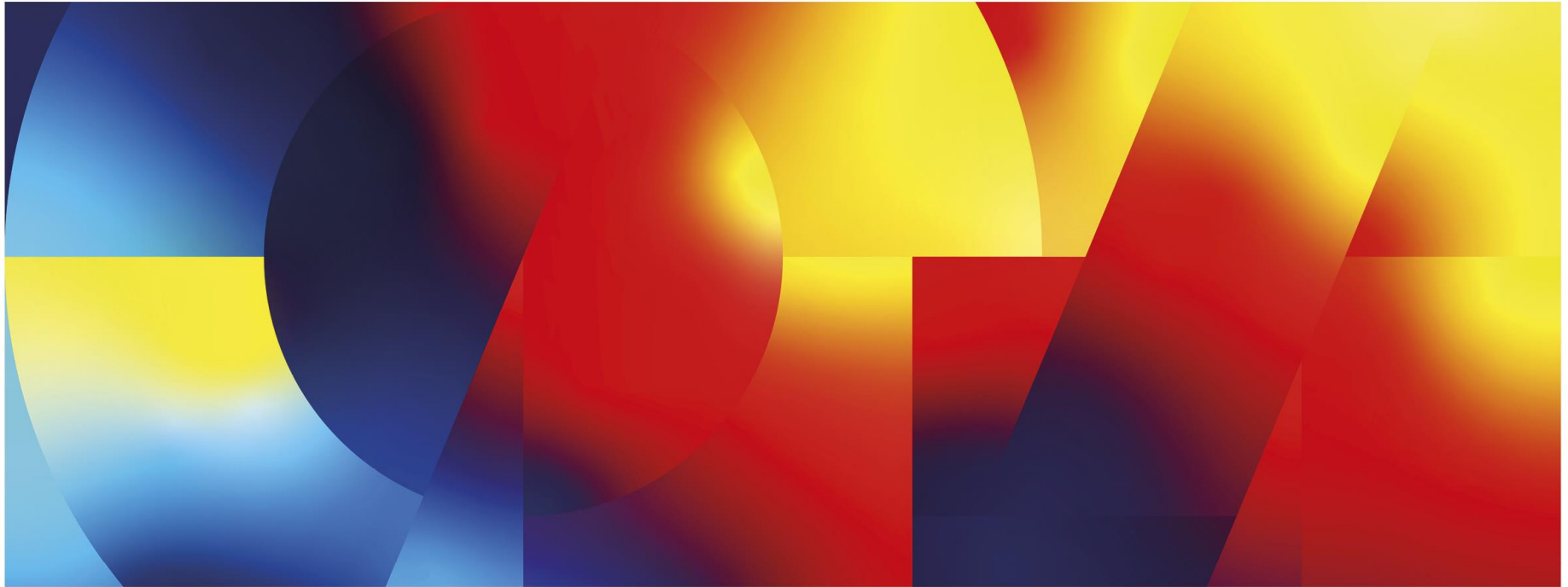


Employment Law Webinar



What we will cover

- Economic uncertainty: impact on businesses and employees:
 - Recruitment and retention issues
 - Cost of living crisis
 - Is a recession / redundancies on the horizon?
- Holiday entitlement for “part-year” workers: ***Harper Trust v Brazel – Supreme Court decision***
- Discrimination on the basis of philosophical belief

What we will cover

- In brief, including:
 - Pre/post natal issues
 - What's happening with Trade Unions?
 - Repeal of EU legislation – impact on employment law
 - Fit notes
 - IR35

What are the most significant people issues your organisation is facing?

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Economic uncertainty: impact on businesses and employees

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Economic uncertainty: impact on businesses and employees

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Why workers just won't stop quitting

**'Great Resignation' Among Over-50s
Is Driving Up Inflation, Says John Lewis**

Economic uncertainty: impact on businesses and employees

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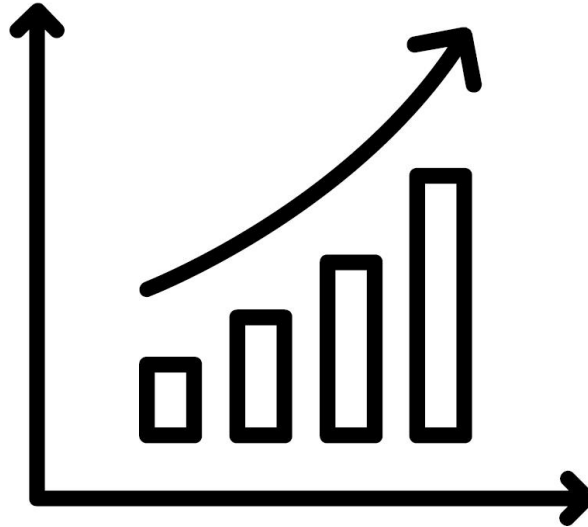
Inflation



Mortgage rates



Utility costs



Economic uncertainty: impact on businesses and employees

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Teachers one step closer to going on strike in Great Britain

Metro engineers to strike over 'miserable' pay offer – but bosses say network won't be shut down

More than 50 staff employed by Stadler Rail at the Metro's depot are set to walk out after rejecting a 4% pay rise

