

HPMA Spring Law Update Training Session 21.04.23: Q&A

1. *Is the Workers Protection Bill running out of time to be passed?*

- The Bill is in the latter stages of its journey in the House of Lords, although as at today (24 April 2023) there is no date scheduled for the committee stage.
- There has been some speculation in the press that the Bill may be ‘dropped’ due to a backlash from back-benchers concerned about free-speech, but the government has so far refused to confirm whether this is true or not. The government’s last minute ‘free-speech’ amendments to the Bill were likely introduced to appease that back-bench discontent, and with those amendments the Bill passed all of its stages in the Commons.
- In March 2022, the government ratified the ILO’s Violence and Harassment Convention. The Bill goes some of the way towards meeting the convention’s commitments, so back-tracking now is problematic. For further info about the convention’s implications see here: <https://www.hilldickinson.com/insights/articles/ilo-violence-and-harassment-convention-potential-implications-employers>

2. *In relation to the Workers Protection (Amendment of Equality Act 2010) Bill, would third party harassment, be for example, patients or relatives behaving in a way that is sexual harassment to employees, or would it be third parties such as contractors?*

- Under the Bill as currently drafted, a third party is defined as a person **other than** the employer / an employee of the employer. This should include patients/relatives, customers/clients, members of the public (where the individual works in a public place, or in the community for example) and anyone entering or working in the workplace (e.g. catering or security contractors). This is like the old third-party harassment provisions (repealed approx. 10 years ago). It is likely that what might be considered to be ‘reasonable steps’ to prevent harassment will be a lower hurdle the more remote the connection between the third party and the workplace.
- As the Bill makes amendments to the Equality Act 2010, the wider definition of ‘employee’ is used – this covers employees (including apprentices) and anyone with a contract personally to do work (which will cover many worker/consultancy type arrangements) - the ‘employer’ is already vicariously liable for the discriminatory acts of those individuals under the current legislation.

3. *If an employee strikes on a bank holiday, do they continue to accrue their bank holiday entitlement?*

- Specific advice should be sought on a case-by-case basis because the answer largely depends on factors such as whether the employee is salaried, whether they would otherwise have been required to work on the bank holiday and the terms of the particular contract (including whether the contract excludes the Apportionment Act 1870).

4. *Regarding the Carers Leave Bill, how does carers leave differ from time off for dependants’ legislation? Is it just the set week entitlement that’s different? Or will it apply for non-emergency situations? Is it expected to replace or encompass time off for dependants, or is it additional?*

- Dependent care leave and Carers leave do have some similarities, but the eligibility is drafted slightly differently and there are other differences, for example:
 - Dependent care leave is designed to deal with unexpected emergencies (such as an accident, sudden illness or unexpected interruption of care arrangements), whereas carers leave can be planned in advance (e.g. to support a dependant through hospital treatment);
 - There is no need to prove a long-term care need to take dependent care leave (the need can be a one-off/temporary and usually is because of its unexpected nature), whereas for carers leave this is a key eligibility requirement;

- When taking dependent care leave, the employee can usually only take a few days leave e.g., to make other care arrangements. Carers leave will be for one (possibly more) week a year.

5. How does the Workers (Predictable T&C's) Bill impact upon the use of Bank Staff?

- Bank staff, and other zero-hours workers, are precisely the type of worker that the Bill is targeted at.
- Once they have the requisite 26 weeks' service, they will be able to request more stable working conditions. The employer will be able to refuse on specified business grounds.
- It is not yet 100% clear how that minimum service will be calculated (will the service for their 'bank' contract run separately to service for their 'substantive' contract if they have one?). The devil will be in the detail.