



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

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| DYDDIAD Y CYFARFOD: DATE OF MEETING: | 16 December 2024 |
| TEITL YR ADRODDIAD: TITLE OF REPORT: | Contractual and Legislative Changes Update |
| CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR: | Lisa Gostling, Director of Workforce & Organisational Development and Deputy Chief Executive |
| SWYDDOG ADRODD: REPORTING OFFICER: | Heather Hinkin, Assistant Director of People Management |

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 accordance with the Terms of Reference for Committee, this report provides an overview of the contractual and legislative changes that have or may impact our workforce in relation to our approach to people management, policies, procedures and our terms and conditions of employment.

The report will provide an overview of recent changes and 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 2024 to date and will seek to build on the interim in-year report Committee received in August concerning the recent election result and the new Labour Government's proposed Employment Bill as outlined in the King's Speech which was part of Labour's plans to "make work pay".

Cefndir / Background

It is imperative that HDdUHB keeps up to date with both contractual and legal changes which impact on our staff. This enables us to offer and promote the most recent terms and conditions of employment for our 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.

Since April 2024, the UK Governments (Conservative and Labour) have enacted a series of employment law reforms under the Employment Rights Bill plus other initiatives. These changes aim to modernise protections, enhance workplace fairness, and address longstanding gaps in equality and inclusion. Welsh health boards, including Hywel Dda, must adapt to these changes while managing potential operational and the financial impacts of such changes.

The employment law reforms target key areas such as flexible working, zero-hours contracts, new parent rights, protections against harassment, and fair pay. In addition to these changes,

the new Labour Government has outlined further reforms aimed at promoting equality, reducing work-related stress, and creating a fairer labour market.

Asesiad / Assessment

The following section details the legislation, its implications for Welsh health boards, and any specific impacts for Hywel Dda.

Contractual and Legal Changes

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 2024:

1. Statutory maternity, paternity, adoption, shared parental, and parental bereavement pay will increase from £172.48 per week to £184.03 per week (or 90% of the employee's weekly earnings if that amount is lower).
2. Statutory sick pay from £109.40 per week to £116.75 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.

Changes to Pension Tiers

The second phase of the changes to the amount members pay for their NHS pension benefits was implemented from 1st April 2024. The NHS Business Services Authority (NHSBSA) wrote to all members to advise them of these changes.

The new rates are outlined below:

| | | |
|---|--------------------|-------|
| 1 | £0 to £13,259 | 5.2% |
| 2 | £13,260 to £26,831 | 6.5% |
| 3 | £26,832 to £32,691 | 8.3% |
| 4 | £32,692 to £49,078 | 9.8% |
| 5 | £49,079 to £62,924 | 10.7% |
| 6 | £62,925 and above | 12.5% |

N.B. as Pensionable Salary Range Contribution Rates are based on actual pensionable pay, it is not possible to align the pay bands to any particular tier.

As a result of the above changes, the amount many members pay stayed the same until the application of the pay award, with some paying less. For members who would pay higher contributions, the maximum increase from 1 April 2024 was advised as being 0.8%. However, on application of the pay award for 2024/25, some staff will have moved up to the top tier and seen a more significant impact on their take home pay.

Pay Awards

The pay awards for 2024/24 were as follows:

| Staff Group | Uplift | Effective Date |
|---|--|----------------|
| Agenda for Change | 5.5% | 1.4.24 |
| Executive and Senior Pay (ESP) | 5% | 1.4.24 |
| General Practice and Dental Educator staff covered by Medical & Dental terms and conditions | 6% | 1.4.24 |
| Medical & Dental N.B. this award was in addition to the reform of the pay scale for medical and dental consultants effective from 1 January 2024 as notified in UCEA Update 24:030 | 6% with an additional £1k for junior doctors | 1.4.24 |

There was an option this year for staff in the first three groups to spread their back pay over 3 months (November, December 2024 and January 2025). Circa 280 of our staff opted to spread their back pay with the total number taking up this option across Wales being circa 6000.

