

Labour government – impacts and actions

Key Changes for HR Professionals in the NHS



The Employment Rights Bill represents one of the biggest changes in workers' rights for a generation. Here, we focus on the five key changes that are likely to impact most significantly on NHS employers.

IMPACT ON NHS EMPLOYERS:

Removal of the two-year qualifying period for unfair dismissal and introducing an "initial period of employment" (potentially nine months) during which employers need to only carry out a proportionate assessment of an employee's suitability for a role (so a lower threshold to achieve a fair dismissal).

ACTION POINT: employers will need to implement robust probationary policies to ensure that this new test is met for dismissals during the initial period of employment.

New right for bank staff (not agency staff) to be offered a guaranteed hours contract at the end of a set reference period and to be given reasonable notice of any changes in shifts or working times (with proportionate compensation where shifts are cancelled). There will be further consultation on the detail of these proposals.

ACTION POINT: *prepare for a significant change in the way that bank arrangements operate, whether at a local or systemic level.*

New requirement to include provision, when contracting out services, that the new provider shall not treat transferring employees less favourably than they were treated prior to any transfer and the new provider's existing employees shall be treated no less favourably than the transferred employees.

ACTION POINT: *include these provisions in contracts in all procurement exercises where employees may be transferred out of the organisation and prepare for their application where employees are transferred into the organisation.*

Introduction of flexible working right - requests must be granted unless the employer can refuse on one of the set grounds and that refusal can be shown to be reasonable.

ACTION POINT: *amend existing flexible working policies to reflect the new right and train managers in its use.*

Abolition of employers' ability to fire and rehire unless the variation was needed to enable the employer to continue to operate its activities and the employer could not reasonably have avoided the need to make the variation.

ACTION POINT: *review any outdated/ unusual payments made to employees or outdated/ unusual practices (e.g. shift and on-call arrangements), as you are unlikely to be able to make any such contractual adjustments once the new provisions come into force. Also review your contracts to ensure that they contain flexibility to alter working arrangements without having to vary the contract, being clear on how any contractual reservations to vary the contract will be exercised.*

PREPARING FOR CHANGE:

NHS employers need to start preparing for the forthcoming changes now, which will include a wide-ranging review of internal processes and policies, as well as engagement with managers to ensure that they are aware of the key changes. Relationships with the unions will need to be strengthened, at a time when many of those relationships have been damaged through industrial action and pay disputes. Flexible working is likely to be a key focus (in-line with the NHS Long Term Workforce Plan) with managers needing to proactively consider how roles can be performed flexibly and having to actively and clearly justify decisions to refuse flexible working requests.

HOW CAPSTICKS CAN HELP:

We can help by working with your HR team to undertake an audit of existing policies and establish where changes need to be made, or where new policies need to be introduced. We can provide training to your HR team and managers to ensure that they are fully up to speed with the new changes.

GET IN TOUCH:

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