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EMPLOYMENT LAW: A GUIDE TO 2025

IMPORTANT WORKPLACE CHANGES & HOW EMPLOYERS CAN PREPARE

Doyle Clayton

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2025 looks set to be a year of preparation for the significant employment law changes being made by the Government's Employment Rights Bill.

When announcing the Bill, some changes were described as 'immediate', while the vast majority are not expected to be in force until 2026 at the earliest. Those described as immediate, such as a change to an employer's ability to refuse flexible working requests and making unpaid parental leave and paid paternity leave a day one right, could come into force in 2025 when the Bill receives Royal Assent. The introduction of unpaid bereavement leave was also described as an immediate change but requires secondary legislation in the form of regulations so could take longer to implement.

During 2025, we can expect to see a good deal of consultation taking place on the detail of many of the reforms and employers will want to follow the Government's plans closely as it responds to the various consultations issued.

Outside of the Employment Rights Bill, the Government is still working to a 6 April 2025 implementation date for neonatal care leave. The National Minimum Wage rates will increase as usual on 1 April 2025 and for the first time rates will reflect increases in the cost of living. September 2025 will see the introduction of a new failure to prevent fraud offence for large organisations. The Government may also begin work on implementing a new right to switch off from work.

Employers will also want to continue to make sure that they are taking reasonable steps to prevent the sexual harassment of their employees in the course of their employment, following the introduction of the statutory duty to prevent sexual harassment on 26 October 2024.

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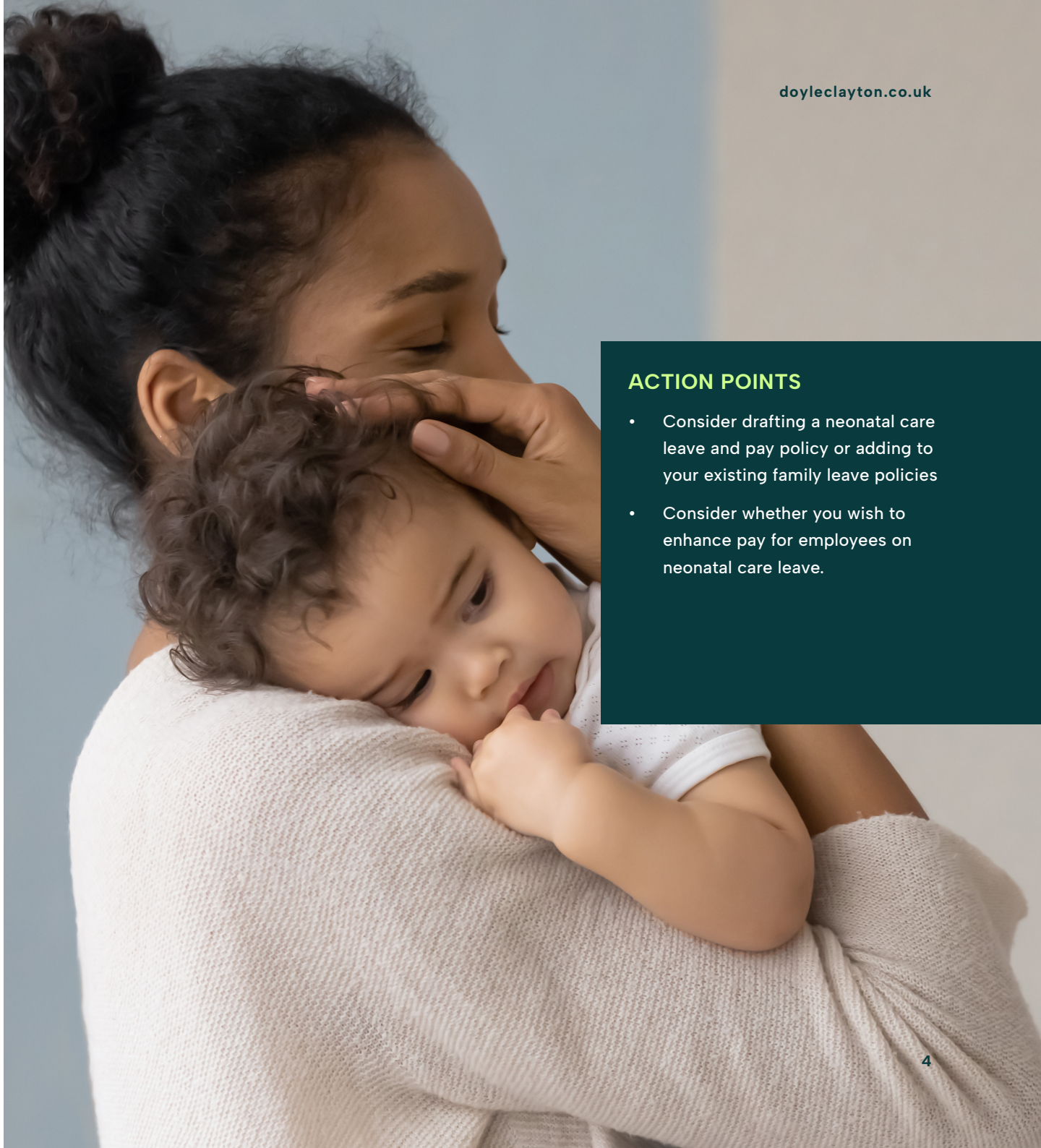
These materials are of a general nature and are not legal advice. No responsibility can be accepted for the consequences of any action taken or not taken as a result of its contents.

NEONATAL CARE LEAVE AND PAY

The new right to paid neonatal care leave is expected to come into force on 6 April 2025. Under the Neonatal Care (Leave and Pay) Act 2023 and regulations to be made under it, employees will have a statutory right to take up to 12 weeks' leave where their child has received, or is receiving, neonatal care. Neonatal care is defined as care of a medical or palliative kind that starts within 28 days of the child's birth and lasts for at least seven days. The right to neonatal care leave is in addition to any other statutory family leave to which the employee may be entitled. No qualifying period of employment will be required.

Leave will be paid where an employee has 26 weeks' continuous employment and their normal weekly earnings exceeding the lower earnings limit. Payment will be at the statutory prescribed rate (£187.18) or 90% of average weekly earnings, if lower.



ACTION POINTS

- Consider drafting a neonatal care leave and pay policy or adding to your existing family leave policies
- Consider whether you wish to enhance pay for employees on neonatal care leave.

NATIONAL MINIMUM WAGE INCREASES

The annual increase in National Minimum Wage rates takes effect from 1 April. For the first time, the cost of living has been taken into account when setting the rates.

Employers will also notice that the gap between the rate payable to 18-20 year olds and that payable to those aged 21 and over has decreased as the Government moves towards its ultimate aim of a single adult rate for everyone aged 18 and above.

From 1 April 2025, National Minimum Wage rates will increase as follows:

- National Living Wage (21 and over): £12.21 (6.7% increase)
- 18-20 year old rate: £10.00 (16.3% increase)
- 16-17 year old rate: £7.55 (18% increase)
- Apprentice rate: £7.55 (18% increase), and
- Accommodation offset: £10.66 (6.7% increase).

