

22 March 2023

Employment Law Seminar 2023



Welcome

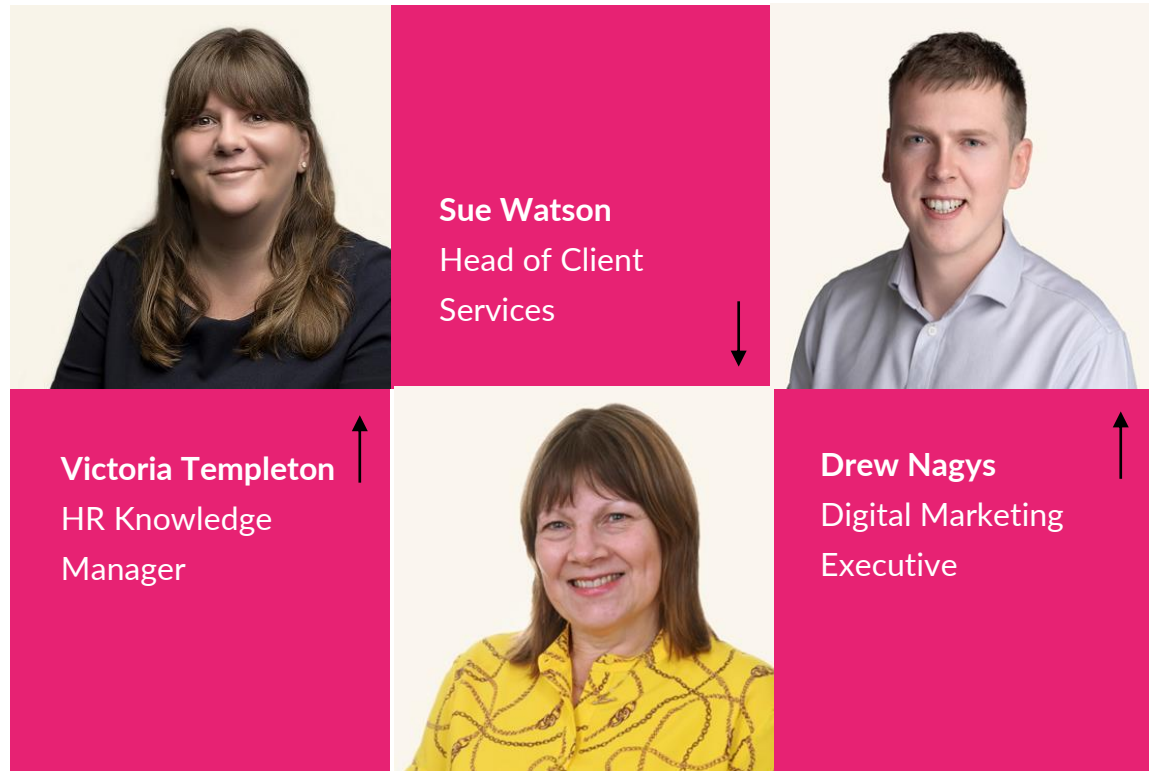


Introductions



Meet the Presenters and Technical Support

- ✓ 25+ years of delivering expert, pragmatic HR advice
- ✓ We support over 800 SMEs with HR, Payroll and Health & Safety
- ✓ Winners of the 2023 Feefo Gold Partner award for customer service

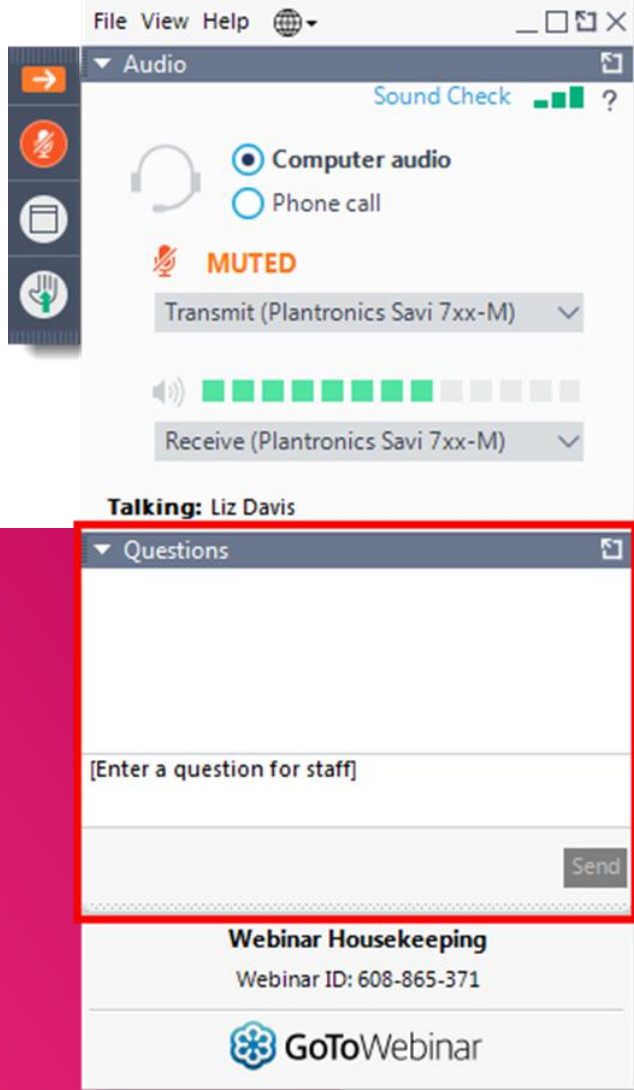






How to ask questions





GoTo Webinar Housekeeping

Time for Questions

Your Participation

Please continue to submit your text questions and comments using the Questions panel



Agenda

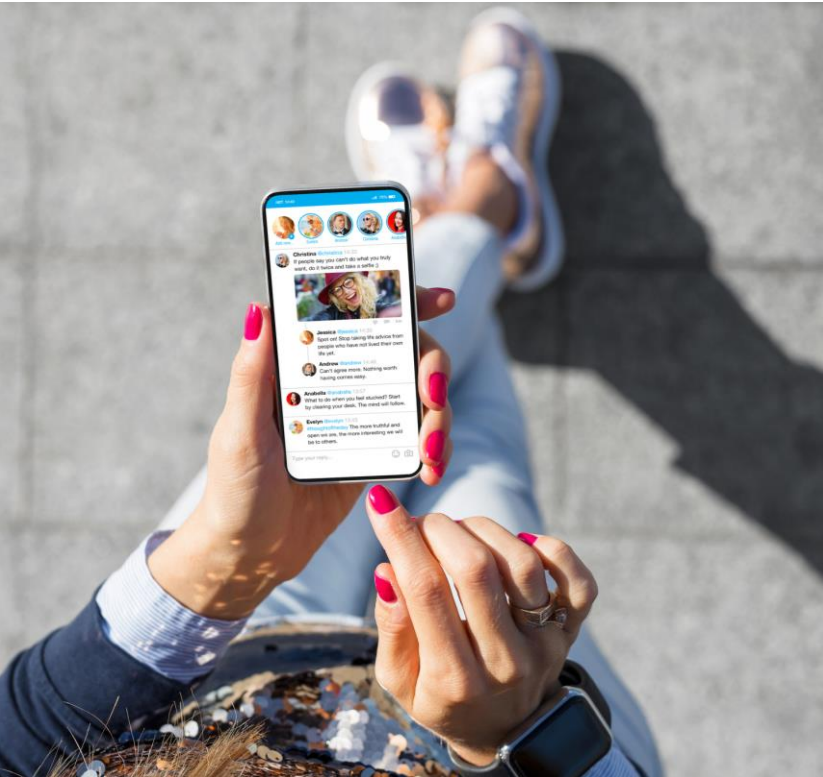
- Key 2022 developments
- Employment Law in 2023
- Practical tips
- Q&A





2022 Developments

1. Do you employ people who work part year or irregular part time hours?
2. Do you employ people on zero-hour contracts?
3. Do you employ people who earn a weekly wage that is less than the lower earnings limit (£123)
4. Do you have an annual leave policy that sets out what happens if leave is not used at the end of the holiday year?
5. Do you proactively encourage employees to take all of their annual leave?



