Impellam Group

dwf

Believe in the Power of Work

What Does A New Labour Government Mean For Employment Law?

Impellam.com

An overview of the upcoming changes and implications for UK businesses

As the UK continues its first year with a new Labour government, significant changes have both been announced and are anticipated in the realm of employment law. This guide delves into the potential impacts of these changes, drawing from insights shared in a recent webinar with industry experts from DWF Jon Keeble, Employment Law Partner and Nigel Crebbin, Employment Law Director.

Introduction

The first Labour government in 14 years has been quick off the mark, eager to make changes in a wide range of areas. Looking to demonstrate a commitment to voters, they are rolling out changes with a view to improve the working life of 'hardworking people.' These changes are understandably met with trepidation for businesses of all sizes.

The **'Make Work Pay'** document outlines a comprehensive strategy aimed at ensuring fair compensation for all workers. It emphasises the importance of elevating the minimum wage, strengthening the enforcement of wage laws, and reducing wage disparities across various sectors.

The document suggests providing incentives for businesses that implement fair wage practices and invest in employee development. By aligning wages with the cost of living and productivity levels, the government seeks to enhance job satisfaction, retention, and economic stability.

On October 10, 2024, the government unveiled the **Employment Rights Bill**, marking one of the most significant reforms to employment rights in recent history. The Bill introduces 28 individual reforms aimed at upgrading workers' rights, improving working conditions, and benefiting both businesses and workers.

Key Reforms and Their Implications

The key to successfully implementing changes to meet the upcoming reforms is to strike a balance between not making kneejerk changes and making time to prepare.

Given these changes are likely to be implemented between 2025 and 2027, now is the time to take stock, assess risks, seek assistance, make informed decisions, and adapt processes and practices, ahead of the reform implementations.

Here are some of the key changes:

- Unfair dismissal
- Zero-hour contracts
- Fire and rehire practices
- Collective Redundancy Consultation
- Statuatory Sick Pay (SSP)
- Trade Unions
- Outsourcing
- Fair Work Agency
- Additional ‘family-based’
- protections and types of leave
- Gender Pay gap
- Flexible Working
- New Worker Protection measures
- Future Prospects and Consultations

Unfair Dismissal

One of the cornerstone reforms is the removal of the two-year qualifying period for unfair dismissal claims. This means that employees will be protected from unfair dismissal from day one of their employment.

However, a consultation is expected on the introduction of a new statutory probation period for new hires, with a preference for a nine-month period. This is intended to balance the assessment of a new hire's suitability for a role, while providing employees with rights from the start. The Government intends that during the statutory probationary period, the steps which employers will need to take to ensure that any dismissal is fair will be 'lighter touch' than those which will be required after that period.

Potentially these changes to the unfair dismissal legislation will mean a significant increase in unfair dismissal claims. The employment tribunal system is already stretched, with long waiting times for claims to be heard by the tribunals, and this increase could create an additional backlog of claims.

Employers should always strive to avoid employment tribunal claims and they will need to robustly manage recruitment, vetting, onboarding, and employee management processes, to safeguard themselves from day one.

Key considerations for employers:

- Are your recruitment and onboarding processes robust enough to ensure minimal risk of unfair dismissal claims from 'day one'?
- A review of progress reporting and improvement plans can ensure that employers make use of the 'lighter touch' obligations, which will apply during the statutory probationary period.

Zero Hours Contracts

The use of zero-hour contracts has soared in recent years and the reforms in this area aim to end 'potentially exploitative' zero-hour contracts by giving workers the right to convert to contracts with guaranteed hours.

The goal is to give workers the option of having contracts which reflect the actual hours they regularly work, based on their average hours over a reference period (which is likely to be 12 weeks). The reform seeks to provide workers with greater security of earnings while still allowing flexibility for those who prefer to remain on zero-hour contracts.

The reforms also state that for any worker 'reasonable notice' needs to be given of any shift changes affecting them. At present, it is unclear how the legislation will define 'reasonable notice'.

What is 'reasonable' to one person might be completely unmanageable to another. For example, a person with no care commitments might find a week's notice acceptable, assuming they had no solid plans. Someone with young children or a carer for someone with a disability, however, might find a week's advance notice to be unreasonably short notice, not enabling them to adapt childcare or care cover plans.