FLEXIBLE WORKING

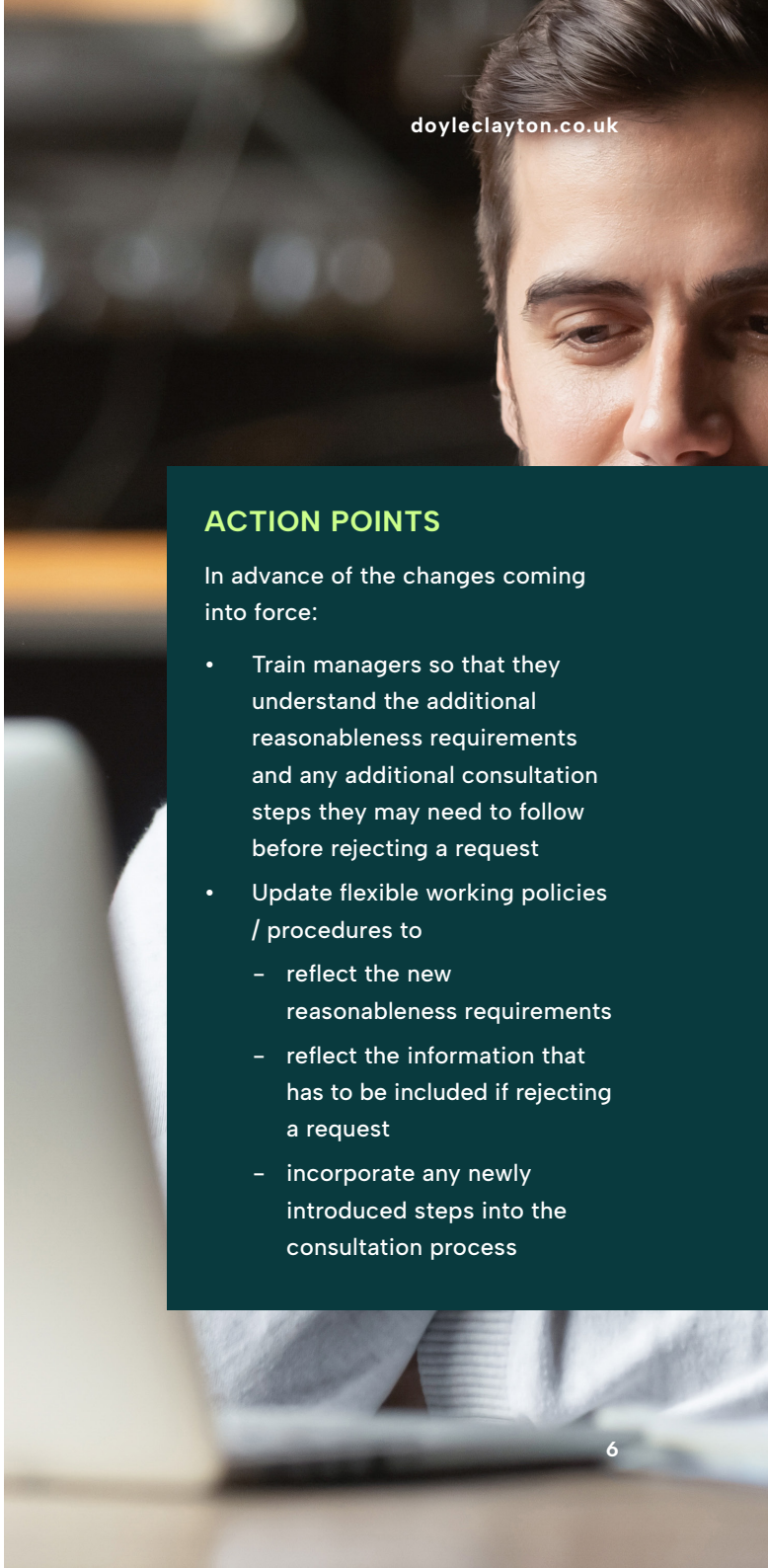
Under the Employment Rights Bill, it will become more difficult for employers to refuse flexible working requests.

Under the existing rules, all employees are able to request flexible working, as no qualifying period of employment is required. Employers must deal with requests in a reasonable manner and the Acas statutory Code of Practice (which employment tribunals must take into account when deciding complaints) makes recommendations on how to deal with requests. Employers are only able to refuse a flexible working request on one of eight statutory grounds and must consult the employee before doing so. The eight grounds are:

- The burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to reorganise work among existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during the periods the employee proposes to work, and
- Planned structural changes.

Currently, an employer can reject a request if it considers one or more of the above grounds apply, suggesting that the test is a subjective one on the part of the employer. The Employment Rights Bill will make it more difficult for employers to refuse flexible working requests, by adding a requirement that it must also be reasonable for the employer to refuse the application on the ground(s) relied on. In addition, when notifying the employee of the refusal, the employer will have to state the ground(s) they rely on and explain why they consider it reasonable to refuse the request on those grounds. Provision is also made for regulations to specify the steps an employer must take when consulting an employee before refusing a request.

The Government indicated in it Next Steps to Make Work Pay document that it would be making “immediate” changes to the right to request flexible working and that it will develop the detail of the approach in consultation and partnership with business, trade union and third sector bodies. This would appear to suggest that the flexible working changes, while not ‘immediate’, could be in force in 2025.



ACTION POINTS

In advance of the changes coming into force:

- Train managers so that they understand the additional reasonableness requirements and any additional consultation steps they may need to follow before rejecting a request
- Update flexible working policies / procedures to
  - reflect the new reasonableness requirements
  - reflect the information that has to be included if rejecting a request
  - incorporate any newly introduced steps into the consultation process

FAMILY LEAVE

Paternity and parental leave

Currently employees only qualify for paternity leave if they have 26 weeks' service at the 15th week before the expected week of childbirth. For unpaid parental leave, employees need a year's service at the time the leave is taken. The Employment Rights Bill will remove these qualifying periods of employment entitling more employees to these rights.

