



The Work Couch

NAVIGATING TODAY'S TRICKY PEOPLE CHALLENGES TO
CREATE TOMORROW'S SUSTAINABLE WORKPLACES

Season 2

Episode 1 – What's on the horizon for employment law in 2024? with Kelly Thomson

Ellie: Hi and welcome to the Work Couch Podcast, your fortnightly deep dive into all things employment. Brought to you by the award-winning employment team at law firm RPC, we discuss the whole spectrum of employment law, with the emphasis firmly on people. My name is Ellie Gelder. I'm a senior editor in the Employment Equality and Engagement team here at RPC and I'll be your host as we explore the constantly evolving and consistently challenging world of employment law, and all the curveballs that it brings to businesses today. We hope by the end of the podcast, you will feel better prepared to respond to these people challenges in a practical, commercial and inclusive way. And to make sure you don't miss any of our fortnightly episodes, please do hit the like and follow button and share with a colleague. So, a very happy new year to everyone on this very snowy January day.

And a warm welcome to season two of The Work Couch. And we're kicking off the new season with a look ahead to 2024, where we're going to explore five key employment law changes and HR trends to watch out for. And we'll also flag what you should be doing now to prepare. And with me to guide us expertly through the maze is Kelly Thomson, partner and ESG Lead for RPC. Hi Kelly, thanks so much for joining me today.

Kelly: Hi Ellie, thanks for having me back and I'm just excited that we've been renewed for a second season.

Ellie: Absolutely, yes. It's exciting to be doing a new season. We've got some brilliant speakers lined up. So, thank you for kicking off things today, Kelly. So, let's dive in straight away then. This is a really important change for employees who are expecting a baby and also those who've returned from maternity, adoption or shared parental leave and it concerns their redundancy rights. So, what's changing and why?

Kelly: Yeah, that's right. So, I think probably it's worth a little bit of a quick recap as to what the position currently is, which is that in the UK, the law already protects women who are impacted by redundancy during their maternity leave. And that will be really familiar to any of our listeners who work in HR teams in particular. And the protection that we're talking about here is the fact that an employer has to offer their employee any suitable alternative vacancy that they have or that an associated employer has before making somebody on maternity leave redundant. So, it's kind of like a sort of baked-in statutory right to sort of jump the queue for any available jobs. It's not saying you have to create a job out of nowhere if one doesn't exist, but if it does, then those on maternity leave are going to go kind of towards the top of the queue.

As long ago as 2019, so pre-COVID, BC, the government announced that they intended to extend that protection that I've just described, so that it wouldn't just cover those people on maternity leave. But the legislation covering that didn't ever materialise, I think they were busy doing other things. And then in October 2022, it sort of came back up to the surface and the government announced that they were backing a private members bill to bring in some changes to extend that right. So, that new Act that we have, came into force in July last year, so July 23, and within that Act it includes a power to make regulations to extend the current right to be offered suitable alternative vacancies. There's multiple layers on this, I'm just kind of mentioning, I think it's quite useful to sort of see just how many steps from a proposal to actually becoming law there often are and why some of these things that we maybe hear about then seem to sort of disappear forever and then suddenly resurface. So, those draft regulations, so we're now at the point of the law that will bring in the change, they were laid before Parliament on the 11th of December 2023, so just gone a month ago. And if passed, those regulations will essentially extend this protection, so the right to be offered suitable alternative employment that may exist in your employer or an associated employer they'll extend it so that it won't just be for those on maternity leave, it will basically be for anyone who's pregnant. So, that will begin on the date that they tell their employer they're pregnant. So, from that point on, they're in that kind of protective position. And it will continue and carry on and apply for a period of 18 months after the birth of a child or for those who are adopting a child 18 months after the placement of that child. And it will cover not just those taking maternity leave, but also those taking adoption or shared parental leave. So, it's kind of casting what has always been a maternity-focused protection, casting that more broadly in relation to pregnancy and also other family leave rights, not just maternity. So, assuming that all goes ahead, it's due to come into effect on the 6th of April. HR

