

Summer TERM 2023

HR BRIEFING

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THE TERMLY LAW AND POLICY UPDATE FROM EDUCATION HR

As part of our usual termly update we've pulled together some of the latest law and policy developments to keep you ahead of recent and forthcoming changes.

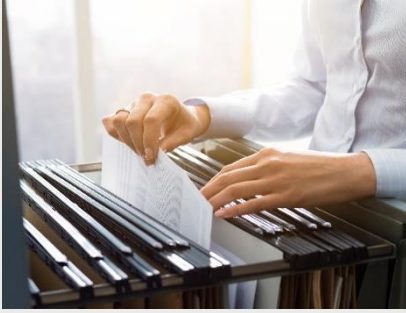
The government agenda continues to be dominated by concerns around the impact of inflation, interest rates, rising business/household costs and skills shortages.

The timetable for any employment law changes remains uncertain. There are, however, some proposals in the pipeline which are likely to pass into law later this year and in the first half of 2024.

Amidst the ongoing challenges that all schools are facing at the moment, don't forget that we are here to help with any HR and staffing matters that you may require extra guidance on, via our [HR website](#) and advisory team.

Education HR Team

EMPLOYMENT LAW UPDATES



Data Protection and Digital Information Bill (new UK GDPR)

Relevant to

All schools and education settings

The UK government introduced the [Data Protection & Digital Information](#) Bill on 8 March, withdrawing the Data Protection & Digital Information Bill that was introduced last June.

The Bill is intended to make the EU GDPR more practical in lower-risk situations. The new act is due to become law sometime in the next 12 months. The final Act could change, as amendments can occur whilst it progresses through parliament. The key areas which the Bill intends to address are likely to remain the same and those most relevant to HR practitioners in schools include:

- Clarifications to the definition of 'personal data'
- A new "recognised legitimate interests" basis for important public interests (e.g., safeguarding vulnerable individuals)
- Controllers may refuse a Data Subject Access Request (DSAR) or charge reasonable fees if it is "vexatious or excessive"
- Removal of the requirement to have a Data Protection Officer (DPO) – but a "Senior Responsible Individual" (SRI), must be appointed for likely "high-risk" processing.
- Data Protection Impact Assessments (DPIAs) & Records of Processing Activities (ROPAs) will only be required for likely high-risk processing

We would advise schools to consider what, if any, changes they wish to make when the Bill becomes law. Schools will still need to be clear about what data they process, data governance and how they comply with their obligations.



Retained EU Law (Revocation and Reform) Bill

Relevant to

All schools and education settings

Retained EU law will no longer automatically be revoked at the end of this year. Instead, a new schedule lists some 600 pieces of legislation which will now be removed, including regulations on things such as air pollution, food, the environment and energy. No key pieces of employment law will be removed under the schedule.

However, the Bill retains powers that make it easier for the Government to amend any retained EU law that is not revoked. In addition, the provisions as to how previous EU case law is to be treated also remain in the Bill, which may well impact on the courts' interpretation of employment law in future cases.

Future developments

Relevant to

All schools and education settings

Family Friendly Rights

Legislation introducing more generous rights is due to pass into law during the next 12 months covering Flexible working, Carers leave and Neonatal leave. A new bill covering employment rights around Fertility Treatment was also introduced to the House of Commons in November 2022.

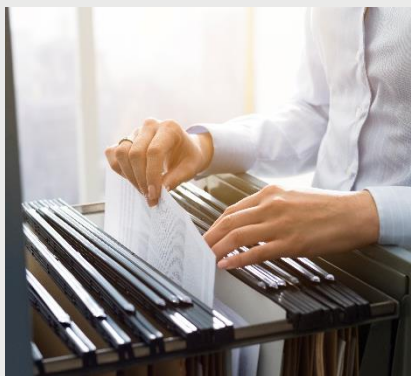
Please visit our [legislation tracker](#) for detailed information in this area.

Extension of the School week

In March 2022 the Government introduced a non-statutory minimum expectation for the length of the school week to be 32.5 hours. Mainstream, state-funded schools must meet the minimum expectation by September 2023. An [information note](#) was published on the DfE website and further guidance is expected in due course and we will publish this on our website once this is available.

EMPLOYMENT LAW UPDATES

(cont.)



HARPUR TRUST vs BRAZEL Consultation

Relevant to

All schools and education settings

The government launched a consultation earlier this year addressing the issues arising from the Supreme Court's judgment. As we are all no doubt aware, the application of the current Supreme Court ruling results in part-year workers being allocated a larger holiday entitlement than part-time workers who work the same total number of hours across the year.

The ruling that all workers are entitled to 5.6 weeks statutory holiday regardless of weeks worked also gives rise to anomalies, e.g., those relating to workers with no fixed hours or a working pattern working only a few weeks during a year, such as an exam invigilator, which potentially increases the weekly pay amount for the purposes of holiday pay.