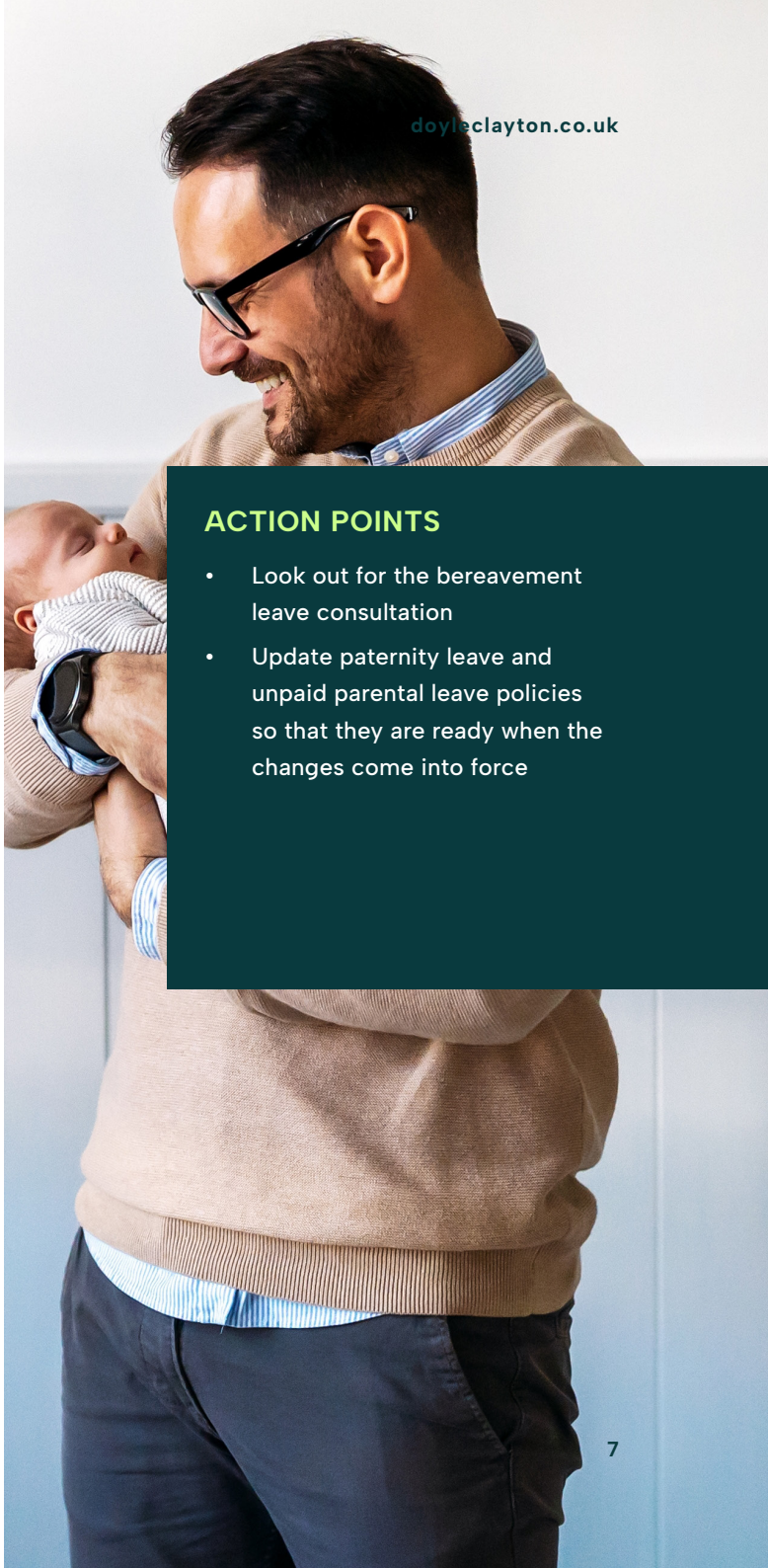
Currently, fathers or partners who take shared parental leave lose their right to take any paternity leave they have not already taken. The Employment Rights Bill will remove the requirement for paternity leave to be taken before shared parental leave, providing more flexibility for employees.

These changes, described as immediate, could come into force when the Employment Right Bill receives Royal Assent or soon after and so could be in force in 2025.

Bereavement leave

The Employment Rights Bill also introduces a new right for employees to take unpaid bereavement leave of at least a week. This will also be a day one right. Regulations will specify the relationships between an employee and the deceased that that will qualify for bereavement leave, the length of the leave and the period within which it must be taken. This will not affect the existing right to two weeks' paid parental bereavement leave where a child dies.

The Government has indicated that these changes could come in earlier than 2026, although it has promised that it will consult on the bereavement leave details to be set out in secondary legislation which could mean bereavement leave will not come into force in 2025.



ACTION POINTS

- Look out for the bereavement leave consultation
- Update paternity leave and unpaid parental leave policies so that they are ready when the changes come into force

ADDITIONAL DISMISSAL PROTECTION FOR PREGNANT WOMEN AND NEW PARENTS

The Government plans to extend dismissal protection for pregnant women and new mothers and will use powers in the Employment Rights Bill to make it unlawful to dismiss a woman while she is pregnant, on maternity leave and within six months of her return to work, except in specific circumstances. These circumstances, which will be set out in regulations, will be of significant interest to employers. The Government describes this an immediate change and is therefore one which could come into force in 2025.

This change builds on additional protections against redundancy which came into force in April 2024. It is currently unlawful for an employer to make an employee redundant while they are pregnant, while they are on maternity, adoption, or shared parental leave and during the six months following their return to work from leave, unless they first offer the employee any suitable available vacancy.

Although the Bill also contains powers to protect those returning from adoption and shared parental leave from dismissal, the Government has not yet said that it will more generally extend dismissal protections in these cases.

ACTION POINTS

- Watch out for regulations dealing with the specific circumstances in which dismissal of pregnant women will be permitted
- Maternity policies may need updating and managers will need to be trained in the new laws

FAILURE TO PREVENT FRAUD OFFENCE

The Economic Crime and Corporate Transparency Act 2023 introduces a failure to prevent fraud offence which will come into force on 1 September 2025. Large organisations may be held criminally liable where an employee, agent, subsidiary or other "associated person" commits a fraud intending to benefit the organisation. Examples include dishonest sales practices, hiding important information from consumers or investors, and dishonest practices in financial markets.

The offence includes fraud offences under the Fraud Act 2006, including fraud by false representation, fraud by failing to disclose information, fraud by abuse of position, participation in a fraudulent business, obtaining services dishonestly, false accounting, false statements by company directors under the Theft Act 1968, fraudulent trading under the Companies Act 2006 and cheating the public revenue (common law).

The offence can be committed even if the organisation and the relevant employee are based outside the UK.

ACTION POINTS

- Large organisations need to ensure that the board and senior management are aware of the new offence and their key role in fraud prevention
- Begin work on risk assessments
- Consider what proportionate steps might be taken to prevent fraud
- Review due diligence processes to include identification of fraud risks
- Communicate your fraud prevention policies and procedures (internally and externally) and train staff on the nature of the offence and your organisation's procedures to address it
- Read and act on the detailed guidance

If prosecuted, organisations have a defence if they have reasonable procedures in place to prevent fraud. In November 2024, the Home Office published guidance on the new offence and reasonable fraud prevention procedures. The guidance states that an organisation's fraud prevention framework should be informed by the following six principles:

1

TOP LEVEL COMMITMENT

Responsibility for the prevention and detection of fraud rests with those charged with the governance of the organisation. The board of directors, partners and senior management should be committed to preventing associated persons from committing fraud. They should foster a culture within the organisation in which fraud is never acceptable and should reject profit based on, or assisted by, fraud.