	and employment lawyer listeners will know that 6th of April is always a date where we get a load of nice new employment.
Ellie:	Magic day, isn't it?
Kelly:	Yeah, it's a magic date. And, and yes, so, so not actually that far away from now. So, I think I would say for employers get preparing now really. And, and what I think is quite important here is that often, you know, redundancies in large organisations or in organisations that have got a sophisticated or, you know, prior process in relation to redundancies, HR teams will, will usually be involved, but that's not always the case. And I think there's a potential trap here if you've got people in your business who might be dealing with redundancies and they may not know about this extended new right. And you may end up sort of tripping yourselves up as an organisation. So, I think now is the time to get to grips with what difference it will make, get to grips with the timing around it and make sure that anybody who might be dealing with redundancies is aware of this or is at least aware to put the flag up the pole and get some advice from HR at an early stage. And the other thing I would say is, because the pregnancy protection that's coming in will apply from the date that the individual tells their employer that they are pregnant. It's going to be really important to make sure that information makes its way, appropriately of course but makes its way to the right people because you don't want the organisation sort of fixed with that knowledge and therefore fixed with the obligation, but the people who have to sort of discharge that obligation have no idea. So, some quite important sort of logistical stuff to think through for employers between now and April.
Ellie:	Yeah, absolutely. And just if we can just stay with that theme then of workers who have caring responsibilities, the next key change applies to carers themselves and the time off work that they can take. So, just tell us what this will mean for carers and their employers.
Kelly:	Yeah, this is another Act, this is the Carers Leave Act that we're talking about, and it's another one that started life as a private members bill, interestingly. It came into force actually, this one on the 4th of December 2023, and then on the 11th of December, so quite quickly thereafter, the sort of implementing regulations were laid before Parliament to give effect to that Act, so we're kind of on the home straight to this change. And essentially what it does is introduce one week's unpaid carers leave, and that's one week in each rolling 12-month period. And it will apply to employees who have a dependant with a long-term care need. It's only applying to England, Wales and Scotland. And again, magic 6 April, 2024, that's the date that it is coming into effect. So, one week's leave in each rolling 12-month period, it can either be taken in individual days or half days or a block of a week. And as is the case with all of these kinds of statutory rights, employees will be protected from detriment or from dismissal because they took that leave or they sought to take that carer's leave. So, it's another one of those get cracking in terms of preparing your approach to it. Like with any sort of family-friendly leave, right? Employers are making decisions around: do we just do the statutory minimum? Do we look to enhance that right, either by offering a longer period or by offering an element of pay because remember the right the statutory right is unpaid or not and also considering you know to what extent they want to sort of change any policies go out and communicate inform people about this new right and both from a sort of employee perspective but also from a management and leadership perspective so that those running teams and those with people management responsibilities are aware that this right is coming in.
Ellie:	So, our next development relates to harassment at work. And Kelly, we've spoken before about the law on sexual harassment, and we did a really interesting compare and contrast with the law on sexual harassment in Australia last year. So, well worth a listen for anyone that's interested in that. Just look at our episode menu for that one. But for now, what's going to be changing here in the UK?
Kelly:	Yeah, I can't believe it was best part of a year ago. That's slightly concerning. My concept of time has clearly gone out of the window. I blame COVID. I blame COVID for everything. So, yeah, we're finally catching up with some of the changes that we talked about in that comparison episode, Ellie. So, what's happening here in the UK is that the Equality Act 2010 is going to be amended to introduce a duty, a new duty on employers to take reasonable steps to prevent sexual harassment of their employees. It will also be combined with a power for our employment tribunals to uplift any compensation they're awarding in a sexual harassment claim by up to 25% if they find that the employer has breached this new duty to take reasonable steps to prevent sexual harassment. So, it's kind of a two-pronged change. There's the obligation and there's the stick for breaching it, if I can put it like that. So, the Act bringing this in is called the Worker Protection Amendment of Equality Act 2010 Act 2023, which rolls nicely off the tongue. And that received royal assent on the 26th of October 2023. And we're expecting it to come into force in or around October 2024. So, we've got a bit of a longer lead-in period than some of the developments we're talking about. However, not that long, which I'll come onto in a minute. So, right now, before this change comes in, the situation that we have is that if you're

