



Webinars for Cold Chain Professionals

2023 EMPLOYMENT LAW CHANGES – HOW RECENT RULINGS WILL AFFECT YOUR BUSINESS

STARTING AT 12:30PM

Citation



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2023 EMPLOYMENT LAW CHANGES – HOW RECENT RULINGS WILL AFFECT YOUR BUSINESS


INTRODUCTION

Citation





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Talking: **Shane Brennan**


Questions

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Citation

2023 Employment Law Changes – how recent rulings will affect your business

**Flora Neville - Business
Owner and HR and
Associate Speaker**

About today.



The Good
Work Plan

The
Employment Bill

Holiday pay and
Equality Act
employee rights

About us.

**Complete
cover**

cover – HR, Health & Safety, EAP
etc.

50K+
clients

Bespoke
documentation and site
visits

24/7
support &
advice
guarantee

26
years
trading

2022 has seen some of the biggest shake-ups in Employment Law...

2022 promises to be a busy year when it comes to key updates and changes to certain aspects of Employment Law.

These changes will naturally have an effect on your responsibilities as an employer.

Our HR & Employment Law team have gathered the top updates that you need to have on your radar and be preparing for in your business.



The Good Work Plan.

“Vision for the future of the UK labour market”

“The biggest shake up of Employment Law in a generation”

Phased roll out of measures designed to ensure:

- Access to fair and decent work
- Greater clarity on the nature of working relationships
- Fair and fit for purpose enforcement system.



Reasons for change.

- Increase in 'atypical' workers such as those in the 'gig' economy
- UK moving away from the traditional Monday-Friday, 9-5 framework
- A more flexible and mobile workforce created challenges to ensure that this didn't result in unfair working practices.

Key areas of confusion:

- Overseas workers
- Agency worker rights
- Flexible working processes
- Tax status vs worker status.

What is a 'Worker'?

**Bank
staff**

Contractors

**Temp
staff**

**Zero
hours**

Casual

Consultants

Freelance

What is a 'Worker'?



Self-employed

Worker

Employee

Previously occupied
a middle ground
putting them at risk
of exploitation

How is employment status determined?

How do you determine who is a 'worker' in your business?

Approach taken by tribunals is the multifactorial test – weighing up all the factors:



Why is it such a difficult area for employers?