Key 2022 developments

- Exclusivity clauses
- Calculating holiday pay for part year and irregular hours workers
- Backdated holiday pay

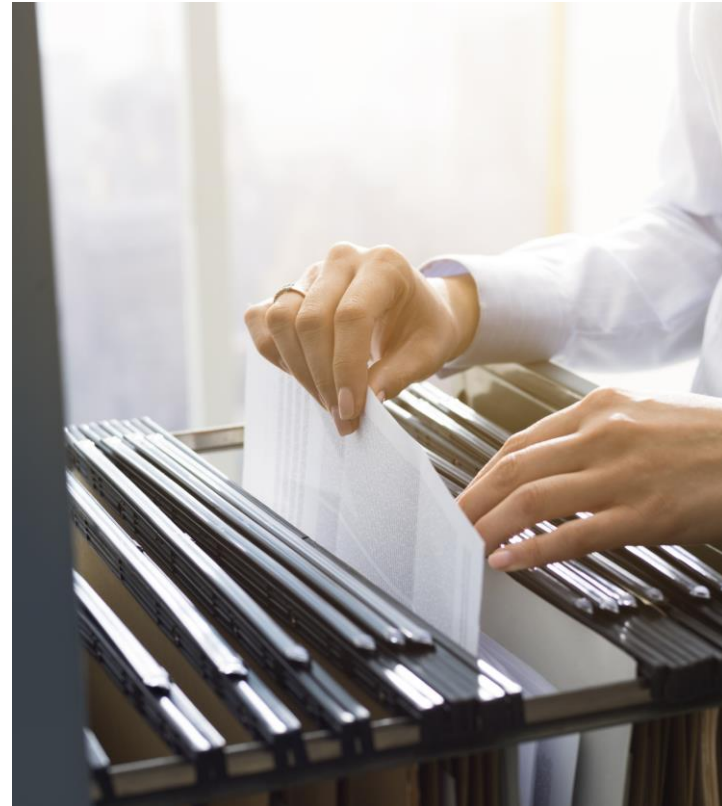


Contract law

Exclusivity Clauses

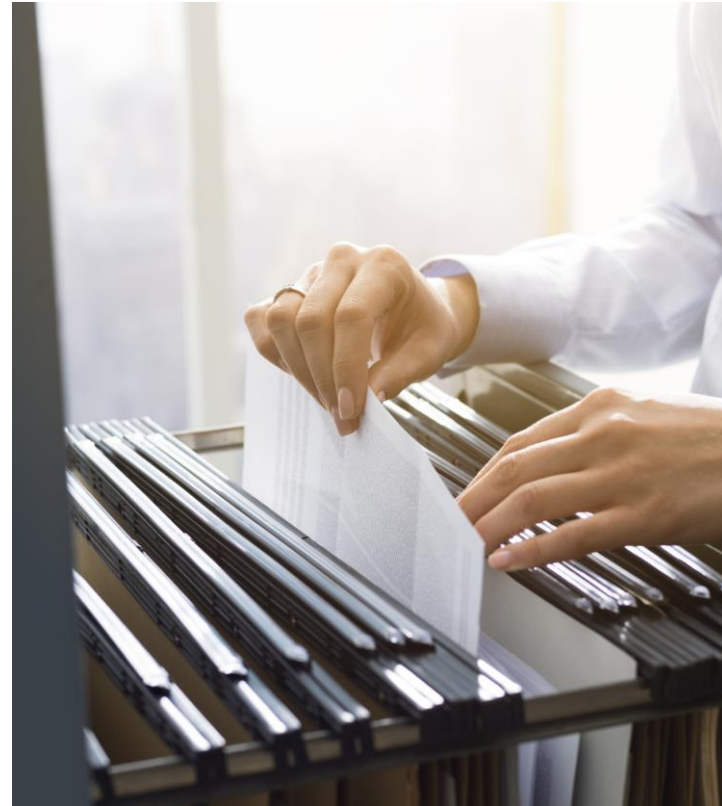
What are they?

- A clause in the contract of employment prohibiting a worker from carrying out any work or providing a service under another contract or prohibits a worker from doing so without their employer's consent.
- They were banned from being used in zero hour contracts in 2016
 - The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015
- Since 5 December 2022, the ban extends to all types of contract of employment.



Exclusivity Clauses

- The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022
- For workers employed with a guaranteed income at or below the lower earnings limit
- £123 per week
- Workers in sectors such as hospitality and health and social care are likely to see workers holding more than one job.





Holiday pay

Harpur Trust

v

Brazel

2015 ET

2018 EAT

2019 CA

2021/22 SC



Holiday pay

Supreme Court Judgement

A permanent worker working part year is entitled to the same annual leave as a permanent worker working a full year. Which is 5.6 weeks paid annual leave and must not be pro rated.

When someone works irregular hours, irrespective of whether it is a full year or part, employers must find a fair, equitable and non discriminatory way of calculating holiday entitlement and pay.



Holiday pay

- All workers must receive the full 5.6 weeks of paid annual leave
- 12.07% method unlawful
- Likely to cover other types of employments
 - Zero hours contract
 - Casual hours contract
 - Term time contract
- As long as the contract is continuous and permanent



Holiday pay

- Does not apply to:
 - Part time contracts with regular hours
 - Casual workers not engaged on a permanent basis throughout the year
 - Workers on fixed term contracts
 - Holiday in the first and final year of service



Holiday pay

Problem:

For someone who does not work regular hours, how can you know what to pay when they take 1 week of their 5.6 weeks annual leave entitlement



Holiday pay

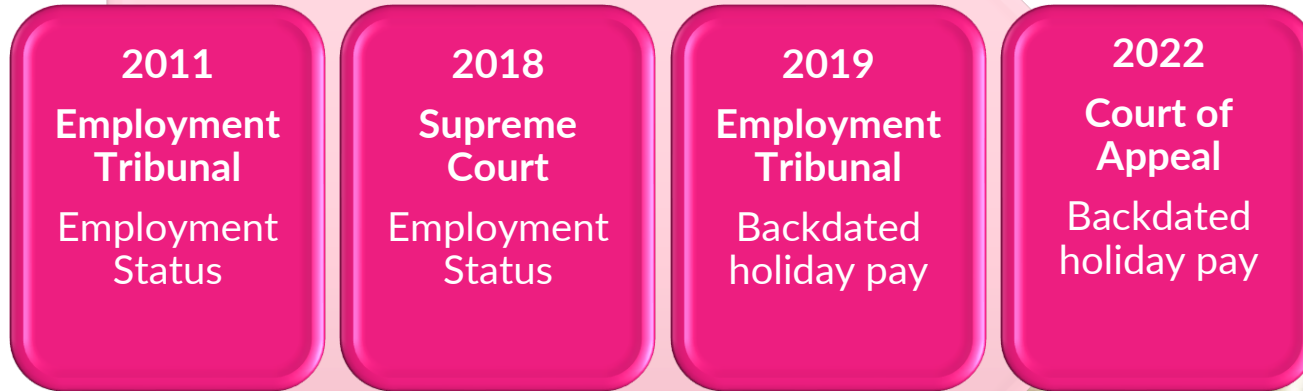
Smith

v

Pimlico Plumbers



Backdated holiday pay



Backdated holiday pay

Court of Appeal ruled an employer must show:

- That you give workers the opportunity to take paid leave
- Workers are encouraged to take paid leave
- The workers were informed that the right would be lost at the end of the holiday year



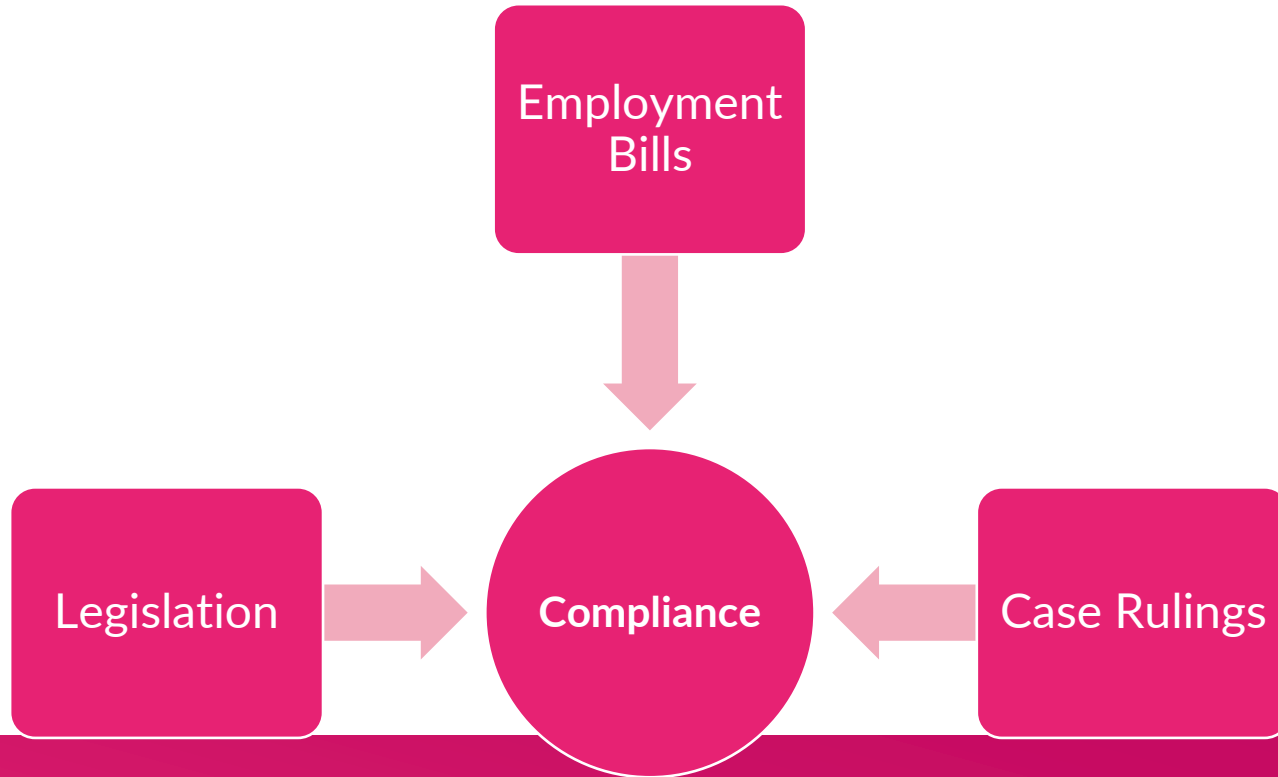


Agenda

- Key 2022 developments
- Employment Law in 2023
- Practical tips
- Q&A



Employment Law in 2023



Knowledge Base Users

- Legislation tracker
 - [Employment Law 2023](#)
- Keep track of our monthly newsletters
 - [Newsletter – HR and Employment Law Updates 2023](#)
 -

www.hrsolutions-uk.com

- Legislation tracker
 - [Employment Law 2023](#)
- Sign up for our weekly updates
 - [Weekly Newsletter](#)

Employment Legislation

Legislation for 2023

March 2023

- Harassment in the workplace – International Labour Organisation’s Violence and Harassment Convention

April 2023

- National Minimum Wage (Amendment) Regulations 2023
- Articles 10 and 11 Social Security Benefits Up-rating Order 2023 (family friendly statutory rate)
- Article 9 Social Security Benefits Up-rating Order 2023 (statutory sick pay increase)

December 2023

- Retained EU Law (Reform and Revocation) Bill

Legislation for 2023

National Minimum Wage (Amendment) Regulation 2023

- 23 years and above: £10.42
- 21-22 years: £10.18
- 18-20 years: £7.49
- 16-17 years: £5.28
- Apprentice rate: £5.28

Article 9 Social Security Benefits Up-rating Order 2023

- Statutory sick pay: from £99.35 to £109.40 per week

Articles 10 and 11 Social Security Benefits Up-rating Order 2023

- Statutory maternity, adoption, paternity, shared parental, parental bereavement pay
- From £156.66 to £172.48 per week