2

RISK ASSESSMENT

The organisation assesses the nature and extent of its exposure to the risk of employees, agents and other associated persons committing fraud in scope of the offence. The risk assessment is dynamic, documented and kept under regular review.

3

PROPORTIONATE RISK – BASED PREVENTION PROCEDURES

A organisation's procedures to prevent fraud by persons associated with it are proportionate to the fraud risks it faces and to the nature, scale and complexity of the organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

4

DUE DILIGENCE

The organisation applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified fraud risks.

5

COMMUNICATION (INCLUDING TRAINING)

The organisation seeks to ensure that its prevention policies and procedures are communicated, embedded and understood throughout the organisation, through internal and external communication. Training and maintaining training are key.

6

MONITORING AND REVIEW

The organisation monitors and reviews its fraud detection and prevention procedures and makes improvements where necessary. This includes learning from investigations and whistleblowing incidents and reviewing information from its own sector.

SEXUAL HARASSMENT

Since 26 October 2024, employers have been a under a statutory duty to take reasonable steps to prevent sexual harassment of their employees in the course of their employment. Where an employment tribunal finds that sexual harassment has occurred and that the employer has failed to comply with the duty, it may increase an employee's discrimination compensation by up to 25%.

In September 2024, the Equality and Human Rights Commission (EHRC) updated its Technical Guidance and published an eight step guide to preventing sexual harassment at work.

Employers who have not done so already should be taking immediate steps to assess the risk of sexual harassment in their workplace and should put in place effective policies and an action plan to address those risks, as well as staff training. This is not limited to sexual harassment by colleagues; it extends to sexual harassment by third parties.

Employers also need to be aware that as part of the Employment Rights Bill, the Government plans to strengthen the duty so that employers will be required to take all reasonable steps, although these changes are unlikely to be in force before 2026. Secondary legislation may specify steps that are to be regarded as 'reasonable'.

The statutory Employment Code of Practice which employment tribunals and courts must take into account when deciding claims under the Equality Act 2010 was not updated when the new duty to prevent sexual harassment came into force. EHRC has confirmed that it will be updating the Code to reflect developments in case law and legislation, but this will be done after it has updated its Code of Practice on discrimination in goods and services, public functions and association. Consultation on changes to that code closed on 3 January 2025. It is possible that the new Employment Code will be published during 2025, although it seems more likely that publication will be aligned with the strengthening of the preventive duty.

Under other provisions in the Employment Rights Bill, unlikely to be in force before 2026, a disclosure that sexual harassment has occurred, is occurring or is likely to occur will be made a qualifying disclosure for whistleblowing purposes. As a result, workers who make a protected disclosure relating to sexual harassment will be protected from detrimental treatment and an employee's dismissal will be automatically unfair if their protected disclosure is the reason, or principal reason, for their dismissal. A further consequence of making sexual harassment disclosures whistleblowing disclosures is that employers will not be able to prevent workers from disclosing details of sexual harassment, for example in a settlement agreement, as any contractual provisions to this effect will be void.

In the meantime employers need to ensure they are complying with the duty as it currently stands.

ACTION POINTS

- Make sure you have an effective sexual harassment policy in place and that you have reviewed and updated your policy in light of the EHRC's eight step Guide and Technical Guidance
- Make sure you have a carried out a risk assessment. This will help you to identify factors that might increase the likelihood of sexual harassment occurring in your organisation and steps that you can take to minimise them. Make sure this covers the risk of harassment by third parties
- Put in place an action plan to minimise identified risks and monitor its effectiveness. Consider publishing your action plan, for example on your website
- Engage with your staff so that you understand where any potential issues lie. This will also help you identify whether the steps you are taking are working
- If you do not already have one, consider using a reporting system (such as an online or independent telephone-based service) that allows your workers to raise an issue (either anonymously or in name), including a mechanism for reporting sexual harassment by third parties
- Run sexual harassment training and regular refresher sessions and make sure you review their effectiveness
- Take immediate action to resolve any sexual harassment complaints, taking into account how the worker wants the complaint to be resolved
- Evaluate the effectiveness of the steps you have taken to prevent sexual harassment in your workplace and implement any necessary changes
- Regularly review your policies, procedures and training and update as necessary
- Make sure a senior person has responsibility for discrimination and harassment issues and for overseeing your harassment policies and procedures

HARASSMENT BY THIRD PARTIES

Although the statutory duty encompasses a requirement for employers to take reasonable steps to prevent sexual harassment of their employees by third parties, currently employers are not normally liable if a third party harasses one of their employees in the course of their employment. Labour proposes to change this through the Employment Right Bill and to make employers liable where they fail to take all reasonable steps to prevent harassment of their employees by third parties. Importantly, this applies to all relevant protected characteristics and is not limited to sexual harassment. This change is unlikely to be in force before 2026.

ACTION POINTS

Many of the steps outlined above in relation to the new statutory duty to prevent sexual harassment are likely to apply equally when seeking to show that you have taken all reasonable steps to prevent harassment by third parties (although they would need to be extended to include all relevant protected characteristics). In particular you will need to ensure that

- Your harassment policies deal with harassment by third parties
- You engage with staff to understand where potential problems lie
- You carry out a risk assessment and identity steps that you can take to reduce risks of third party harassment
- You have reporting mechanisms in place
- Your harassment training covers third-party harassment
- You evaluate the effectiveness of the steps you take to prevent third party harassment

EQUALITY ACTION PLANS

Large employers employing 250 or more employees are already required to report on their gender pay gap and to publish their gender pay gap information on their website, as well as on a Government website.

Although employers have been encouraged to go beyond reporting and to implement action plans to reduce inequality, there are currently no legal obligations for them to do this. This is due to change under the Employment Rights Bill which allows regulations to be made requiring large employers to develop and publish an equality action plan showing the steps they are taking to advance equality between male and female employees. This will include addressing the gender pay gap, as well as supporting employees going through menopause. The Government will consult the EHRC on the content of the regulations before they are published and so this change will not be in place before 2026.