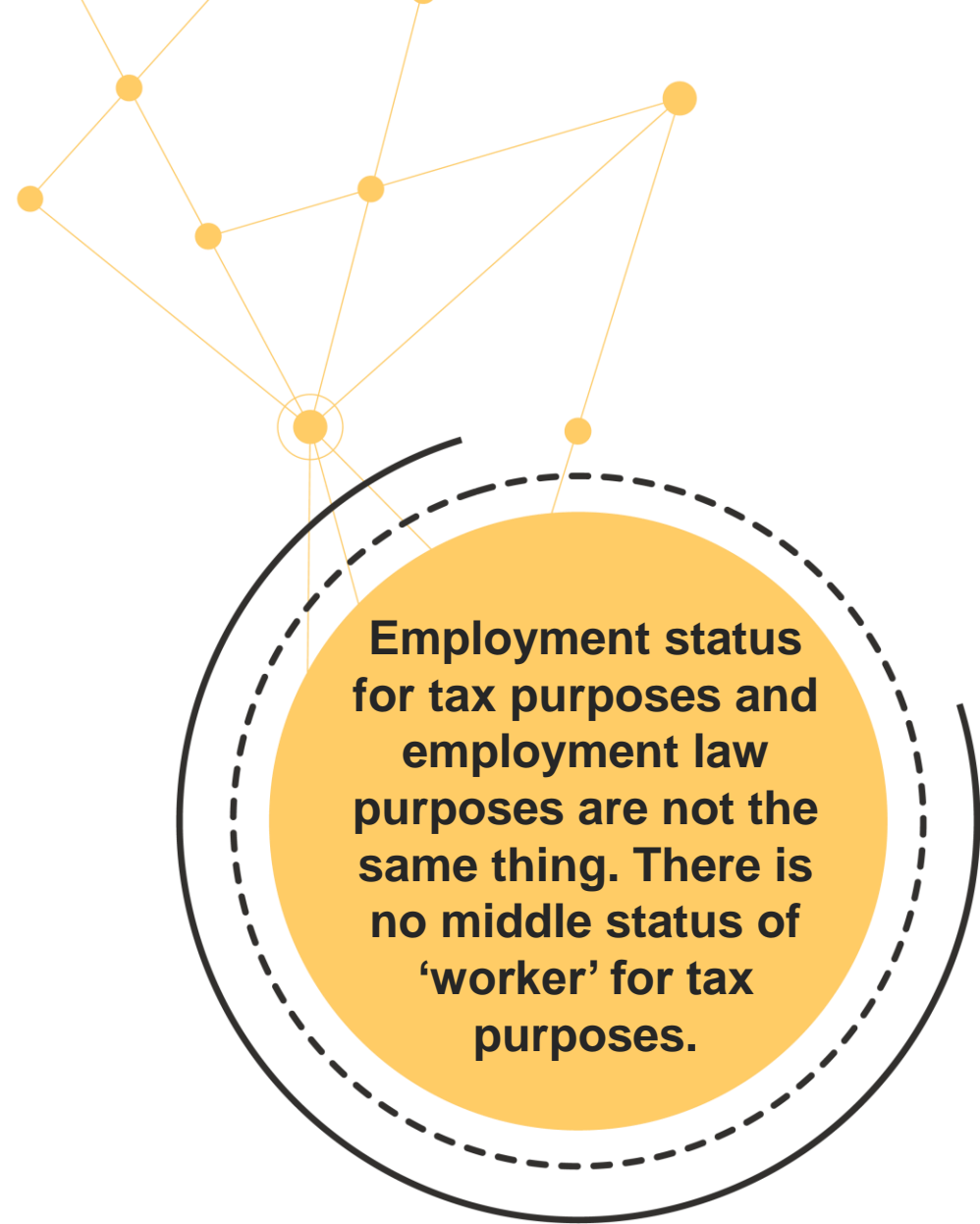
Four key issues

- Uncertainty of defining employment status even at the highest levels in the courts
- The intention of the parties is not a strongly influencing factor
- Individuals usually happy with arrangements but can then change the goal posts quickly and without warning
- The question of 'status' is not static and can change over time.

IR35.