Employment Bills

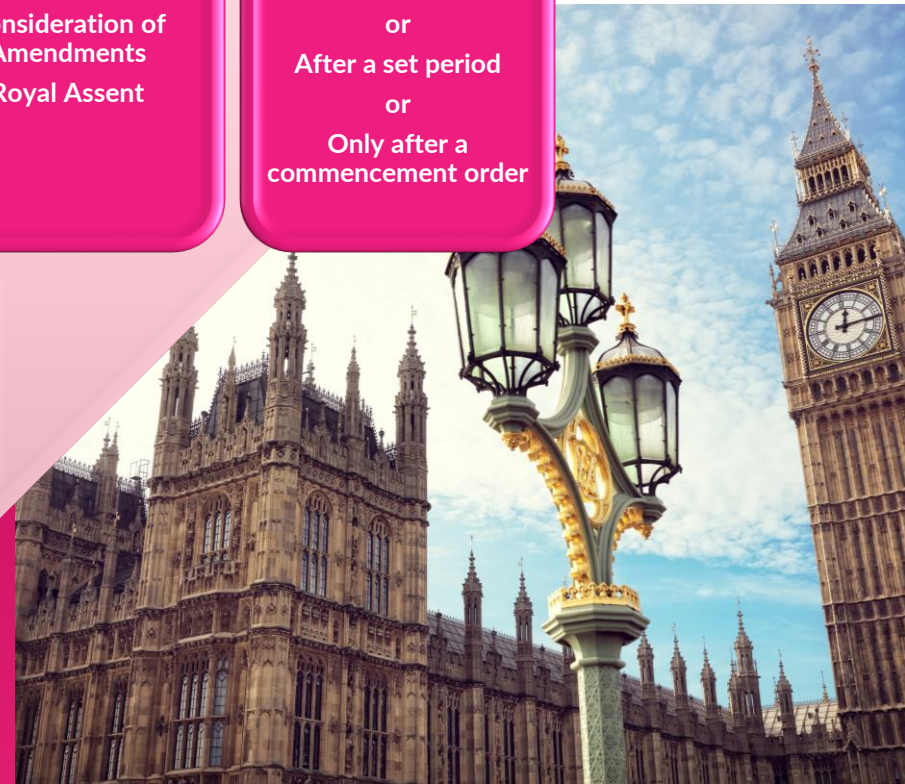
Employment Bills

House of Commons
3 x reading stages
1 x committee stage
1x report stage

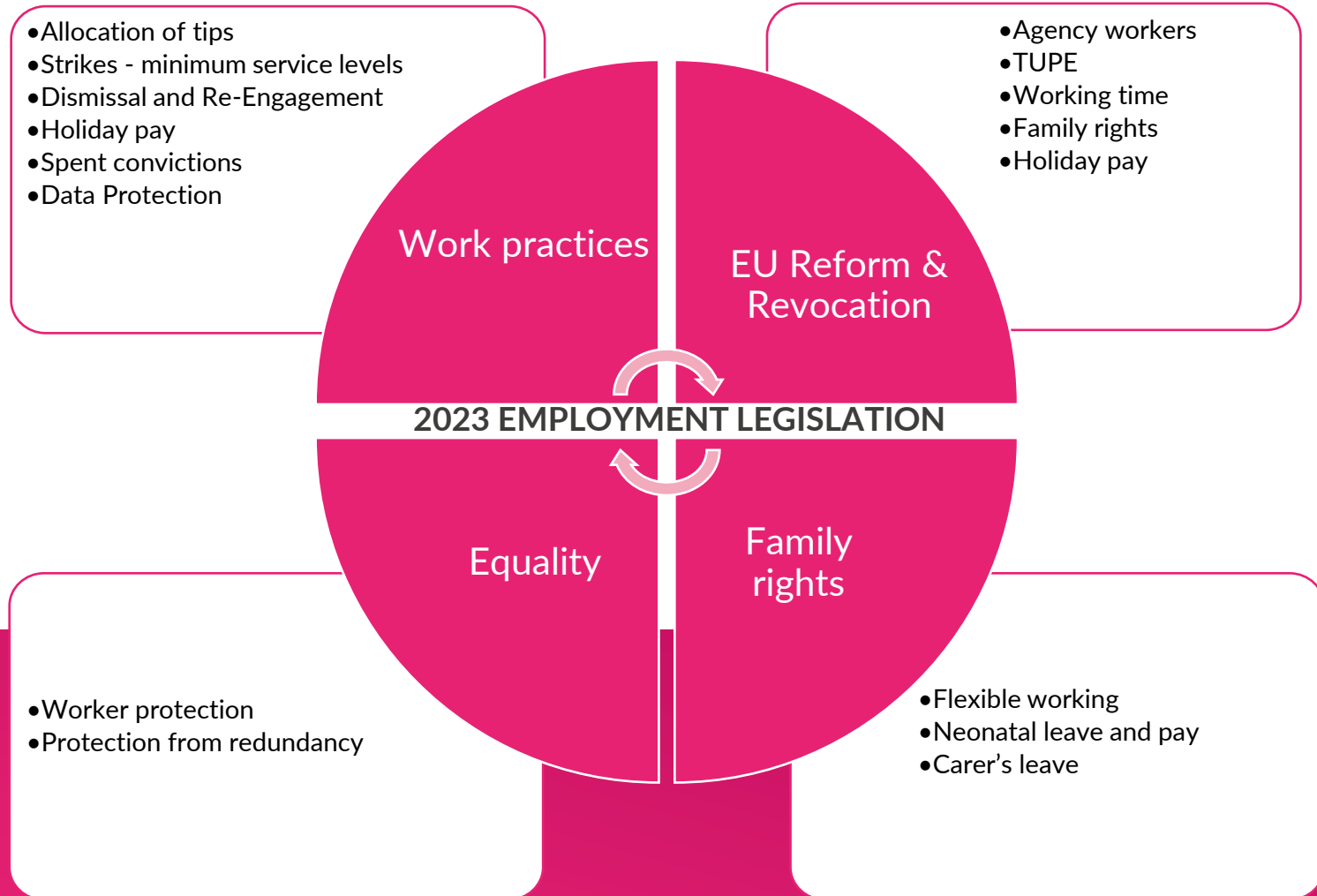
House of Lords
3 x reading stages
1 x committee stage
1x report stage

Final Stages
Consideration of
Amendments
Royal Assent

Act of Parliament:
Effective immediately
or
After a set period
or
Only after a
commencement order



Employment law in 2023



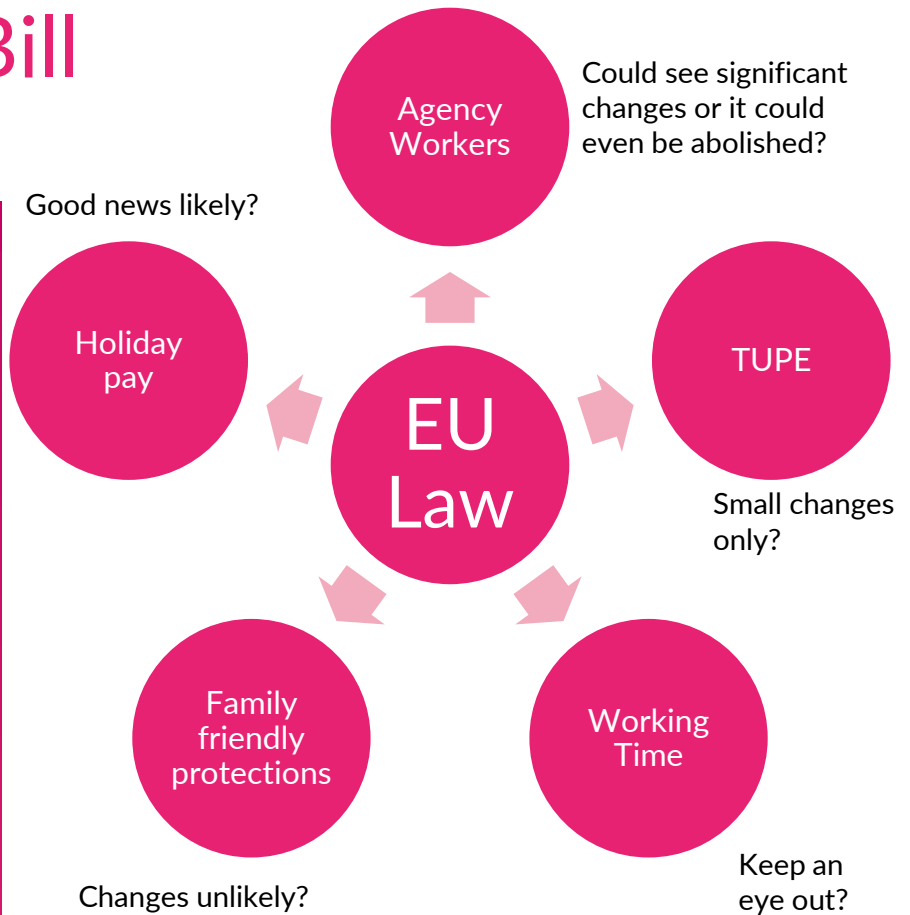


Retained EU Law (Reform and Revocation) Bill

- Revokes legislation in the UK that is based on European Law, including case law
- Abolishes, retain, or retain with amendments
- **31 December 2023!**
- House of Lords, report stage 19 April