There is also talk of extending these obligations to 'agency' workers as well, which if it happens will doubtless lead to further complexities. The Government is currently consulting on this possibility.

Who will be responsible for ensuring guaranteed hours and reasonable shift change notice? The agency? The employer? The MSP? If there is a dispute, who is the claim going to be brought against?

As with many of these changes, much more clarification is needed and will hopefully be given ahead of the changes coming into effect.

Key considerations for employers:

- Ascertain where zero-hour contracts are used, and where the employment model will need to be reviewed.
- Robust procedures will need to be implemented to ensure reasonable notice is given of shift patterns.

Fire and Rehire Practices

The new legislation will significantly restrict the use of 'fire and rehire' practices.

Currently, there are few limitations on employers firing employees and rehiring them under new conditions and not rehiring those that refuse to agree to new terms, as long as there are sound reasons for making the changes and the dismissals involve the employer following a fair and reasonable procedure. Although it is worth noting that a new statutory Code of Practice on Dismissal and Re-engagement came into force on 18 July 2024 which sets out a process for employers to follow. Any failure to comply with the Code can lead to increased or reduced compensation of up to 25% in relevant claims.

When the new reforms are in place, businesses will need to demonstrate that 'fire and rehire' was pretty much unavoidable, as otherwise the dismissals will be automatically unfair.

Making 'forced changes' to contracts in this way will likely become far rarer and there will be an increase in employers achieving changes to employment contracts by negotiating with employees to reach agreement.

The reform might also increase the likelihood of employment contracts being drafted to containing more flexibility, with clauses which allow employers to make changes.

Key considerations for employers:

- Changing terms and conditions will become harder. Employee engagement will be more important than ever.
- Increased risk of claims when changing terms and conditions.
- Consider amending template contracts to include flexibility clauses.

Collective Redundancy Consultation

The new bill removes the current threshold that requires collective consultation with trade unions or employee representatives to take place only when 20 or more redundancies are proposed to take place over 90 days in a 'single establishment'.

Instead, the reference to 'single establishment' will be removed, meaning it will be necessary to consider the total number of proposed redundancies across the employer's entire organisation.

Those of us old enough to remember Woolworths closing down may remember the controversy when there was no consultation on what were perceived to be mass redundancies. In many cases, the '20 redundancy threshold' was not met in individual stores and so **those who worked in a store with fewer than 20 workers were not entitled to the benefit of collective consultation.**

The new bill's removal of the 'single establishment' requirement will have a significant impact on large employers with multiple sites and offices and will increase the number of situations where collective redundancy consultation applies.

There are also two options being considered regarding the compensation which an employer can be required to pay if it fails to comply with its collective redundancy consultation obligations. The compensation payable to affected employees is currently capped at 90 days' pay, but the Government is considering:

- Increasing the cap from 90 to 180 days, or
- Removing the cap entirely.

The consultation is seeking views on introducing a right for employees to apply for interim relief where they have a claim for a protective award. The consultation is also seeking views on whether interim relief should be available for employees bringing a claim for unfair dismissal in a fire and rehire situation.

Key considerations for employers:

- This is a major change to collective redundancy consultation law.
- Once enacted it will be important for employers to take these changes into account when restructuring.

Statutory Sick Pay

The reforms include the removal of the **lower earnings limit for Statutory Sick Pay (SSP),** making SSP available to all employees regardless of their weekly earnings. Additionally, the waiting period before SSP takes effect will be eliminated, entitling employees to SSP from the first day of sickness absence rather than from the fourth day.

The changes here should be straightforward: employers will need to review employee policies and procedures and update them to reflect this change. They will also need to budget for a potential increase in SSP payments.

Employers might also look at ways to reduce sickness in the workplace. **Research from 2022 has shown stress was one of the biggest contributors to a rise in workplace absences compared to the previous year,** with the number of workers taking sick leave hitting a 10-year high. Mental health also played a big part in absences.

New initiatives to reduce stress and improve mental health can not only reduce potential SSP costs,but also boost your EVP and improve customer retention.

Key considerations for employers:

- Review policies and procedures.
- Increase in SSP costs to the business.

Trade Unions

'Anti-union legislation' introduced by previous administrations will be repealed, including the Strikes (Minimum Service Levels) Act 2023.

