



Employment Law Update

28 March 2023

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Agenda

1. Welcome
2. Case update
3. Legislation and consultations round-up
4. Neurodiversity and the workplace
5. What's on the horizon?

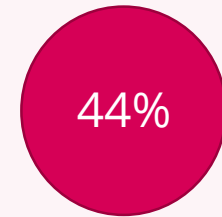
Case update

A redundancy round-up

In order that consultation is “genuine and meaningful” a fair procedure requires that consultation takes place at a stage when an employee or employee representative can still, potentially, influence the outcome

Mogane v Bradford Teaching Hospitals NHS Foundation Trust (Employment Appeal Tribunal)

The impact of the cost of living crisis is likely to lead to an increase in redundancies in 2023



of employers looking at restructuring or redundancies in next 12 months

Source – WorkNest

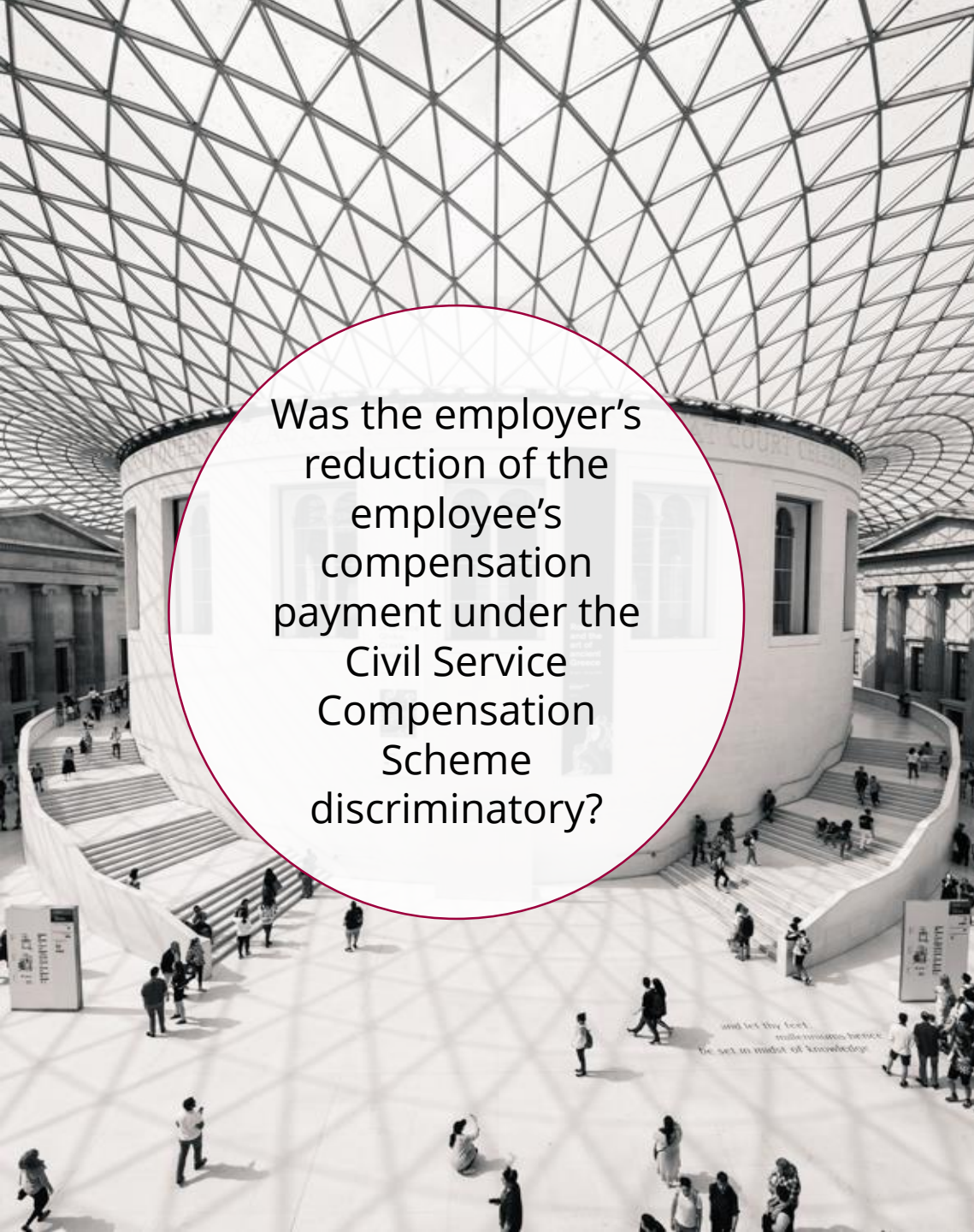
Redundancy and disability discrimination

Was disability the reason for an employee's non-participation in an interview as part of a redundancy selection process?