an employer and you take all reasonable steps to prevent harassment, but it happens anyway on your watch. So, it happens anyway in the course of employment, you can seek to defend a claim that might be brought on the basis that you did everything you could and the individual person who harassed the employee did that anyway and there wasn't really anything reasonable else that you could have done as an employer. And that defence is sometimes run. It's quite a high hurdle. After this amendment that we're talking about, Ellie, taking reasonable steps, taking all reasonable steps isn't just a potential shield to a claim like it is now when you say, well, hang on a minute, we did everything we could. It's also going to be a proactive obligation and a duty on the employer. I think that's a really important shift in emphasis, actually. And it's kind of reflecting the sort of positive obligations on employers to proactively create and ensure that they're creating and protecting safe environments, both in terms of physical safety, but also in terms of psychological safety and mental health and all of the other kind of impacts of toxic workplace cultures of which harassment is one element. So, I think right now, although it feels like, well, we've got kind of until around about October, actually, if you're an employer, I would be saying this is something to get to grips with now because what do those reasonable steps mean for you as an organisation? You need to have a plan about how you're gonna actually discharge that obligation if you haven't already, nailed it and how you're gonna implement it because things like annual opt-in training, that's not gonna be enough. Even having a policy against harassment, that's unlikely to be enough. I would be asking questions like, how are you actually ensuring that bad behaviour is rooted out? How are you creating genuine speak-up culture? How are you protecting people who do speak up? How are you educating your leaders on their role? Those are the sorts of questions I would want to be asking and would be asking as an employer.

Ellie: So, a lot actually to be looking at in the lead-up to October. I mean, and if we look at diversity, inclusion, equity and belonging more broadly, various regulators are going to continue their increased focus on this. We did see this last year. So, what are the new regulatory expectations when it comes to DEIB for 2024? And which sectors are we talking about here?

Kelly: Yeah, it's a really interesting shift that I don't see dissipating. We've seen, as you said, Ellie, we've seen an increasing regulator focus on DEI, DEIB, in particular in areas like financial services, including insurance. In law, our regulator has been looking at the obligations of leaders in law firms around workplace culture. And as I say, I don't see that going in any direction other than upwards in terms of that interest.

And there's loads of different drivers for that, you know, employee and kind of future talent expectations in this space, ESG considerations for organisations kind of focusing on, you know, being responsible businesses, the impact of social change and social movements, this increasing, and I would say welcome recognition that non-financial misconduct impacts on not just employees but on customers, clients, markets as well and the importance of the diversity of thought in reducing group think and poor decision-making. And as we kind of touched on just a moment ago, the need for like psychologically safe workplaces with speak up cultures and actually that that's again part of avoiding consumer harm as well as part of creating, good environments for employees. So, just I think it's worth touching on the financial services sector where there's one example of where there's some sort of change coming.

Back in 2021, in the summer of 2021, both the FCA and the PRA, so the regulators in the financial services sector, they published a joint discussion paper on diversity and inclusion. Building out from that in September last year, both of them, so the FCA and the PRA, and together they're the regulators for financial services and insurance, they each published their own consultation papers on D&I in the sector.

They're long papers, they're well worth a read. We would need a number of, we need a whole new, we need a series three to cover them in detail. And the proposals within the different consultation papers, vary by type of firm, size of firm, et cetera. But I just thought it might be useful to draw a few key points. So, the FCA, they're proposing applying a minimum standard to all firms that have what's called a Part 4A permission. So, that's Part 4A permission under the Financial Services and Markets Act.

And to those firms, they'll be subject to a minimum standard that's got the aim of kind of reducing discrimination, reducing misconduct. So, what they're looking to do is expand the scope of the code of conduct for staff source book called COCON. So, anyone who operates in this sector will know COCON and expand the scope of that to be clear that it covers serious instances of bullying, harassment, that sort of behaviour towards employees and also employees of group companies and contractors.

And also, the FCA talking about being really clear that bullying and that kind of misconduct in the workplace is relevant to the fitness and propriety of people working in that sector. And even that similarly serious behaviour in a person's personal or private life is also relevant. So, you don't just leave work at the door and from a regulator perspective, they're also looking to require the larger firms to be developing D&I strategies, setting targets to address under representation, collecting and reporting data, publishing their data transparently and treating these issues as sort of points of governance. All of that for some organisations could be quite a significant change. The PRA, similar sort of approach interestingly, they say they're aiming at

supporting prudent decision-making, better risk management through reducing the risk of group think. So, embracing that benefit of diversity of thought that I mentioned.

For their large firms, they're again looking at requiring a D&I strategy to be created and targets to address under representation. They're also talking about requiring firms to have a specific strategy around improving board diversity and inclusion. And an expectation that responsibility for D&I needs to be allocated to the relevant senior management functions to be reflected in their statements of responsibilities, and that's a specific regulatory requirement, and that measures for accountability are put into place.