**London Ambulance Service:
Workers face strike ballot over pay**

Economic uncertainty: impact on businesses and employees

**Nurses to vote on strike action in
Royal College of Nursing's first ever
UK-wide ballot**

**Amazon: Coventry workers balloted
for strike action in UK first**

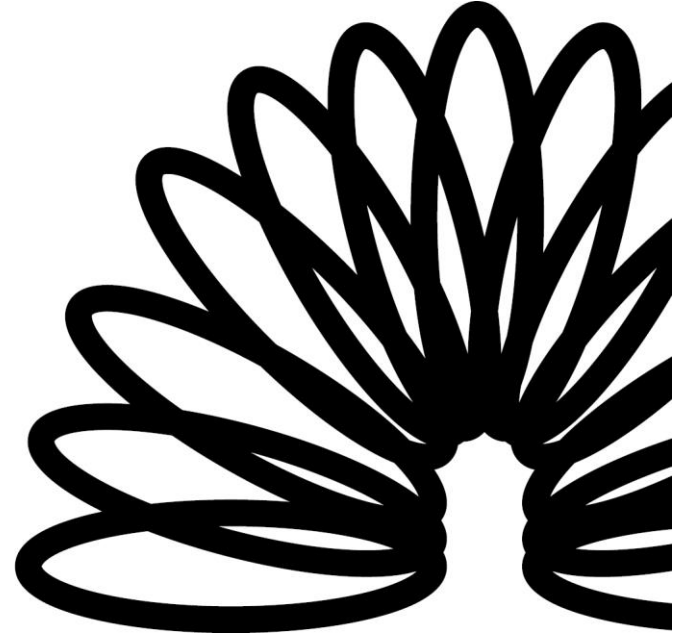
What steps have you taken to improve retention and recruitment?

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What can be done to attract and retain candidates?

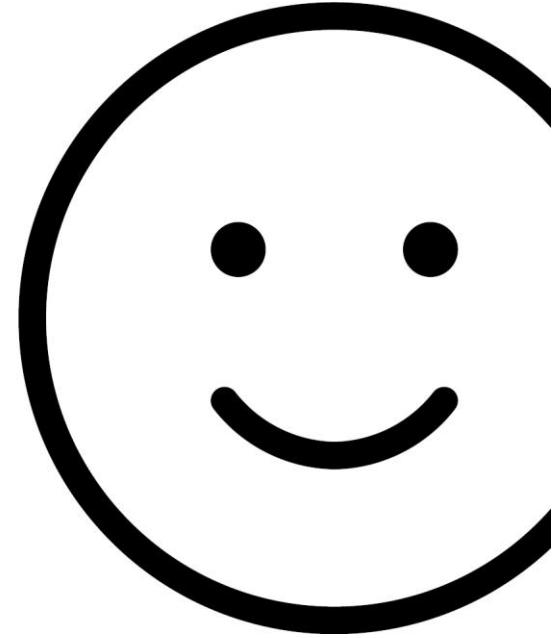
- Utilise flexible working practices
 - Flexible
 - Hybrid
 - 4-day week



Recruitment and retention

What can be done to attract and retain candidates?

- Utilise flexible working practices
- Focus on improving your culture



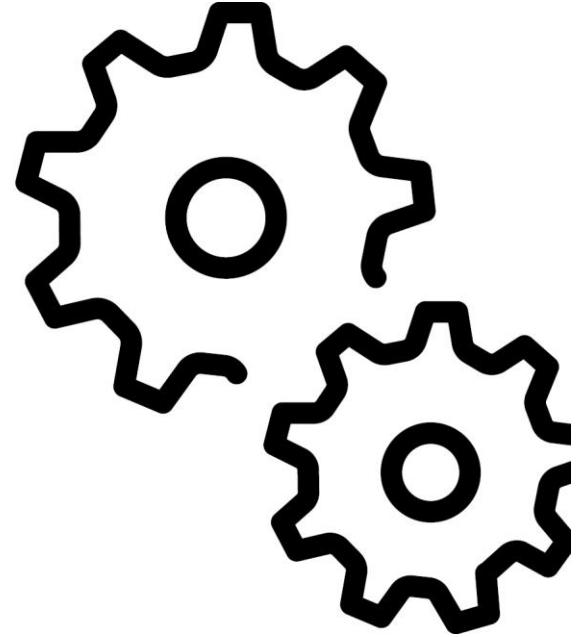
What can be done to attract and retain candidates?

- Utilise flexible working practices
- Focus on improving your culture
- Improving communication with employees



What can be done to attract and retain candidates?

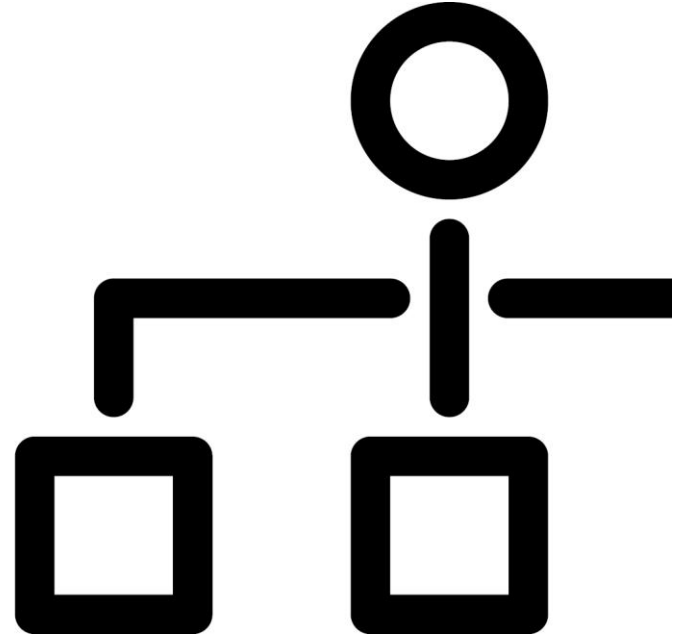
- Utilise flexible working practices
- Focus on improving your culture
- Improving communication with employees
- Include employees in decision making



