

Employment Law Webinar

29th September 2020



Mark Mason[™]
Employment Law

Think

What is your most pressing employment law question / concern?

Put your answer in the “chat”

Topics to cover

Employment status

Equality law

Reflecting Christian ethos in HR policies

Employment law updates (non-covid)

Covid-related updates

Miscellaneous questions

Questions

Put them in the “chat” as we go

We may unmute you to get more clarity on the question so be prepared to speak if you want to ask a question (just like you would if we were meeting in person)

Employment status

Employee

Worker

Voluntary worker

Volunteer

Self-employed

Intern

Employment status

Employee

Unfair dismissal rights (two years' service)

Right to minimum wage, holidays, sick pay

Protection against discrimination

Employment status

Worker

~~Unfair dismissal rights (two years' service)~~

Right to minimum wage, holidays, sick pay

Protection against discrimination

Distinguishing between employee and worker

Generally, no “mutuality of obligation”.
Hirer doesn't have to offer work and worker
doesn't have to accept it when offered

Employment status

Voluntary Worker

Agrees to work for charity on a voluntary basis but still works under a contract (special category of worker under NMW legislation)

Protection against discrimination (probably)

Employment status

Volunteer

Gives time for no monetary reward

Reimbursed for out of pocket expenses

No employment rights

No protection against discrimination

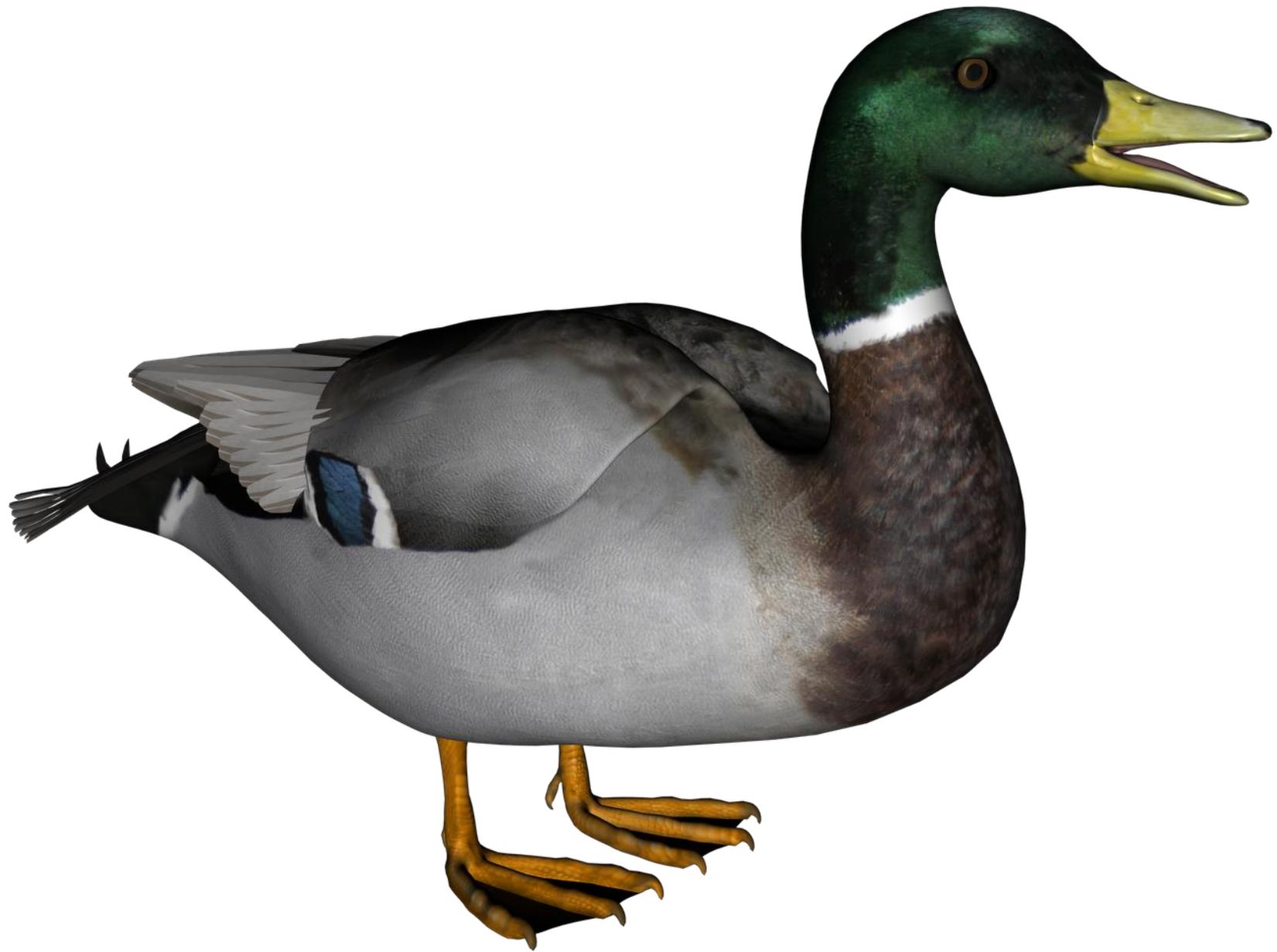
Employment status

Self-employed

No employment rights

Employment status

Is the individual employed or self-employed?



Primary tests for employment

Personal service

Control

Mutuality of obligation

Other relevant factors

The intention of the parties (including any written agreement)

Insurance

Equipment

Risk

Integration

Not – “raises own support”

HMRC tool for employment status

<https://www.gov.uk/guidance/check-employment-status-for-tax>

Useful tool – though not tailored to mission agency context

Anecdotally, HMRC not in a big rush to push for employed status in mission agency context

Employment status

~~Intern~~

Employment status

~~Intern~~

Employee (fixed-term),
volunteer, voluntary worker



Equality law

Think

A church employs the following people:-

1. Pastor
2. Youth & children's worker
3. Music coordinator
4. Administrator
5. Book-keeper
6. Community outreach / advice worker
7. Coffee bar / café supervisor
8. Café assistants

Which roles would be easiest to justify as requiring a Christian to carry them out?

