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# A retirement revolution

Life after the default retirement age



# A retirement revolution

A NORTON ROSE LLP SURVEY  
OCTOBER 2011

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## Contents

- 05** Introduction
- 06** Methodology
- 07** Executive summary
- 08** Working arrangements for those working beyond the old default retirement age
- 10** Workplace discussions
- 12** Training for staff
- 14** View on legislation
- 16** Conclusion
- 16** Contact

## A retirement revolution

## Introduction

The default retirement age (or DRA) is something UK workers have lived with since 2006, when the Employment Equality (Age) Regulations 2006 made it possible for an employer to lawfully dismiss an employee by reason of retirement where the employee had attained the DRA of 65.

A legal challenge by Age UK followed, arguing that the DRA breached EU regulations. This failed, but in 2010 the coalition government announced it planned to scrap the DRA. The legislative process duly worked its course and complete abolition of the DRA took effect on 1 October 2011. Although some employers may continue to have a compulsory retirement age, they must be able to prove that it is justified if challenged at an employment tribunal.

Age UK estimates that around 100,000 people a year were forcibly retired before the removal of the DRA. It seems likely therefore that, in the post DRA world, UK employers will have to accommodate a similar number choosing to stay in work. This, clearly, marks a major shift in the working environment in this country.

Employers have now had time to consider the effect of the new legislation, and begin to adapt to a working world without enforced retirement. We felt it would be an opportune time to find out what shape that new working world is taking. How are employers reacting to the changes, and what does it mean for their employees? We undertook a survey asking those questions – the findings have confirmed some of our assumptions, and provided one or two significant surprises. This report outlines them all.

Thank you to all of you who took time to complete our survey.

**Paul Griffin**

Head of Employment and Labour, London  
Norton Rose LLP

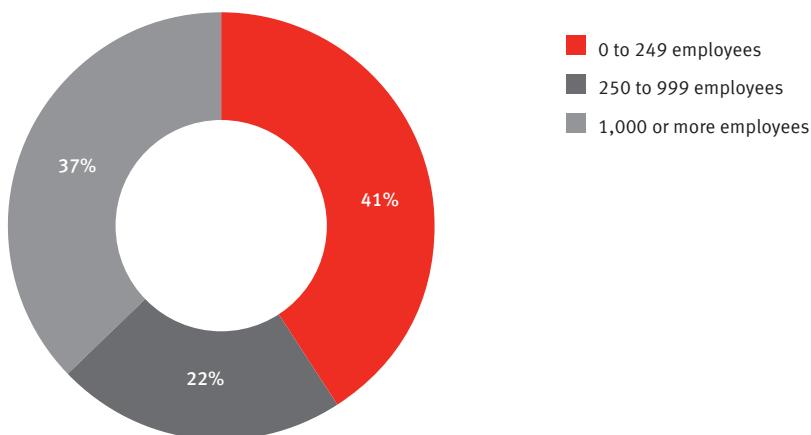
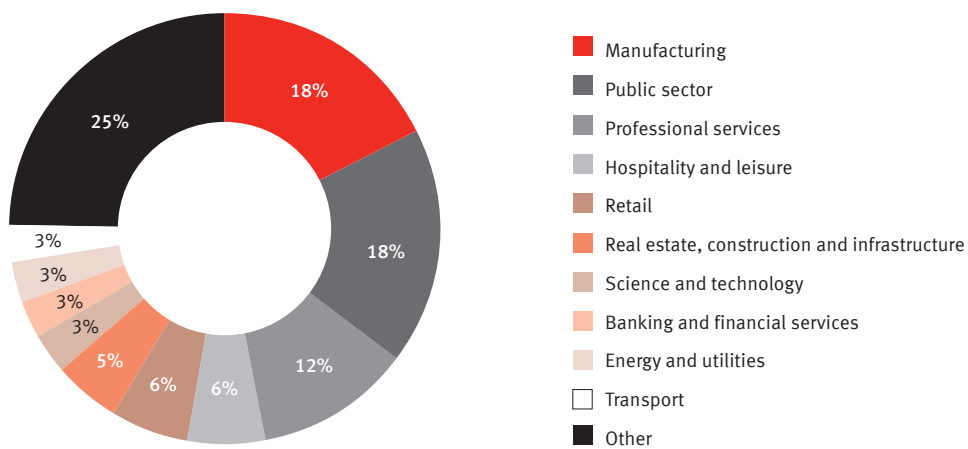
## Methodology

Our survey was sent to senior HR professionals in the UK in June 2011, with responses being gathered until the end of July. The 125 respondents worked in industries including financial services, energy and utilities, transport, construction and infrastructure, science and technology, transport, professional services, manufacturing and the public sector. The survey was conducted online.

