

NEWS FROM THE HR TEAM



EMPLOYMENT NEWS

Extra bank holiday in 2022

To mark the Queen's platinum jubilee there will be an additional bank holiday on Friday 3rd June 2022. Employers may wish to decide how this additional leave day will be taken by staff, whether it would be an additional paid day of leave to their

usual annual leave allowance, or whether staff should be advised as early as possible that they would need to allocate an additional day from their current leave allowance for this bank holiday.

Upcoming bank holidays in England and Wales 2022

3 January	Monday	New Year's Day (substitute day)
15 April	Friday	Good Friday
18 April	Monday	Easter Monday
2 May	Monday	Early May bank holiday
2 June	Thursday	Spring bank holiday
3 June	Friday	Platinum Jubilee bank holiday
29 August	Monday	Summer bank holiday
26 December	Monday	Boxing Day
27 December	Tuesday	Christmas Day (substitute day)



	Extra bank holiday in 2022	1
	Proposed statutory payment rates for 2022/2023	2
	Case Law	2
	Unfair dismissal where furlough was not considered prior to redundancy	3
	Part time workers (Prevention of Less Preferential Treatment) Regulations 2000	3
	Is interviewing considered more appropriate to scoring candidates from a selection pool in cases of redundancy?	3
	Finance Bill confirms minimum pension age rise	4

Proposed statutory payment rates for 2022/2023.

The Government has proposed the below changes in statutory payments rates for next year:

- The standard weekly rates of statutory maternity pay (SMP), statutory adoption pay (SAP), statutory paternity pay (SPP), statutory shared parental pay (ShPP) and statutory parental bereavement pay (SPBP) will increase from £151.97 to £156.66 (or 90% of the employee's average weekly earnings if that is less than the statutory rate)
- The weekly rate of statutory sick pay (SSP) will increase from £96.35 to £99.35.
- The lower earnings limit (LEL), below which employees don't qualify for these statutory payment rates, will increase from £120 to £123 per week.



Menopause, a potentially protected characteristic.

Following Menopause Day on 18th October 2021, which highlighted that in some cases, employees who are experiencing the menopause may be classed as protected under the Equality Act 2010.

we have drafted an HR policy for all managers and employees regarding key detail they should be aware of. Please contact us for a copy of our policy or any questions you may have.

Employer duty to prevent sexual harassment

The Government is set to publish a report outlining the duty employers will have, to prevent sexual harassment. Once the clear guidance for employers is published we will update you further.

Case law; Dismissal for urine being found next to a whisky barrel at a whisky distillery not deemed an act of gross misconduct warranting summary dismissal

Mr K Wilson v W Grant and Sons Distillers Ltd

Long standing employee Mr Wilson stated he was a keen ornithologist and had followed a robin he had spotted when he was near barrels of whisky at the distillery where he worked. Following the employers spotting a 'suspicious looking puddle' on the floor next to the barrels of whisky, a sample of the 'puddle' was sent away for testing and confirmed the liquid as human urine.

The employers were not satisfied that a robin had been sighted as no other employees had spotted a robin that day and nor had Mr Wilson previously revealed his keen bird watching interests to his place of work. Wilson was dismissed and subsequently submitted a claim for unfair dismissal and wrongful dismissal.

The ET confirmed that whilst the employer had been within the band of reasonable responses not to believe Mr Wilson's explanations, they had not been able to confirm the urine had belonged to Mr Wilson. The ET awarded Mr Wilson £11,264.76 in damages for breach of contract plus 12 weeks' notice and ruled that his dismissal did not amount to an act of gross conduct warranting summary dismissal.

Employers are reminded of the need to ensure thorough investigations are carried out and to weigh up the circumstances where clear wrongdoing would amount to an act of gross misconduct.

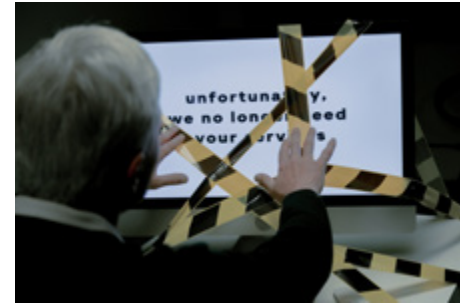
Unfair dismissal where furlough was not considered prior to redundancy

Mhindurwa v Lovingangels Care Limited

A Tribunal has ruled that a redundancy dismissal was an unfair dismissal where the employer failed to give consideration to utilise the Furlough Scheme/CJRS. The ET considered that the Furlough Scheme should have been considered as an alternative to redundancy and further considerations should have been given to whether there would be sufficient work levels for the employee to return to after the end of the Furlough Scheme.

In contrast, in the case of *Handley v Tatenhill Aviation Limited*, the employee was placed on the Furlough Scheme and made redundant only once it became apparent that cost savings needed to be made.

It would seem in cases where employers utilised the Furlough Scheme in full or in part, prior to dismissals, Tribunals would be less likely to find those dismissals as unfair.