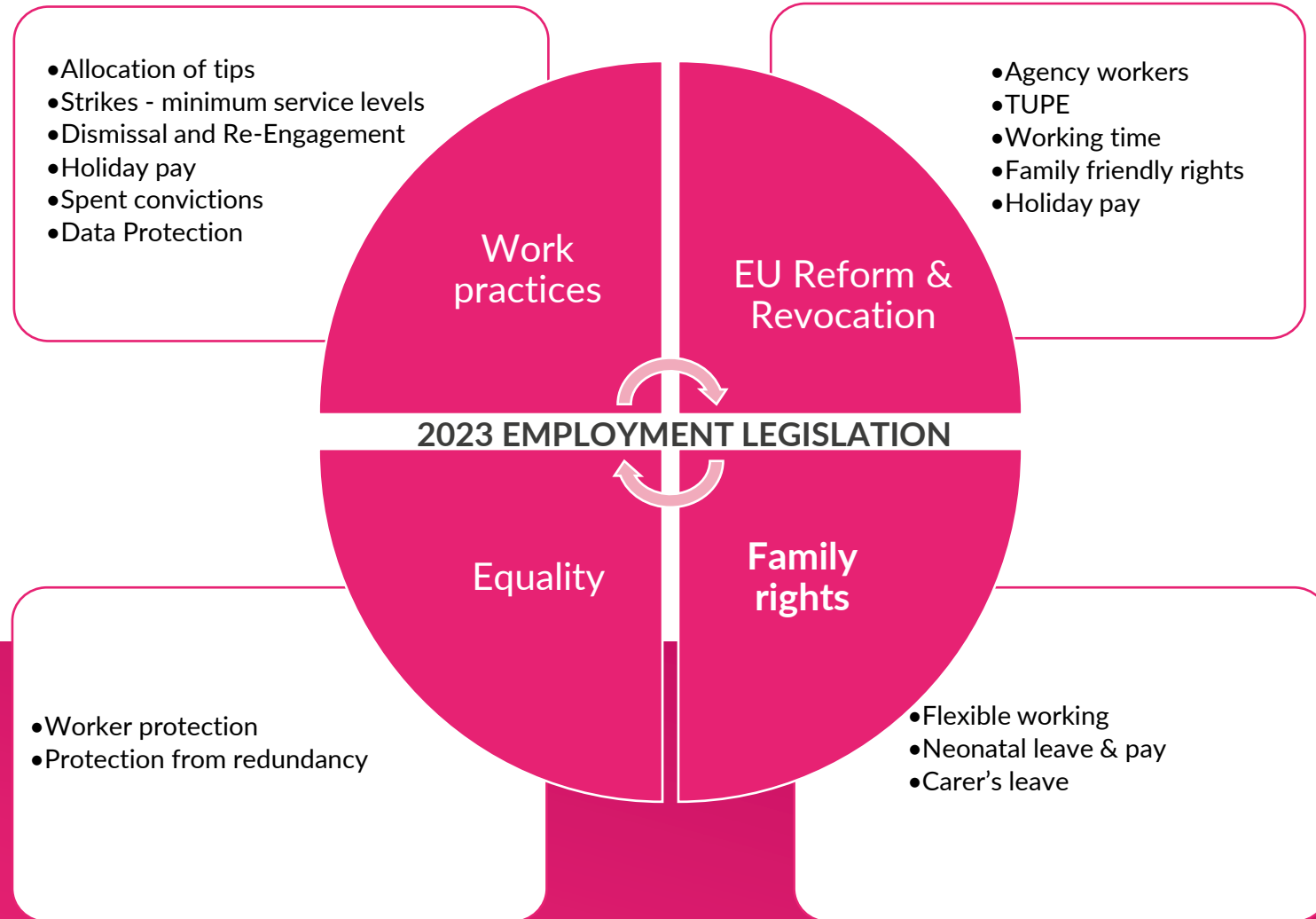


Retained EU Law (Reform and Revocation) Bill

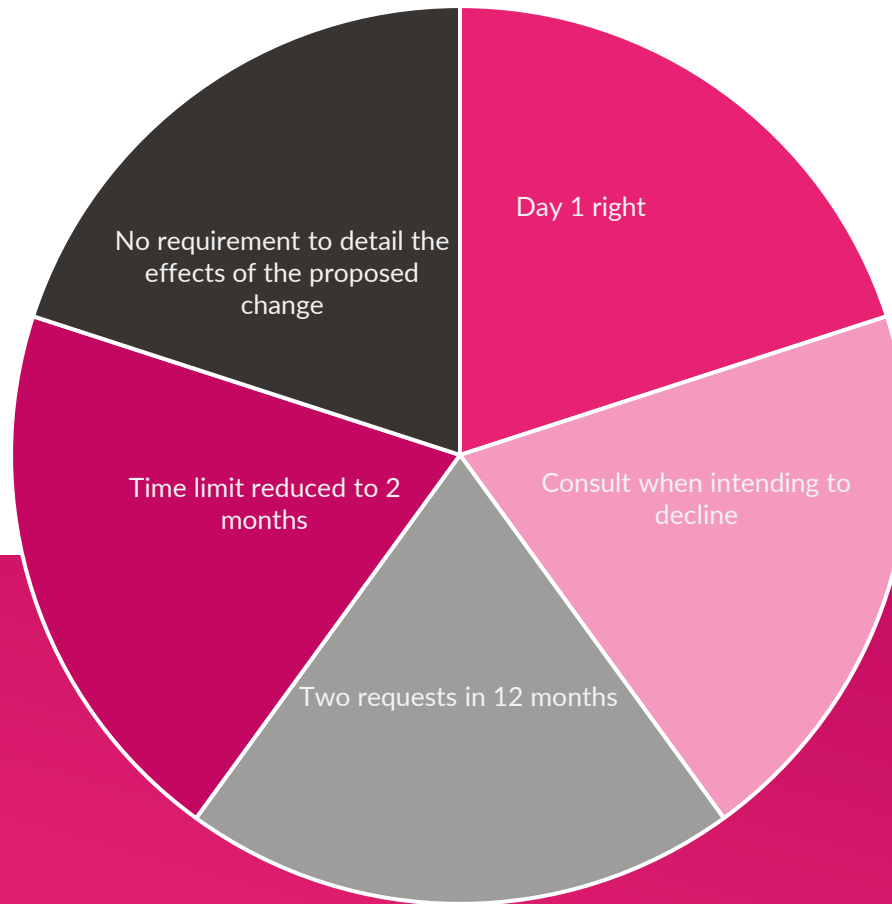




Employment law in 2023



Family rights: Employment Relations (Flexible Working) Bill



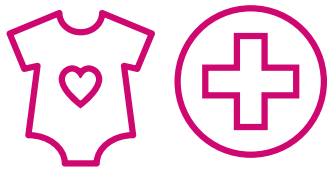
Family rights: Neonatal Care (Leave and Pay) Bill

Neonatal care:

“of a medical or palliative kind specified in the regulations and that starts before the end of a period of 28 days beginning with the day after the date of the child’s birth.”

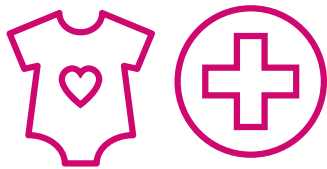
“Leave to be taken before the end of a period of at least 68 weeks beginning with the date of the child’s birth”

“..neonatal care continues without interruption for a period of at least 7 days, beginning with the day after the day on which the care starts”



Family rights: Neonatal Care (Leave and Pay) Bill

“Parental or other personal relationship with a child who is receiving, or has received, neonatal care”



Expect leave to be capped at 12 weeks and would be a day 1 right

Expect pay to require minimum earnings correlating with the Lower Earnings Limit

Expect entitlement to pay to require at least 26 weeks continuous service



Carer's Leave Bill

- “Regulations entitling an employee to be absent from work on leave in order to provide or arrange care for a dependent with a long-term care need.