ACTION POINTS

- If your gender pay gap reporting reveals a gender pay gap, consider what action you can take to reduce / eliminate pay inequality
- Look out for the regulations which may give further details on the content of action plans

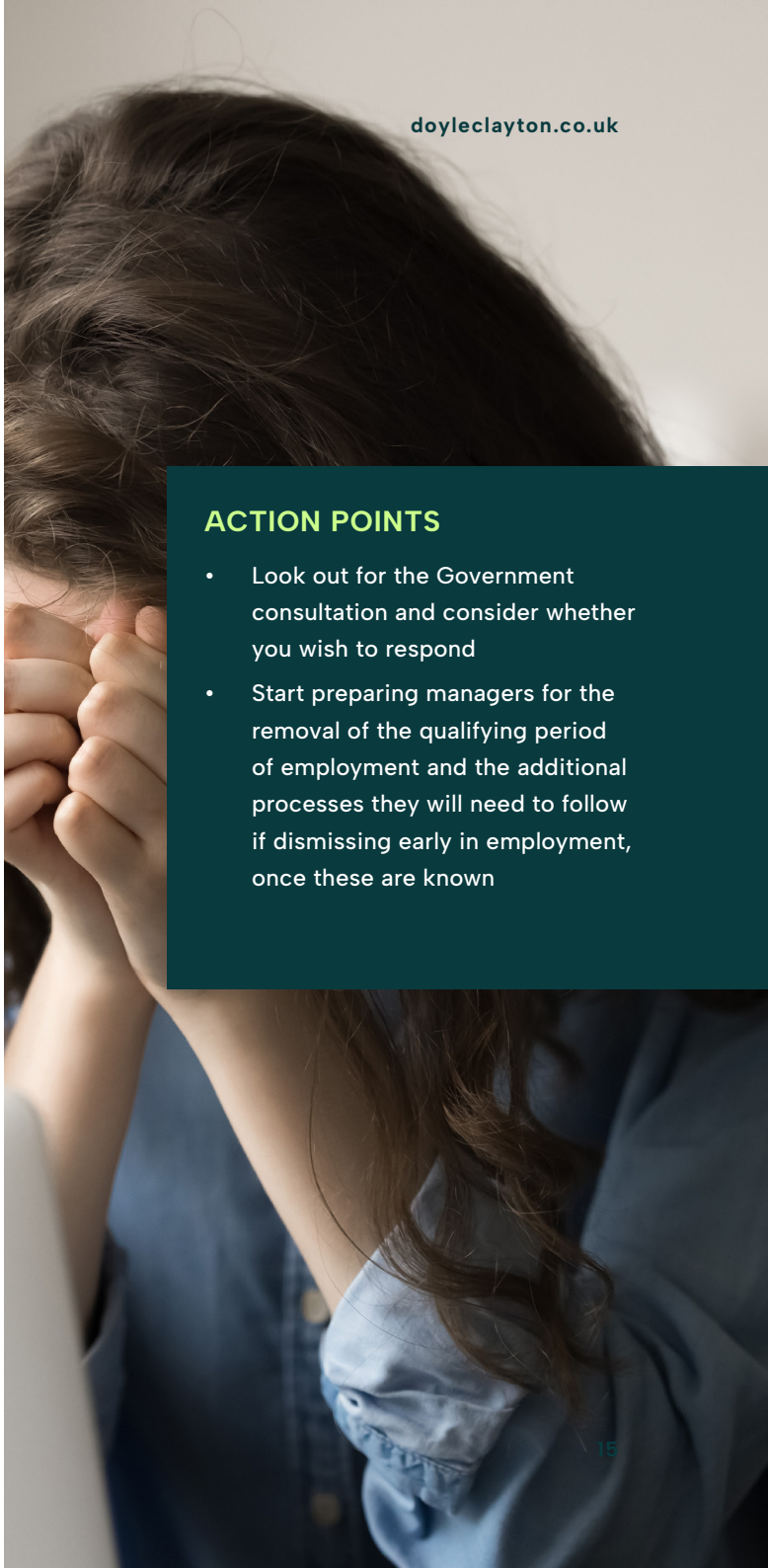
UNFAIR DISMISSAL

The Government plans to remove the current two year qualifying period of employment for claiming unfair dismissal so that employees will be able to bring employment tribunal claims from the first day of their employment. However, during an initial period of employment employers will be able to follow a "lighter-touch" dismissal process if dismissing for capability, conduct, statutory restriction or some other substantial reason relating to the employee. The Government has said that these changes will not be in force before Autumn 2026. During 2025, employers should look out for a Government consultation which will consider the length of the initial period of employment (its current preference is for nine months) and details of the "lighter-touch" dismissal process.

Employers will be able to follow the "lighter-touch" process if the dismissal takes effect in the initial period of employment or within three months of it ending (provided notice was given during the initial period). Employees who have not started work will not have unfair dismissal protection (unless their dismissal is automatically unfair).

The Government is also considering whether for dismissals during the initial period, employment tribunals should not be able to award the full compensatory damages otherwise available and the Government's consultation is likely to cover this as well.

The lighter-touch process will not apply where dismissal is for redundancy or some other substantial reason not relating to the employee (such as a business restructure). In those cases the dismissal will be subject to the normal unfair dismissal test, i.e, did the employer follow a fair procedure and act reasonably in treating the reason they relied on as a sufficient reason for dismissal.



ACTION POINTS

- Look out for the Government consultation and consider whether you wish to respond
- Start preparing managers for the removal of the qualifying period of employment and the additional processes they will need to follow if dismissing early in employment, once these are known

EMPLOYMENT TRIBUNAL TIME LIMITS

The Government proposes to increase time limits for bringing employment tribunal claims from three to six months. Although this was not included in the Employment Rights Bill when initially published, it has since been included as a Government amendment. This extended time limit is likely to result in employers facing more employment tribunal claims and further delays in cases being heard. This change is unlikely to be in force before 2026.

ZERO HOURS / LOW HOURS WORKERS

A new law had been expected to come into force in September 2024 giving workers whose hours lacked predictability the right to request a more predictable working pattern. However, the Labour Government considered that the new law did not go far enough to protect zero hours and low hours workers and decided not to bring the legislation into force. Instead, the Employment Rights Bill sets out far wider protections, requiring employers to offer contracts with guaranteed hours and to provide reasonable notice of shifts, shift changes and cancellations. These changes are not expected to be in force until 2026 at the earliest but during 2025 we can expected to see Government consultations on the detail. Employers who use zero hours and low hours workers will want to follow these developments closely and may wish to respond to the consultations.

Guaranteed hours

Employers will have to offer zero hours and low hours workers a contract with guaranteed hours, reflecting the number of hours they regularly worked during a reference period. Workers will not be obliged to accept the offer, so they will be able to remain on zero hours or low hours contracts if they prefer.

This will be a continuing obligation. If a worker's guaranteed hours remain below the 'low hours' threshold and their regular hours exceed the guaranteed hours in a reference period, their employer will have to offer a further guaranteed hours contract reflecting the increased hours actually worked. The obligation will continue until the worker's hours exceed the low hours threshold (so that they are no longer a low hours worker).

Much of the detail will be set out in further regulations, including the length of the reference period (expected to be 12 weeks), the definitions of a 'low hours contract' and 'regular hours', the form of offer, and the deadline for making and responding to an offer.

Employers will only be able to offer guaranteed hours on a fixed term basis if they reasonably consider that the worker is only needed to perform a specific task or is only needed until the occurrence of a particular event (such as the return from leave of an employee whose absence the worker was covering). In such cases, the contact must provide for termination when the task has been performed or on the occurrence of the particular event. Similarly a fixed term offer may be reasonable where there is only a temporary need for the work.

Where an employer fails to comply with its obligations, a worker will be able to bring a tribunal claim and be awarded compensation, capped at an as yet unspecified number of a 'week's pay', with workers being under a duty to mitigate their loss.