Why might some of the others still require to be undertaken by a Christian? How would you attempt to demonstrate the Christian occupational requirement for these positions?

(If anyone wants to comment, raise hand and we can unmute)

Equality Act 2010

Protected characteristics

Who is protected? Jurisdiction

Who is protected? Employment status

Equality Act

Protected characteristics particular to churches and mission agencies:-

- **Religious belief**
- Sexual orientation
- Sex
- Gender reassignment

Generally, unlawful to take these characteristics into account

Occupational requirement

“Occupational”

The application of the requirement must relate to the job

“Requirement”

It is not sufficient for the employer to have a *preference* that the job is undertaken by a Christian.

“Proportionate means of achieving a legitimate aim”

Occupational requirement – lessons from case law

Sheridan v Prospects for People with Learning Disabilities

1. Make sure to clearly define the organisation's ethos statement, beliefs and reason for existing in governing documents and policy statements.
2. An organisation's ethos can change over time

Occupational requirement – lessons from case law

Muhammed v The Leprosy Mission International

The job description contained the following in the list of duties:-

- “To represent TLM’s Christian ethos throughout their work activities by applying a Christian mind and attitude”
- “To spiritually support the work of the mission through Christian prayer and fellowship, daily at the International Office and at various meetings throughout the year”

Job description

- Key document
- Is it obvious from it that the person must be a Christian? (e.g. relief of poverty / social action role)
- What will the person do as part of their job – pray with people, share faith etc? If so, write it in!
- Ensure the requirement to be a Christian is all over the JD – not just one or two points

Occupational requirement

- Defining “Christian”
- How narrow can / should you go?
- Consider existing staff – not just new recruits!
- Provision to dismiss employee if they no longer meet the “occupational requirement”?
- Check in each year at appraisal re Statement of Faith / Code of Conduct

Religious belief – indirect discrimination

- No occupational requirement but criteria weighted to favour Christians? (e.g. Christian book-shop)
- Where the job is advertised

Other discrimination in employment relevant to Christian ethos

- Women in teaching positions
- Same-sex relationships
- Gender reassignment
- Divorce and re-marriage

Sexual orientation – what's covered?