The respondents ranged in seniority from HR Manager to CEO/Managing Director level and were drawn from employers of various sizes. 49% came from companies employing over 500 people and 37% from companies employing over 1,000 people.

Please note that some questions had multiple choice options. This means that some combined percentages expressed in this survey add up to more than 100%.

The views expressed in this document by named individuals are personal and not necessarily those of their employer.



## Executive summary

The response to the survey was impressive – 125 separate employers gave their views, the majority of whom employed over 250 employees. 37% of the respondents had more 1,000 employees.

Their responses highlighted significant issues for employers as the default retirement age ends:

- A significant majority (70%) have altered the terms of employment to remove the default retirement age. Only 3% intend to retain a default retirement age.
- 86% of employers are letting employees over the age of 65 continue in the same role. Nearly half were also considering flexible working arrangements for over 65s.
- More than three quarters of those considering more flexible working arrangements for over 65s are considering allowing employees to work reduced hours or part time.
- A significant minority (27%) of respondents confirmed that they had not changed the way that they discussed retirement with employees. Of those that have, nearly half said that they now wait for individual staff to bring up the issue of retirement rather than approaching the issue with employees. A quarter said that they now approach the issue through the appraisal system.
- 76% of respondents have not given their line managers access to any additional training on how to deal with retirement conversations.
- Nearly half (46%) of respondents felt that the phasing out of the default retirement age would have a negative impact on their business. Employers believe that it will make it more difficult for them to manage older members of staff out of the business. 22% say they will now have less capacity to take on younger members of staff.

Although they have taken the initial steps required, many employers are still deciding how to respond to the legislation, in particular the effect on performance management policies and how to conduct retirement discussions. Of the respondents, 7% had a workforce of which 15% or more are currently over the age of 60.

### Working arrangements for those working beyond the old default retirement age

As a result of the Age Regulations, employers have to remove the default retirement age from their employment documentation. A significant majority (70%) of those who responded to the survey confirmed that they have already done this. Worryingly though, one in ten employers have not taken any practical steps at all to remove the default retirement age in their organisation.

The vast majority (92%) of employers are considering letting older workers continue in the same role. 86% of employers are confident that this would not have a material impact on the business. The steps that employers have taken to accommodate these employees are also revealing.

The Acas (Advisory, Conciliation and Arbitration Service) guidance encourages employers to consider flexible working for older workers if they are no longer able to carry out their current job, and 46% of employers reported that they are considering such arrangements. Of these, 79% are considering reduced hours or part time roles, while 41% are considering job-sharing. Employers from government-funded and public-sector bodies are the most supportive of flexible working arrangements for older staff.

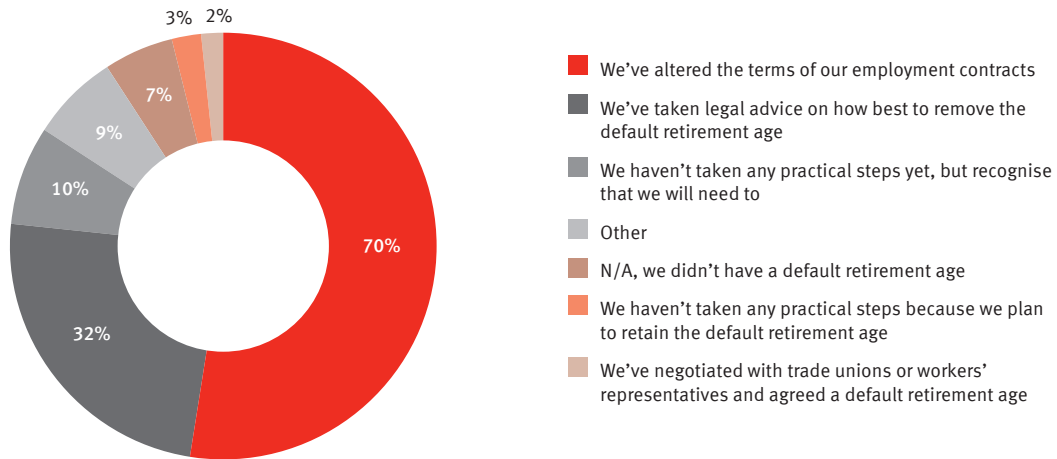
Many employers are still considering their options, one respondent adding “the business is still reviewing the options so it is possible other actions will be taken following this review”. Another respondent confirmed this by saying “it is too early to start making adjustments to work – the problem will come over time if capabilities deteriorate”. At the time of the survey, there were few employers for whom this would be an issue – 51% confirmed that less than 5% of their workforce was currently over 60. As the number of employees over 60 increases, then employers may find more of a requirement to consider the impact of continued employment.