Reasonable notice of shifts

Employers will have to give workers reasonable notice of shifts (specifying the date, start time and number of hours to be worked), and reasonable notice of shift changes and cancellations. The length of this 'reasonable' notice is not yet specified and will be subject to consultation.

Where reasonable notice is not given, workers will be able to bring tribunal claims and be awarded compensation, again capped at an as yet unspecified number of a 'week's pay', with workers being under a duty to mitigate their loss.

Workers will also be entitled to payment for shifts cancelled, moved or curtailed at short notice. The amount of the payment will be specified in regulations, but may not exceed the amount the worker would otherwise have received for the shift. The Government will consult on the detail and workers will be able to bring a tribunal claim if the employer fails to pay.

Other tribunal claims

It will be automatically unfair to dismiss an employee for accepting / rejecting a guaranteed hours offer or in order to avoid having to offer them guaranteed hours.

Workers will also have the right not to be subjected to a detriment because they accepted / rejected guaranteed hours, because they declined to work a shift as they reasonably believed the employer had not given them reasonable notice, or because they have brought a tribunal claim in good faith to enforce their rights.

Agency workers

The Government recognises that that if agency workers do not have these rights, employers will turn to using agency workers. A consultation on how these obligations should apply in respect of agency workers closed on 2 December 2024 and the Government's response can therefore be expected in 2025.

ACTION POINTS

- Look out for Government consultations considering aspects of the new rights in further detail and consider whether you wish to respond
- Begin work on auditing your workforce to identify how many workers you engage on zero or low hours who could potentially be entitled to the new rights
- Identify seasonal fluctuations in demand for work and consider how you might deal with these
- Review systems for managing shifts and shift changes and consider what changes may be required

CHANGING EMPLOYMENT TERMS: DISMISSAL AND RE-ENGAGEMENT

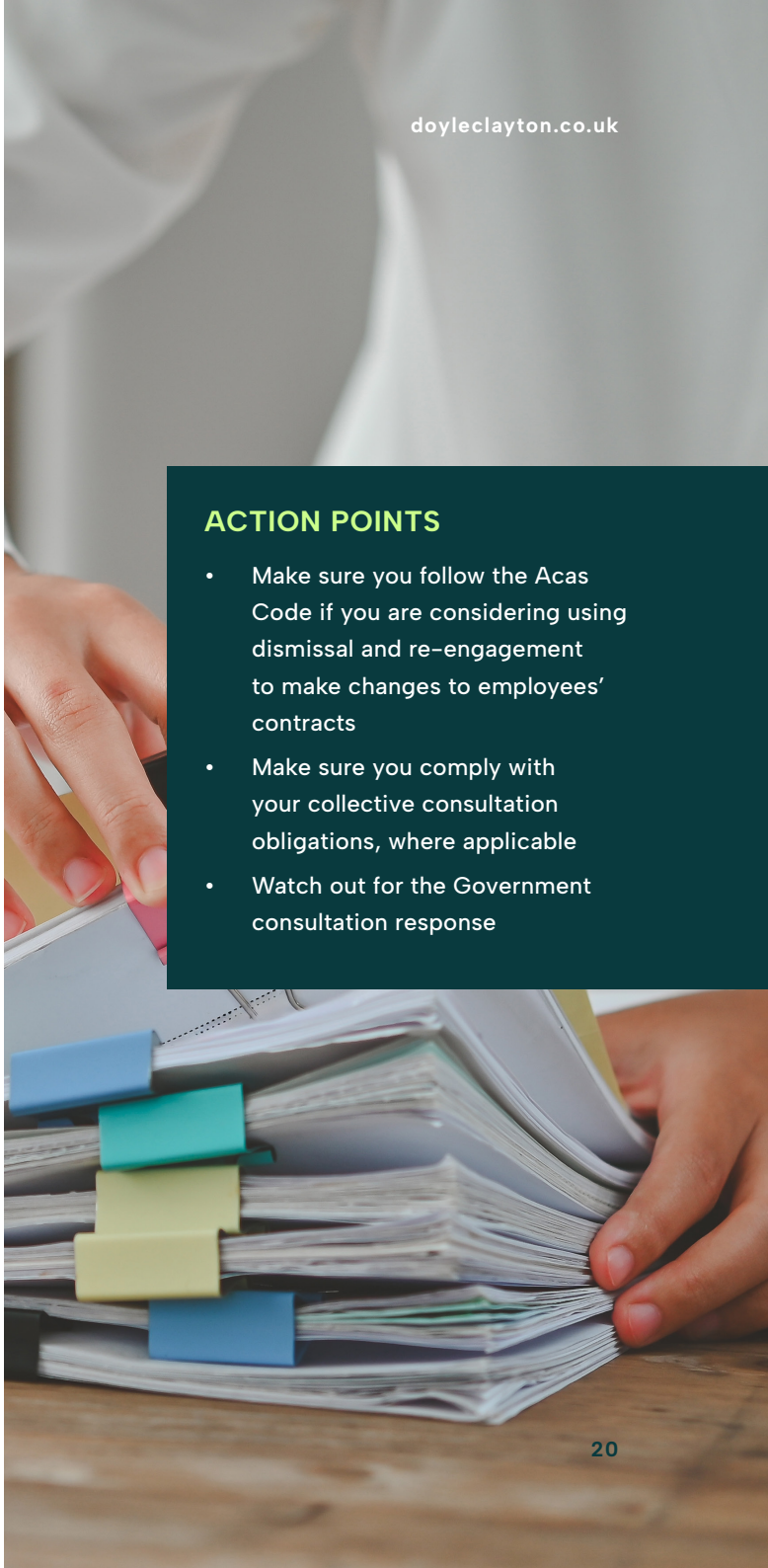
In July 2024, the Acas statutory Code of Practice on Dismissal and Re-engagement came into effect.

Employers that have been unable to agree changes to employment contracts with an employee may seek to achieve these changes by terminating the employee's contract and offering continued employment on new terms. Sometimes they decide instead to dismiss and hire new employees on the new terms. These practices are often referred to as 'fire and rehire'. Employers considering going down either of these routes must comply with the Acas Code. An employment tribunal may increase / decrease compensation by up to 25% in relevant claims (including unfair dismissal) where the employer / employee has unreasonably failed to follow the Code.

There are additional statutory collective consultation obligations where an employer is proposing to dismiss 20 or more employees at one establishment within a period of 90 days or less. Failure to comply with these obligations can result in an employment tribunal awarding a "protective award" of up to 90 days' full pay. From 25 January 2025, employment tribunals have the power to increase / decrease protective awards by up to 25% where there has been an unreasonable failure to follow the Acas Code.

Labour considers the statutory Code of Practice inadequate and the Employment Rights Bill includes measures aimed at ending fire and rehire save in exceptional circumstances, although these measures will not be in force before 2026 at the earliest. The Bill provides that it will be automatically unfair to dismiss an employee for refusing to agree changes to their contractual terms or to enable the employer to employ them (or another employee in their place) under a varied contract. This is subject to a very limited exception, where essentially the change is needed to ensure the viability of the business and cannot reasonably be avoided.