R (Amicus) –v- SoS Trade & Industry

“The protection against discrimination on grounds of sexual orientation relates as much to the manifestation of that orientation in the form of sexual behaviour as it does to sexuality as such.”

Occupational Requirement – Sexual orientation

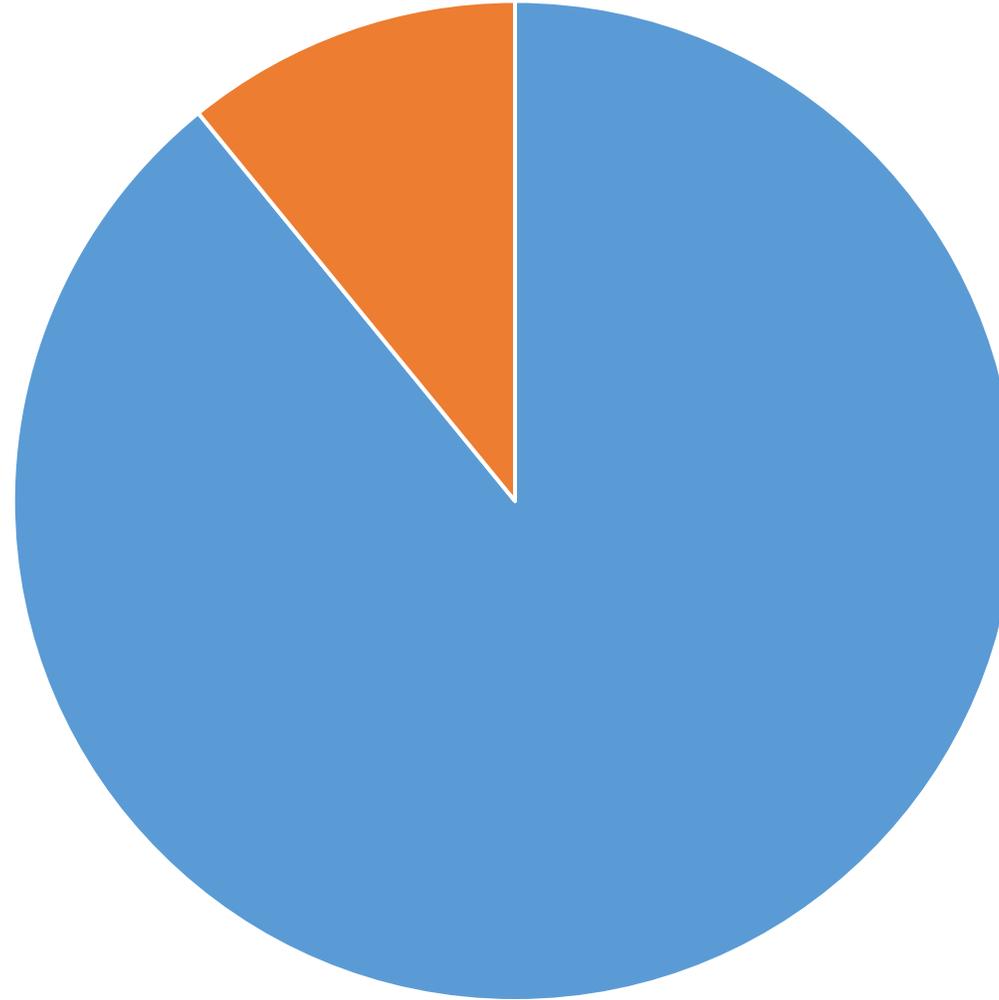
Tolley's Employment Law Commentary – “It will be rare for an OR to apply in the context of sexual orientation discrimination. It has been suggested that it may, for example, apply to a role giving personal advice or counselling to gay men or lesbians.”

