



PWYLLGOR DIWYLLIANT, POBL A DATBLYGU SEFYDLIADOL
PEOPLE, ORGANISATIONAL DEVELOPMENT & CULTURE COMMITTEE

DYDDIAD Y CYFARFOD: DATE OF MEETING:	11 December 2023
TEITL YR ADRODDIAD: TITLE OF REPORT:	Contractual and Legislative Changes
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Lisa Gostling, Director of Workforce and OD (Organisational Development)
SWYDDOG ADRODD: REPORTING OFFICER:	Heather Hinkin, Head of Workforce

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Er Gwybodaeth/For Information

ADRODDIAD SCAA
SBAR REPORT

Sefyllfa / Situation

In line with the Terms of Reference for the People, Organisational Development & Culture Committee (PODCC) this report provides an overview of the contractual and legislative changes that may impact our workforce and our approach to people management, policies, procedures and our terms and conditions of employment.

The report will provide an overview of recent changes and also provide some insight into proposed or potential changes that may also impact on the way we manage or discharge our people responsibilities.

This report focuses on the period 1 April 2023 to date.

Cefndir / Background

It is imperative that Hywel Dda University Health Board (HDdUHB) keeps up to date with both contractual and legal changes which impact on staff. This enables the Health Board to offer and promote the most recent terms and conditions of employment for staff and raise awareness of forthcoming changes that may impact them so that they can make informed choices where required. It also enables the Health Board to minimise any associated risks with our offering not being compliant with employment law requirements.

Asesiad / Assessment

Contractual and Legal Changes

1. Maternity, paternity and statutory sick pay changes

The Department for Work and Pensions (DWP) confirmed pay rates would increase as follows with effect from 6 April 2023: -

- Statutory maternity, paternity, adoption, shared parental, and parental bereavement pay will increase from £156.66 per week to £172.48 per week.

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

These are relevant changes for our staff as some are only entitled to the statutory elements rather than occupational allowances depending on their ability to meet the eligibility thresholds including length of service.

2. Income Tax changes from 6 April 2023

The 45% additional rate of income tax threshold was cut from £150,000 to £125,140, which means more higher earners will pay higher tax. This change will have affected around 2% of our staff.

3. Additional Bank Holiday

There was an extra bank holiday this year on 8 May 2023 to commemorate and celebrate the coronation of King Charles III. Our staff were advised of this additional bank holiday via global staff communication.

4. Reasonable Adjustments for mental health in the workplace

The Advisory, Conciliation and Arbitration Service (ACAS) has launched a framework on the types of adjustments that can be made and the additional support that is available in the workplace. This framework has been shared with Senior Workforce Managers to assist them in their work with managers to proactively support staff in work and also when dealing with sickness absence.

5. Neyland and Johnston GP Surgery

PODCC was previously advised that the above GP Surgery undertook Transfer of Undertakings (Protection of Employment) (TUPE) of some 20 staff into the Health Board on 1 November 2022. Work is now underway to tender for a new provider which, if successful, would see the staff TUPE back out of the Health Board.

6. Employment Law Updates

Retained EU Law (Revocation and Reform Bill)

Whilst this was due to come into effect on 31 December 2023, the Government has decided to defer its introduction. Had it come into effect, 4800 pieces of EU law would have ceased to apply in the UK on that date. The Government had the power to extend the deadline to 23 January 2026 and has now proposed that each piece of legislation will continue to apply unless specifically removed due to the implications of such a change to so many pieces of legislation simultaneously.

Whilst we are now less certain of the impact from 1 January 2024, as and when each piece of legislation is amended it could still result in challenges, disputes and litigation as organisations seek to understand their new obligations and for employees to understand their rights due to the impact any such revocation may have on one's ability to rely on existing case law where previously EU principles would have taken precedence e.g. in TUPE matters.

Employment Relations (Flexible Working) Act 2023

The government previously announced its support for the Employment Relations Bill however not all the initial provisions have been included in the Act – for example, the day one right to make such a request will now be considered as part of secondary legislation. However, it is anticipated that this secondary legislation will be enacted simultaneously and the likely date to implement is April 2024.

The key changes will be as follows: -

- Employers must consult with employees before rejecting flexible working requests
- Employees would be able to make two flexible working requests per year
- Employers must respond within two months of receiving a flexible working request
- The removal of existing requirements that the employee must explain what effect, if any, the change applied for would have on the employer and how that effect might be dealt with.

