

AUTUMN TERM 2022

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 energy costs and skills shortages.

The timetable for any employment law changes remains uncertain. There are, however, numerous proposals in the pipeline which are likely to re-emerge over time.

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



ENGAGING AGENCY WORKERS DURING INDUSTRIAL ACTION

Relevant to

All schools and education settings

There were regulations in place that previously legally restricted employment agencies from providing workers to cover for staff on strike. These regulations were repealed in July 2022, meaning that schools can now choose to engage individuals via an employment agency to cover a strike period.

Schools have always been able to employ individuals directly on a fixed-term basis to cover the duties of striking employees. However, allowing schools to use temporary agency staff to provide cover during periods of strike widens the options available to schools, and thereby will help to minimise the disruption caused by industrial action.



CHANGES TO RIGHT TO WORK PROCESSES

Relevant to

All schools and education settings

At the beginning of the COVID-19 pandemic in March 2020 the Home Office introduced temporary concessions to allow employers to carry out remote right to work checks. The adjustments allowed schools to carry out right to work checks over video calls and permitted job applicants and existing workers to send scanned documents or a photo of documents for checks rather than sending originals. This scheme ended on 30 September 2022.

This means that from 1 October, employers will need to either

- Perform an in-person manual check using original documents
- Perform an online check using the Home Office online service

Or

- Engage the services of a certified Identity Service Provider (IDSP).

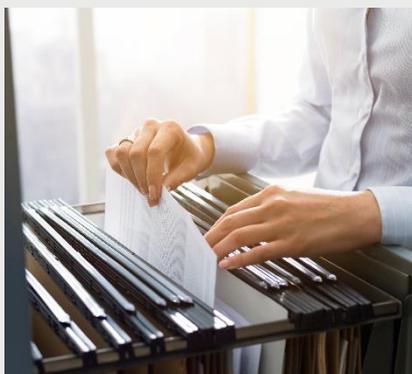
Retrospective checks are not required for those staff who had a COVID-19 adjusted check between 30 March 2020 and 30 September 2022 (inclusive), however, you will need to ensure processes are in place to comply with the rules now the COVID concessions have ended.

All employers are required by law to carry out right to work checks on their employees, in order to prevent illegal working.

Further information is available either via our [website](#) or [Gov.uk](#).

EMPLOYMENT LAW UPDATES

(cont.)



BRAZEL VS HARPUR TRUST: SUPREME COURT JUDGEMENT

Relevant to

All schools and education settings

The Supreme Court judgement in the case of Brazel vs The Harpur Trust was published in July 2022. The judgement affects the **calculation** of holiday pay due to part year workers and the **rate** of pay at which holiday leave is paid. The two key decisions of the Supreme Court are as follows:

- Workers are entitled to a minimum of 5.6 weeks paid holiday per year, regardless of the number of hours, days or weeks that they actually work
- Holiday pay should be calculated using the calendar week method (WTR/ ERA) average weekly pay from 52 working weeks (looking back a maximum of 104 weeks) prior to the leave discounting any weeks not worked

Brazel vs Harpur – Actions for employers

Relevant to

All schools and education settings

- Review / audit pay arrangements & collate list of potential claimants assessing the risk and value of any claims
- Adopt the WTR /ERA method of calculating holiday pay for workers without fixed working hours
- Expect / or request updates from your LA regarding changes agreed through local collective bargaining arrangements
- Review holiday rules for staff, for example, it may now be necessary to specify when annual leave is taken for casual worker
- Consult with affected staff and amend contracts where necessary
- Academies check any commercial transfer agreement (CTA) for LA staff to determine liability for any claim
- Budget for backdated holiday claims
- Look out for future updates to the NJC Green Book

Further information and resources are available on our [website](#)





SCHOOL TEACHERS' PAY AWARD 2022

Relevant to

Maintained schools, PRUs and most academies

In July the School Teachers' Review Body (STRB) published their Annual Report and consultation on the draft report ran until early September. **The final version of the STPCD is due to be laid before Parliament on 14th October and come into force on 4th November. The pay award will therefore need to be backdated to 1st September 2022.**

The 2022 draft STPCD proposes the following:

- Pay award of a 5% increase on all pay and allowance ranges and advisory points
- Higher increases to some parts of the Main Pay Range (of between 5.5% and 8.9%) as a step towards achieving a minimum starting salary of £30,000 by September 2023
- This represents an increase on the DfE original proposal of an increase of 3% to teachers on the UPR and Leadership pay ranges
- FTE workdays reduced from 195 to 194 (in respect of the additional bank holiday for the state funeral of Queen Elizabeth II held on 19th Sept)

The DfE has decided only to confirm teachers' salaries for the next academic year, rather than the two-year deal initially proposed.