Recruitment and retention

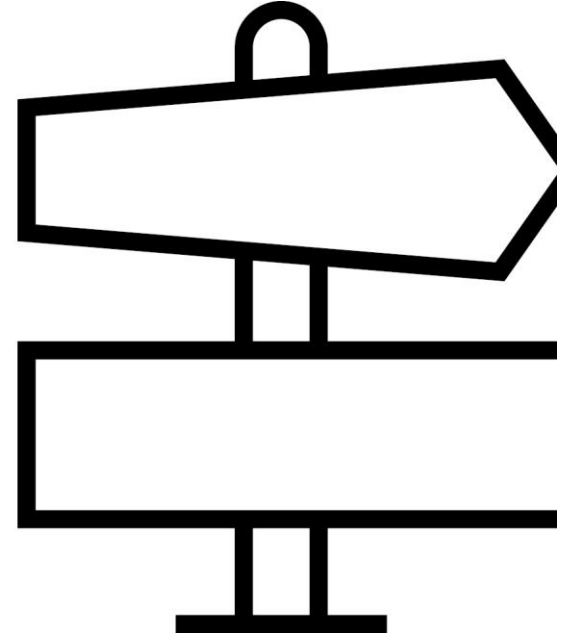
What can be done to attract and retain candidates?

- Utilise flexible working practices
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- Include employees in decision making
- Improve management skills



What can be done to attract and retain candidates?

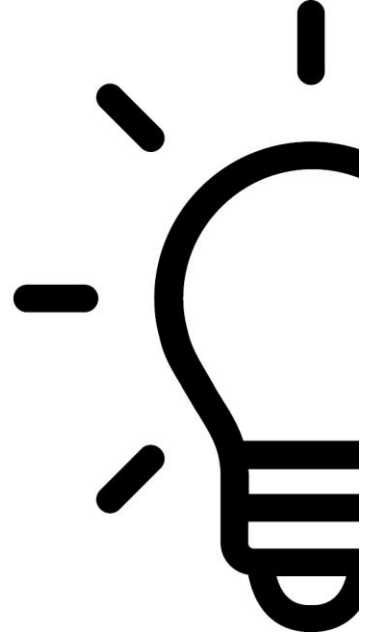
- Utilise flexible working practices
- Focus on improving your culture
- Improving communication with employees
- Include employees in decision making
- Improve management skills
- Investment in career progression



Recruitment and retention

What can be done to attract and retain candidates?

- Utilise flexible working practices
- Focus on improving your culture
- Improving communication with employees
- Include employees in decision making
- Improve management skills
- Investment in career progression
- Think about 'upskilling' your current workforce



What can be done to attract and retain candidates?

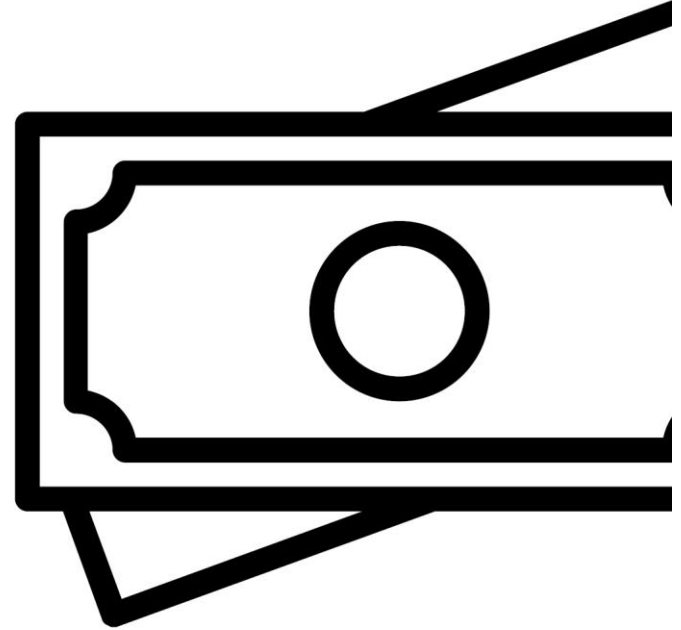
- Utilise flexible working practices
- Focus on improving your culture
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- Include employees in decision making
- Improve management skills
- Investment in career progression
- Think about 'upskilling' your current workforce
- Invest in H&W initiatives



Recruitment and retention

What can be done to attract and retain candidates?

- Invest in your brand



Recruitment and retention

What can be done to attract and retain candidates?

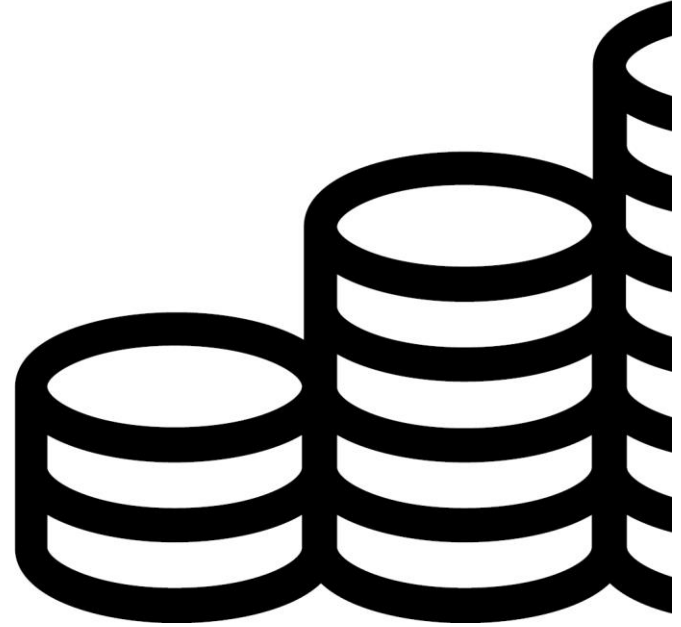
- Invest in your brand
- Develop a digital presence



Recruitment and retention

What can be done to attract and retain candidates?