We are unclear at this stage if the above changes will be included in the proposed new All Wales Policy which we anticipate will be shared in the next month. The first draft provided in September 2023 did not include them and clarity has been sought from NHS Employers as to whether they will now be included in the final draft in readiness for April 2024 or else an immediate review will commence to align with the changes.

Protection from Redundancy (Pregnancy and Family Leave) Act 2023

This legislation came into effect on 24 July 2023. This strengthens and extends protection from redundancy for women and new parents until 18 months after the birth/adoption during a redundancy exercise. This change has been communicated to the Operational Workforce teams to ensure that this provision is considered when an Organisational Change Proposal is under consideration.

NHS Pension Scheme - Partial Retirement

Partial retirement is an option for NHS employees aged 55 and over to take part of their pension benefits and continue working. This option had previously only been available for members of the 2008 Section and the 2015 Scheme. On 1 October 2023, the regulations changed to allow members of the 1995 Section to take partial retirement. From this date, the amount of benefits members are able to take when partially retiring is also changing and members will be able to partially retire and claim up to 100% of their pension benefits from any Section or Scheme.

To take partial retirement, members must reduce the annual rate of their pensionable pay by 10% or more of their pensionable pay received in the previous 12 months. This also applies to members who wish to take partial retirement of their pension for a second time. Members are not required to have a break in employment of 24-hours to claim their partial retirement benefits. This, in effect, makes it another type of flexible working application rather than a retire and return application.

This is a complex area for staff to navigate and a pensions factsheet has been produced by the NHS Business Service Authority to assist staff. Further guidance has also been provided by Shared Services in the interim including how the drawdown of pension can be enacted under the new rules. We are receiving enquiries from staff and trade unions in terms of understanding the new rules and how this works with our current local policy which we have been asked not to update as there is an All-Wales Retirement Policy being prepared that will cover these changes.

Updates to the NHS Criminal Record Checks Standard

The changes to the Rehabilitation of Offenders Act (ROA) 1974 and amendments to the filtering rules came into force on 28 October 2023 and affect what is disclosed on Disclosure and Barring Service (DBS) basic, standard and enhanced checks.

The latest changes to the rules mean that all unspent conditional cautions and convictions (as defined by the ROA) will now be automatically disclosed. All records that are disclosed

on a DBS basic check will also appear on standard and enhanced checks. Additionally, the rehabilitation periods for some disposals/sentences have been reduced, meaning that some people will benefit from seeing their convictions becoming spent sooner.

Whilst these amended rules won't require changes to be made to our recruitment processes per se, we do need to be aware of them and advise managers of the possible impact. For example, less criminal record information will be disclosed about serious offences, so while this type of check can provide a level of assurance about a person's suitability it should not be relied on in isolation. The Health Board will also need to remind managers of the importance of conducting periodic checks on existing employees and that, as a result of these changes, where appropriate, there might be some instances now where criminal record information appears on the new check that was not previously disclosed on a standard or enhanced level check and this may require careful consideration before confirming the check remains satisfactory.

Looking Forward

Potential for Industrial Action

- The British Medical Association (BMA) wrote to our Chief Executive to advise that they had decided to move to a statutory ballot on industrial action for junior doctors in relation to the continual erosion and the restoration of junior doctors' pay to 2008/09 levels.
- The Health Board was notified by letter dated 26 October 2023 of the intention to ballot all junior doctors for industrial action with the ballot opening on 6 November and closing on 18 December 2023. Should the ballot carry then they may announce strike action between 8 January 2024 and 17 June 2024 and such action would be in the form of an initial 72-hour strike. This dispute has necessitated ballot notices being issued to the Health Board and also Shared Services who employ a significant proportion of junior doctors who rotate across Health Boards. The ballot notices indicate that there are 47 members employed by Hywel Dda and a further 190 members employed by Shared Services primarily across our 4 acute sites.
- The All-Wales Industrial Action Planning Cell has met to discuss the above potential action. Key members of that group are directly meeting with the BMA and are providing updates as they emerge. In addition to this Cell, HDdUHB has re-established its Industrial Action Planning Group which met for the first time on 17 November 2023.