Interestingly, 10% of employers said they have or are considering offering a financial package to incentivise retirement.

Although employers can retain a compulsory retirement age, an employer must be able to show that the decision to retire an employee is justified as a “proportionate means of achieving a legitimate aim”. There is little guidance as to what will be considered effective justification. Examples given in the Acas guidance suggest that a fixed retirement age will only be lawful in exceptional circumstances. As such justification will not be easy it is therefore not surprising that only 3% of employers indicate that they plan to retain a default retirement age. Another 2% indicate that they have negotiated with trade unions or workers representatives and agreed a default retirement age. The majority of these are government funded or public sector bodies who are likely to have strong trade union bodies.

## Working arrangements for those working beyond the old default retirement age

### What practical steps has your organisation taken to remove the default retirement age?



### What actions have you taken/considered taking in relation to employees who wish to work beyond 65?



“The survey results show that whilst the majority of employees questioned are prepared for the removal of the default retirement age, many are focussing on the older employees to consider flexible working. It remains to be seen whether such approaches will be welcomed or possibly create more litigation in this area.”

**Paul Griffin, Head of Employment and Labour, London, Norton Rose LLP**

“We were already considering how we could retain employees in certain sectors of the Bank, who had corporate knowledge/experience that is hard to replace. Such consideration include being more flexible to requests to “wind-down” prior to the retirement age that the employees preferred.”

**Paul R Helsby, Senior Manager, Employee Relations, HSBC Bank plc**

### Workplace discussions

With the default retirement age gone, employers dismissing an older worker will have to show that the dismissal is for another statutory reason, such as capability. To avoid a claim of unfair dismissal, a fair procedure will need to be followed. For many employers this will require a change in company culture and working practices.

Although the majority of respondents (73%) indicated that they have changed the way they discuss retirement with their staff, it is not clear that there has been a complete and widespread shift in working practices. 60% of employers indicated that prior to 6 April (when the phasing out of the DRA began), retirement was raised at specific meetings with individuals who were approaching the default retirement age. Whilst that figure has dropped, a significant number of employers (19%) continue to target older staff for conversations about retirement, either through individual meetings or the appraisal process.

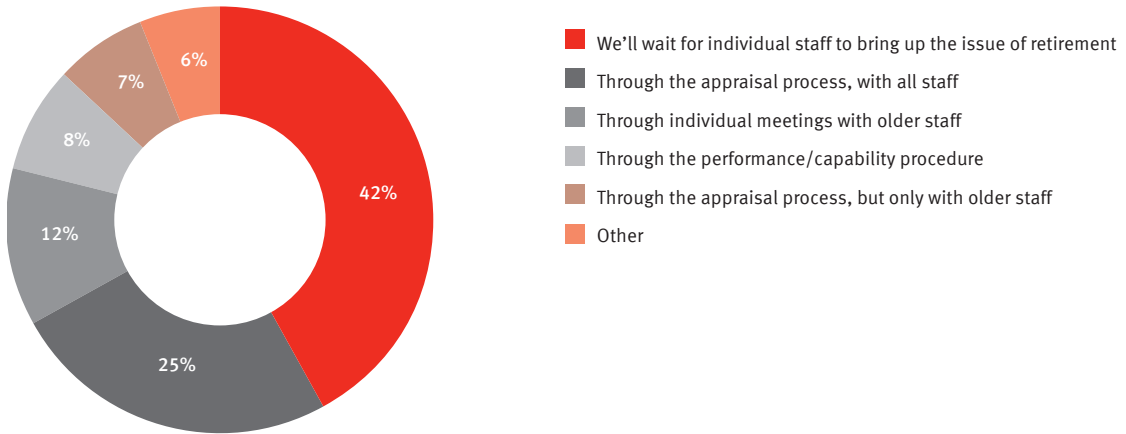
Some employers are avoiding the issue altogether. Since 6 April, 42% of employers admitted that they do not raise the issue of retirement at all, but wait for individual staff to bring it up. This of course hinders workplace planning, as employees may never raise the issue.