Occupational Requirement – Sexual orientation

“Organised religion” exemption

Can attach requirements relating to sex, sexual orientation, gender reassignment for doctrinal reasons

Jobs with Christian Occupational Requirement



■ No organised religion exemption ■ Organised religion exemption

Organised religion exemption

- Organisations other than churches will find this **very** difficult to claim
- Organisation must be set up to advance Christian faith
- Job description must show how the employment is to advance Christian faith
- Still mountain to climb

Action points

For the organisation generally

1. Statement of faith
2. Code of conduct / ethos statement
3. Check policies – Equal Opportunities, Recruitment & Selection
etc

Action points

For the job

1. Review job description – does it fully reflect what is required?
2. Does the job show that it needs to be undertaken by a Christian?
3. Could the job be shown to be for the purposes of organised religion?

Action points

When recruiting

1. Review job description afresh. If an occupational requirement is being asserted, say so. If not and certain criteria might indirectly discriminate, can they be justified?
2. Ensure the recruitment process tests the candidates' suitability with respect to the occupational requirement
3. Ensure the contract for the appointed person refers to the ongoing nature of the occupational requirement

Equal Opportunities Policy

“It is our policy to provide employment equality to all, irrespective of:

- Sex, including gender reassignment
- Married or civil partnership status
- Religious belief
- Race
- Disability
- Sexual orientation
- Age”

Does this look like a good policy statement for your agency? Why not?

Do your HR policies reflect your Christian ethos?

Particular policies to consider:-

Equal opportunities – image of God

Anti-harassment – image of God, deserving of dignity and respect

Disciplinary and grievance – biblical dispute resolution

Maternity, paternity etc – children are a blessing

Employment law – changes to be aware of (non-covid)

Update to Employment Rights Act

New requirements for contract of employment to be given on or before first day of employment (formerly within 2 months) and to include reference to:-

- “Any other paid leave”
- Probationary period
- Provision of training

Only required for employees employed on or after April 2020 – no need to re-issue contracts to people who commenced before this.

Employment law – changes to be aware of (non-covid)

New right to Parental Bereavement Leave – from April 2020

Right to time off in event death of child up to age 18 (inc stillbirth)

Can take one block of two weeks' leave or two blocks of one weeks' leave

Must be taken within 56 weeks of the death of the child

Important to have a policy on this now – very difficult circumstances to be trying to search for answers if don't already have a policy in handbook

Covid-19 – where are we now?



Covid-19 – where are we now?

Coronavirus Job Retention Scheme (furlough) in October

Employer pays for hours worked

Government pays 60% of hours not worked

Employer pays 20% of hours not worked & employer NI and pension on the govt contribution

Covid-19 – where are we now?

Job Support Scheme – November to April

New scheme to replace furlough

Less generous

Can't be used if employee serving notice

Not expected to be used if e'er can top up pay

No requirement to have previously been furloughed

Not likely to be anywhere near as popular

May be useful in some cases – if downturn temporary and no right to invoke reduced hours in contract