The Health Board has no information at this time as to whether the BMA will separately ballot Consultants and SAS Doctors in Wales in relation to industrial action.

Strikes (Minimum Service Levels (MSL)) Act 2023

The act makes amendments to the Trade Union and Labour Relations (Consolidation) Act 1992. Government is now in the process of setting the Regulations and has entered into periods of consultation already with regard to ambulance services, fire and rescue, passenger rail and border services. Following these consultations, on 16 November 2023, the Government produced non-statutory detailed guidance for employers, trade unions and workers on issuing work notices in relation to minimum service levels during strike action. The guidance is structured in order of the process to follow for issuing a work notice, including a flow chart.

The consultation in relation to hospital services in England, Scotland and Wales closed on 14 November 2023. The Health Board is currently awaiting Government's response to this consultation but anticipate that the Regulations that follow will enable employers to issue a

work notice to specify the individuals required to work and the work they must carry out to secure MSL for that strike period. The employer would be required to consult the union about the numbers of people to be identified and the work to be specified in the work notice and have regard to their views before issuing the work notice.

The purpose of such a notice is reduce the significant risk to the smooth functioning of health services, potentially leading to harmful delays, restricted access to essential care and an increased burden on staff and resources during the previous periods of industrial action in the past 12 months. (It was reported that last year alone 900,000 appointments were cancelled, and 22 critical incidents were called as a result of industrial action)

The consultation sought views on enabling hospitals to function for certain patients as they would on a non-strike day (e.g. patients requiring urgent or emergency treatment in hospital during the period of industrial action, and people who are receiving hospital care and are not yet well enough or able to be discharged). It also sought views as to whether any MSL issued would equally apply to other organisations including the Third Sector, social enterprises and charities that support those hospital services. The Health Board does not know at this stage if the Regulations will be published ahead of the potential industrial action that may follow a supportive ballot outcome for the BMA outlined above.

The Employment Rights (Amendment, Revocation & Transitional Provision) Regulations 2023

With effect from 1 January 2024 new provisions will apply for irregular hours workers and part year workers on permanent contracts in respect of holiday entitlement. This will accrue at 12.07% of hours worked each pay period, capped at 28 days. Holiday pay will be based on average weekly earnings, ignoring unpaid weeks. The model departs from the confusion caused by the recent Supreme Court decision in Harper Trust and provides a simpler accrual model accounting for varying hours.

The new regulations will also allow 'rolled-up' holiday pay for these workers - a 12.07% uplift to regular pay in each period, to overcome previous issues with holiday pay timing. The new rules should benefit employers and workers by removing confusion and preventing over or underpayment when compared to their full-time colleagues.

The Health Board is currently working to assess the implications of this new legislation and will communicate with staff once the issues and implications have been assessed.

Workers (Predictable Terms & Conditions) Act 2023

This statutory right will provide zero-hour workers with the right to request predictable hours in their contract after six months. The ACAS Code of practice is currently out to consultation until 17 January 2024.

This code of practice is akin to that for requesting flexible working in that the draft code sets out principles around being accompanied to meetings (albeit there is no statutory right), explaining the rationale when requests are declined and setting out a right of appeal. This legislation also has ties to the Right to Request Flexible Working in that a request under that legislation for a predictable work pattern would also be counted as one of the two requests that can be made under this legislation. Employers will therefore need a system to ensure requests are appropriately documented under both pieces of legislation.

Workforce has requested input from key departments on the potential impact of this code in relation to current practices, potential impact and how we would process map this into

business-as-usual mechanisms and reporting. Comments have been requested by end of December 2023.

Carers Leave Act 2023

This Act is likely to take effect in April 2024 and would provide a statutory right to one week's unpaid leave to either arrange or provide care for a dependant with a long-term care need. The impact of this bill on the Health Board may be marginal as carers can already access up to 5 days unpaid leave per annum as part of the All-Wales Special Leave Policy.

The General Medical Council (GMC) – sexual harassment

The GMC has issued new professional standards that include zero tolerance of sexual harassment. This is the first time in 10 years that the Standards have been updated and will include reference to sexual harassment for the first time. The standards are due to come in on 30 January 2024 following a 5-month familiarisation period and will apply to all doctors on the UK medical register. The GMC is also preparing to regulate Physicians Associates and Anaesthesia Associates at this point this guidance will also apply to them.

