to make redundancies when furlough is available.</li><li>• During the two phases of the CJRS, the second phase being flexible furlough, it is arguable that by utilising the CJRS the employer should be able to stave off the need for redundancies whilst the scheme is in place. An employer who fails to do so, or at least give serious consideration to that possibility, may find a redundancy dismissal in these circumstances held to be substantively unfair.</li><li>• Employers facing the prospect of having to make redundancies should also bear in mind the collective consultation provisions which are triggered when an employer is making 20 or more redundancies in a 90-day period. These provisions can be rather complex.</li><li>• Remember: if you do make a furloughed employee redundant, their redundancy pay is protected. This means they are eligible for redundancy pay based on their normal wages – not the furlough rate. This is effective from 31 July 2020.</li></ul>

# Making payroll & HR easy

## WHAT NEXT?

For further information or guidance on how this legislation affects your business, call us now on **0345 184 4615**