The Bill also introduces new requirements for employers to provide employees with written statements of the right to join a trade union and simplifies the process for trade union's achieving compulsory recognition.

Trade unions will also be able to obtain access to places of employment on a mandatory basis by submitting an 'access request.' At this point, employers will need to negotiate with unions on the terms of access they are happy to provide. These terms might include areas the unions are allowed to access, the date and amount of time they can access and the activities they are permitted to carry out.

To prepare for this, employers should consider how they will respond to these access requests and set out policies to ensure compliance with the new obligations. It is also an opportunity to reconsider the role they want to have in the future in respect of working with unions.

Key considerations for employers:

- Increased role of the unions going forwards.
- Legislation will be amended to remove some of the restrictions on trade union activity.

Outsourcing

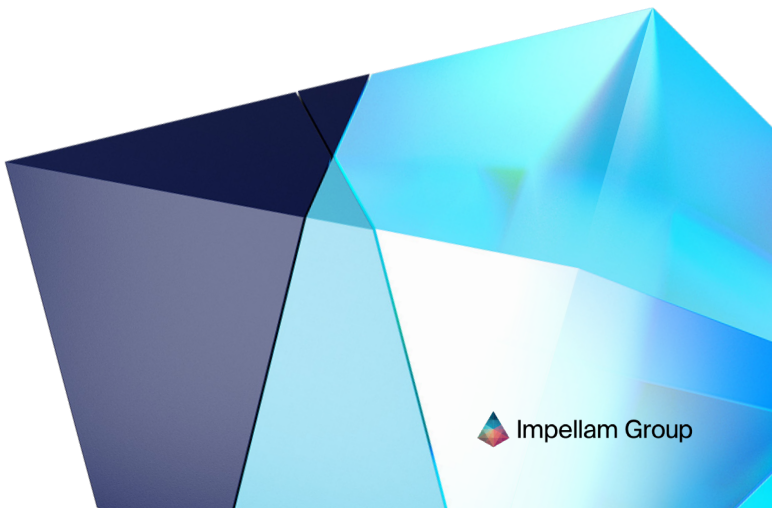
Changes made through the Procurement Act 2023 could lead to regulations being introduced which require that new contractual provisions are included in relevant public sector outsourcing contracts.

The goal of this is to avoid suppliers to the public sector having a 'two tier workforce' with different employment terms applying to those employees who have transferred to the employer from the public sector from those employees who have not. The new contractual provisions would require employers to ensure that all employees have equally beneficial employment terms, both those whose employment transferred to the employer from the public sector and those whose employment did not.

This would have significant cost implications for employers taking on public sector contracts, such as refuse collection, public transport and care. These companies should start considering these likely new regulations when bidding on projects that will include public sector workers transferring to them.

Key considerations for employers:

- This amendment could have significant cost implications for employers taking on public sector contracts.



Fair Work Agency

A new Fair Work Agency will be established to protect employee rights. This is likely to take place in 2026.

A significant area of risk here is regarding holiday pay, which can be difficult for employers to calculate where hours are irregular or for temporary employees. The Fair Work Agency's enforcement procedures are likely to be similar to those which currently apply in respect of the national minimum wage enforcement and therefore fines could well come into play as standard, and/or even prosecution.

Sick pay may also be examined, but it will be a lesser risk, as it is more straightforward to calculate.

It is key to remember that this new agency will be able to look at historical records, so this will not just affect how you operate now. If there are any 'skeletons in the cupboard' they may well come to light, and this will be an agency with teeth. Employers should therefore look back at any past disputes or non-compliance and ensure that they are resolved ahead of time.

Key considerations for employers:

- Increased risk of enforcement action.
- Review legislative and regulatory compliance.

Additional 'family-based' protections and types of leave

- **Bereavement leave** – there will be a new statutory right to bereavement leave, going beyond the current right to parental bereavement leave.
- **Paternity leave and unpaid parental leave –** as with many other areas, these will become 'day 1' rights.
- **Pregnant women and new mothers -** there will be stronger protections for pregnant women and new mothers returning to work. This will include protection from dismissal whilst pregnant or on maternity leave and for a period after returning to work. The length of this period is not yet defined, but 6 months is suggested.