- Invest in your brand
- Develop a digital presence
- Pay increase



Recruitment and retention

What can be done to attract and retain candidates?

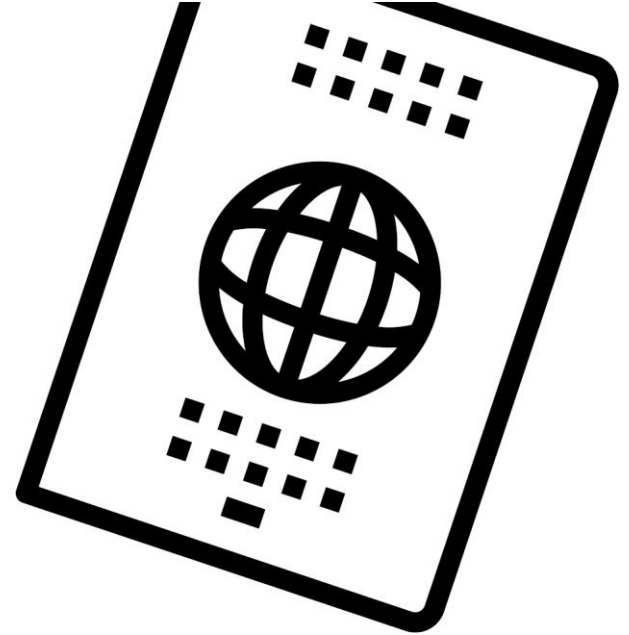
- Invest in your brand
- Develop a digital presence
- Pay increase
- Performance based bonuses



Recruitment and retention

What can be done to attract and retain candidates?

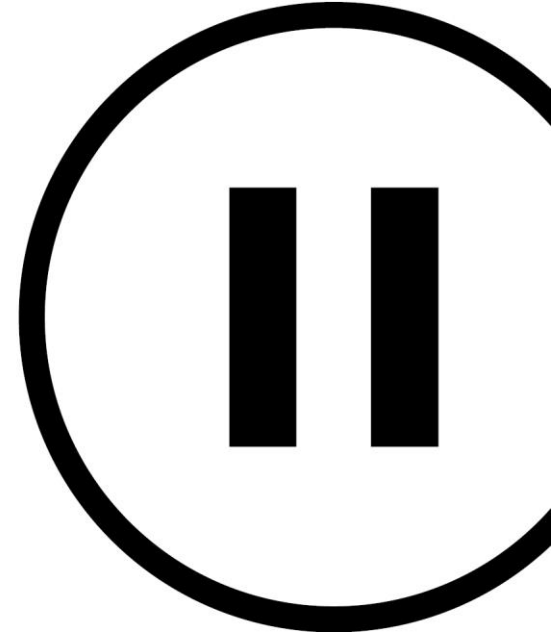
- Invest in your brand
- Develop a digital presence
- Pay increase
- Performance based bonuses
- Increased holiday entitlement



Recruitment and retention

What can be done to attract and retain candidates?

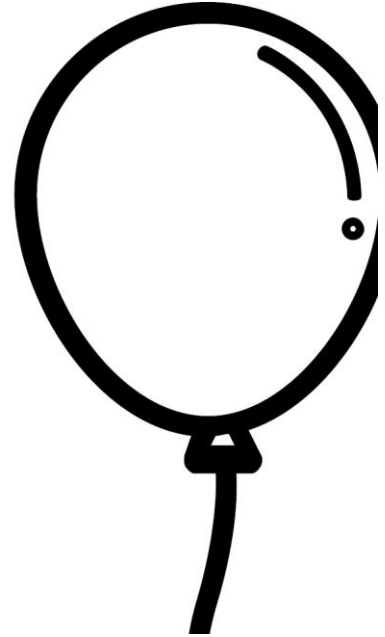
- Invest in your brand
- Develop a digital presence
- Pay increase
- Performance based bonuses
- Increased holiday entitlement
- Paid or unpaid sabbaticals



Recruitment and retention

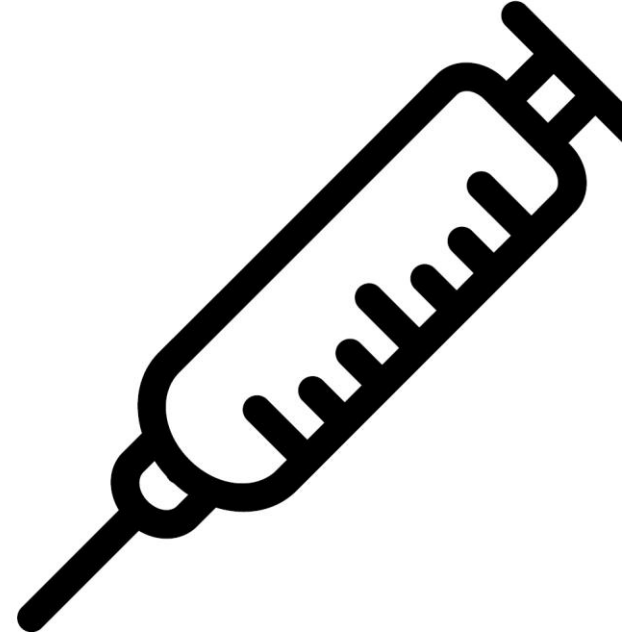
What can be done to attract and retain candidates?

- Invest in your brand
- Develop a digital presence
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- Performance based bonuses
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- Improve family friendly benefits



What can be done to attract and retain candidates?