Interestingly, despite suggestions by employers that the removal of the DRA would have an impact on performance management processes, only 26% of respondents to the survey indicated that the organisation has made more use of performance management since the phasing out of the default retirement age.

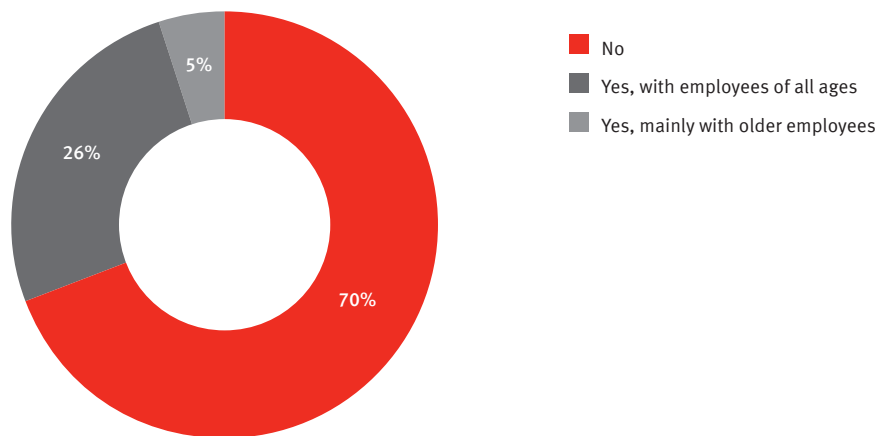
Some employers whose performance management procedures are far from straightforward have previously preferred to rely on the DRA rather than addressing performance issues with older workers. Many employers do not like the idea of using the performance procedures in this way in the future. However, as the number of older workers in the UK increases following the scrapping of the DRA, employers may find themselves relying more on performance or capability procedures.

Where employers have responded that their use of the performance management process has increased, 43% said that they would go through a formal process more regularly, with a further 30% indicating that the questions and procedures during the process are now going to be more detailed.

**How do you now approach the issue of retirement with your staff (for those not already under notice of retirement prior to 6 April 2011)?**



**Since the phasing out of the default retirement age, has your organisation made more use of performance management processes?**



“Theoretically, there should be very little discussion with older employees about retirement and they should be treated like every other employee. However, our survey suggests that a significant minority of employers intend to drive the retirement agenda with their older staff. This may increase the chance of litigation.”

**Paul Griffin, Head of Employment and Labour, London, Norton Rose LLP**

### Training for staff

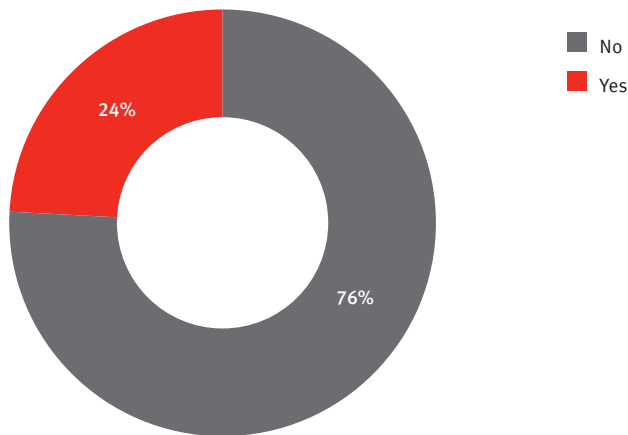
A significant majority (76%) of respondents who replied to the survey indicated that they had given no additional training to line managers on how to deal with retirement conversations. This may be due to the fact that nearly half of the respondents are waiting for employees to raise the issue of retirement rather than it being part of an appraisal procedure.

However, it is important for employers to carry out such conversations correctly to avoid any unfair dismissal claims and also to ensure that there can be no suggestion of discrimination. Being able to demonstrate effective training procedures for managers would assist an organisation in defending against such claims.