Key considerations for employers:

- Consideration will need to be given by employers to ensure that the new rights are kept to.
- Policies and procedures will need to be kept under review and amended as appropriate.

Gender pay gap

There are already **reporting requirements on gender pay gaps for organisations of over 250 employees**. New regulations will require employers to also show that they have plans to reduce any gender pay gap. They will also need to show how women in their workforce are being supported during the menopause.

Whilst gender pay gaps have been slowly decreasing in general over the last few decades, that reduction is petering out, **with an actual increase between 2022 and 2023**. In 2022/2023, 78% of reporting employers stated that the median hourly pay was higher for men than for women, while only 14% of employers stated median hourly pay was higher for women. 8% stated that median hourly pay was the same for women as for men. **This is therefore still an issue many employers need to address**.

Mandatory action statements can only be beneficial to achieve a more equitable and diverse workforce as well as for EVP. These regulations are likely to be implemented in 2026, so employers have time to look at what needs to be put in place.

Key considerations for employers:

- What steps/action needs to be taken to develop and publish an "equality action plan"?
- What is the gender pay gap? What steps are being taken to help reduce any gap?
- How are employees supported going through the menopause?

Flexible Working

Flexible working will become the default position with employers. As well as only being permitted to refuse requests if specific grounds are met, they are also being required to show that their decision was a reasonable one. This reform aims to ensure that more flexible working requests are agreed upon, promoting a better work-life balance for employees.

As it stands an employer could compliantly turn down a flexible working arrangement due to additional cost, but that cost could be minimal – as little as £10 a month. Such unreasonable refusals will no longer be permitted.

Policies and processes will need to define what is and is not a reasonable refusal and employers will need to be fair and consistent in their decisions.

Key considerations for employers:

- What does 'reasonable' look like for a business in your sector and your size/ location/turnover?

New Worker Protection measures

Amendments to the Equality Act 2010 are already in force which place more rigorous obligations on employers to safeguard employees from sexual harassment.

Businesses must take reasonable steps to prevent sexual harassment of their workforce, including harassment by third parties such as customers or passengers, and failing to do so can result in a 25% increase in any compensation awarded to employees who successfully bring harassment claims.

Employers need to carry out sexual harassment risk assessments that consider factors such as the age and gender of employees, workplace environment and the likelihood of third-party interactions.

Key sectors this will affect are those where there are more public facing roles. **A 2018 survey found that 9 in 10 hospitality workers had experienced sexual harassment and over half of those said that the perpetrator was a customer**.

This external harassment and abuse will need to be addressed by employers. No employer can guarantee a public-facing staff member will not ever be subject to sexual harassment. What they will have to do is demonstrate they are doing everything they reasonably can to minimise risk, act when incidents occur and support their staff.

It also should be noted that this obligation applies to all employers, whether or not their employees' work involves interaction with people outside of the employer's workforce.

Key considerations for employers:

- Employee safeguarding from sexual harassment needs to be front and centre in all risk assessments
- What processes are in place for where sexual harassment incidents occur, and how can these be built on to show that reasonable steps are being taken to avoid sexual harassment occurring?

Future Prospects and Consultations

Beyond the immediate changes introduced by the Employment Rights Bill, the Government has outlined further plans for employment law reform.

These include:

- The introduction of a 'right to switch off', prohibiting employers from being able to contact employees outside of working hours
- Ethnicity and disability pay gap reporting
- Reform to employment status, providing greater clarity on whether someone is employed or self-employed and removing the intermediate category of 'worker'.

Conclusion

These actual and proposed legislative changes and reforms underscore a significant shift towards creating a more inclusive, equitable, and safe work environment for all employees. By addressing the needs of families, enforcing measures to reduce inequalities, promoting new ways of working, and strengthening protections against unfair dismissal and sexual harassment, employers are being required to take proactive steps to adapt and comply.

However, these changes will not be without their challenges for businesses and organisations of all sizes.

It is imperative that employers stay informed and prepared for these changes, ensuring that their policies and practices reflect the evolving landscape of employment law.