- Invest in your brand
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- Improve family friendly benefits
- Health cash plans



Recruitment and retention

What can be done to attract and retain candidates?

- Invest in your brand
- Develop a digital presence
- Pay increase
- Performance based bonuses
- Increased holiday entitlement
- Paid or unpaid sabbaticals
- Improve family friendly benefits
- Health cash plans
- PHI, PMI and other benefits



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What other steps are you taking to support employees?



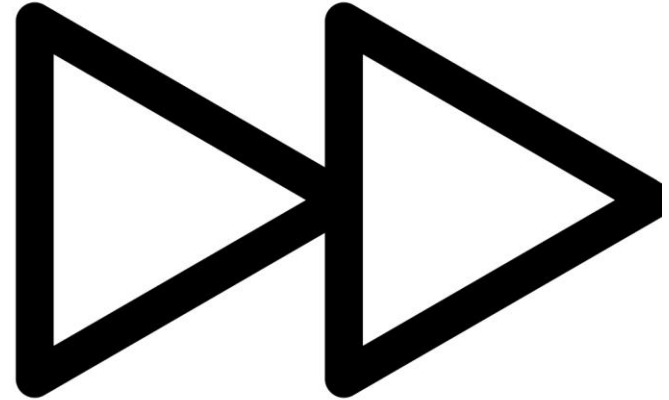
Other ways to support employees

- Extra pay increase



Other ways to support employees

- Extra pay increase
- Bring forward pay increase



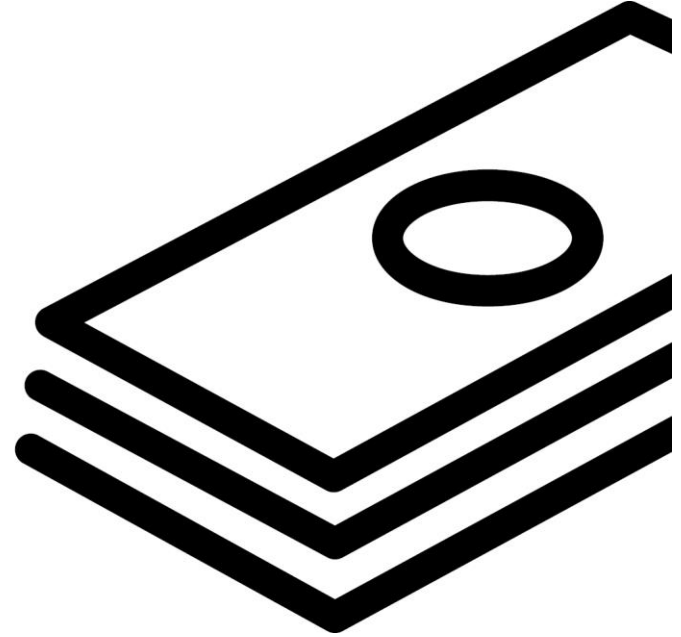
Other ways to support employees

- Extra pay increase
- Bring forward pay increase
- Lump sum cost of living payment



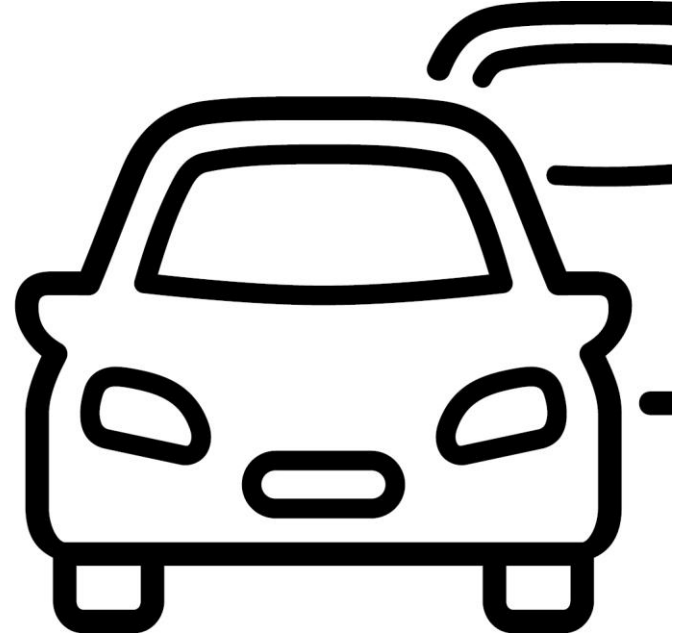
Other ways to support employees

- Extra pay increase
- Bring forward pay increase
- Lump sum cost of living payment
- Loans to employees



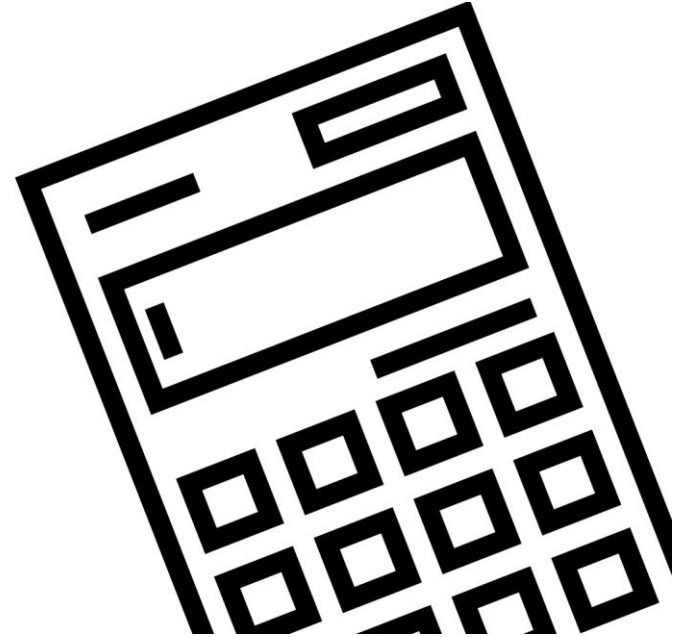
Other ways to support employees

- Extra pay increase
- Bring forward pay increase
- Lump sum cost of living payment
- Loans to employees
- Increased fuel allowance