On 16 October 2024 the Welsh Partnership Forum Business Committee ratified the decision of the Welsh Government to accept the NHS Pay Review Body (NHS PRB) recommendation to add an intermediate pay point in each of pay bands 8a and above with effect from 1 April 2024. The uplift will be implemented in January 2025 and will include any backpay due for those who have reached the intermediate pay point at that banding from 1 April 2024 onwards.

Disclosure and Barring Service (DBS) Update

We have been notified by Shared Services that the cost of a DBS Check will increase from 1 December 2024 as follows: -.

| | pre Oct-19 | Oct-19 | Apr-22 | Dec-24 |
|----------|------------|--------|--------|--------|
| Basic | £25.00 | £23.00 | £18.00 | £21.50 |
| Standard | £26.00 | £23.00 | £18.00 | £21.50 |
| Enhanced | £44.00 | £40.00 | £38.00 | £49.50 |

During financial year 2023/24 the Health Board undertook over two thousand DBS checks at a cost of £72,724. Based on the same trajectory for the current year 2024/25 the increase in DBS costs would result in a cost increase to the health board of £21,275.

Transfer of Undertakings (Protection of Employment) Regulations 2006

Transfers that have taken place in the period both as transferor (from the Health Board) and transferee (into the Health Board).

- Laundry – on 1 April 2024 seven staff TUPE'd over to Shared Services, however two have subsequently returned to employment with the Health Board.
- Public Health – on 1 April 2024 one staff member TUPE'd across to the NHS Executive
- W&OD – on 1 April 2024 three admin staff from Carers Wales TUPE'd into the Health Board.
- St David's Practice - on 1st November 2024, 10 staff from St David's GP practice transferred into the Health Board and joined with current Health Board staff from the Solva GP Practice to form the new Meddygfa Penrhyn (Peninsula Practice).

Employment Law Updates

The Employment Relations (Flexible Working) Act 2023

This came into force in April 2024 with the key changes being:

- Flexible working becoming a day-one right rather than needing at least 26 weeks' service.
- Employees can put in two such requests per year rather than just one.
- Employees do not need to provide a reason for their request or explain the business impact.
- Employers must consult with employees to discuss alternatives before rejecting requests, and to address them within two rather than three months.

In preparedness for this new legislation, a new All Wales Flexible Working Policy was introduced and adopted by Hywel Dda in December 2023 with an underlying principle of "how can we make this happen". Significant work has been done to promote this policy internally and we are currently seeing circa 75%+ of all such requests reported in ESR being approved.

The above policy framework does still cause difficulty for managers especially with shift-based roles which can often complicate the request being approved where there are challenges in covering clinical roles, especially where the weekly reduction requested is minimal and therefore unattractive to pick up by other staff. The toolkits and positive benefits for staff retention are regularly promoted to encourage an improvement in the application success rate with examples of case studies being provided to enable managers to see that, with a little creativity, it can be possible to accommodate and balance the needs of the service more often than not. We will continue to monitor the success rate of applications and impact on retention into 2025.

To date, we have not seen a significant increase in the number of employees submitting two requests per year however we are seeing a reported increase in the number of applications. This could be in part due to better reporting arrangements that are also now in place albeit there is still work to do to ensure we capture every request made and its outcome.

Paternity Leave Amendment Regulations 2024

From 6 April 2024, employees taking statutory paternity leave (and pay, if they are eligible) can now split their two weeks' entitlement into two separate one-week blocks, rather than having to take them both together. They can also take their two weeks at any time within the first year after their child's birth, rather than within only the first eight weeks after birth as previously required.

Employees now must give employers 28 days' notice for each week of leave, down from 15-weeks' notice previously, before taking leave. However, they still need to give notice of their upcoming entitlement 15 weeks before the expected date of birth. The Health Board's policy was already compliant with these requirements.

