



May 2023 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this month's edition, we report on:

- The rise and control of AI
 - Positive action in the workplace
 - The Employment (Allocation of Tips) Act 2023
-

The rise and control of AI

Some 15% of all businesses have adopted at least one AI technology, which amounts to around 432,000 companies. It seems the current use of AI technologies is limited to a minority of businesses, generally larger businesses including IT, telecommunications and the legal sector.

Launched in March 2023, Chat GPT is the latest AI technology to embed itself in our lives. Recently, Italy has banned ChatGPT and Elon Musk and other AI experts are calling for a pause on AI development to discuss what direction we want it to take.

Businesses are using AI for its time and cost-saving capabilities and ability to monitor, streamline activities, eliminate biases and automate repetitive tasks.

Recently the TUC looked at the challenges of AI in terms of ensuring that workers are treated fairly, as what it calls "management by algorithm" becomes increasingly prevalent.

But legislation and regulation are key, which is why the government's recently published white paper entitled "A pro-innovation approach to AI regulation" makes for interesting reading. The paper intends to build public trust in AI, promote innovation and make it easier for businesses to grow and create jobs.

It sets out a series of principles for the use of the technology, including the need for safety, transparency, fairness and accountability.

The government's aim is to adopt a regulatory (as opposed to a legislative) approach that does not stifle creativity. Currently there is no single regulatory body in the UK responsible for dealing with the use of AI, the white paper suggests that the existing regulators, beind the Health and Safety Executive (HSE), the Equality, Human Rights Commission (EHRC), Information Commissioner's Office (ICO) and the Employment Agency Standards Inspectorate (EASI) should apply the five new "values-focused cross-sectoral principles" to address any AI risks in accordance with existing laws and regulations.

Implications for employers

It's important that employers consider their approach to the use of AI. This may include:

1. Identifying and auditing your current AI-based technologies to check how they stack up against both existing employment and data protection legislation as well as the 5 proposed principles.
2. Making sure anyone dealing with your AI-based technologies is familiar with White Paper proposals and that any areas for concern or further consultation have been flagged.
3. Check which of the sector specific regulators may apply to you and look out for their updates, ensuring that you are aware of what you should be doing.
4. Looking at the global picture to see what other countries are doing as the UK may follow their changes.

For businesses, understanding the risks it may pose is key, including staff rights and civil liberties, and perhaps most importantly who's in charge of its regulation.

Employers:

The guidance: <https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper>

Contact us: we can assist with guidance and policies

Positive action in the workplace

The government has published guidance on positive action in the workplace, a measure promised in the Inclusive Britain report.

Positive action is where an employer treats those with a protected characteristic more favourably than others. The aim is (amongst other things) enabling or encouraging those with a protected characteristic to overcome or minimise a disadvantage or allow them to take part in a particular activity.

The Equality Act 2010 contains voluntary provisions allowing for positive action in certain circumstances, such as where a group is underrepresented or where they may suffer disadvantage connected to the protected characteristic. One of the core requirements for positive action is that it has to be proportionate.

The guidance is designed to help employers understand how they can utilise the positive action provisions to encourage diversity and aid promotion.

The guidance also deals specifically on recruitment and promotion.

It provides advice on types of action that employers might consider and how an employer can assess whether its proposed action is proportionate.

If employers want to use positive action, they should consider and make records of the following:

- What evidence is available to show that action is needed?
- What are the main goals and what action/s can be used to meet these aims?
- Is the action proportionate and reasonable?
- How will progress and success be measured?
- How will staff be consulted?
- How long will these measures be needed and when will they be reviewed?

Employers: for the guidance: <https://www.gov.uk/government/publications/positive-action-in-the-workplace-guidance-for-employers>

Contact us: we can assist with recruitment and promotion.

The Employment (Allocation of Tips) Act 2023

The Employment (Allocation of Tips) Act 2023 received Royal Assent recently. The commencement date has not been announced but, according to the government it will be in about one year's time.

Basically, it requires employers to ensure all tips and service charges are allocated fairly between its workers. 'Fairly' is not defined, but employers need to follow the Code of Practice, which is being developed and will be put out for consultation soon.

It also states that employers should have a written policy on how it deals with tips. This is an interesting development, as I don't think there has previously been an express statutory requirement for employers to have a formal policy on something.

Employers: must keep records of all tips and service charges received for three years, which is interesting as the Government has removed record keeping requirements for working time.

Contact us: for further advice

For more information or assistance Email: enquiries@employmentlawsupport.co.uk



Disclaimer: This newsletter is provided for general information only and does not constitute legal or other professional advice. If you require advice on a specific legal or HR issue, please contact enquiries@employmentlawsupport.co.uk.

Employment Law Support accepts no responsibility for any loss which may arise from reliance on information contained in this newsletter.

Employment Law Support Principal: Caroline Robertson
Solicitor Non-Practising