Other ways to support employees

- Extra pay increase
- Bring forward pay increase
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- Provide debt support e.g. loan consolidation



Other ways to support employees

- Extra pay increase
- Bring forward pay increase
- Lump sum cost of living payment
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- Increased fuel allowance
- Provide debt support e.g. loan consolidation
- Practical tips and support: energy saving, reducing food bills etc



Other ways to support employees

- Extra pay increase
- Bring forward pay increase
- Lump sum cost of living payment
- Loans to employees
- Increased fuel allowance
- Provide debt support e.g. loan consolidation
- Practical tips and support: energy saving, reducing food bills etc
- Focus on mental health support



Economic uncertainty: redundancies?

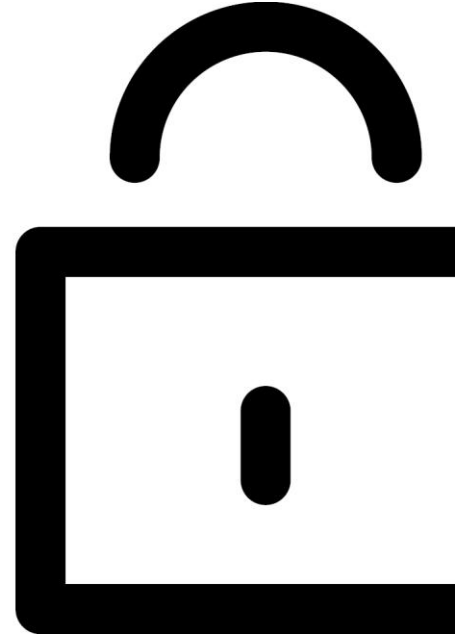
- Redundancy exercise in a hybrid / remote working environment:
 - Consider your selection pools carefully
 - Be careful of indirect sex discrimination and unfair dismissal
 - Consider interpretation of “relevant place of work” and an “establishment”
 - Remote consultation
 - Wider pool of suitable alternative employment?



- Necessary to ask whether, as a matter of fact, a reorganisation has led to a reduced need for employees to carry out work of a particular kind.
- ET will look closely at the business case
- ET in a redundancy case should consider the issues of fair selection, fair consultation, and alternative employment unless the parties explicitly or implicitly make it clear that any of those are not in issue

Redundancy

- Consider insurance against tribunal claims arising from redundancies: timing!



Holiday entitlement for “part-year” workers

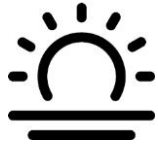
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- Difficult to calculate holiday entitlement for atypical workers
- Many employers use the 12.07% (“the percentage method”)

Many employers use the

12.07%

(“the percentage method”)

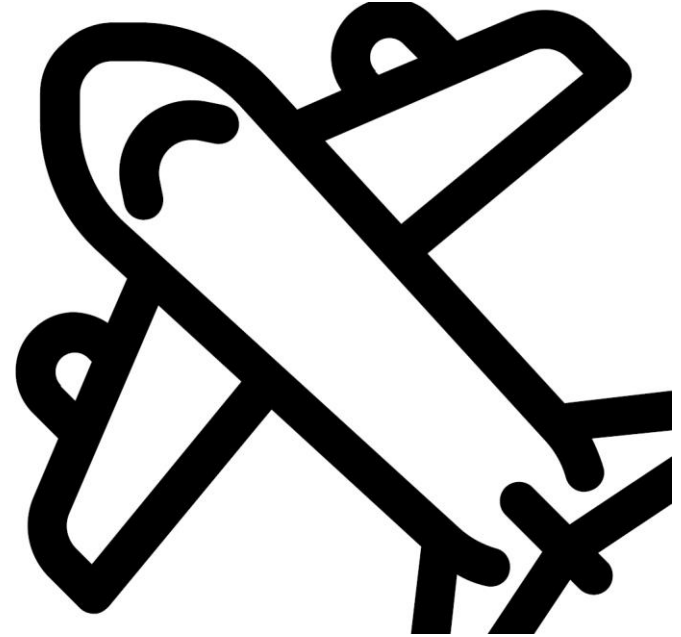


- Music tutor who worked at the school only during term-time, but importantly had no guaranteed hours.
- Paid holiday pay at the end of each term equal to 12.07% of earnings in that term. This meant that she took 1.87 weeks' holiday at the end of each term (one-third of 5.6 weeks).
- Argued that each time she took holiday she should be paid her average weekly earnings over the last 52 weeks excluding those in which she had earned no pay under WTR.
- This would essentially give her 5.6 weeks' full pay for holiday – same as a year-round worker – even though she only worked in a maximum of 39 weeks per year.
- Question for Supreme Court: should holiday entitlement for a “part-year” worker reflect the proportion of the holiday year they work or should it be 5.6 weeks regardless of the number of weeks they work?