Hilaire v Luton Borough Council (Employment Appeal Tribunal)

Was the employee placed at a substantial disadvantage?

Was there a duty to make reasonable adjustments?



Was the employer's reduction of the employee's compensation payment under the Civil Service Compensation Scheme discriminatory?

Disability discrimination


When will dismissing an employee on long-term disability-related absence be justified as a proportionate means of achieving a legitimate aim?

McAllister v Revenue and Customs Commissioners (Employment Appeal Tribunal)

Marriage discrimination

Does less favourable treatment because of marriage to a particular person constitute marriage discrimination?

Ellis v Bacon (Employment Appeal Tribunal)



It is key to determine what the reason is for the less favourable treatment

Case tracker: Key cases to watch

Case	Detail	Key dates
Holiday pay <i>Chief Constable of the Police Service of Northern Ireland and another v Agnew</i>	Would a series of unlawful deductions from holiday pay be interrupted by gaps of more than three months?	Supreme Court – 14 and 15 December 2022 – awaiting judgment
Employment status <i>Independent Workers Union of Great Britain v Central Arbitration Committee and another</i>	Is there an employment relationship meaning that Deliveroo riders fall within the scope of the trade union freedom right under Article 11 of the European Convention on Human Rights?	Supreme Court – 25 and 26 April 2023
Employment status <i>HMRC v Professional Game Match Officials Limited</i>	What is the employment status of football referees?	Supreme Court – 26 and 27 June 2023

Case tracker: Key cases to watch

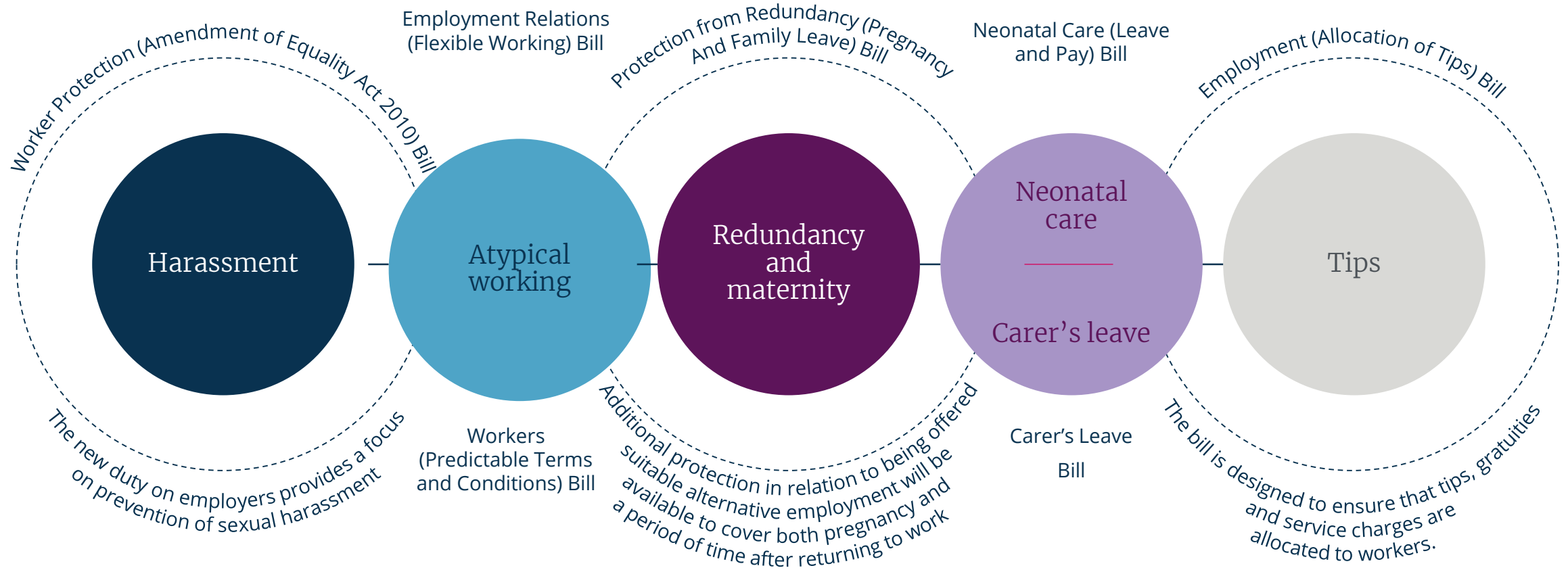
Case	Detail	Key dates
Agency workers <i>Kocur v Angard Staffing Solutions Limited</i>	Whether agency workers' right to be informed of relevant vacant posts is limited to notification	Supreme Court – 7 December 2023
Handling grievances <i>Hope v British Medical Association</i>	When might it be fair to dismiss an employee for bringing “frivolous and vexatious” grievances?	Court of Appeal – awaiting a new hearing date



