

SPRING TERM 2023

# HR BRIEFING

## IN THIS ISSUE

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### EMPLOYMENT LAW AND POLICY UPDATES (pages 1-3)

- The Employment Relations (Flexible Working) Bill
- Retained EU Law (Revocation and Reform) Bill
- Harpur Trust vs Brazel – government consultation

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### PAY & BENEFITS UPDATES (page 4-6)

- School teachers' pay award 2023
- Green Book / NJC pay negotiations
- Extra Bank Holiday – May 2023

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### OTHER NEWS (page 6)

- Awarding QTS to Overseas Teachers

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### KEY REMINDERS (page 7)

- Industrial Action
- Statutory rate increases – April 2023
- Reporting deadlines



## 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.

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



## The Employment Relations (Flexible Working Bill)

### Relevant to

All schools and education settings

Last October, the Government confirmed that it will support the [Employment Relations \(Flexible Working\) Bill](#). The Bill, if passed, will make the right to request flexible working a **Day One Right** (it is currently only available to employees with 26 weeks' continuous service), and this remains a right to *request*, not a right to a flexible working arrangement. The Bill will also:

- Simplify the process to by removing the requirement for an employee to explain any potential effect they think the change in their working pattern will have on their employer.
- Allow two applications (rather than one) for a flexible pattern of work during any 12-month period.
- Require employers to consult with the employee about their flexible working application before refusing it.
- Require the employer to notify the employee of its decision about their flexible working application within two (rather than three) months.

There will be no change to the list of eight reasons currently in place that employers may use to refuse a request for flexible working.

There is no clear timetable for when these changes might be implemented but is likely to become law sometime this summer.



## Retained EU Law (Revocation and Reform) Bill

### Relevant to

All schools and education settings

The Retained EU Law (Revocation and Reform) Bill, or "Brexit Freedoms Bill," is moving through Parliament after passing a third reading in January. The Bill could have huge implications for employers as it will automatically end any retained EU law on 31 December 2023, unless new legislation is introduced to keep it.

The laws that could change or expire at the end of the year include TUPE, the right to paid annual leave, the maximum 48 hour working week, agency worker regulations and part-time and fixed-term worker regulations.

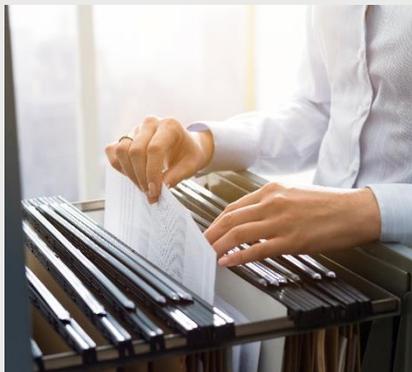
The controversial draft legislation has the power to remove around 4,000 laws, unless the Government takes positive action to preserve specific laws before the 'sunset' date of 31 December 2023. Current legal opinion is that the 'sunset date' of December 2023 is wholly unrealistic and is likely to be delayed.

MPs recently voted against a proposed amendment to the Bill which would have forced ministers to provide a list of all the laws they plan to scrap under the Bill. The Bill still has a number of stages to move through in the House of Lords before it can become law and we will keep you updated over the coming months on further progress and the impact on HR practices and procedures.

# HARPUR TRUST vs BRAZEL: Launch of Government Consultation

## EMPLOYMENT LAW UPDATES

(cont.)



### Relevant to

All schools and education settings

The government has launched a [consultation](#) addressing the issues arising from the Supreme Court's judgment. The application of the ruling published in July 2022 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 such as workers with no fixed hours or working pattern working only 4 weeks during a year, such as an exam invigilator, and being entitled to 5.6 weeks of holiday pay.

The consultation is designed to address these disparities in order to ensure that holiday pay and entitlement received by workers is proportionate to the time they spend working. The proposal is to replace the 52-week reference period when weeks in which no remuneration is earned are ignored for calculating holiday pay, with a 52-week reference period which includes weeks with no remuneration.

## Brazel vs Harpur – Actions for employers

### Relevant to

All schools and education settings

- Our guidance to date has been 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.
- The consultation closes on 9 March 2023 so please take the time to respond if you are able to – the link is on the slide and in your handout.
- Further information and resources are available on our [website](#)





## PAY & BENEFITS UPDATES



### SCHOOL TEACHERS' PAY AWARD 2023/24

#### Relevant to

Maintained schools, PRUs and most academies

On 15 November 2022 the School Teachers' Review Body (STRB) published its remit letter for the pay period 2023/24. The Local Government Association (LGA) has now begun consulting with local authorities to inform the response to the remit from National Employers Organisation for School Teachers (NEOST), which is the statutory recognised national employer representative body for school teachers.

Key messages included in the remit for 2023/24 include:

- Maintenance of commitment to target of £30k starting salary for ECTs
- DfE request to the STRB to offer an initial view on areas within the STRB's scope that would benefit from future exploration in order to address how 'broader structural issues' can be adapted in order to provide a coherent and fulfilling career path for teachers and leaders
- The requirement to have regard to the Government's inflation target when forming recommendations on pay
- To determine what the STRB considers a fair pay award for teachers, while recognising the impact pay rises will have on schools' overall budgets

The STRB is due to report back to the DfE in May 2023.

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

### 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<sup>th</sup> January 2023:

- Consideration of a flat rate increase to hourly rates of pay to bring the minimum rate up to £15 per hour within two years
- A review and improvement of NJC terms for family leave and pay
- A review of job evaluation outcomes for school staff whose day to day work includes working on Special Educational Needs (SEN)
- An additional day of annual leave for personal or well-being purposes
- A homeworking allowance for staff for whom it is a requirement to work from home
- A reduction in the working week by two hours
- A review of the pay spine, including looking at the top end, and discussions about the link between how remuneration can be used to improve retention

A further update is due following the meeting of the NJC employers on 23<sup>rd</sup> February 2023.