Holiday entitlement for “part-year” workers

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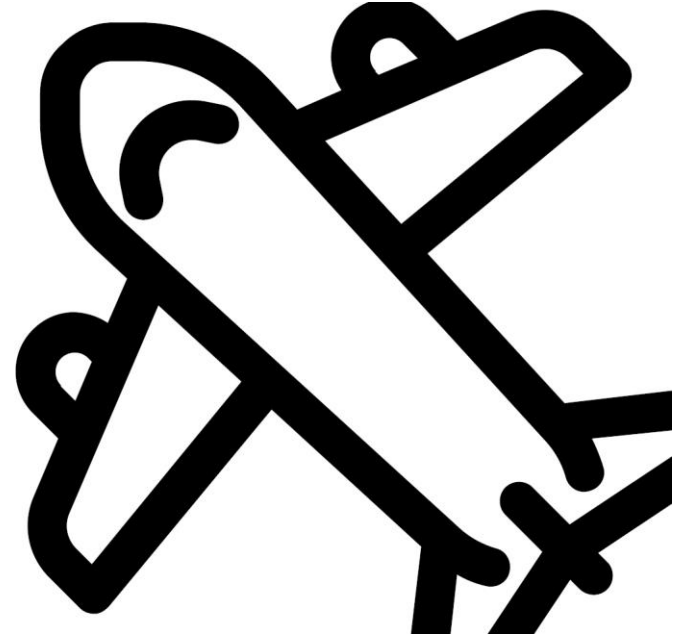
- **5.6 weeks regardless of the number of weeks they work**
- The fewer weeks a worker works the bigger the impact
- Applies to any worker who has a permanent contract who doesn't have normal working hours
- Permanent?



Holiday entitlement for “part-year” workers

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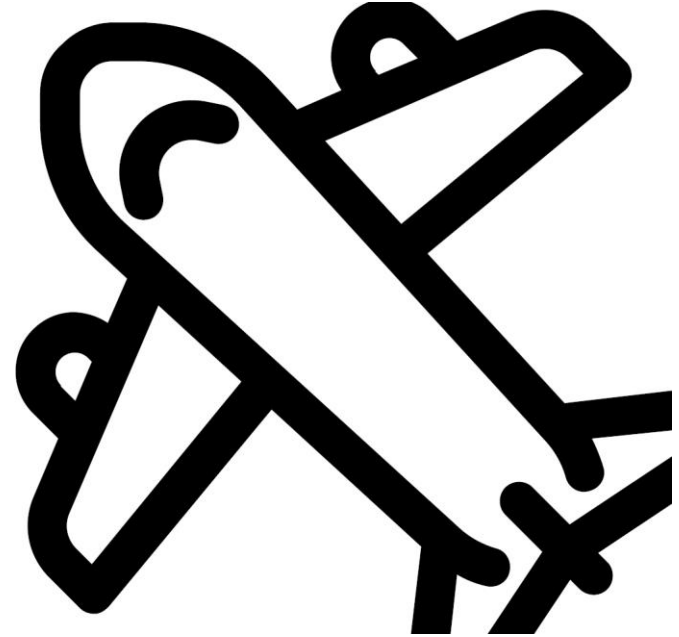
- **Worker A:**
 - Zero hours
 - Works every week
 - Average 10 hours per week
 - Paid £10 per hour
- **Worker B:**
 - Zero hours
 - Works 26 weeks of the year
 - Average 10 hours per week
 - Paid £10 per hour



Holiday entitlement for “part-year” workers

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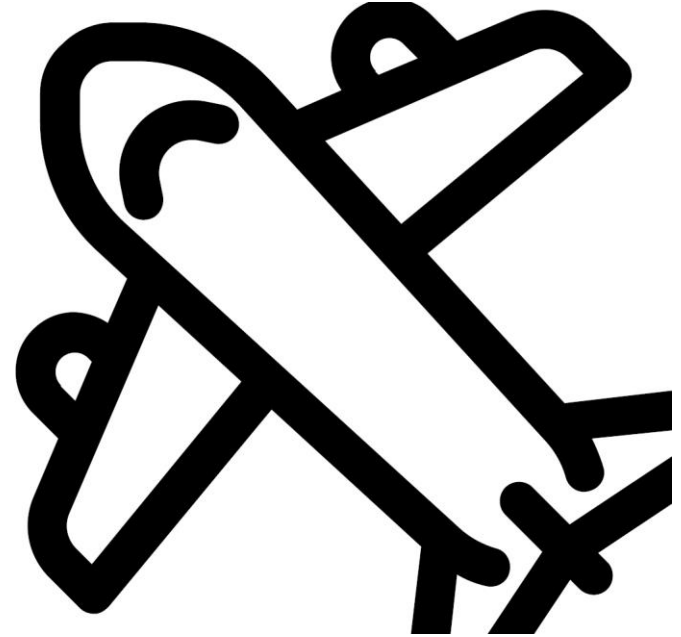
- **Worker A:**
 - Average weeks pay = £100
 - 5.6 weeks x £100 = £560
- **Worker B:**
 - Weeks pay £100
 - 5.6 weeks x £100 = £560
 - If had worked less weeks it would be the same
- Using 12.07%
- 260 hours x 12.07% = 31.4 hours
- 31.4 x £10 = £314



Holiday entitlement for “part-year” workers

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- Potential historical liability
- What should employers be doing?
 - Review contracts and practices
 - Use fixed-term contracts – don’t leave workers on ongoing contracts
 - Try to share hours to avoid blank weeks
- Complex area: seek advice



Grainger test: what constitutes a protected philosophical belief?

It must:

- Be genuinely held
- Be a belief, not an opinion or viewpoint
- Relate to a weighty and substantial aspect of human life and behaviour
- Attain a certain level of cogency, seriousness, cohesion and importance
- Be worthy of respect in a democratic society
- Not be incompatible with human dignity or the fundamental rights of others

Grainger test: what constitutes a protected philosophical belief?