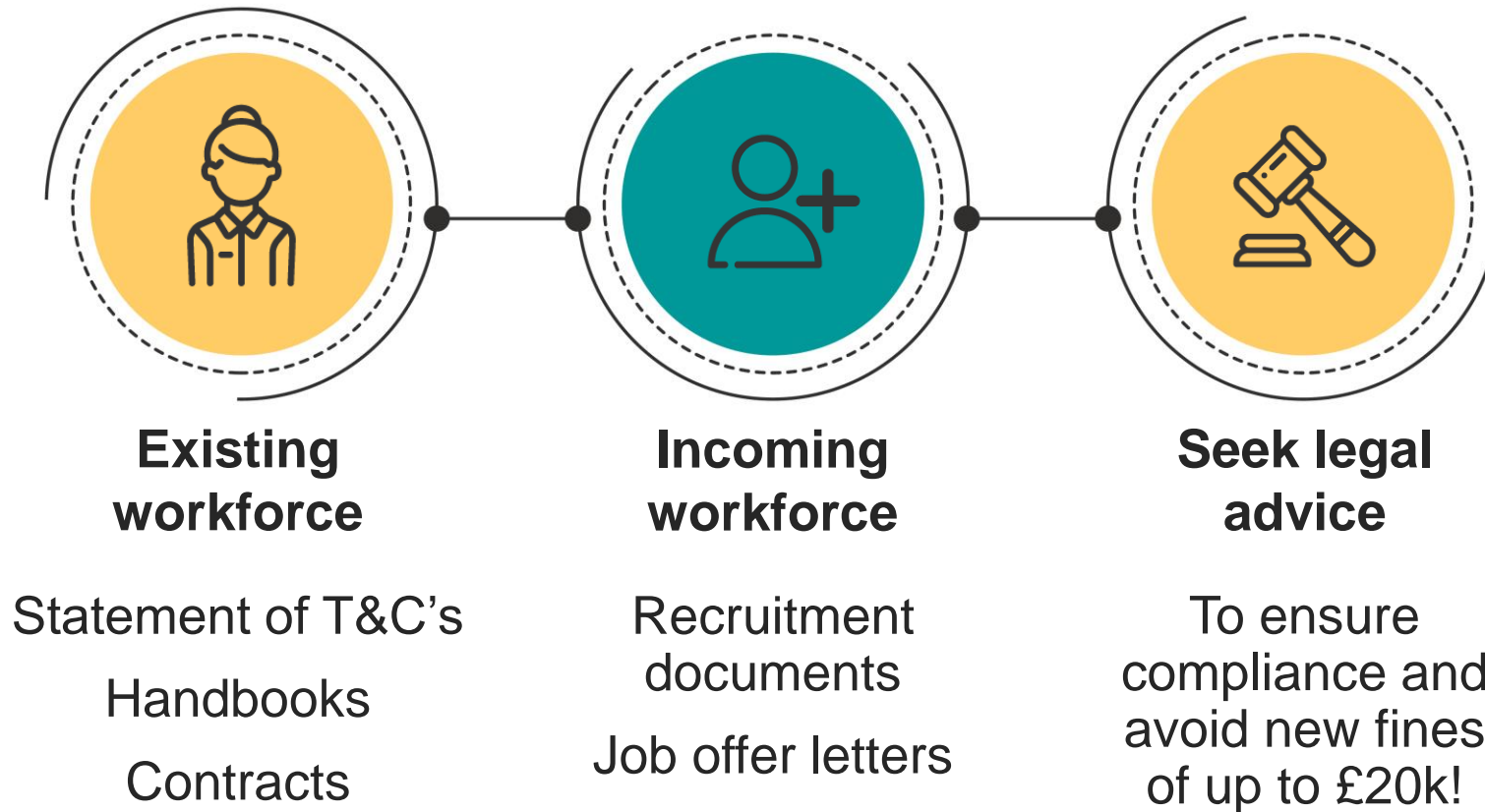
IR35 is not Employment Law

- Aimed at ensuring that where individuals provide their services through intermediary companies but work like employees, they pay tax at the same rate as employees
- Failure to provide a 'Status Determination Statement' or failing to carry out the assessment with reasonable care, could result in the end user being directly liable for any tax or NI which HMRC decides is due.



Impact on your documentation.

Most (if not all) of your employment law documents, contracts and handbooks will need to have been reviewed and redrafted to incorporate these changes.



Contracts and handbooks.

- Have you reviewed your documentation to reflect any key changes to the way you're now working i.e. following the pandemic?
- Do you regularly review and update your employment contracts?
 - Who writes them?
 - Would they stand up to scrutiny at an Employment Tribunal?
- Why are handbooks important to have?
 - Main points in contract, full details of policies and procedures outlined in handbooks
 - Don't forget to add any new policies – hybrid working etc.
- Do all employees have a copy or access to one?
- Have they signed to say they have read and understood?

What should I include in my contracts?



Employment Bill.

Details set out in the Queen's Speech in December 2019

- Creating a new, single enforcement body, offering greater protections for workers.
- Ensuring that tips left for workers go to them in full and the introduction of a statutory Code to regulate how tips should be distributed.
- Introducing a new right for all workers to request a more predictable contract.
- Extending redundancy protections to prevent pregnancy and maternity discrimination.
- Allowing parents to take extended leave for neonatal care
- Introducing an entitlement to one weeks' leave for unpaid carers
- Subject to consultation, making flexible working the default unless employers have good reason not to.