Is not offering an employee the opportunity to appeal a dismissal deemed an unfair dismissal?

Gwynedd Council v Barratt and Anor

The Court of Appeal has ruled that in cases where an employee is dismissed and not offered the right to appeal the dismissal, no critical impact would be reflected on the fairness of the decision to dismiss.

The right of appeal is considered part of a fair procedure, but it would only form one factor towards the overall considerations of fairness. This highlights that a full detailed process of investigation is imperative when making

decisions to dismiss employees, and whilst offering the right to appeal that decision should be part of that process, if it is not offered, it will not automatically render the decision to dismiss as unfair. For any potential issues where you may be considering dismissal, please contact one of our HR Specialists to ensure the correct process is followed and to protect your business.

We can provide support and guidance on how to operate a compliant scheme. If this of interest please get in touch.

Is interviewing considered more appropriate to scoring candidates from a selection pool in cases of redundancy?

Gwynedd Council v Shelley Barrett

Gwynedd Council v Shelley Barrett
The Court of Appeal has stated that if an employer is simply reducing the number of roles as part of a redundancy process, they should use the scoring and pooling process as part of their redundancy process. However, where new roles that previously did not exist are to be introduced, and the employer is wanting to select employees for these new roles from their employees who are 'at risk' of redundancy, the interview and scoring process would be used.

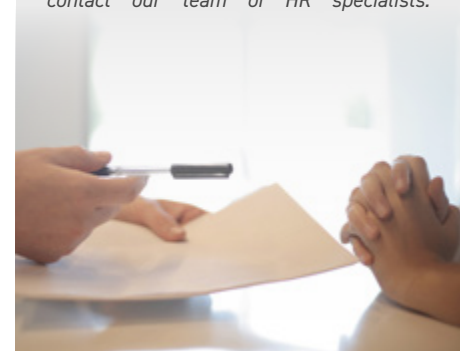
For any redundancy advice and questions contact our team of HR specialists.

Part time workers (Prevention of Less Preferential Treatment) Regulations 2000

Forth Valley Health Board v Campbell

The claimant Mr Campbell argued that his not receiving paid breaks, in comparison to his full-time colleagues, was unlawful. Whilst the ET agreed with him, this was overturned at appeal where it was ruled that the 'but for test' would be applied. This meaning, the paid breaks related to the number of hours worked on that shift, and if a full-time worker was to work those hours for a day, they too would not receive a paid break.

The breaks provided would need to be in line with the Working Time Directive (WTD), but applied fairly in relation to the hours worked during a working day.



Finance Bill confirms minimum pension age rise

The recently published Finance Bill confirmed an increase in the minimum pension age to 57 from April 2028. However there could be changes between the Finance Bill becoming the Finance Act.

Individuals do not have the ability to protect a retirement age of 55. However schemes that had the right to take benefits at 55 in their rules as at 11 February 2021 will be able to protect that age for existing members and any others that joined that scheme by 3 November 2021. Individuals in the process of transferring to such a scheme before the 3 November 2021 can still benefit from protection if the transfer completes after.

The scheme rules must specifically give an 'unqualified right' to retire at 55 for protection to apply. This isn't as simply as being able to take benefits from age 55, but rather that the member doesn't need the consent of the trustees, the scheme administrator or employer to take benefits at this age. This is a more common feature in occupational schemes.

Many SIPPs and personal pensions will not benefit from protection because they have adopted standard scheme rules which link the date benefits can be accessed to the 'normal minimum pension age' rather than explicitly stating the actual age, such as age 55. Clients in schemes with existing

protected pension ages will not be affected by this latest increase.

So for those without a protected pension age, this means:

- Individuals who reach age 57 before the 6 April 2028 will be unaffected.
- Individuals born after 5 April 1973 will have their normal pension minimum age increased by 2 years .
- Individuals born between 5 April 1971 and 5 April 1973 will be able to access their pension from their 55th birthday as long as they access it before the 6 April 2028. If taking benefits after this date they will need to wait until their 57th birthday.

Individuals in protected schemes can transfer and retain a protected age although this depends on the type of transfer:

- A block (buddy) transfer, where more than one member of a scheme transfers at the same time to the same receiving scheme, will maintain the protection on the funds transferred and any new monies that are paid into that new scheme.

- An individual transfer will also retain the protected age, but the funds transferred will be ring-fenced in the receiving scheme. Any new contributions would go into a separate arrangement that would have a minimum pension age of 57.

Fortunately a two year delay is much easier to plan for than the five year increase to the retirement age which occurred in 2010 when it increased from 50-55.

As protected pension ages are likely to be the exception rather than the norm it is important individuals who are affected and still wish to retire at 55 accrue savings in other tax wrappers such as ISAs, bonds and collectives to cover their income needs in this two year period.

It is also vitally important that any individuals considering pension transfers need to check if the scheme they are intending to move from has a protected pension age. However it is also important individuals are in a scheme which provides the investment options they need and offers all the flexibilities and benefit choices introduced under 'pensions freedoms' in 2015.

