

# Key employment law changes in April 2021 and beyond

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Employment Team  
Morton Fraser LLP

# Extended CJRS

- Further extension until 30 September 2021
  - UK Government contributing 80% of wages (subject to £2,500 cap) for unworked hours until 30 June 2021
  - Employers remain responsible for employer NICs and employer pension contributions
  - Employers to contribute 10% to unworked wages in July and 20% in August/September
  - Since 1 December 2020 grant cannot be used to cover notice pay
  - Notice and redundancy pay continue to be calculated on basis of pre-furlough pay until CJRS closes
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## “No jab no job”

- Some employers reportedly mandating vaccination for new starts and in some cases existing workers
  - Possibility of unfair dismissal claims from existing staff
  - Possibility of discrimination claims from existing staff and new starts including:-
    - Disability discrimination
    - Sex discrimination
    - Religion and belief
    - Ethical veganism/vegetarianism (not an issue for current approved vaccines)
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# April changes

## Tribunal compensation

- Cap on week's pay – £544
- Maximum basic award - £16,320
- Cap on compensatory award - £89,493

## Statutory Benefits

- SMP, SMA, ShPP, SAP, SPP - £151.97 per week
  - SSP - £96.35 per week
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# April changes

- Guidelines for injury to feelings awards will be amended
  - Current levels are as follows:-
    - Lower band (less serious cases) £900 - £9,000
    - Middle band £9,000 - £27,000
    - Upper band (most serious cases) £27,000 - £45,000
  - Awards over £45,000 will only be made in exceptional cases
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# April changes

- National Living Wage and National Minimum Wage
  - Entitlement to NLW lowered from 25 to 23 years of age
  
  - NLW 23 years and over - £8.91 per hour
  - NMW 21 – 22 years rate - £8.36 per hour
  - NMW 18 – 20 years rate - £6.56 per hour
  - NMW 16 – 17 years rate - £4.62 per hour
  - NMW apprentice rate - £4.30 per hour
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# Gender Pay Gap Reporting

- Enforcement for the 20/21 year suspended due to the coronavirus outbreak until 5 October 2021
  - Employers still encouraged to report by usual deadline of 30 March/4 April
  - Although also suspended last year, 50% of affected employers did report showing an increase in the pay gap of nearly 1%
  - Calculations for both this year and the 21/22 year will be impacted by furlough
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# Other changes

- Changes to off-payroll working rules (IR35) being extended to private sector with effect from 6 April 2021
  - Changes being made to calculation of Post Employment Notice Pay and tax treatment of payments for those not resident in the UK
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# Employment Bill

- Announced as part of the Queen's Speech in December 2019 and proposed:-
    - Establishing a single labour market enforcement body
    - Ensuring tips and service charges go to workers in full
    - Enhancing redundancy protections to prevent pregnancy and maternity discrimination
    - Introducing a right to request more predictable contracts
    - Introducing neonatal leave and pay
    - Introducing a right to unpaid time off for carers
    - Making flexible working the default position unless employers have a good reason not to (subject to consultation)
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## Other future changes

- Ethnicity pay gap reporting
  - Restriction on use of gagging clauses
  - Possible reform of post termination non-compete clauses in employment contracts
  - Possible extension of the ban on exclusivity clauses in employment contracts
  - Tribunal fees?
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## Case update

- Uber BV and others v Aslam and others
    - Supreme Court upheld tribunal judgment that Uber drivers are workers
    - In assessing worker status, approach should be “statutory interpretation, not contractual interpretation”
    - Starting point should be on whether individuals fall within statutory definition, not written documentation
    - In this case drivers’ services were “very tightly defined and controlled by Uber”
    - Control over remuneration was of major importance
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# Case update

- Allay (UK) Limited v Gehlen
    - Employer attempted to rely on “reasonable steps” defence for harassment of one employee by another
    - Employer had provided equality and diversity training
    - Employment Tribunal found it was “clearly stale” as both harasser and other employees had failed to act in accordance with it
    - On appeal EAT upheld decision finding:-
      - The nature of the training and extent to which it was likely to be effective was relevant
      - The training in this case was unimpressive even for a small employer and quality of related policies was criticised
      - Less effective training becomes “stale” more quickly
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# Case update

- Aylott v BPP University
    - Disabled claimant requested OH referral during sickness absence
    - Request was ignored and at a sickness review meeting she was offered a settlement agreement and re-engagement as a contractor
    - Resigned and claimed constructive dismissal (based on failures to manage workload and absence properly) and disability discrimination
    - Employers focus on the settlement agreement without offering alternatives (the OH referral) was discriminatory
    - Constructive dismissal claim was also successful
    - Case has been appealed to EAT
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# Case update

- **McTear Contracts Ltd v Bennett & Others**
    - Employees can transfer to multiple employers following TUPE Service Provision Change
    - Single contractor replaced by two new contractors with work split on geographical basis
    - EAT held tribunal wrong to conclude each employee can only transfer to one transferee
    - Follows ECJ case relating to business transfers
    - Undesirable for consequences of transfer under Reg 4, to depend on type of transfer at issue
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# Case update

- Argos Limited v Kuldo
    - Claimant was only candidate for alternative role during redundancy procedure and was “mapped” into it
    - Claimant raised a grievance setting out why the alternative was not suitable
    - Resigned and claimed constructive dismissal after grievance but grievance appeal dismissed
    - Tribunal upheld claim finding new role was significantly different to the old one
    - Employer had breached implied term of trust and confidence by failing to properly consult, assess the roles and address the grievance and appeal
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## Future cases to look out for

- Royal Mencap Society v Tomlinson-Blake
    - is time spent asleep “time work” for NMW?
  - Flowers and others v East of England Ambulance Trust
    - must holiday pay calculation include regular voluntary overtime?
  - Chief Constable of Police Service of Northern Ireland and another v Agnew and others
    - do gaps of 3 months or more interrupt a “series” of unlawful deductions from holiday pay?
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# Future cases to look out for

- Harpur v Brazel
    - should annual leave be capped at 12.07% of annualised hours for workers who only work part of the year?
  - Davies v Scottish Courts and Tribunals Service
    - was dismissal arising from conduct caused by menopause unfair or discriminatory?
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**Questions?**

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