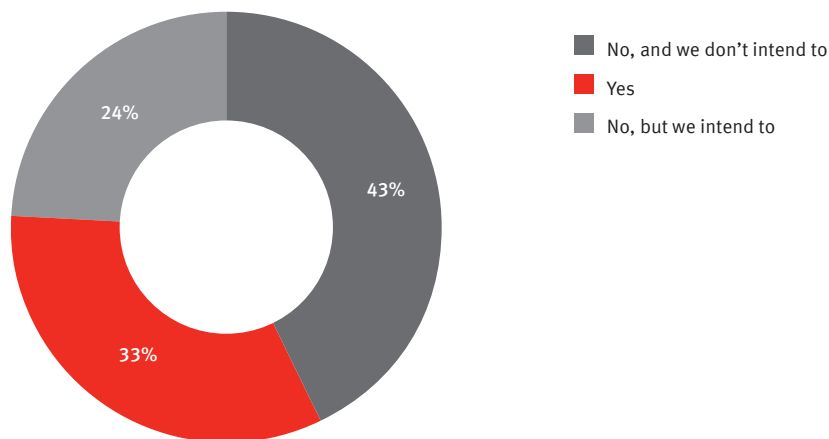
As well as not providing additional training to staff, employers have been slow in sending any communications to employees as a whole regarding the removal of the DRA. Only one third had sent any communication, although a further 24% indicated that they had not at the time of the survey but intended to. 43% of the respondents, however, did not intend to send any communication at all. Whilst there is no legal requirement in the legislation to do so, such communication can go a long way to ensuring managers and other staff are fully aware of the retirement situation and avoid any needless misunderstandings.

This lack of communication could be linked to the fact that relatively few employers have taken advice on how best to remove the default retirement age. Only 32% of all respondents reported that they had taken legal advice on the issue.

Have you given your line managers access to any additional training on how to deal with retirement conversations since 6 April 2011 [when the phasing out of the Default Retirement Age began]?



Have you sent any communication to employees regarding the removal of the default retirement age from 6 April 2011 [when the phasing out of the Default Retirement Age began]?



“The lack of training provided by businesses is a concern. Training is an essential element of risk management in relation to any form of discrimination. The removal of the default retirement age gives rise to some difficult issues in dealing with older members of staff, issues which training can be crucial in overcoming.”

**Paul Griffin, Head of Employment and Labour, London, Norton Rose LLP**

### View on legislation

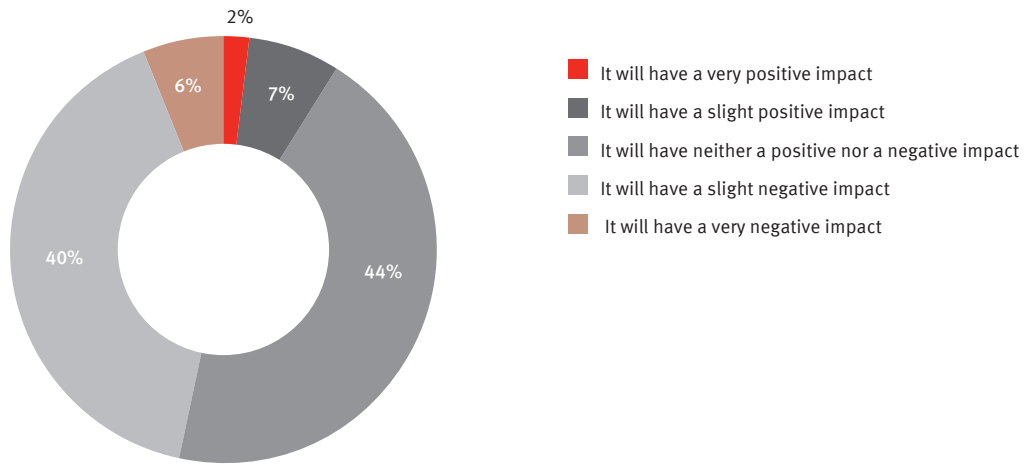
Prior to the introduction of the legislation, employers were concerned about the impact it may have on their business. It seems that this concern has not changed upon implementation. Few employers (only 9%) that felt that the phasing out of default retirement would have a positive impact on their business. Nearly half (46%) reported that it is likely to have a negative impact – with 6% stating that it would have a very negative impact on their business.

A key negative impact identified by 36 respondents was that it would make it more difficult for them to manage older members of staff out of the business. One respondent added “It will add cost to the business when individuals capability declines”, and another claimed “It will make succession planning more difficult”.