Employment Bill.

Neonatal Leave - two new rights:

Right to Leave

Day one right for employees where a neonate (child which is 28 days old or younger) is admitted to hospital for care for a continuous period of seven days or more.

Right to Pay

Right to statutory neonatal pay where the employee meets service and minimum earnings criteria (expected to be 26 weeks and Lower Earnings Limit which is currently £120 per week).

Employment Bill.

Carers' Leave

- Government's response to consultation published in September 2021 confirmed a right to one week's unpaid carers' leave each year
- New right will be a day one right for all employees
- Relationship will be similar to the definition of a dependent - a spouse, civil partner, child, parent, a person who lives in the same household as the employee (other than by reason of them being their employee, tenant, lodger, or boarder) or a person who reasonably relies on the employee for care
- The right depends on the person being cared for having a long-term care need defined as a long-term illness or injury (physical or mental), a disability as defined under the Equality Act 2010, or issues related to old age.

Employment Bill.

Carers' Leave

- Leave can be taken by day or even half days
- Notice requirement – double the length of leave requested plus one day
- Limited scope for employers to postpone (but not deny) the leave where “the operation of their business would be unduly disrupted” by serving a counter-notice
- When will it be reasonable to postpone?
- What evidence will the employee have to produce?



The Flexible Working Bill.

- Was put to Parliament at the end of 2021 following a consultation into the current flexible working requirements.
- Seeking views on making the Right to Request Flexible Working a day one right for all employees.
- Flexible working includes working from home, reducing work hours, compressing work hours or changing work hours.



Flexible working – watch this space.

Currently:

- At the moment employees must have been employed for 26 weeks before they can request flexible working
- Employers must respond within three months of receiving a request
- Employees can only make one request per 12-month period
- It is 'fairly easy' for employers to refuse a request if they have a business case for doing so.

What would change?

- Employees will have the right to request flexible working from **day one** of employment
- Likely that employers will have to respond more quickly than the current 3-month legal limit
- Likely to scrap the one request per year rule.
- Employers will have to explain and demonstrate why a request was refused

Managing requests fairly.

- Requests must always be considered fairly
 - ✓ Hold a meeting to discuss it
 - ✓ Deal with requests in the order that you received them
- You can turn down a flexible working request if you have a genuine business case for doing so
- If you decide to reject an employee's request, you must allow them the right to appeal.

8 'fair' reasons for refusal:

- The burden of additional costs
- The detrimental effect on the employer's ability to meet customer demand
- An inability to re-organise work amongst existing staff
- An inability to recruit additional staff
- A detrimental impact on quality
- A detrimental impact on performance
- An insufficiency of work during the periods the employee proposes to work
- Planned structural changes.

Changes to Right to Work checks.

Updated guidance for employers on conducting Right to Work checks

You could face criminal and civil penalties

Criminal offence – Up to five years in prison and/or an unlimited fine

Civil offence – Fines of up to £20,000 per illegal worker



- List A

- No restrictions on individual's permission to be in the UK
- Includes documents such as UK passport or biometric residence permit.



- List B

- Restrictions on individual's permission to be in the UK
- Follow up right to work checks must be undertaken

Equality Act reforms.

What changes can we expect to see?

- Reinstatement of the employer's duty to prevent third-party harassment
- Introduction of a duty on employers to prevent sexual harassment – potentially holding employers to account for failing to take reasonable steps to prevent this, even if an incident has not occurred
- Aim is to get employers to prioritise prevention
- Consideration of an extension of the time limit for bringing an Equality Act based claim from three months to six months.

Equality Act – statutory defence.

Under s109(4) Equality Act, employers can successfully defend claims for unlawful discrimination if they can show that they have taken “all reasonable steps” to prevent the discriminatory acts occurring. **What does this look like?**



Further changes.