Employment Tribunal update: Mediation in Northern Ireland

Legislation and consultations round-up

Private Members' Bills: Reform in 2023 and beyond



Legislation tracker

Legislation	Outline	Key date
Strikes (Minimum Service Levels) Bill 2022-23	New legislation introduced to mitigate the disruption of strikes on the public	2023?
Gender Recognition Reform (Scotland) Bill	Legislation to change the process for a trans person to acquire a gender recognition certificate in Scotland.	Passed on 22 December 2022. The Bill has been blocked from receiving Royal Assent.

What else is in the pipeline?



Calculating holiday entitlement for part-year and irregular hours workers



Code of Practice on dismissal and re-engagement



Government response to the Women and Equalities Committee's report on menopause in the workplace

Neurodiversity in the workplace

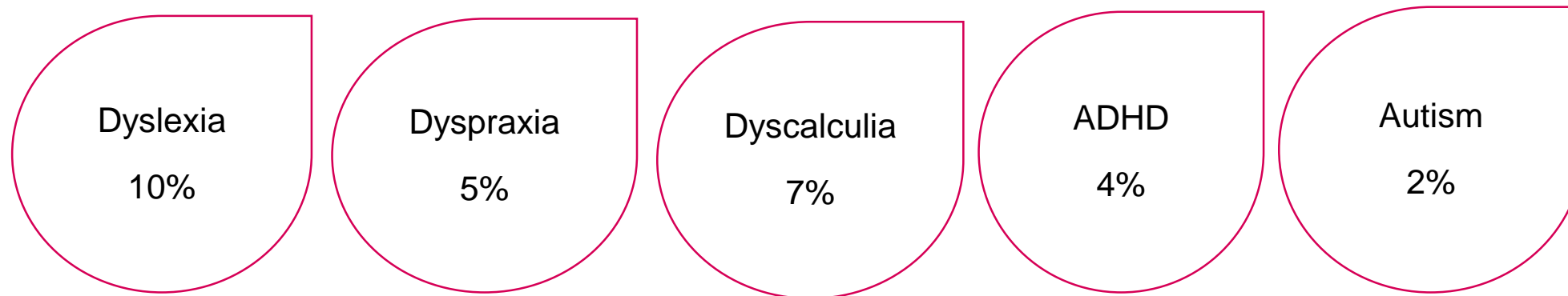
What is neurodiversity and why does it matter?



Neurodiversity refers to the different ways the brain can work and interpret information. It highlights that people naturally think about things differently. We have different interests and motivations, and are naturally better at some things and poorer at others.

Most people are **neurotypical**, meaning that the brain functions and processes information in the way society expects.