The Worker Protection (Amendment of Equality Act 2010) Bill

This received Royal Assent on 26 October 2023 and is likely to come into effect in October 2024. This legislation would be a new requirement for employers to be more proactive with a duty to prevent sexual harassment in regard to their employees rather than just redress it once it has occurred. It will also make employers liable for harassment of their employees by third parties.

Neonatal care (Leave and Pay) Act 2023

This Act is anticipated for introduction from April 2025 albeit it received Royal Assent on 24 May 2023. This change would provide a new statutory entitlement to neonatal leave and pay for employees whose babies are in neonatal care for an extended period. The plan is to provide up to 12 weeks' paid leave for both parents so they can spend more time with their babies and would cover the time spent in neonatal care. This legislation could effectively mean that an employee is absent from work for a period of 68 weeks when taken with full maternity leave and annual leave entitlement.

The Health Board has communicated a number of the above changes to staff as they have arisen and continues to consult and work with staff and trade union colleagues on those that remain work in progress.

Potential Legislative Changes being considered by the Government

Draft Statutory Code on “fire and re-hire”

This was open to consultation from 24 January to 18 April 2023. Under the draft code, employers would be required to consult with staff and explore alternative options and conduct an ongoing assessment of whether the changes are vital. There is no date set for its introduction at present.

Fertility Treatment (Employment Rights) Bill

This Bill would require employers to allow an employee to take paid time off work to attend fertility treatment appointments (and for connected purposes relating to treatment). Again, this provision is already included in the All-Wales Special Leave Policy.

Miscarriage Leave Bill

This would ensure 3 days of paid bereavement leave for people who have sadly experienced miscarriage. Under current laws, only those who suffer pregnancy loss after 24 weeks are legally entitled to maternity/paternity leave and pay.

There is currently no legal provision for paid leave for people who unfortunately suffer the loss of a pregnancy before 24 weeks, meaning many employees return to work immediately after suffering such a loss.

The right to disconnect

The Government is being urged to give UK home-workers the right to disconnect through the addition on an employment bill to help people switch off and protect their mental health. Should this translate into a Bill that receives Royal Assent it would provide workers with a legal right to switch off and not respond to work issues out of their normal working hours.

The Health Board will be in a better position to provide an assessment of any forthcoming changes as the detail becomes clearer and can provide further updates to Committee in subsequent meetings.

Argymhelliad / Recommendation

The People, Organisational Development & Culture Committee is requested to:

- **NOTE** the Contractual and Legislative Changes Report.

Amcanion: (rhaid cwblhau)	
Objectives: (must be completed)	
Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor:	3.13 Approve workforce and organisational development policies and plans within the scope of the Committee.
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	N/A
Parthau Ansawdd: Domains of Quality Quality and Engagement Act (sharepoint.com)	Not Applicable
Galluogwyr Ansawdd: Enablers of Quality: Quality and Engagement Act (sharepoint.com)	Not Applicable
Amcanion Strategol y BIP: UHB Strategic Objectives:	1. Putting people at the heart of everything we do

Amcanion Cynllunio Planning Objectives	2c Workforce and OD strategy
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2021-2022	5. Offer a diverse range of employment opportunities which support people to fulfill their potential

Gwybodaeth Ychwanegol: Further Information:	
Ar sail tystiolaeth: Evidence Base:	Employment Legislation
Rhestr Termiau: Glossary of Terms:	Included in the body of the report
Partïon / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Diwylliant, Pobl a Datblygu Sefydliadol: Parties / Committees consulted prior to People, Organisational Development & Culture Committee:	N/A

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	None arising from this paper
Ansawdd / Gofal Claf: Quality / Patient Care:	Not applicable
Gweithlu: Workforce:	As impacted.
Risg: Risk:	None arising from the presentation of this report as the report is for information only however the most significant risk presented relates to the potential for industrial action.
Cyfreithiol: Legal:	It is essential that the HDdUHB has up to date policies and procedures in place which comply with legislation as a minimum standard.
Enw Da: Reputational:	Failure to apply the appropriate entitlements under the legislation and policy framework effectively may lead to formal complaints which may have a reputational impact.
Gyfrinachedd: Privacy:	Not applicable
Cydraddoldeb: Equality:	Not applicable