Carers Leave Act 2023

The Act took effect in April 2024 and provides 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. However, one minor change has been made to the Health Board's Policy as a result of the change in legislation and this was approved by Committee in April 2024.

We have communicated a number of the above changes to staff as they have arisen and continue to consult and work with staff and our trade union colleagues on those that remain work in progress.

New Statutory Code on “fire and re-hire”

This was open to consultation from 24 January to 18 April 2023. Under the code, employers would be required to consult with staff and explore alternative options and conduct an ongoing assessment of whether the changes are vital. The code sets out employers’ responsibilities when seeking to change contractual terms and conditions of employment and seeks to ensure dismissal and re-engagement is only used as a last resort.

Employment tribunals will have the power to apply an uplift of 25% of an employee’s compensation if an employer unreasonably fails to comply with the code where it applies.

The Code of practice was published on 18 July 2024 and provides guidance in dismissal and re-engagement scenarios. A copy of the Code has been shared with the Workforce Teams to ensure compliance when advising managers and staff in relation to the need for organisational change.

Social Partnership Duty

On 1 April 2024 the new Social Partnership Duty (“the Duty”) on public bodies came into force in Wales. The new Duty requires all public bodies within scope to seek consensus or compromise with their recognised trade unions or (where there is no recognised trade union) other staff representatives, when setting and delivering their organisations’ well-being objectives under the Well-being of Future Generations (Wales) Act 2015. The 7 wellbeing goals under this Act are:

1. A prosperous Wales
2. A resilient Wales
3. A healthier Wales
4. A more equal Wales
5. A Wales of cohesive communities
6. A Wales of vibrant culture and thriving Welsh language
7. A globally responsible Wales

In preparedness for this legislation, a Public Service Reference Group was established in June 2023 to consider the content of any statutory guidance required to implement the new Duty, consider the key issues for discussion at the national engagement events and consider the format of the annual report, including whether it could be incorporated into existing annual reporting requirements in advance of it coming into effect on 1 April 2024.

Members of the group were from Blaenau Gwent Council, 3 Health Boards including Hywel Dda, National Museum of Wales, Health Education and Improvement Wales (HEIW), GMB Union, Unite, Public & Commercial Services Union (PCS) and Welsh Government.

There have been two conferences following the legislation coming into effect (one in July in Cardiff and the other in September in Swansea). The Staff Side Lead and the Head of Workforce for Hywel Dda delivered a workshop on the Health Board’s approach to partnership working at the second conference. There is also a module on ESR on Social Partnership which the Health Board features in.

We understand that Public Health will be leading the drafting of the first annual reporting requirements with our trade unions and a copy of the draft will be shared with Committee once available.

Worker Protection (Amendment of Equality Act 2010 (2023))

This legislation came into effect on 26 October 2024 and is a new requirement for employers to be more proactive with a duty to prevent sexual harassment and create a safe working environment regarding their employees rather than just addressing it once it has occurred. It will also make employers liable for harassment of their employees by third parties.

The key requirement of this Act is that employers must now take all reasonable steps to prevent harassment, including third-party incidents. This sends a clear signal to all employers that they must take reasonable preventative steps against sexual harassment, encourage cultural change where necessary, and reduce the likelihood of sexual harassment occurring.

The Equality and Human Rights Commission's guidance on sexual harassment has been updated to reflect the new legal requirements under the Act for employers and this document has been shared with Senior Workforce colleagues to support them in their management of case work.

Employees will not be able to bring a claim for the preventative duty but in successful Tribunal claims for alleged sexual harassment, it will naturally follow that a breach of the employment duty will automatically be examined. The Employment Tribunal system does expect to see a rise in the number of claims under this legislation, but this is often the case with any new piece of legislation.