The Government has also consulted on strengthening remedies in fire and rehire cases to give employees the right to apply for interim relief where they claim either unfair dismissal or a protective award. This would mean that an employment tribunal could order the employer to reinstate the employee, or failing that to pay their salary and benefits until the final determination of the employee's claim.



ACTION POINTS

- Make sure you follow the Acas Code if you are considering using dismissal and re-engagement to make changes to employees' contracts
- Make sure you comply with your collective consultation obligations, where applicable
- Watch out for the Government consultation response

COLLECTIVE REDUNDANCIES

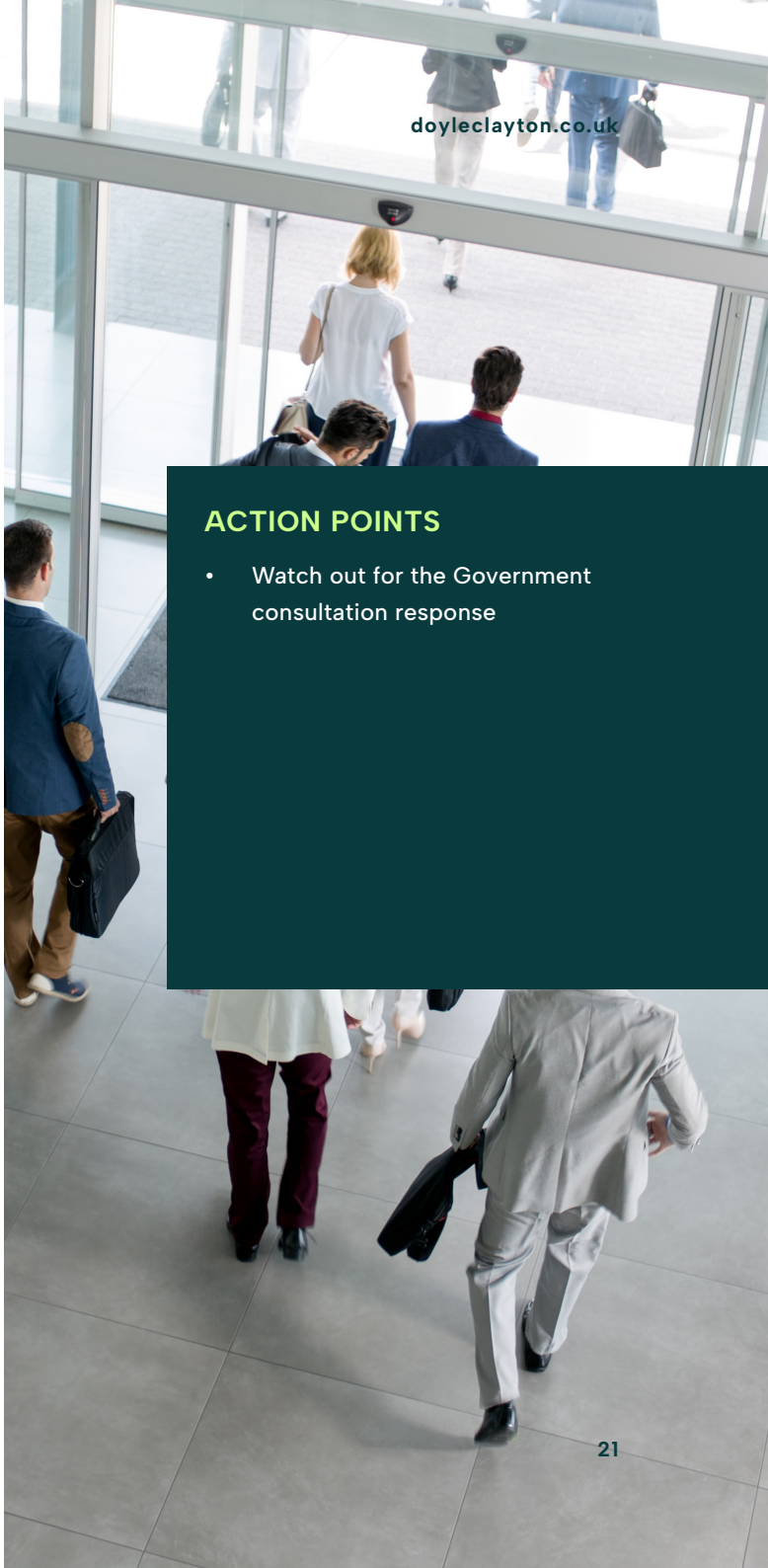
The Employment Rights Bill includes provisions which will mean that an employer's collective consultation obligations will be triggered more frequently.

Currently, employers must consult collectively with appropriate representatives where they propose to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. Consultation must begin at least 30 days before the first dismissal takes effect, increasing to 45 days where 100 or more redundancies are proposed. A redundancy dismissal is widely defined for these purposes to include any dismissal for a reason not relating to the employee concerned. This means that as well as traditional redundancies (where a workplace is closed or fewer employees are needed to do the work), dismissals due to a restructuring or in order to bring about a change in contractual terms (fire and rehire) are also included.

Employers must also notify the Secretary of State of proposed redundancies in the same timescales.

As part of the Employment Rights Bill, the obligation to consult collectively and notify the Secretary of State will be triggered based on the number of employees affected across the whole business, rather than a single workplace / site / office. This change is unlikely to be in force before 2026.

Alongside this, the Government has consulted on raising the cap on the protective award (currently 90 days' full pay) and is considering whether the cap should be doubled to 180 days' full pay or removed entirely, leaving it to the discretion of the employment tribunal to decide the level of the penalty. The Government has also consulted on whether interim relief should be available in protective award claims if a claimant is able to show that their protective award claim is 'likely' (in the sense of there being a pretty good chance) to succeed. This would enable those bringing a claim for a protective award to seek an emergency order requiring the employer re-instate or re-engage employees until the final hearing, or failing that to pay their salary and benefits until the final hearing.



ACTION POINTS

- Watch out for the Government consultation response

STATUTORY SICK PAY

The cost of Statutory Sick Pay (SSP) is set to increase for employers as changes under the Employment Rights Bill will mean that more employees will qualify. The Bill will remove the current three-day waiting period, so employees will qualify for SSP from the first day of employment. It will also remove the lower earnings limit so that employees qualify irrespective of how much they earn. However, there will be a lower level of SSP for those earning below the SSP flat rate and the Government has consulted on what that rate should be.

TRADE UNIONS AND INDUSTRIAL ACTION

Trade unions

Changes in the Employment Rights Bill could see an increased role for trade unions in the workplace. While these changes are unlikely to be in force before 2026 at the earliest, they need to be on employers' radars as many will affect employers who have had little or no exposure to trade unions to date.