The consultation was designed to address these disparities in order to ensure that holiday pay and entitlement received by workers are proportionate to the time they spend working replacing the 52-week reference period, in which weeks with no pay are ignored for calculating holiday pay, with a 52-week reference period which includes weeks with no pay. The consultation closed on 9th March and the outcome is likely to be delayed due to recent developments with the Retained EU Law (Revocation and Reform Bill).

HARPUR TRUST vs BRAZEL Actions for Employers

Relevant to

All schools and education settings

- In light of the consultation our guidance for schools remains unchanged. Schools are advised to make adjustments in line with the existing ruling to staff who are impacted. However, although the law remains unchanged at the moment, some schools may now wish to consider adopting a wait and see approach pending the outcome of the consultation, being aware that until the law is changed, liabilities will continue to be incurred.
- Community and voluntary controlled maintained schools and PRUs should have regard to any direction provided by the local authority (LA) to ensure that there is a standardised approach to pay across the LA's employees. We would advise other maintained schools that have adopted the LA's pay mechanisms to do the same.
- Further information and resources are available on our [website](#)



SCHOOL TEACHERS' PAY AWARD 2022/23 & 2023/24

Relevant to

Maintained schools, PRUs and most academies

The 2022/23 pay award was finalised in October 2022 detailed guidance can be found on the [website](#), including updated template pay policies and advisory pay points.

On 15 November 2022 the School Teachers' Review Body (STRB) published its remit letter for the pay period 2023/24. You can find full details in [our latest news article](#) of 18 November 2022.

Following strike action in early 2023 and intensive talks between the Government, the NEU, NAHT, ASCL & NASUWT the DfE set out a **revised offer on pay conditions & workload for 2022/3 & 2023/4** in late March.

The offer included:

- a £1,000 one-off payment for the academic year 2022/23
- an average 4.5% pay rise for 2023/24
- £30,000 starting salary for new teachers from September 2023

Some non-pay measures were also included in the offer – Requiring Ofsted to give greater clarity on when schools should expect inspections:

- Reforms to workload
- Aligning the teacher pay setting process with the school budget process
- Allowing for schools to make their own decisions about pay progression & ending performance related pay.

The Trade Unions rejected the offer. The DfE will now revert to the usual School Teachers' Review Body (STRB) process for the 2023/24 academic year, so not agreeing the pay offer likely means the £1,000 non-consolidated payment for 2022-23 and the non-pay proposals will be withdrawn.

At the time of writing neither the full report of the STRB with pay recommendations for 2023/24 nor the response from the Secretary of State for Education have been published by the DfE.

We will keep you updated with developments as the situation progresses.

PAY & BENEFITS UPDATES



GREEN BOOK / NJC PAY NEGOTIATIONS 2023/24

Relevant to

Settings where Green Book / NJC pay and conditions apply

The pay claim was submitted by the NJC Unions (Unite, Unison & the GMB) on 30 January 2023. You can find full details of the claim on our [website](#).

The National Employers met on 23rd February and agreed made the following one-year (1 April 2023 to 31 March 2024), full and final offer to the unions representing the main local government NJC workforce, with effect from 1 April 2023:

- an increase of £1,925 (pro rata for part-time employees) to be paid as a consolidated, permanent addition on all NJC pay points 2 to 43 inclusive
- an increase of 3.88% on all pay points above the maximum of the pay spine but graded below deputy chief officer
- an increase of 3.88% on all allowances

The NJC Unions (Unite, GMB, Unison) met with the National Employers on 8 March seeking a 'significant improvement' to the £1,925 headline offer'. The National Employers rejected the unions' request and reaffirmed their offer as full and final.

UNISON has announced a ballot for industrial action which opened on 23 May 2023, whilst GMB and Unite members will conduct strike ballots from late May to early July. If members vote in favour, strikes could start in schools from September 2023. The prospect of industrial action gives rise to a lengthy delay before this year's pay can be settled. The National Employers advise very strongly against imposing any pay offer before the collective bargaining process has concluded. Bypassing this process can be an extremely expensive mistake for employers due to the possibility of punitive penalties imposed where a pay offer is imposed before the collective bargaining process has concluded.

We will update you via the website as more information becomes available.

Government consultation: (WTR) Working Time Regulations, Holiday Pay & (TUPE) 'Transfer of Undertakings (Protection of Employment) Regulations

Relevant to

All schools and education settings

The [consultation paper on Retained EU Employment Law and proposed reforms](#) was published on 12 May 2023 – covering proposed changes to working time record keeping, annual leave & holiday pay calculations and TUPE consultation requirements.

In summary the key points in the consultation document include:

- The return of 'Rolled up' holiday pay is being proposed as an option for all workers. ("rolled-up" holiday pay, refers to a system in which an employee's holiday pay is included as an element within their basic pay (i.e. the two payments are "rolled up" together – ACAS used to suggest an uplift of 12.07% on basic pay to cover holiday pay for these purposes) and it is this calculation that the government is suggesting a return to. Paying staff in this manner means that they don't get paid holiday pay when they take holiday, which the ECJ ruled back in 2006 was a practice not compatible with the Working Time Directive.
- Many organisations (not only schools) continue to use rolled-up holiday pay especially when engaging casual workers. Paying 'rolled up' holiday can lead to underpayment of statutory holiday entitlements. The supreme court ruling in July 2022 made it clear that holiday pay for casual staff should be calculated using the methodology defined in the Working Time Directive rather than on a 'rolled up' basis. A return to rolled-up pay would reduce the complexities in the calculation of holiday pay for all.
- The consultation also notes that workers would need to be made aware of the change, by clearly marking the rolled-up element as holiday pay on payslips.