We are cognisant that patients and visitors can be significant third-party risks, particularly in high-stress areas like A&E and mental health services. Work is ongoing jointly across Wales in terms of this agenda and the Health Board is actively engaged in those discussions. Separately, colleagues across W&OD, Safeguarding and frontline services are also actively working on plans to ensure we can meet the new duties included in the act.

Looking Forward

The Employments Rights Bill was published on 10 October 2024 and sets out a wide range of ambitious workplace reforms. The bill will bring forward 28 individual employment reforms, from ending "exploitative" zero hours contracts and fire and rehire practices to establishing day one rights for paternity, parental and bereavement leave for millions of workers. Statutory sick pay will also be strengthened, removing the lower earnings limit for all workers and cutting out the waiting period before sick pay kicks in. It has been reported as an important advancement in safeguarding employees.

Some of the reforms proposed are detailed below:

The **Fair Work Agency** (FWA) is established, and it is planned for it to have a single set of powers to investigate and act against businesses that do not comply with employment law, including the enforcement of employment tribunal awards, statutory sick pay, holiday pay and breaches of national minimum wage regulations. The FWA will also be able to issue civil penalties and to order employers to compensate workers, based on existing powers in the National Minimum Wage Act 1998.

The introduction of the FWA will not introduce any new rights, but we can expect enforcement to be more effective as a result. The Employment Rights Bill will be the first phase of implementing the FWA. The Bill itself is unlikely to enter law until 2025, with most expected reforms not due to take place until 2026 following consultation on any secondary legislation. Employers will have the opportunity to take advantage of the long lead-in period to review policies and ensure legal compliance.

Zero-Hours Contracts

Amongst other changes, the Government has announced that it will address one-sided flexibility by “banning exploitative zero-hours contracts”. Across the UK, around one million people aged over 16 reported being on zero hours contracts between April – June 2024, amounting to around 3.1% of the total working population. The legislation would result in employers having to offer guaranteed minimum hours and compensate workers for cancelled shifts.

The impact of this legislation could be significant for Health Boards due to the significant reliance on bank staff and flexible workers across the NHS which may also make compliance challenging. Guaranteed hours may also reduce workforce flexibility and increase costs if there is a significant shift to permanent contracts. The Government launched a consultation into Making Work Pay in relation to the application of zero hours contract measures for agency workers on 21 October 2024. The consultation closed on 2 December 2024. The Health Board has contributed views to this consultation.

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.

Right to Switch Off: Preventing employees from being contacted out of hours, except in exceptional circumstances, to allow them the rest and get the recuperation they need to give 100% during their shift. No further update at present but will be subject to consultation.

Mandatory Pay Gap Reporting: Public sector employers will need to report ethnicity and disability pay gaps, requiring robust data systems. The Health Board already publishes this data.

Simplified Employment Status: The Labour Government has outlined plans to move to a simpler (single status) two category framework for employment status whereby individuals would be classified as either workers or genuinely self-employed for the purpose of workplace rights and protections.

Whilst revisions to worker classifications could reduce administrative complexity, this shift would be a significant overhaul of employment relationships and rights. The Health Board currently operates a three-tier model with workers, employees and self-employed. Ordinarily, workers receive less employment rights due to the nature of the contract but can receive higher pay e.g. bank and agency locums. We will be monitoring developments here closely due to the potential financial and contractual implications.

Other Developments of Note

Healthier Working Lives Report

An interim report has been published by the Commission for Healthier Working Lives to address the growing challenges of working-age ill-health. The report draws insights from a range of employers, experts and the public and highlights the need for a new approach to help people with underlying health conditions to remain in or return to work. The full recommendations will be published in Spring 2025 and will outline how employers and government can work together to manager workforce health proactively, offer earlier support to remain in work and provide clear pathways for those seeking to enter the labour market.

This report sits well with the work we are doing internally in relation to the Health and Wellbeing strand of the Non-Pay Elements of the Pay Deal. We await the recommendations with interest.

