



work place news *by Chloe*



The Great Staffing Crisis

Some are calling it the “Great Resignation, but “The Great Staffing Crisis” seems apt to me.

The UK isn't short of sectors complaining of desperately challenging recruitment conditions:

- Hospitality
- Food & Drink
- NHS and care sector
- Retail
- Haulage

Basically – jobs that don't involve sitting behind a desk are available in abundance.

The number of **job vacancies hit 1 million for the first time** since records began

The hospitality industry alone is recruiting for over 100,000 roles, the Road Haulage Association reports a shortage of 70,000 heavy goods vehicle drivers and almost 200,000 retail jobs were advertised in a single week in August.

What's the cause?

Tim Martin, JD Wetherspoon founder, was a vocal supporter of Brexit and called those who warned of a staff shortage ‘doomsters’. Now he's demanding ‘a more liberal immigration system’ because he can't get enough staff.

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The editor's welcome

It's a confusing time – on one hand the UK is experiencing a labour shortage crisis with a million jobs on offer, but turn the page and you'll read about people struggling to secure jobs due to unrealistic expectations about experience and skills. There are also still plenty of businesses continuing to feel the impact of the pandemic and the High Street loses more retailers and hospitality outlets each month.

Hopefully we're through the worst of it and we can continue upwards. It would be unrealistic to expect an immediate bounce-back, but let's keep our fingers crossed it doesn't take the several years some are predicting.

This month we take a look at some of those challenges, potential solutions as well as a reminder about the extra bank holiday in 2022 and what the implications might be for your business.

As always, please follow us on [LinkedIn](#) for our latest updates and latest news.

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This month...

Health & Safety changes

The extension of safety protection from employees to workers...

[Read more >](#)

Flexible working consultation

Have your say on 5 key proposals around flexible working...

[Read more >](#)

Bank Holiday payments 2022

With an extra Bank Holiday in 2022, are workers entitled to an extra days' pay?

[Read more >](#)

Undoubtedly Brexit is a huge factor which, combined with the pandemic, prompted record numbers of EU nationals to leave the UK for good.

The HGV driver shortage (resulting in the recent fuel crisis) is reportedly mainly due to older, experienced foreign drivers leaving the UK due to Brexit and not enough British candidates applying in their place.

The majority of EU nationals who haven't qualified for Settled Status now can't secure roles in the UK without sponsorship – which isn't available for most of the roles these industries are struggling to fill.

The minimum skill level for sponsorship will allow, for example, Wetherspoons to sponsor a chef, but not bar or waiting staff – and it won't cover HGV drivers.

It's not just Brexit though, poor pay and conditions are also reportedly contributing to the staffing crisis. Low wages and long, unsociable hours are becoming less tolerated by large numbers of workers.

People's priorities and lives have seen a huge shift as a result of the pandemic, with pressure points like childcare provision becoming even more pronounced. There seems to be widespread feelings of being undervalued, demotivated and generally looking for the best opportunities to promote well-being and provide a greater work/life balance.

What's the fix?

The government sent letters to nearly 1 million HGV licence holders in the UK encouraging them to seek out roles in the industry. Up to 4,000 people are to be trained as new HGV drivers and the government also launched a temporary visa scheme for 5,000 HGV drivers and 5,500 poultry workers.

The hospitality sector is also calling on the government to help, by providing a vehicle for EU nationals to obtain working visas. Currently the immigration rules don't allow sponsorship of "lower skilled" roles like bar, waiting and kitchen assistant staff.

That isn't looking likely however, with the government stating:

"Visas will not be the long term solution, and reform within the industry is vital. That's why the government continues to support the [haulage] industry in solving this issue in the long term through improved testing and hiring, with better pay, working conditions and diversity."

Are expectations too high?

Anecdotal reports suggest that the expectations of employers, and the recruitment process, are simply unreasonable, and applicants are struggling to secure even entry-level roles. Speak to those with a disability and they'll tell you their chances are even lower.

My unscientific research

I carried out my own completely unscientific research on this – a family member was recently looking for a role in the retail sector.

She applied online to a well-known supermarket for a part-time checkout role. There were some lengthy online, situational tests to complete as part of the application. She has over 40 years' experience in retail, but she didn't even pass the first stage.

I wondered whether I could land one of the tens of thousands of available retail jobs, and followed the online application process for a retail assistant at a supermarket well known for its low price goods and fast checkouts. Again, the process was to answer a number of situational and aptitude tests.

Having passed the first stage – I felt pretty pleased with myself. Until I failed the second stage and was informed that they, sadly, wouldn't be progressing my application.

Admittedly, it saved me a potentially awkward conversation with either my employer, or said supermarket, and I don't want to sound big headed but I haven't always been a lawyer. I actually have a fair bit of retail experience. But I'm not good enough. Neither, as it turns out, is my sister who also gave it a go. She has a very successful career in events – let's hope she keeps it, because apparently she can't secure a job in her local supermarket.