And again, requirements to monitor D&I, report, and publish. So, quite wide-ranging proposals. Consultation papers were open for comment until just before Christmas 2023. And the plan, as far as we know it, is that both regulators will review those comments, kind of make any changes to their proposals. And the plan being that they'll publish policy statements at some point during 2024 with the proposal to be that the amended rules within their sectors will come in in 2025, a year after when they publish the proposals. So, depending on how far into 2024 we get their policy statements, that will then kind of give us our lead-in period. So, again, it might sound like a long time or a sort of, oh, let's just sit, it's a watching brief. Let's see what happens kind of scenario. And lawyers love saying, just watch this space. But actually, I really would urge firms who are going to be in the scope of what these reforms, whatever they may look like, to really start getting to grips with it, because yes, we don't have the final policy statement, but we can see the direction of travel. And for many, this will be a really significant exercise because even if you have a D&I strategy, does it address all of these points? Is it embedded? Does it have the kind of accountability? Have you got the ability to measure the data to kind of report all of that stuff? And those are significant exercises that, you know, in my experience can involve lots of parts of an organisation.

So really, it's something to get to grips with sooner rather than later. And also as well, you do have a bit of a short window to potentially get ahead of your peers. If you can really get to grips with this and be doing this stuff before you're required to, that can be a good news story from a talent and sort of retention perspective also.

Ellie: Yeah, absolutely. It's going back to that proactivity point, isn't it, rather than being reactive. And interestingly, you talk about accountability because I know we've talked to lots of retailers about the importance of leadership and culture. And so, it's so important that businesses start looking at that sooner rather than later, because ultimately, without that, you're not going to get very far on your D&I journey.

Kelly: Absolutely.

Ellie: So, there's some really big themes actually so far that we've covered but it's also essential that employers don't lose sight of those other changes that are traditionally introduced each year. For example, those increases to statutory pay rates which kick in on the 1st of April 2024.

Kelly: Yeah, that's right. And anyone who deals with payroll will know that we have different rates of national living wage for different types of worker. All of those rates are increasing on the 1st of April 2024. ' So, the national living wage will increase from £10.42 to £11.44. And another change, that national living wage rate will also now apply to everyone aged 21 and over. Whereas until then, people who are aged 21 and 22 are subject to their own rate, which is called the standard adult rate, that's being scrapped and everyone from 21 and upwards will fall into the national living wage. The other living wage rates that we have are the development rate, which applies to workers aged 18 to 20. The young workers rate, which applies to those aged 18, but above compulsory school age, unless they're apprentices, because we have an apprentice rate for apprentices under 19 and those aged 19 and over who are in the first year of their apprenticeship. All of those rates are also increasing, and it's just making sure that you're aware of those and that they are implemented properly into your payroll and the other systems to the extent they're relevant to any of the people who work for you.

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- Ellie:** Absolutely. And now unfortunately we don't have time to cover every employment law change for 2024, and there will be other developments to watch out for and monitor this year, not least pending a general election. So, Kelly, can you give us a super quick sort of round-up of the other developments that HR just needs to keep an eye on that we know of, sort of as of today?
- Kelly:** Yeah, it's going to be a busy one. Even putting to one side the election of it all, which as we know always has huge impacts from an employment and workers perspective. Be looking out for developments in relation to mental health at work, developments around non-compete restrictions and enforceability limits on that, the impact of the revocation of EU law. Bizarre to think that was all we were talking about when you look back to sort of 2019 and then we kind of stopped talking about it, didn't we, for a couple of years.
- Ellie:** Yeah.
- Kelly:** The right to request predictable working patterns and the implications of those discussions. And then our friend AI, generative AI, which I know Ellie we're gonna be covering in a lot more detail in a future episode specifically because it's such a huge topic.
- Ellie:** Yeah, absolutely. So, a plethora of developments to keep on track of this year
Well, thank you so much, Kelly. That was such a helpful overview of what to expect on the HR horizon in 2024.
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- Kelly:** You're very welcome, Ellie, although I'm slightly concerned about the length of my to-do list after our discussion.
- Ellie:** Yes, I know it comes with a slight health warning this podcast. But as you mentioned, we will be exploring AI in more detail in a future episode. That will be with partner and head of RPC's employment engagement and equality team, Patrick Brodie. I should also mention that we covered the top 12 most important employment law changes in 2023 in our [Christmas special](#). So, if you missed that and you need a download on all of those developments, which you need to keep track of, do check that one out. It's a really useful overview.
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Thank you all for listening and we hope you'll join us again in two week's time.
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