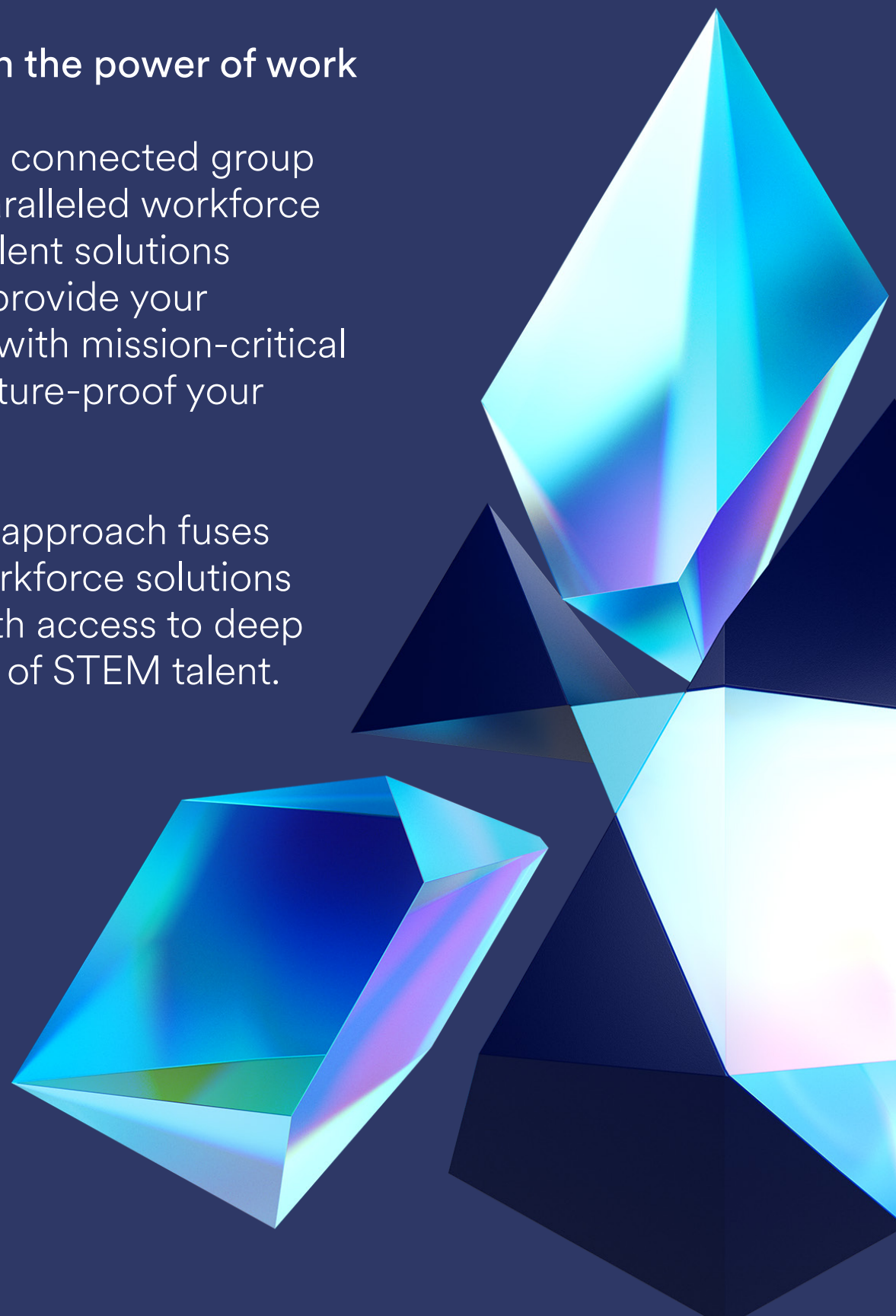
Impellam Group

Believe in the Power of Work

We believe in the power of work

Impellam is a connected group offering unparalleled workforce and STEM talent solutions expertise to provide your organisation with mission-critical skillsets to future-proof your business.

Our blended approach fuses extensive workforce solutions expertise, with access to deep communities of STEM talent.