It does not need to:

- Allude to a fully fledged system of thought
- Be shared by others

Philosophical belief

Which of the following amounts to a protected philosophical belief? Respond via Slido

McClung v Doosan Babcock Ltd and Others



The Claimant had supported Rangers Football Club for 42 years. He never missed a match and received yearly birthday cards from them. He believed supporting the Club was a way of life, as important to him as attending church is for religious people. He lost his job as a contractor, believing this was due to his support of the Club.

Poll results from Slido:

Yes



No



Embery v Fire Brigades Union



The Claimant, a Fire Person and elected Union Executive Council Member, had always been open about his deep-seated belief in national independence. He believed many of the EU's regulations to be against democracy, and had been in favour of leaving the EU for many years. He was dismissed from his union job after speaking at pro-Brexit rallies.

Poll results from Slido:

Yes



93 %

No



7 %

Greater Manchester Police Authority v Power

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The Claimant, a trainer for Greater Manchester Police Authority, believed in spiritualism, life after death and that mediums or psychics can communicate with the dead. He also believed that psychics could be useful in police work, and sought a declaration that his belief was not a justification for dismissal.

Poll results from Slido:

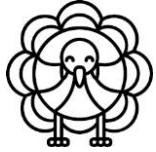
Yes



No



Miles v The Royal Veterinary College



The Claimant, a veterinary nurse, believed in ethical veganism and that the law could be broken to expose and reduce animal suffering. She was dismissed after being arrested in connection with alleged burglaries by the Animal Liberation Front. The police found a sick turkey at her flat which she said she had rescued.

Poll results from Slido:

Yes



No



Forstater v CGD Europe and Others



A Claimant appealed against a decision that her belief that individuals cannot change their biological sex was not a philosophical belief.

She had posted tweets on transgender issues whilst carrying out consultancy work for the respondents, and was not offered further work.

Poll results from Slido:

Yes



No





A health and disabilities assessor left his role after refusing to say that he would comply with a policy which required him to use transgender individuals' preferred pronouns.

He claimed to have a lack of belief in “transgenderism”, a religious belief that people can not change their sex/gender and an objection to an accommodation of patient’s “impersonation” of the opposite sex.

Bailey v Stonewall and Others



The Claimant, a barrister, believed that women are defined by biological sex rather than gender identity and that “gender theory” (as promoted by Stonewall, a LGBTQ+ charity) is detrimental to women e.g. by denying them female only spaces.

She brought claims for victimisation, direct discrimination and indirect discrimination.

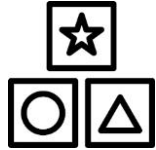
Higgs v Farmor's School



Mrs Higgs, a Christian teacher in a school, was dismissed after making comments on Facebook which the school believed were homophobic and transphobic.

The Claimant asserted that her lack of belief in gender fluidity and that someone can change their sex or gender were protected beliefs.

A non-binary bisexual/queer panel member who publicly voiced strong opposition to those with 'gender critical' views was recused from the EAT hearing



- **The Neonatal Care (Leave and Pay) Bill** - seeks to introduce the right to 12 weeks' paid leave for parents whose babies are in neonatal units
- **Fertility Treatment (Employment Rights) Bill** - seeks to afford greater protections for women undergoing IVF protections
- **Mellor v MFG Academies Trust** – a failure to provide workplace facilities to express breastmilk was harassment on the grounds of sex, creating a degrading and humiliating environment

- New legislation allows agency workers to temporarily replace those on strike and increases the maximum damages which may be ordered against a union for unlawful industrial action
- Liz Truss has proposed to introduce various anti-strike measures:
 - Removing tax free payments from union members
 - Introducing a 'cooling off' period after each strike
 - Increasing the minimum notice period for strike action from 2 – 4 weeks
 - Raising ballot thresholds from 40% to 50% in order for a strike to be lawful
 - Setting minimum service levels for critical national infrastructure

Raising ballot thresholds from

40% to 50%

in order for a strike to be lawful



- The employer had dishonoured its agreement with the Union by making offers directly to employees before exhausting collective bargaining processes
- Held:
 - Bypassing the Union in this way would be prohibited where acceptance would mean terms would not be determined by collective agreement i.e. where there was a real possibility that terms would have otherwise been determined by collective agreement
 - This will be assumed if there is an agreed procedure for collective bargaining in place which was not complied with

The Retained EU Law (Revocation and Reform) Bill



- This will repeal any retained EU law unless legislation is specifically introduced to retain it
- The legislation would expire on 31 December 2023 (but this could be extended to 2026)
- This could radically reshape the employment law landscape
- The government could potentially be removing legislation on:
 - TUPE
 - Paid annual holiday
 - 48 hour working week
 - Part-time and fixed-time worker regulations
 - Agency worker regulations

- **Burke v Turning Point Scotland** - "long COVID" constituted a disability for the purposes of the Equality Act 2010
- **In July 2022 the government published their response to the 'Menopause and the Workplace' 2021 Report** – this confirmed that menopause will not become a protected characteristic under the Equality Act
- **Fit notes** - From 1 July 2022 they can be issued by occupational therapists, physiotherapists, nurses and pharmacists as well as doctors
- **Change to IR35 rules**



"long COVID"

constituted a disability for the
purposes of the Equality Act 2010

- **June 2022: Advice to employees surrounding hybrid working**
 - Equal opportunities to access to training, social activities etc.
 - Adequate rest breaks from home
 - Policies should explain requests, assessment and how decisions are made
- **September 2022: New guidance on staff suspensions**
 - Employees should only be suspended when it is a reasonable way of dealing with a situation and there are no appropriate alternatives

Questions and answers

Thank you

 Ward Hadaway  @WardHadaway
wardhadaway.com