Carer's Leave Bill

- “A person is a dependent of an employee if they:
 - Are a spouse, civil partner, child or parent
 - Live in the same household as the employee
 - Reasonably rely on the employee to provide or arrange care



Carer's Leave Bill

- Long term care, currently defined as:
 - “they have an illness or injury (physical or mental) that requires, or is likely to require care for more than three months
 - They have a disability for the purpose of the Equality Act
 - They require care for a reason connected with their old age”



Carer's Leave Bill

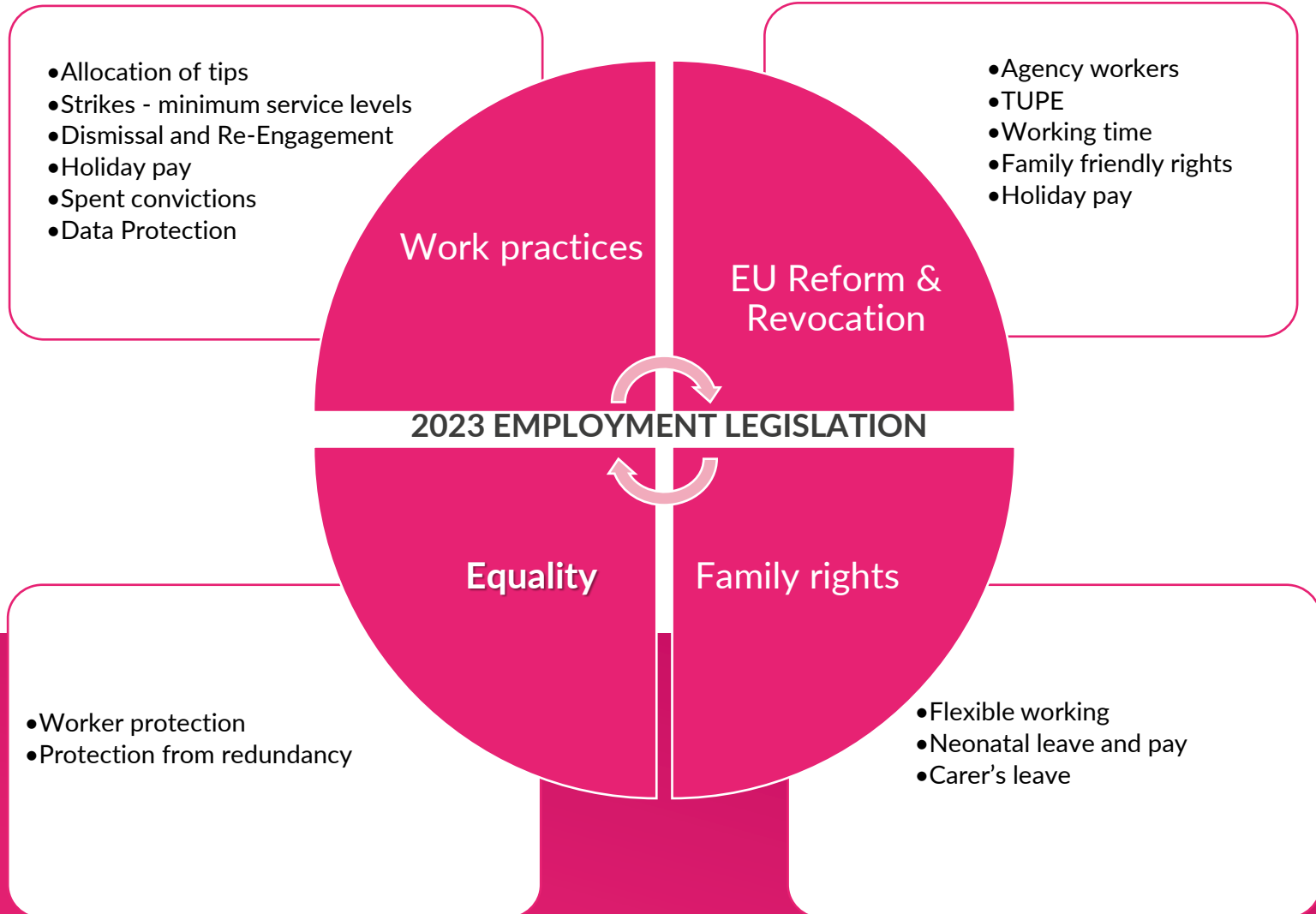
- Entitlement is “at least a week’s leave during any period of 12 months
- An employer cannot require an employee to provide evidence before granting the leave
- Make a complaint to a tribunal:
 - Their employer has unreasonably postponed a period of carer’s leave
 - Prevented or attempted to prevent the employee from taking carer’s leave
 - Compensation must be just and equitable including the employer’s behaviour and any consequential loss sustained by the employee







Employment law in 2023



Equality: Protection from Redundancy (Pregnancy and Family Leave) Bill

- Current law provides only those employees on maternity/adoption leave with priority over other at risk employees when it comes to suitable alternative employment
- Regulation 10 – The Maternity and Parental Leave etc. Regulations 1999
- This Bill would extend this protection to start from the time an employer is notified of the pregnancy and expire 18 months after maternity leave begins



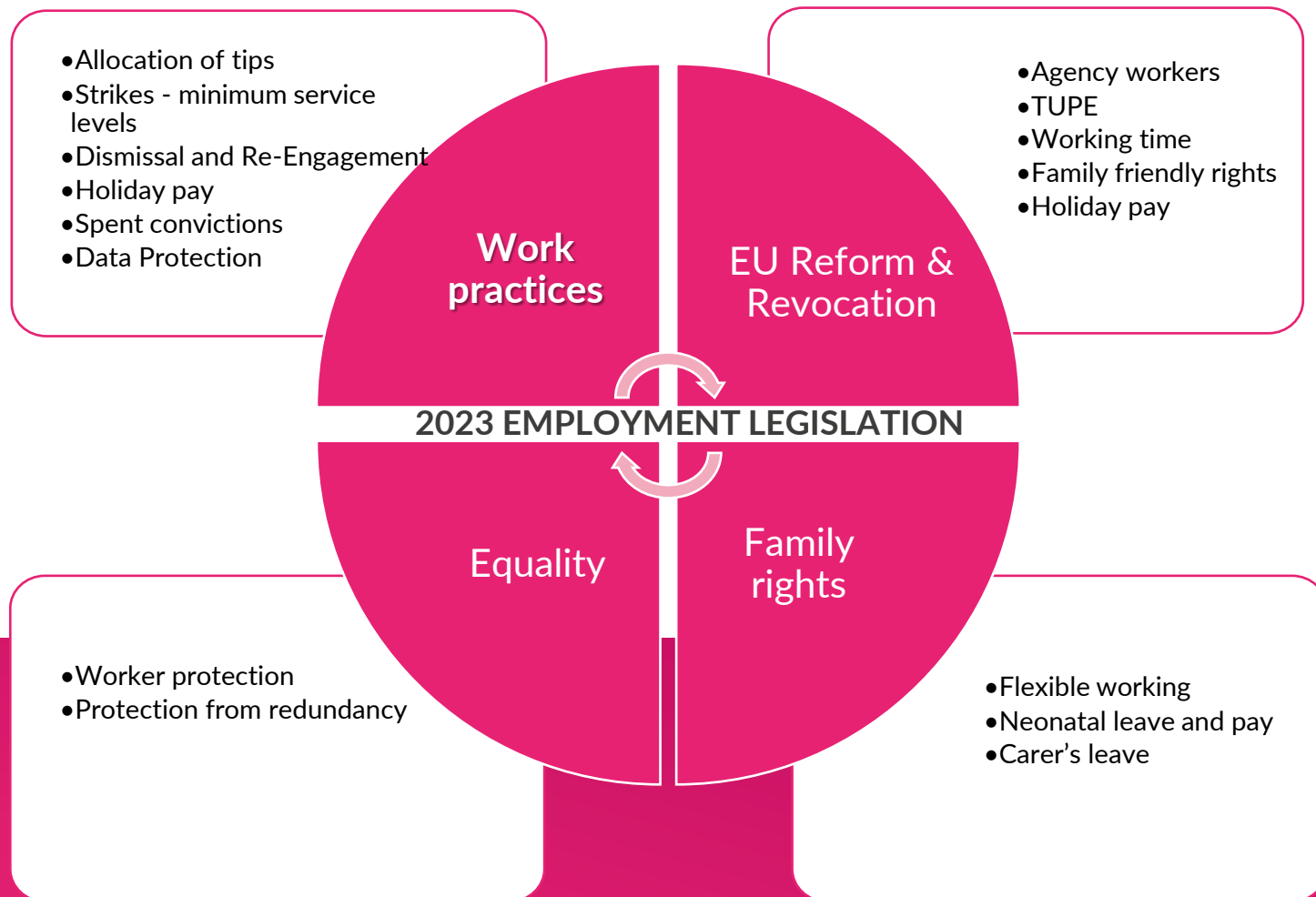
Equality: Worker protection (Amendment of Equality Act 2010) Bill