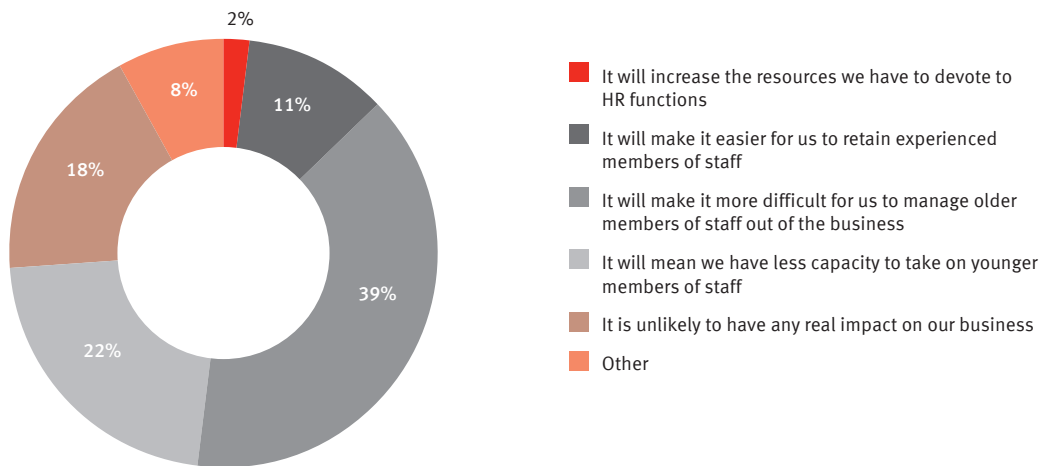
Nearly a quarter (22%) also said that the changes would mean they would have less capacity to take on younger members of staff. Whilst a logical consequence of the scrapping of the DRA, the size of this number will be worrying to many. At a time when work opportunities for the younger generation are being squeezed, the fact that nearly one in four employers will find it harder still to find room for entry level staff as a direct result of the scrapping of the DRA is a concerning statistic.

Interestingly, only 11% recognised the potential upside of making it easier for their business to retain experienced members of staff.

**What impact will the phasing out of the default retirement age have on your business?**



**What will be the biggest practical impact on your business of the phasing out of the default retirement age?**



“It intriguing to note how many businesses regarded the removal of the default retirement age as a bad thing. One of the biggest issues is clearly the impact the move has on employers’ ability to take on younger members of staff. This is particularly interesting given the current debates regarding youth unemployment and the methods by which it might be reduced.”

**Paul Griffin, Head of Employment and Labour, London, Norton Rose LLP**

### Conclusion

There is little doubt that the end of the default retirement age has already begun to change the working environment in the UK. The majority of employers have amended their employment contracts and set about finding ways to cater for the over 65s in their business. Very few employers seem to be considering continuing with a mandatory retirement age.

It seems one of the biggest trends will be flexible working, with many employers, particularly those in the public sector, considering it for older employees. It is the Government's intention to offer flexible working to all staff in the future and although some employers already offer this, it will be interesting to see how employers deal with an increase in requests.

For most employers the issue of how to hold retirement discussions or use performance appraisals with older staff remains an uncomfortable one. Too many employers continue to get this wrong. There remain far too few employers willing to train their line managers in how to deal with retirement conversations. This has the potential to become a major issue as people stay in their jobs for longer and the working population in the UK grow older.

Perhaps most worryingly, the end of the default retirement age is presenting employers with major problems when it comes to the composition of their workforce. Most striking is the number of employers who believe they will have less capacity to bring in younger workers to their business as a direct result of the abolition of the DRA. Perhaps this is why some employers are considering offering a financial incentive for retirement.

It is clear that the removal of the DRA is triggering a change in culture and working practices for many employers. For employers, facing up to these changes in a flexible and informed way will ensure they continue to stay on the right side of the legislation while protecting their commercial interests.

### Contact



**Paul Griffin**

Head of Employment and Labour, London  
Norton Rose LLP  
Tel +44 (0)20 7444 2169  
Mobile +44 (0)7970 559 914  
paul.griffin@nortonrose.com



**Catrina Smith**

Partner  
Norton Rose LLP  
Tel +44 (0)20 7444 3542  
Mobile +44 (0)79 0968 4911  
catrina.smith@nortonrose.com



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