Job Support Scheme



Hours not worked
Unpaid



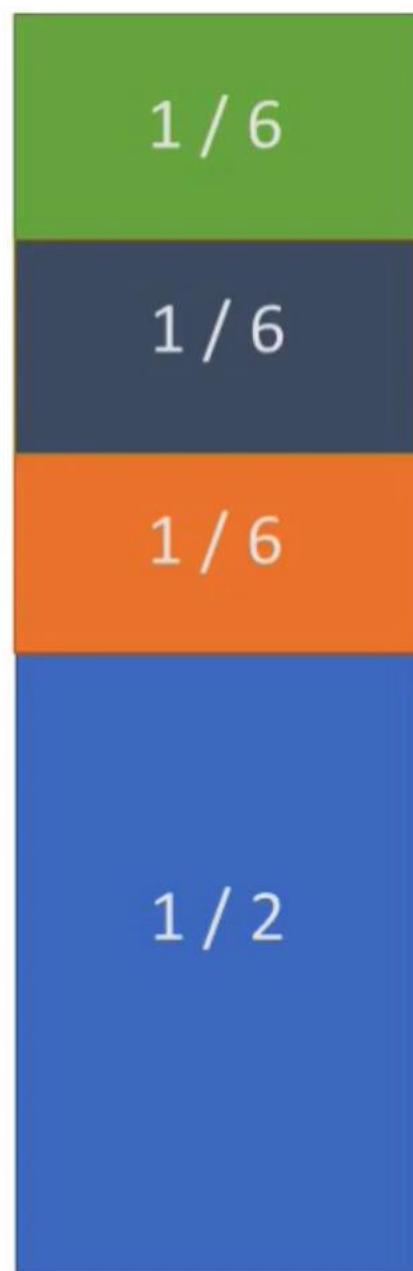
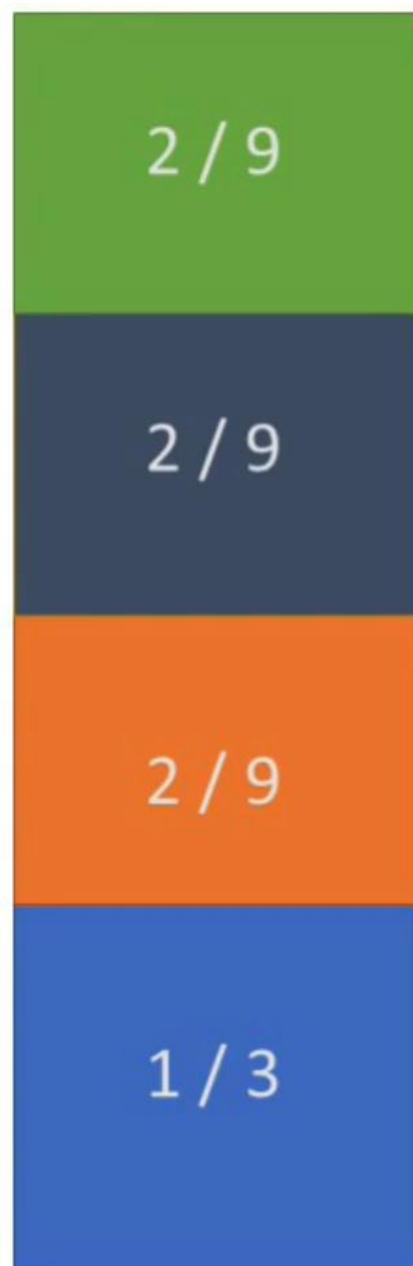
Hours not worked
Paid by government



Hours not worked
Paid by employer



Hours worked
Paid by employer





October



November - April



Covid-19 – where are we now?

H&S considerations

Employer duty to maintain safe working environment

Employee protected from suffering detriment / dismissal if report health and safety concern or refuse to work if genuine fear of unsafe working conditions.

Work from home if can – working from home policy – covering health and safety, as well as data protection and other matters

Covid-19 – where are we now?

Self-isolation

Employees should isolate if:-

- They are symptomatic (until negative test)
- They live with someone who is symptomatic (until negative test)
- They have been advised to isolate by “track and trace” as they have been identified as a close contact of someone who has tested positive

Covid-19 – where are we now?

Self-isolation

No need to self-isolate if:-

- A colleague is symptomatic and is isolating pending a test result (assuming social distancing has been maintained)
- A colleague is self-isolating pending a family member getting tested

Covid-19 – where are we now?

Pay during self-isolation

Entitled to SSP from day one if:-

- Symptomatic (pending negative test)
- Diagnosed with the virus
- Isolating because someone in household has tested positive
- Isolating as identified as a close contact by “track and trace”

May be eligible for low-income isolation benefit

Not entitled to pay over and above SSP unless employee themselves is sick

Covid-19 – where are we now?

Pay during self-isolation

Not entitled to pay if can't work because:-

- Child sent home from school to isolate as a classmate tests positive
- Quarantining upon return to country from a country not on the exempt list

Covid-19 – where are we now?

Carrying over annual leave

Leave must normally be taken in the year it accrues

If leave **cannot** be taken this year because of covid, up to 4 weeks can be carried over to be taken in the next two years

Where possible, have leave taken this year – potential operational problem next year and significant pay in lieu of accrued and untaken holiday if employee leaves

Nothing in this presentation is intended to be taken as legal advice relating to your specific situation.

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Question time

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