- A new single entitlement & potential carryover of 5.6 weeks statutory annual leave.
- Proposed that (as is the position now) 1.6 weeks could be carried over by written agreement between the employer and worker. Where leave is missed due to long-term sick leave or family-related leave the entire statutory annual leave entitlement of 5.6 weeks could be carried forward. (Currently, carry-over is limited to 4 weeks of EU leave and must be used within 18 months). Under the new proposed rules, it is unclear as to whether the 18-month restriction will remain.
- Other changes proposed also affect how new starters would accrue their annual leave entitlement. The goal is to simplify these issues with a single clear method for calculating holiday entitlement in the first year at work, under which workers build up their holiday entitlement at the end of each pay period.
- Requirements to record the daily working hours of their workers, at least for the purposes of complying with the Working Time Regulations will be removed.
- With regard to TUPE, at present employee representatives must be elected for consultation on a TUPE transfer. Businesses cannot consult employees directly about TUPE transfers. The consultation confirms that this requirement will be removed in certain circumstances.

You can follow all recent employment law updates

Updated Version - Burgundy Book

Relevant to

All schools and education settings

An updated Burgundy Book was published on 8 June. The Burgundy Book is a national agreement between the five teacher unions and the national employers, also known as NEOST, and it contains the terms and conditions of service for schoolteachers in England and Wales. It has been updated for the first time in over two decades! It is an essential reference for all schools – both maintained and academies – with the majority choosing to incorporate the agreement into their teachers' contracts of employment. Its main provisions relate to notice periods, sick leave and pay, and maternity leave and pay. It is not an exhaustive list of provisions, and it should be read in conjunction with an employer's own conditions and the conditions of employment as provided under the School Teachers' Pay and Conditions Document.

The 2023 edition takes account of the updates in legislation that have occurred since the most recent version was published in 2000. A summary of changes is included in Appendix 9 of the new Burgundy Book and reflects changes to the educational landscape such as the establishment of Academy Trusts and updated and new pieces of legislation such as Data Protection Regulations and the Equality Act of 2010.

The application of any of the terms and conditions of employment contained in the Burgundy Book has not been amended in any way. Gender-neutral pronouns have been adopted throughout the Burgundy Book, with the aim of promoting inclusivity.

You can find an updated version of the Burgundy Book on our website clicks on this [link](#).



Keeping Children Safe in Education (KCSiE) 2023 published

Relevant to

All schools and education settings



The statutory guidance document, [Keeping Children Safe in Education 2023](#), was published on 6 June, with changes coming into effect on 1 September 2023. Changes affecting HR processes are minimal and include:

Changes to Part Two: Management of Safeguarding

Staff training should include understanding roles and responsibilities in relation to children's exposure to online harm and filtering and monitoring risk from IT systems, training should be undertaken at induction, then regularly updated

Changes to Part Three: Safer Recruitment

Clarifying it is good practice for schools to inform shortlisted candidates that online searches will be carried out and confirmation that copies of documents used to verify the successful candidate's identity, right to work and required qualifications should be kept on the personnel file

Changes to Part Four: Safeguarding Concerns/ Allegations

Clarifying that schools should follow their safeguarding policies and procedures, if any allegation occurs when an individual or an organisation was using school premises to run activities for children. Specification that records of such allegations (except for those that are found to be malicious or false) should be held and retained until the accused has reached normal pension age, or for 10 years from the date of the allegation if that is longer, (Previously the guidance simply referred directly to the ICO published guidance on employment record retention)

KEY REMINDERS



Industrial Action

The NEU have announced 2 more days of action on **Wednesday 5 July and Friday 7 July**. ASCL has announced that they will not be taking industrial action during the Summer Term but will be balloting members this term for action to be taken in the Autumn.

Useful [website](#) resources include:

- Detailed guidance both on the legal and practical implications of industrial action
- FAQs
- Template letters
- Industrial Action Checklist



ECT changes from September 2023

- From Sept 2024 Teaching School Hubs (TSHs) will become the main provider of Appropriate Body Services
- New ECTs must be registered from September 2023
- ECTs part-way through induction must be transferred to TSH by Sept 2024
- OTTs awarded QTS in the UK must complete ECT induction if they have less than 2 years' full-time experience when awarded QTS.

You can more find detailed information on [our website](#).



Other employment law updates

There are a range of recent updates on gov.uk – links below. We are working on updating our website resources.

- [Ethnicity Pay Reporting Guidance.](#)
- [New FAQs from ICO on handling Subject Access Requests \(SARs\)](#)
- [BSI Launch Standard for Workplaces to support menstruation & menopause](#)
- [Apprenticeship Funding changes](#)

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