Source - Acas



Source: Acas

Neurodiversity: An outline of the legal obligations

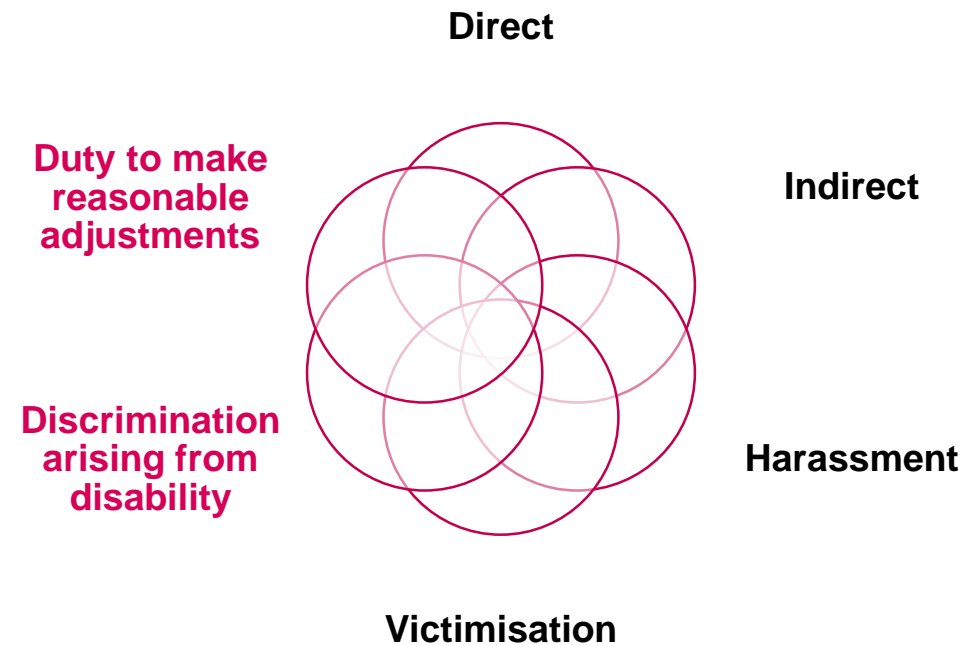
A person has a disability if they have a **physical or mental impairment** that has a **substantial** and **long term adverse effect** on a person's ability to **carry out normal day to day activities**.

The following neurodiversities have all been recognised by Employment Tribunals as disabilities: **ADHD, autism, dyspraxia, dyslexia and dyscalculia**. Each case will depend on the facts.

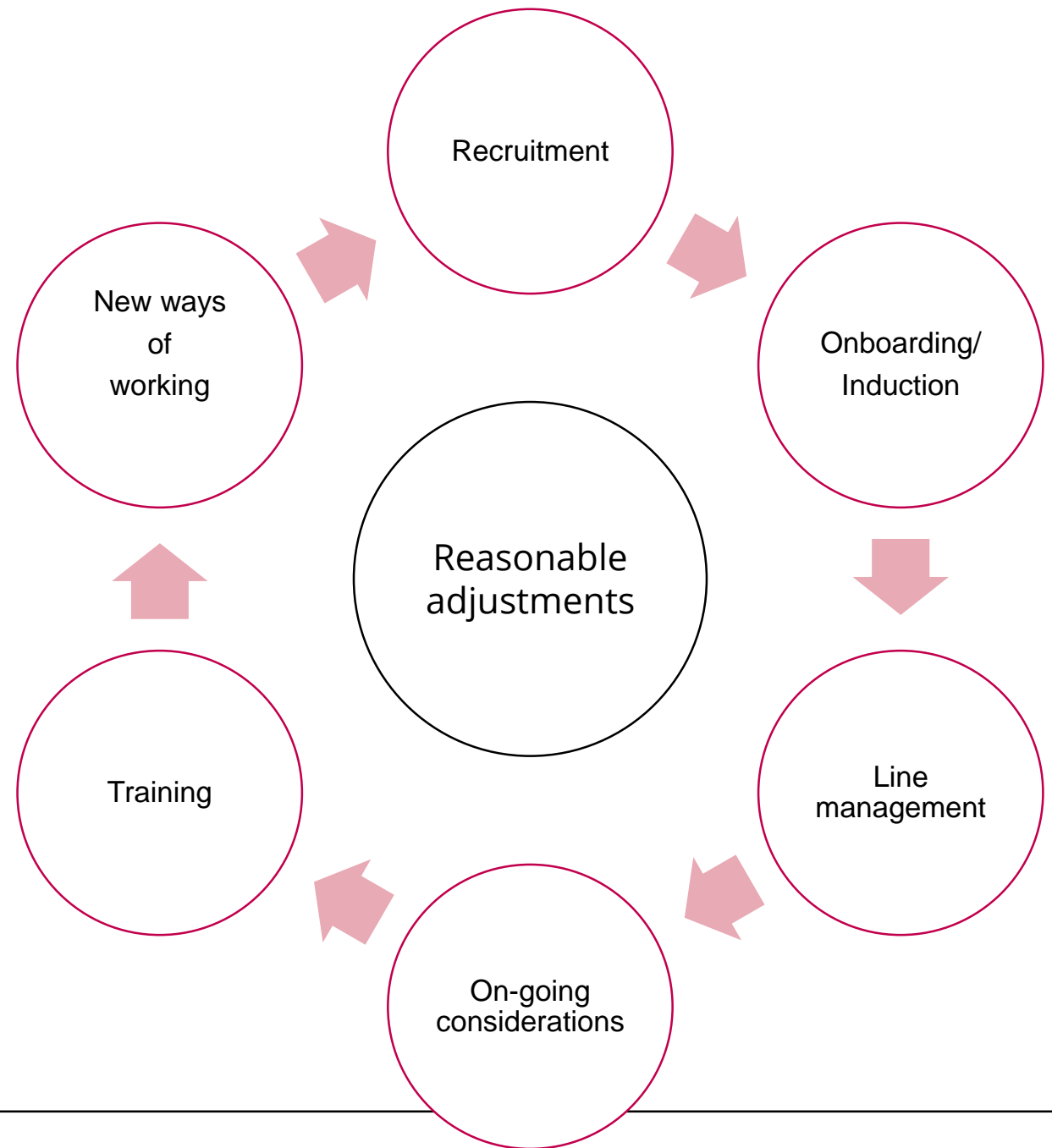
What if the employer did not **know** about the employee's disability?