- **New statutory code to prevent 'fire and rehire' practices**
 - Following the case of P&O Ferries, who illegally terminated the contract of over 800 employees, a new statutory code was announced.
 - The new code aims to clamp down on employers who fire their employees and rehire them on a contract that has less benefits than their original terms and conditions
 - The new Statutory Code of Practice will include the practical steps employers should follow before considering a 'fire and rehire' tactic.
- **Wider ban on exclusivity clause**
 - In 2015, exclusivity clauses were banned for zero-hour workers, so they were able to take on other jobs and generate more income.
 - This ban is due to be widened to allow the country's lowest-paid workers to take on other jobs should they choose to, giving them more flexibility on when and where they work.
 - The new ban will apply to workers whose guaranteed weekly income is £123 or less and forms part of the government's wider plan to tackle the current cost-of-living crisis.

Pimlico Plumbers.

New Court of Appeal decision on back-dated holiday pay claims for the 'self-employed'

- Background to the case
- Distinction between self-employed, employee and worker
- How has the Court of Appeal judgement changed the law?

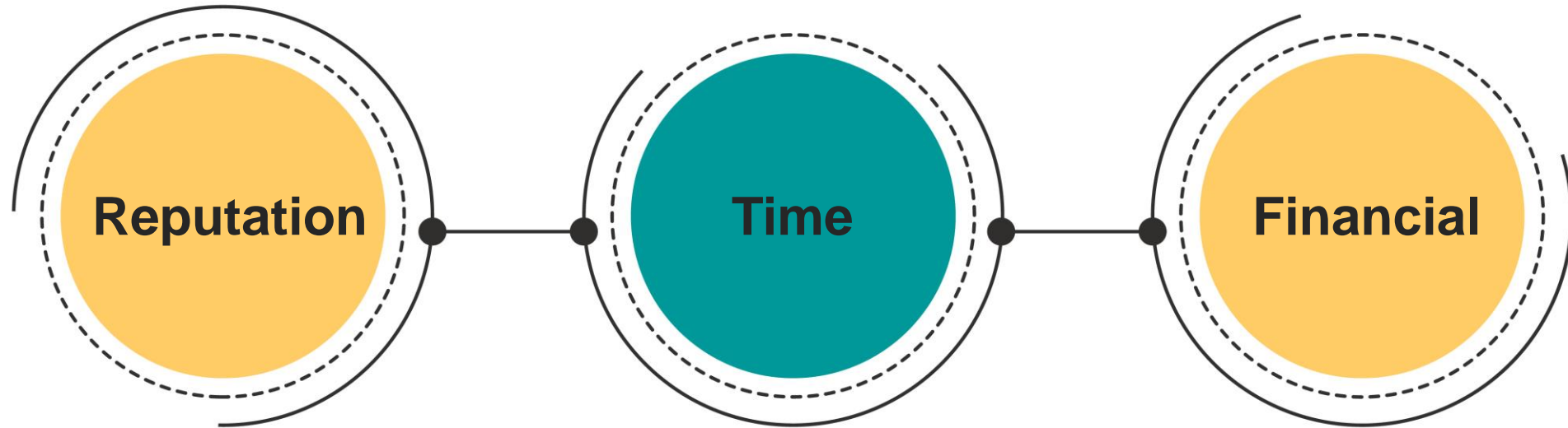


**Who will
this affect?**

The importance of robust HR foundations.



HR – three key reasons to get it right.