- Introduces a specific legal duty on employers to take all reasonable steps to prevent sexual harassment at work
- Employers potentially liable for harassment of their employees by third parties





Employment law in 2023





Work practices: Employment (Allocation of Tips) Bill

- Workers to receive tips, gratuities and service charges paid by customers in full and without deduction
- Employers will be required to have a written policy when awarded on more than an occasional and exceptional basis



Work practices: Strikes (Minimum Service Levels) Bill

- Would mandate employees working in 6 sectors to provide a minimum level of service when there is strike action
- Health, education and transport sectors
- Employer possibly reasonably identifying the staff that would be required
- Would allow employers to take action when an employee breaches the minimum service level.



Work practices: Code of Practice – Dismissal and Re-Engagement

- Open consultation seeking views on a draft Code of Practice on dismissal and re-engagement
- Consultation closes 18 April
- The Code would apply to
 - Employers wishing to make changes to its employees contracts of employment and
 - Where agreement cannot be sought, the employer dismisses and offers re-engagement on new terms or new employees to perform the role



Work practices: Code of Practice – Dismissal and Re-Engagement

- An employer to consider its business case in the event that agreement cannot be gained on proposals put forward
- Certain actions to be required when sharing information
- When multiple changes are proposed, implementation where possible should be over a period of time
- Changes taking place later down the line will require the employer to revisit the business case to consider if it remains relevant



Work practices: Rehabilitation of offenders

- The Police, Crime, Sentencing and Courts Act 2022, section 193
- The time for certain convictions to become 'spent' will be reduced
- 'Spent' convictions are not automatically disclosed on employment checks



Work practices: Rehabilitation of offenders

Custodial sentence of up to 1 year:

'spent' after 12 months without re-offending

Convictions between 1 and 4 years

'spent' after 4 crime free years

Sentences over 4 years

Not automatically disclosed where there has been a 7-year period of rehabilitation

The changes will not apply to convictions relating to serious sexual, violent or terrorist offences for which the sentence was four years or more.

Received Royal Assent on 28 April 2022.

Regulations to be brought in due course



Work practices: Holiday pay consultation

- Harpur Trust v Brazel case triggered a Government consultation that closed 9 March
- Draft code introduces:
 - New legislation to resolve the issues by allowing employers to pro rate holiday entitlement for part year and irregular hours workers
 - Would give them an entitlement proportionate to the number of hours worked
 - 52 week holiday entitlement reference period
 - Would be consistent with the pay reference period of 52 weeks
 - Would require employers to keep records of time spent working, like the current obligation on holiday pay and NMW regulations
- Knowledge Base users can access our calculators and guidance documents



Work practices: Use of agency workers during strike action

- Trade Unions and the Trade Union Congress launched a judicial review on 2022 legislation that permits employers to use agency staff during strike action
- Trade Unions believe it is unfair:
 - The Secretary of State for Business failed to consult, as is required by the Employment Agencies Act 1973
 - It violates trade union rights protected by Article 11 of the European Convention on Human Rights



Work practices: Bill of Rights

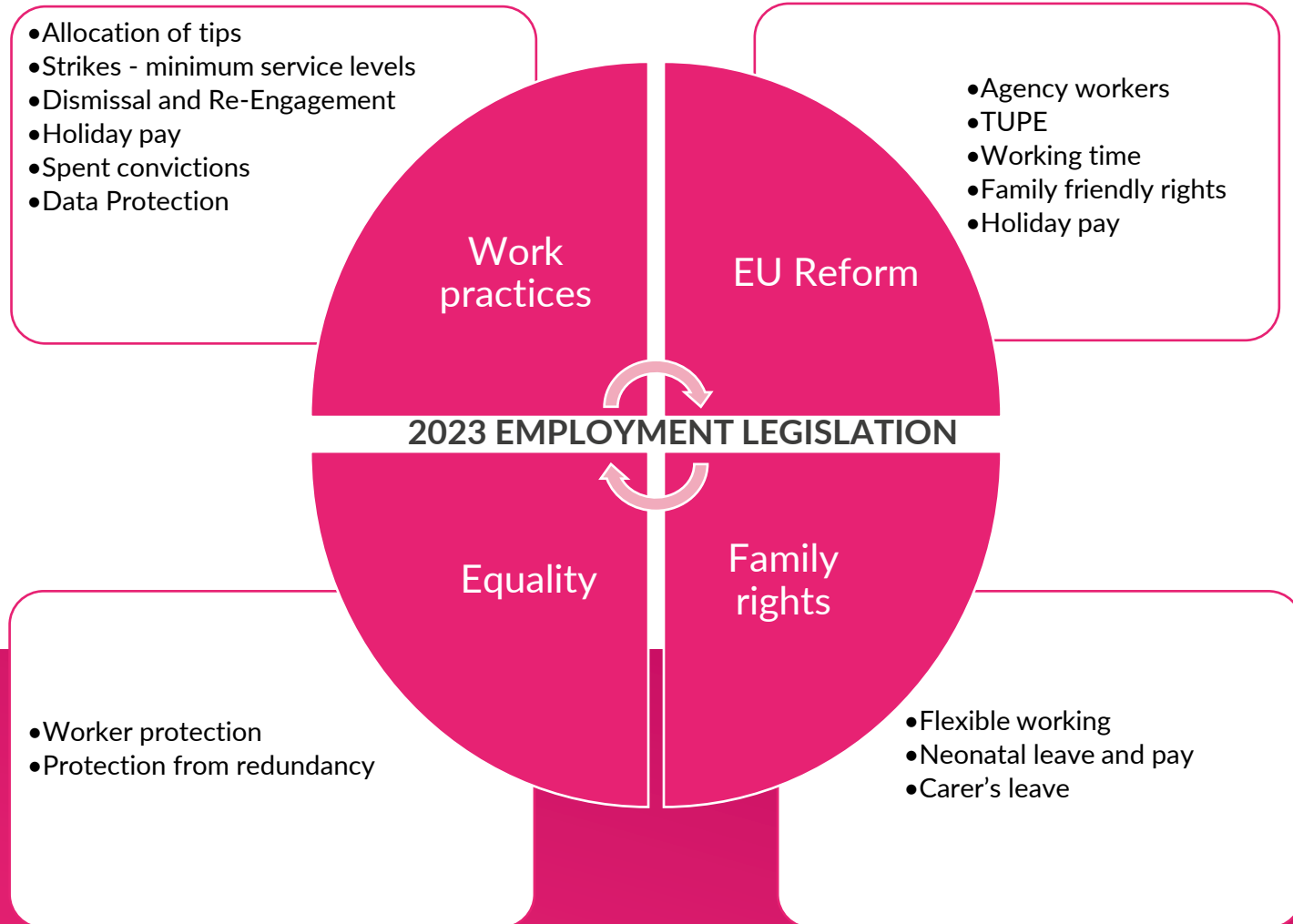
- The Bill would repeal and reform the Human Rights Act 1998
- The Human Rights Act 1998 derives from the European Convention on Human Rights – an internal binding treaty
- Broad range of issues



Work practices: Data Protection and Digital Information Bill (No. 2)

- Data Subject Access Request (DSARs)
- Legitimate interests
- International transfer of data
- Records of processing

Employment law in 2023







Agenda

- Key 2022 developments
- Employment Law in 2023
- Practical tips
- Q&A



Practical Tips

What to do next...