All employers will be required to give workers a written statement informing them that they have the right to join a trade union. They will have to provide this at the same time as providing the section 1 statement of employment particulars, and at other prescribed times.

Unrecognised trade unions will also be able to request an access agreement allowing union officials to access the workplace to meet, represent, recruit or organise workers, or to facilitate collective bargaining (but not to organise industrial action). Where the employer and union are unable to agree access terms, the union will be able to apply to the Central Arbitration Committee (CAC) to determine their workplace access.

The Government also plans to amend the conditions of trade union recognition to make the statutory recognition process easier, meaning that employers could face more requests for recognition by trade unions.

Industrial action

The Employment Rights Bill will also make it easier for employees to take part in lawful industrial action. The Bill will amend the Trade Union Act 2016 so that industrial action can take place where a simple majority of those voting vote in favour. There will be no requirement for any particular level of turnout. There will also be changes (reductions) to the information required to be included on the ballot paper and to be provided to employers and employees. Unions will also only have to give seven days' notice of industrial action (instead of 14).

Workers will also be protected against detrimental treatment for taking part in industrial action, filling a current gap in the law.

RIGHT TO SWITCH OFF

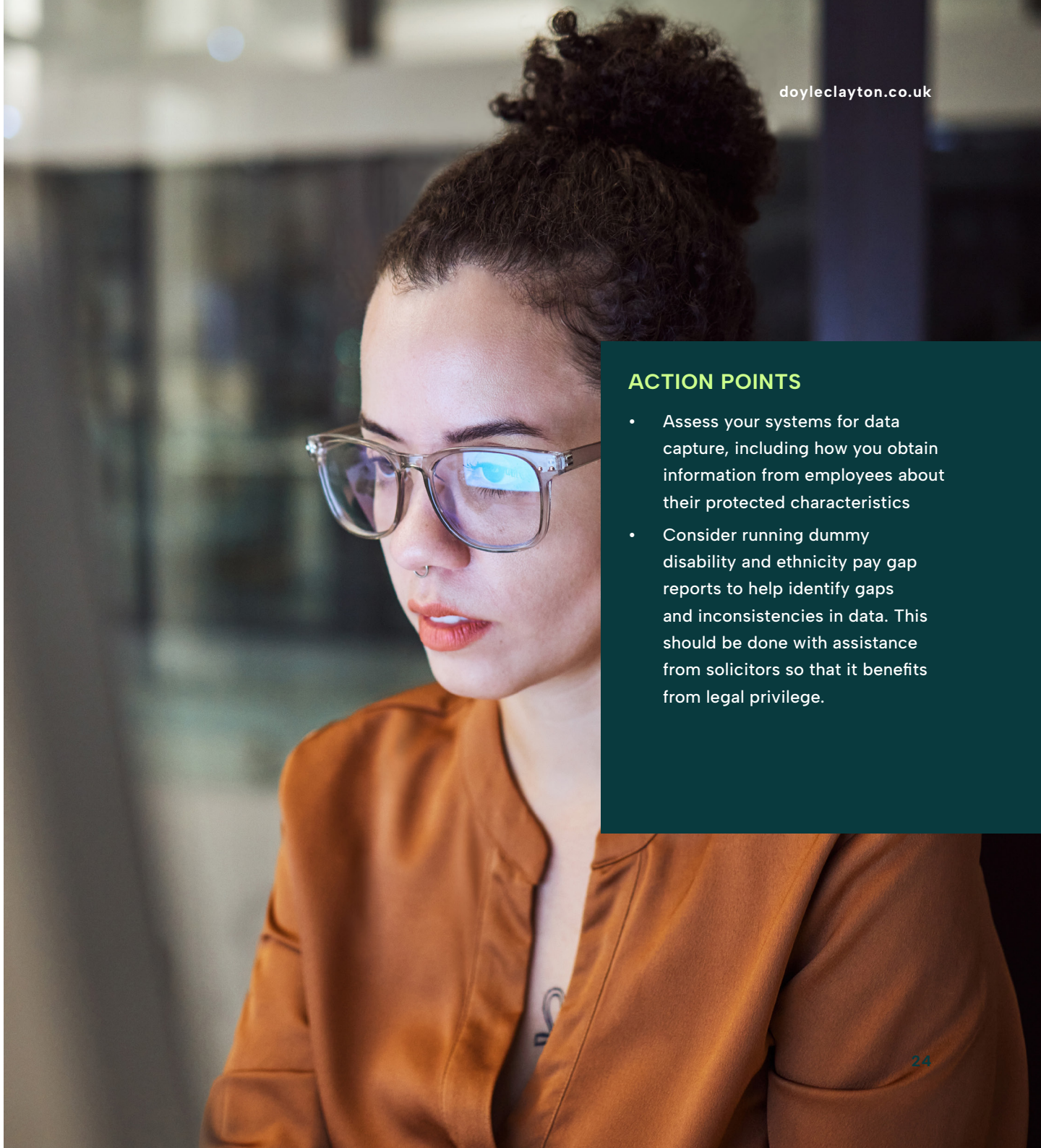
The Government plans to introduce a new right to switch off providing workers with the right to disconnect from work outside of working hours and not be contacted by their employer. Rather than doing this through legislation, it plans to introduce a statutory Code of Practice. This will follow similar models to those that are already in place in Ireland and Belgium and give workers and employers the opportunity to have constructive conversations and work together on bespoke workplace policies or contractual terms that benefit both parties. A consultation on the Code of Practice is expected to be launched in 2025.

OTHER EQUALITY MEASURES

2025 could see the publication of the Government's Draft Equality (Race and Disability) Bill for consultation. The Bill will:

- Require large employers (those employing 250 or more employees) to report on their ethnicity and disability pay gap
- Extend equal pay rights to protect workers suffering discrimination on the basis of race or disability, and
- Ensure employers can no longer avoid paying equal pay by outsourcing services.

There is expected to be significant consultation on the draft Bill and so it is likely to progress more slowly than the Employment Rights Bill. Further consultation is also promised before any secondary implementing legislation is made.



ACTION POINTS

- Assess your systems for data capture, including how you obtain information from employees about their protected characteristics
- Consider running dummy disability and ethnicity pay gap reports to help identify gaps and inconsistencies in data. This should be done with assistance from solicitors so that it benefits from legal privilege.

OTHER THINGS TO LOOK OUT FOR

In its Policy Paper, Next Steps to Make Work Pay, the Government set out some plans for longer-term reforms including:

- A full review of the parental leave system, as the Government considers that the current system does not support working parents
- A review of carer's leave and an examination of the benefits of introducing paid carer's leave
- Consulting on how to implement workplace surveillance technologies
- Consulting on moving towards single worker status and a simpler framework that differentiates between workers and the genuinely self-employed
- Consulting on strengthening protections for the self-employed by providing a right to a written contract; extending blacklisting protections and extending health and safety protections
- A review of the Transfer of Undertakings (Protection of Employment) Regulations 2006, and
- A review of health and safety guidance and regulations.

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