In Summary

Health boards in Wales, as significant public sector employers, may face unique challenges in implementing some of these legislative proposals while maintaining service delivery.

However, Hywel Dda Health Board must prepare for these changes by continuing to invest in workforce development, enhancing data systems, and further embedding Equality, Diversity & Inclusion (ED&I) principles into its culture. These steps will support compliance, maintain workforce morale, and improve health outcomes for diverse patient populations.

As always, there are clearly implications for the Health Board to consider: -

- Cost pressures - Potential for increased staffing costs due to higher rates of pay, guaranteed minimum hours and administration however, this may also present opportunities for better rostering and reduced high costs agency spend.
- Operational – We may need to re-evaluate our staffing models and contractual arrangements to ensure alignment with the new regulations. This could involve transitioning some zero-hour workers to fixed-term or permanent contracts to maintain compliance.
- Recruitment and Retention - While the Bill could improve job satisfaction and reduce turnover by providing workers with greater job security, it may also limit the flexibility that attracts some workers to zero-hour contracts in the first place, potentially affecting recruitment.
- Legal - Employers must navigate new legal requirements, which may increase the risk of non-compliance and associated penalties. This necessitates investment in training and systems to ensure adherence to the new rules.
- Systems – We may need to review existing system capability and ensure that we future proof our procurement of systems over the next few years as best we can.

To reduce or mitigate the challenges and leverage opportunities presented by the new legislation and those proposed in the Employment Bill, the following may assist employers including the Health Board to remain compliant and be prepared: -

- Continue to conduct assessments of current workforce strategies and include the impact of the changes on the use of zero-hour contracts.
- Explore alternative employment models that align with any new requirements while maintaining operational flexibility.
- Explore predictive rostering models to accommodate flexible working requests thus enabling more to be agreed and to manage the increased complexity of compliance with any new pay and scheduling regulations.
- Develop contingency plans for staffing shortages caused by expanded leave rights.
- Continue to foster open communication with our trade unions and zero-hour workers to understand preferences and concerns.
- Ensure our career development pathways provide opportunities for our zero-hour workers to upskill or transition into roles with guaranteed hours.
- Continue to collaborate with industry associations and government bodies to provide feedback on forthcoming consultation exercises and advocate for any necessary adjustments to address the unique challenges faced by the healthcare sector, particularly in maintaining flexible staffing to meet patient care demands.

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)

| | |
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| Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor: | 2.1 To provide assurance to the Board on compliance with legislation, guidance and best practice around the workforce and OD agenda |
| 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 Choose an item. Choose an item. Choose an item. |
| Galluogwyr Ansawdd: Enablers of Quality: Quality and Engagement Act (sharepoint.com) | Not Applicable Choose an item. Choose an item. Choose an item. |
| Amcanion Strategol y BIP: UHB Strategic Objectives: | All Strategic Objectives are applicable Choose an item. Choose an item. Choose an item. |
| Amcanion Cynllunio Planning Objectives | 1 Workforce Stabilisation Choose an item. Choose an item. Choose an item. |
| Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2021- 2022 | 2. Develop a skilled and flexible workforce to meet the changing needs of the modern NHS 5. Offer a diverse range of employment opportunities which support people to fulfill their potential Choose an item. Choose an item. |

Gwybodaeth Ychwanegol:

Further Information:

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| Ar sail tystiolaeth: Evidence Base: | N/A |
| Rhestr Termau: Glossary of Terms: | ESR – Electronic Staff Record |

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| 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 directly from the report – for information only |
| Ansawdd / Gofal Claf: Quality / Patient Care: | N/A |
| Gweithlu: Workforce: | None arising directly from the report – for information only |
| Risg: Risk: | None arising directly from the report – for information only |
| Cyfreithiol: Legal: | None arising directly from the report – for information pre-statute. |
| Enw Da: Reputational: | N/A |
| Gyfrinachedd: Privacy: | N/A |
| Cydraddoldeb: Equality: | N/A |