EU Reform & Revocation

- Keep up to date with our updates
- Register for our free [webinar 11 May, 10am](#)
- Diarise 31 December 2023

Business
compliance

What to do next...

Family Rights

- Review and amend existing policies and procedures
- Develop new policies
- Review budgets associated to family leave
- Line Management training

Business compliance

What to do next...

Equality

- All staff equality, diversity and inclusion training (EDI)
- Line management EDI training
- Review and amend existing policies and procedures
- Act on issues promptly, swiftly and in line with policy

Business compliance

What to do next...

Work Practices

- Review contracts of employment to ensure you comply with the exclusivity clause legislation and Harpur Trust ruling
- Review how you calculate holiday pay
- Review processes for distributing tips and gratuities
- Review recruitment policies and procedures
- Review redundancy project plans to assess coverage of new employee protection rights

Business compliance

What to do next...

EU Reform

- Keep up to date with our updates
- Free webinar 11 May, 10am
- Diarise 31 December 2023

Family Rights

- Review and amend existing policies and procedures
- Develop new policies
- Review budgets associated to family leave
- Line Management training

Equality

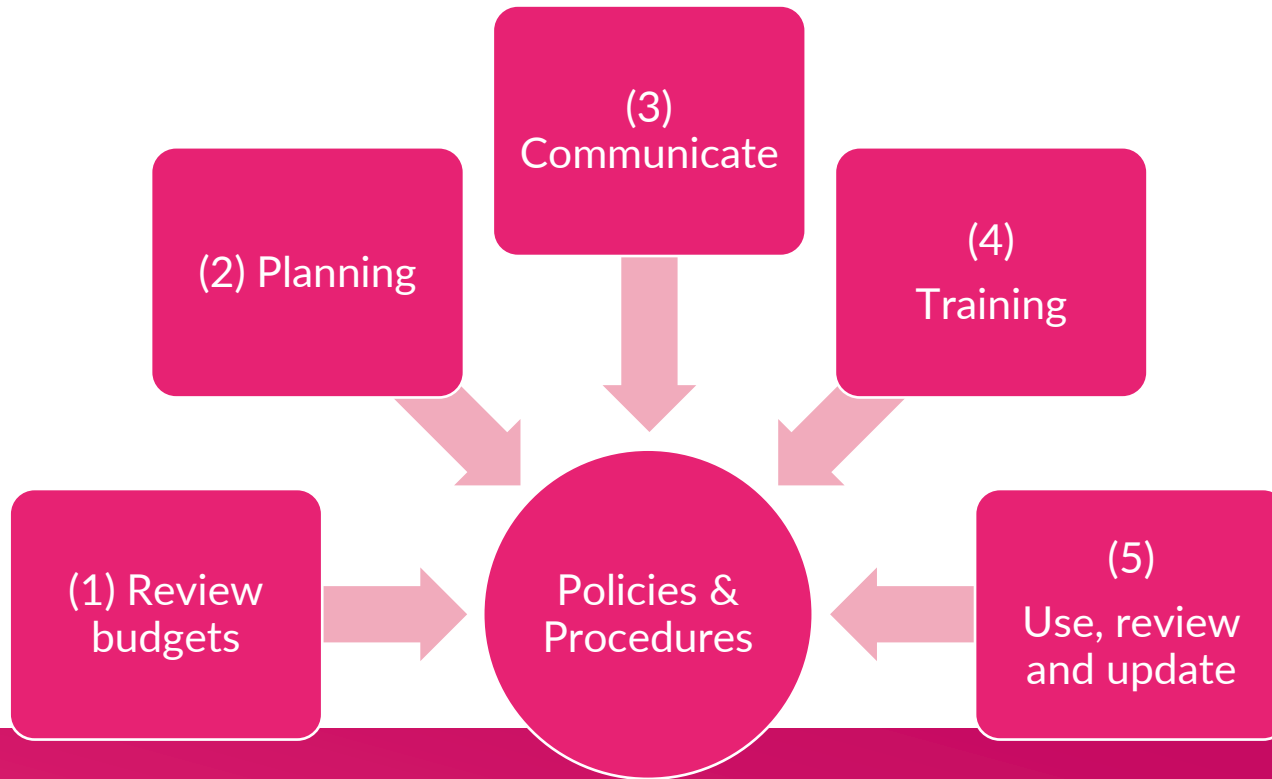
- All staff equality, diversity and inclusion training
- Line management EDI training
- Review and amend existing policies and procedures
- Act on issues

Work Practices

- Review contract of employment to ensure you comply with the exclusivity clause legislation
- Review how you calculate holiday pay for part year and irregular hours workers.
- Review processes for distributing tips and gratuities
- Review and update processes for calculating holiday pay
- Review recruitment policies and procedures
- Review redundancy project plans to assess coverage of new employee protection rights

Business
compliance

Introducing new policies



1. Additional costs associated with employment law changes
2. Planning how the company will become compliant with new laws
3. Communicate to the workforce new policies and procedures introduced
4. Training line managers
5. Use and review their implementation and effectiveness whilst monitoring changes to the law



What help do
you need to
remain
compliant?

Rank in order, your priorities for 2023

Visit: www.menit.com

Or Scan:



Enter code: 5129 5045

Agenda

- Key 2022 developments
- Employment Law in 2023
- Practical tips
- Q&A





Training Courses Management

- Effective Communication Skills
- Leading the Team
- Managing Conflict at Work
- Effective Appraisal Skills
- Managing Performance
- Recruitment and Selection
- Holding Difficult Conversations
- Equality, Diversity & Inclusion
- Managing Grievance
- Managing Disciplinary
- Employment Law
- ILM Level 3
- ILM Level 5



Scan to register for our
training courses:



Training Courses

Health & Safety

- **Level 2 Health & safety**
11 April @ 9:30am
- **Level 2 Emergency First Aid**
24 April @ 9:30am

Dates currently being scheduled:

- **Level 2 Fire Safety**
- **Level 2 Food Safety**
- **Level 2 Mental Health First Aid**
- **Level 3 Safeguarding**
- **Mental Health Ambassador**
- **Safeguarding Ambassador**



Scan to register for our
training courses:





Our 2022/23 SME Survey Results

Scan the QR code for
a digital copy:



Free Webinars

- **Return to work interviews – why do them?**
13 April @ 10am
- **EU Law (Reform and Revocation) Bill**
11 May @ 10am
- **The pros and cons of adopting a 4 day work week**
15 June @10am
- **Why businesses need a different approach to recruitment**
13 July @ 10am
- **Building skills and capabilities of your workforce**
10 August @ 10am
- **How to become an age friendly employer**
14 September @ 10am
- **Immigration developments and how they impact employment**
12 October @ 10am



Scan to register today



Thank you

0844 324 5840

www.hrsolutions-uk.com