When are employers **vicariously liable**?

What is discrimination?



Neurodiversity and the employment lifecycle



What's on the horizon?

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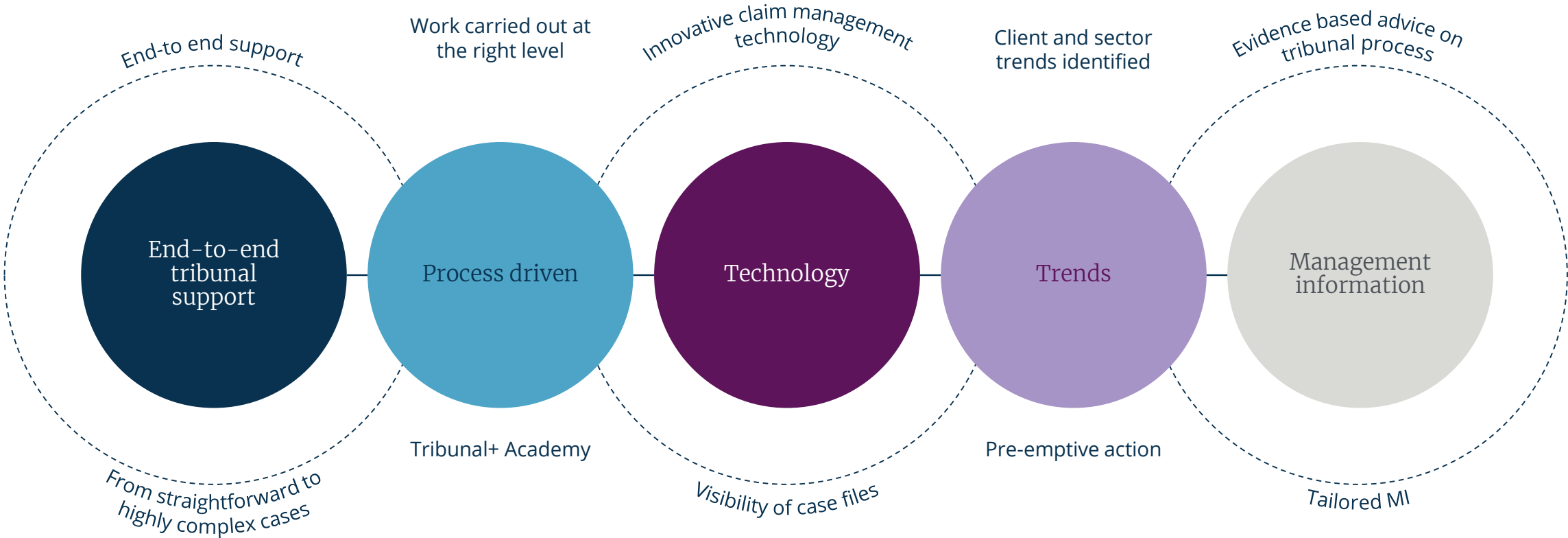
Retained EU Law (Revocation and Reform) Bill 2022-23

**What is the latest
position?**

Key issues for employers in 2023



Tribunal+





Questions?

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