So what should employers do?

Clearly we aren't going to solve the issues in this article – the causes are much more complex and multi-faceted than we can cover, I've touched the tip of the iceberg, and there is no magic solution.

However, employers would be wise to focus on how they can attract, motivate, reward and retain staff – focus on well-being, employee satisfaction and, ultimately, keeping people happy.

Also take a look at your recruitment processes – are you missing out on potentially great candidates due to a rigid, unfit for purpose, recruitment process? Are your equality and diversity practices up to scratch?

Naturally pay will be a major factor, but upping what you pay staff isn't always going to be an affordable option. There are plenty of other elements you can focus on:

- Degree of flexibility in working patterns
- Holiday entitlement
- Non cash benefits like cycle to work schemes, childcare vouchers, healthcare, gym memberships
- Those added 'extras' like free fruit, pizza Fridays, your birthday off
- Team building events
- Autonomy
- Clarity, support, training and development within roles

Guest article

Health & Safety changes - protection required for all workers

There have been so many changes in 2021 – furlough ending, an increase in hybrid working, the extension of IR35 to the private sector, statutory pay rises, etc. There is one however that you may have missed with everything going on and that is the extension of health and safety protection to workers.

What's happened?

Previously the right not to be subjected to detrimental treatment for leaving or refusing to return to work if you believed yourself to be in 'serious and imminent danger' applied only if you were an employee.

Now the right not to be subjected to a detriment in certain health and safety cases has been extended to workers.

This was achieved largely by the insertion of a new section (44(1A)) into the Employment Rights Act 1996.

The amendments align with the judgment in *R (Independent Workers' Union of Great Britain) v Secretary of State for Work and Pensions* and another 2020.

The High Court in that case held that the UK had failed to properly implement the EU Health and Safety Directive by limiting protection to employees and therefore excluding workers from protection.

When did this come into effect?

The change applies to health and safety detriments occurring on or after 31 May 2021.

Why is this legislation important?

The COVID-19 pandemic and subsequent Government guidance put concerns around the health and safety of the workforce firmly on the table. Employees have been able to seek to rely on section 44 of the Employment Rights Act 1996 as grounds on which

to refuse to return to work, but the extension of this protection will allow both workers and employees to leave / refuse to return to work or take steps to protect themselves and others where they feel danger is 'serious and imminent'.

What to do now

While some employers are settling into a sense of normality, the situation is still uncertain and employers need to be alert to the needs of their business and those engaged in it to ensure, as far as practicable, the safety of their workforce.

In practice, for businesses that rely mainly on employees it is likely to have little impact; if not, this change may result in those businesses who rely predominantly on workers needing to engage with their workforce and implement additional safety measures.

ACAS guidance on working safely during COVID-19 has been updated to reflect the change and we would encourage employers to review their working practices in light of that guidance.

Like all claims, whether a worker or employee will be protected remains fact specific and each workplace will have different challenges.



RACHEL EASTON

Read more about Rachel [here](#) or send her an email [here](#).



Consultations

The HSE has also consulted on making changes to the Personal Protective Equipment at Work regulations, which will extend the duty to provide PPE from just employees to workers.

The consultation ended on 15 August 2021, although, as of yet, there has been no suggestion of when these changes might be implemented. However, given the changes mentioned in Rachel's article, it would seem highly likely that these changes will come into force, potentially in the new year,

RECENT CASE LAW

Amazon drivers seeking employment rights

Leigh Day, a law firm known for its personal injury practice, is representing two Amazon delivery drivers and looking for more to join a group action.

The drivers are classed by Amazon as self-employed, so aren't entitled to paid holiday or national minimum wage, but they are claiming employment rights on the basis they are given set shifts, timings for deliveries and are expected to book time off.

It's estimated that, if successful, Amazon could owe over 3,000 staff over £100m. Leigh Day has previously successfully supported similar claims against Uber and Addison Lee, so watch this space.

Uber in the firing line, again

This time, unions are supporting race discrimination claims from workers who are required by Uber to use facial recognition software to log into their app. If it doesn't recognise them, they risk being dropped.

It's alleged that the software produces a higher number of inaccurate results for black and ethnic minority workers, who, as a result, are more at risk of losing their jobs. The Equality and Human Rights Commission is supportive of the case and its progress and result will be very interesting.

As many businesses focus on developing their tech (just look at Tesco's latest checkout free store) it's important to consider what potential impact the latest cutting edge development might have on a range of people.

If the software Uber is using does suffer the fault alleged, there were some serious failings in the development and testing stages. Place the emphasis on equality and diversity throughout your business to avoid similar pitfalls.



Believe it or not?