**Details of the 2022/23 pay award which was finalised in November 2022 can be found on the [website](#), including new pay spines for LGS & GLPC.**

## EXTRA BANK HOLIDAY – MAY 2023

### Relevant to

All schools and education settings

Ultimately whether or not a member of staff is entitled to leave in respect of an additional bank holiday is a matter for the contract of employment. In cases where the contract states the individual has *'33 days annual leave including 8 bank holidays'* they will not be entitled to additional pay and leave for the extra 2 bank holidays in the 2022/23 academic year.

Alternatively, where an employee has a contract that states they will be paid for *'28 days annual leave plus bank holidays'* they will be entitled to pay and leave for the additional 2 bank holidays. For most of our customers, terms of collective agreements such as the Burgundy Book for Teachers and NJC Green Book for support staff are incorporated into contracts of employment and STPCD terms and NJC pay spines form part of the contractual agreement between staff and employers.

Independent schools (including academies) may have different contractual arrangements in place; however, we would expect most settings will want to consider offering the benefit of the additional Bank Holiday regardless of contractual obligations.

### **Teachers Paid on School Teachers' Pay & Conditions Document terms and conditions (STPCD)**

In 2022/23 the School Teachers' Pay and Conditions Document (STPCD) was amended to accommodate the extra bank holiday in September 2022 and the DfE has confirmed it will in due course lay regulations to further reduce the school year from 189 days to 188 days, for the academic year 2022-23 as a result of the additional bank holiday in May 2023. A revised 2022/23 STPCD to due be issued imminently in which:

- The number of days a full-time teacher is required to work is reduced from 194 to 193 days; (this includes 5 INSET days) and
- Full-time directed time hours for the year will be reduced from 1258.5 hours to 1252 hours.

The pro-rata principle relating to directed time will be applied in the usual way for part-time teachers – so a part-time teacher working 4 days per week would be expected to work  $1252 \times 0.8$  FTE– equal to 1001.6 hours.



## EXTRA BANK HOLIDAY – MAY 2023 Contd.

### Relevant to

All schools and education settings

### Support Staff paid on NJC Green Book Terms & Conditions

The Green Book entitles Term-Time only (TTO) employees to pay or alternatively schools can choose to provide an additional period of paid leave during term-time in respect of any extra bank holiday.

- Where a part-time employee would have been at work on the day of the bank holiday, they should continue to receive normal pay for this time (this will, in effect, give them paid leave for the additional bank holiday).
- Those part-time staff whose working pattern means they will not be working on 19th September 2022 or 8th May 2023 are still working for the full number of days / hours for which they are contracted to work annually and so may need to be given an additional pro-rata paid leave entitlement to reflect the additional bank holiday.

If schools are using the NJC Advisory Model Calculations (detailed in Part 4 of the Green Book) to determine pay and leave for TTO members of staff, these can be adapted to calculate the pro-rata entitlement for the additional bank holiday where TTO staff don't usually work on the day of the additional bank holiday. Due to different remuneration arrangements and different annual leave years in schools, there is no one-size-fits-all approach.

**Additional guidance and a range of model calculations are available on our [website](#) to check that you are paying staff correctly.**

*The contents of this briefing are for information and guidance purposes and should not therefore be relied upon as a substitute for specific, tailored HR or legal advice.*

## Awarding QTS to overseas teachers

### Relevant to

All schools and education settings

On 1 February 2023, the way that QTS is awarded to overseas-trained teachers changed. The number of countries where an individual is automatically eligible to apply for QTS has been expanded. In addition, there are an extra 7 countries where if the teacher has a subject specialism in languages, mathematics or science and a teaching qualification to teach 11 to 16-year-olds, they will be able to use the service to check if they meet the requirements. Teachers from all eligible countries will have to show they meet a consistent set of criteria for the award of QTS. Over time, this route will be opened to qualified teachers from every country outside the UK.

A new qualification has also been launched by the DfE. International qualified teacher status (iQTS) is designed for UK and non-UK citizens living outside the UK and leads to the automatic award of QTS.

Detailed guidance is available on our [website](#) and via [GOV.UK](#).

# KEY REMINDERS



## INDUSTRIAL ACTION

The NEU announced teachers' strike action in England and Wales on seven dates in February and March.

Useful [website](#) resources include:

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



## STATUTORY INCREASES – APRIL 2023

The government have published statutory maternity, adoption, paternity, shared parental and parental bereavement pay rates effective 2 April 2023.

The weekly earnings threshold a worker must meet to become eligible for statutory parental pay or statutory sick pay will remain the same as in 2022/23 for the year 2023/4, at £123 per week.

The Government have yet to publish the increase in statutory redundancy Pay for 2023/4. You can find all the updated rates on the [website](#).



## REPORTING DEADLINES

You can find detailed information via the links below:

### Gender Pay Gap Reporting 30th March / 4 April 2023

<https://www.strictlyeducation4s-hr.co.uk/hr-resources/equality-law>

### Public Sector Apprenticeship Reporting (full details tbc)

[Public sector apprenticeship target - GOV.UK \(www.gov.uk\)](https://www.gov.uk/public-sector-apprenticeship-target)

<https://www.strictlyeducation4s-hr.co.uk/hr-resources/recruitment-selection-and-appointment/appointing-volunteers-and-atypical-workers/atypical-workers-guidance-and-information>

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