PAY & BENEFITS UPDATES



GREEN BOOK / NJC PAY NEGOTIATIONS

Relevant to

Settings where Green Book / NJC pay and conditions apply

In August the Employers' Side made an improved, final pay offer of £1,925 on all points as well as an increase to allowances. In addition, from April 2023 an increase of one day leave entitlement was proposed for all employees, as well as the deletion of pay point 1 from the NJC pay spine.

The trade unions have been conducting ballots on the revised offer. On 27th September Unison confirmed that members had voted to accept the pay offer, and Unite and GMB are expected to respond later in October. In order for the pay deal to be finalised so that it can be implemented and paid to employees, GMB and Unite must also vote to accept the employers' offer.

We have published the 2022-23 draft teachers' pay ranges and the draft advisory pay points on our [website](#). These are draft pending the publication of the STPCD 2022, they are however highly unlikely to change.



EXTRA BANK HOLIDAY – SEPTEMBER 2022

Relevant to

All schools and education settings

This has been an exceptional year in that there have been two additional bank holidays. In addition to the extra Jubilee bank holiday which fell in the last academic year, the start of the current academic year (2022-23) had an unexpected additional bank holiday to allow the nation to mourn on the day of the state funeral of the late Queen Elizabeth II.

The draft School Teachers' Pay and Conditions

Document (STPCD) 2022/23 has been amended to reduce the working days per annum from 195 to 194 taking account of the additional September bank holiday. This is made up of 189 days on which a full-time teacher may be required to teach and perform other duties plus 5 non-teaching days (e.g., INSET). Therefore, full-time working hours for this academic year will be reduced from 1265 hours to 1258.5 hours. Part-time staff will be required to be available for the equivalent proportion of this. There will also be an impact on supply teachers who must have a day's pay calculated on the basis of 1/194, instead of the usual 1/195 during this academic year.

Academy trusts and independent schools can, of course, determine their own arrangements.

NJC Green Book is applicable to many school-based support staff in the state sector. Essentially staff are entitled to holiday and normal pay in respect of additional bank holidays. For term time employees, additional bank holidays should be reflected in the employee's pay or an additional period of paid leave during term-time granted instead. 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 wouldn't usually be working on 19th September are still working for the full number of days / hours for which they are contracted to work annually, and so will need to be given an additional pro-rata paid leave entitlement to reflect the additional bank holiday.

Maintained schools with support staff who are not on Green Book terms should refer to their local terms and conditions, although these are likely to be similar.

AWARDING QTS TO OVERSEAS TEACHERS – proposed changes



Relevant to

All schools and education settings

The Department for Education (DfE) is changing the way they award QTS to teachers from overseas.

At present qualified teachers who trained outside of England can get QTS by having their qualifications assessed by the Teaching Regulation Agency (TRA). This includes teachers who trained in Scotland, Northern Ireland, the EEA, Australia, Canada, Gibraltar, New Zealand and the USA.

The proposed changes will apply to qualified teachers from all countries outside the UK and will be introduced in early 2023. There will be a new professional recognition service, called **Apply for Qualified Teacher Status** which will set consistent standards so the qualifications and experience of overseas teachers can be fairly assessed against set criteria. The Teaching Regulation Agency will continue to be the body responsible for awarding QTS.

Teachers who qualified in Scotland and Northern Ireland will not need to demonstrate the same criteria as teachers using the *Apply for Qualified Teacher status* in England service. They will need only to supply evidence of their teaching qualification to the Teaching Regulation Agency. The Government will announce the countries in their early roll-out soon, and applications from these countries will open in early 2023. You can find more information on [Gov.uk](https://www.gov.uk)

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.

KEY REMINDERS



KEEPING CHILDREN SAFE IN EDUCATION

The latest version of the DfE statutory guidance document, [Keeping Children Safe in Education](#), came into force on 1 September 2022.

We produced a detailed briefing note in June to take you through what's changed.

Changes to Part 3 – Safer Recruitment - have generally provoked the most discussion, particularly the guidance that schools should consider using online searches prior to interview for shortlisted candidates.

Our updated guidance documents and resources are available on our [website](#).



REVIEW OF STAFFING NEEDS

The autumn term is typically the point in the year when schools and colleges review their staffing levels and consider whether reductions or restructures may be needed for the following academic year. This usually means a period of consultation starting in February or March to take into account staff notice periods.

Don't forget we are here to offer HR advice in this area. We also have a free webinar recording '**How to plan ahead for changing staffing needs**' available on our [website](#).



SCHOOLS BILL

You will recall that the Schools Bill was introduced to parliament in May 2022.

The most high-profile headlines around the content of the White Paper have concerned its proposals around full academisation by 2030.

The third reading of the Schools Bill was planned for 14th September but this did not take place and no new date has been announced.

It is likely that the Schools Bill will be passed but the date and details are unknown. We will keep you updated with developments and HR implications on our website.

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