We take a look at some of the current figures reported in the world of work – there's some food for thought:

41% of workers

A new study reports that **41% of workers feel they're not paid what they're worth**

58% of the population

The Welsh government fears **16 to 64-year-olds could be just 58% of the population by 2043** and urges young people to stay in Wales

sharpest rate in 24 years

Starting salaries and temporary **staff wages have risen at the sharpest rate for 24 years**, a survey of 400 recruitment firms suggests

128% increase

Glassdoor reported a **128% increase of reports of burnout** in the period April – September 2021

70% of employees

A survey just released by THE OUT reports **over 70% of people have experienced burnout in the last 12 months**

42% of employees

Research conducted by Culture Shift reports that **42% of employees say a toxic workplace culture has impacted their mental health**

Are workers entitled to an extra days' paid holiday in 2022 for the extra Bank Holiday?



With everything that's been going on you can be forgiven for forgetting, or not even noticing, that we're getting an extra bank holiday in 2022.

It's the Queen's Platinum Jubilee so Friday 3 June has been declared a 9th bank holiday for 2022 – for many people that means a 4 day weekend. But not for everyone, and for some it may come at a price.

Are workers entitled to an extra days' paid holiday?

There is no legal right to the day off on a bank holiday – and there are plenty of workers whose role means they have little choice but to be available on bank holidays. For those people their contracts are likely to be clear that there is no entitlement to take bank holidays as leave. The Queen's platinum jubilee gift to the country is unlikely to make much of an impression on them.

But those whose workplace normally closes on bank holidays will be expecting an extra days' holiday next year – whether they're actually entitled to one depends on what the employment contract says.

For example, if the contract says something like “your annual leave entitlement is 28 days including bank holidays” then there is no right to take the extra bank holiday next year as additional holiday. If the contract wording is more loose, along the lines of “your annual leave entitlement is 20 days plus bank holidays” then it's likely they will be entitled to the 3 June as an additional paid holiday for 2022.

What do your contracts say about holiday and Bank Holidays?

If the company is planning to shut down for the day you'll need to think carefully about how you will manage leave. What do your contracts say about holiday and bank holidays? Will you give workers an additional day paid holiday?

If not, you'll need to give sufficient notice to workers that the company will be closing that day and that they have to book it out of their annual leave entitlement.

Notice requirements are twice the amount of leave intended to be taken – so 2 days' notice to take 1 days' holiday.

Closing your operations for the day but not giving workers the extra day as paid holiday (or not giving it as an extra day in lieu if that's what you would normally do for those who work a bank holiday) is unlikely to be a popular approach.

It's been a tough time for everyone, and we're experiencing something of a staffing and well-being crisis (see our lead article). Giving your workforce the extra days' holiday will obviously come at a cost to the business, but in most cases should be a manageable one.

The key is to plan ahead, and communicate with your staff.

[Continue reading >](#)

Government Kickstart scheme and apprentice bonus extension

Kickstart is a government-backed scheme that provides funding to create new 6-month fixed-term jobs for 16- to 24-year-olds in receipt of Universal Credit who are at risk of long-term unemployment.

By hiring through the Kickstart Scheme before it ends, you'll be helping a young person get into work who may in return bring fresh ideas that could help your business grow.

For each job created, the government will cover 100% of National Minimum Wage for 25 hours per month, initial costs associated with the role, and provide you with £1,500 in funding for each job placement created.

In return, you must offer support Kickstart hires in finding future roles or developing their employability.

The scheme was due to come to an end on 31 December 2021 but has now been extended until 31 March 2022. You will need to apply for the scheme by 17 December.

Apprentice bonus

The closing date for the government incentive payment for new apprentices was due to come to an end on 30 November 2021, claiming a £3,000 bonus for every apprentice who started between 1 April 2021 - 30 September 2021.

You will now be able to apply for the £3,000 payment for apprentices with an employment start date from 1 October 2021 to 31 January 2022 once applications open in January 2022.

You do not have to pay the bonus back and it can be used for anything to support your costs i.e. uniform or travel.

The payment is in addition to the existing £1,000 an employer will already get for taking on an apprentice who is either aged 16 to 18 years old; or under 25 and has an education, health and care plan or has been in the care of their local authority.



Have your say...

Flexible Working will not become the default

But you can have your say about other changes

Currently, employees with at least 26 weeks' service can make a request to work flexibly. The employer must consider the request, following a specific process and timelines, and can only refuse the request for one or more of the 8 reasons specified in the legislation.

Following calls to reform the right to request flexible working legislation, the government has repeatedly said it would consider making flexible working a default right, so that employers cannot refuse requests. The pressure for this has only increased as a result of the pandemic.

A new consultation has been launched, but in it the government confirms it would be impractical to make flexible working a default right. It needs to be a two-way discussion. They are however putting forward 5 key proposals for consultation:

- Making the right to request flexible working a "day one" right
- Making changes to the 8 business reasons for refusing a request to work flexibly
- Requiring the employer to suggest alternatives to the arrangement suggested by the employee
- Changing the administrative process that applies to a flexible working request
- Raising awareness of the existing right of employees to request a temporary flexible working arrangement

The consultation closes on 1 December 2021.

Responses can be submitted [online](#) or by email to labourmarketparticipation@beis.gov.uk.