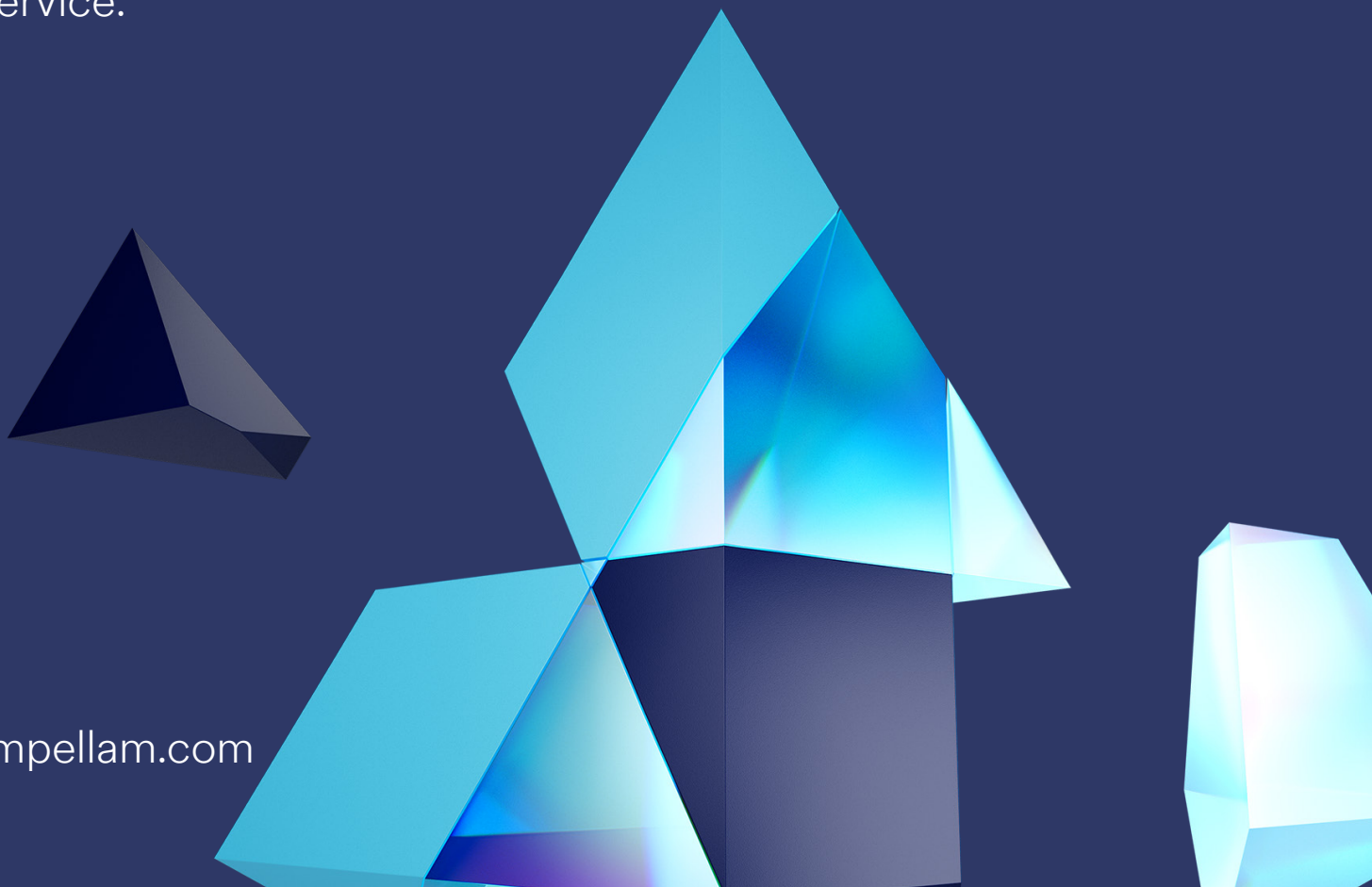


Impellam.com

DWF is a leading global provider of integrated legal and business services, operating across nine key sectors in over 35 global locations with over 4,500 people. Our purpose is to deliver positive outcomes with our colleagues, clients and communities.

The legal market has changed profoundly in the last decade and the speed of change continues to increase. There is a clear and growing desire for legal services to be delivered in an easier and more efficient way. So we've listened to our clients and designed a range of services to meet these needs.

Our vision is to deliver integrated services on a global scale through our three offerings; Legal Services, Legal Operations and Business Services. Our ability to seamlessly combine any number of these services to deliver bespoke solutions for our clients is our key differentiator. This Integrated Legal Management approach delivers greater operational efficiency, price certainty and transparency for our clients. Without compromising on quality or service.



Impellam.com