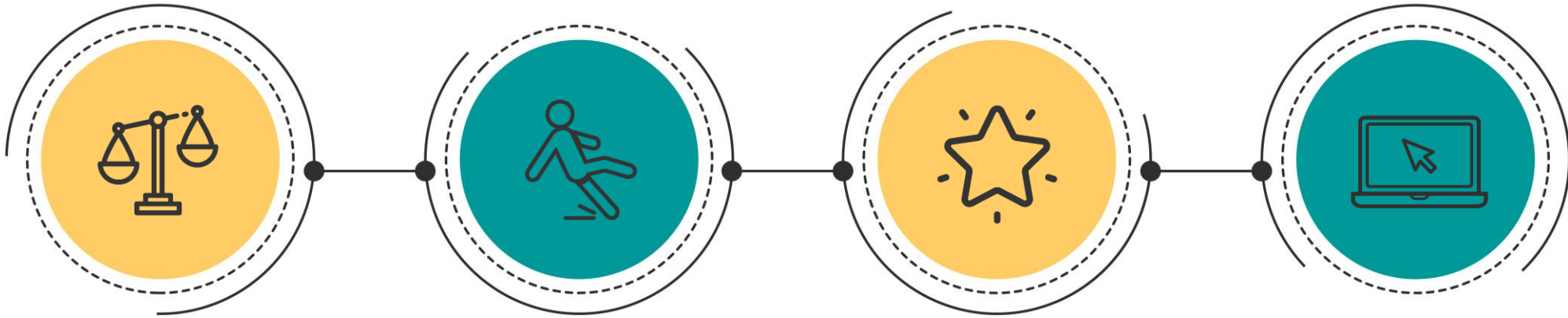




Questions.



Why Citation?



HR & Employment Law

Financial protection & bespoke packages to suit your business

- ✓ The Citation Advice Guarantee
- ✓ Bespoke, tailored contracts & handbooks
 - ✓ Template policies
- ✓ Regular reviews & updates
 - ✓ Consultant visits

Health & Safety

Packages to suit various business sectors, size & needs

- ✓ Assistance obtaining certifications & accreditations
- ✓ Site audits and inspections
- ✓ On and off-site training days
- ✓ Over 1,600 template risk assessments and policies - general and sector specific

Our partnership

Unlimited, 24/7 access to our advice line & crisis management services

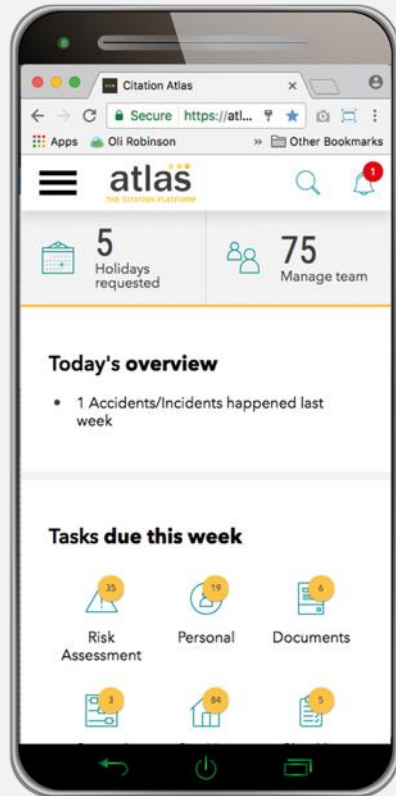
- ✓ Daily support
- ✓ Employee Assistance Programme
- ✓ Informative webinars
- ✓ Legislation updates
- ✓ Referral scheme

Technology

Full access to our bespoke management platform ATLAS

- ✓ Unlimited eLearning usage
- ✓ Up to date, interactive and sector specific courses
 - ✓ Absence and holiday management
- ✓ Risk assessment & COSHH library and document centre.

What Atlas can do for you.



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- ✓ **You'll be eight times less** likely to be faced with a tribunal claim
- ✓ **Seven times less** likely to suffer a major injury in the workplace
- ✓ **30% less likely** to have a reportable accident at work
- ✓ **47 x times** less likely to receive an enforcement notice versus UK/national average

85% of clients agreed by partnering with Citation they are building a safer, happier and more productive workplace.



"Highly recommended and great value. Thorough and very professional, the team is extremely experienced in their fields."

Stanley Baughan, Phillips Tyres Ltd

Speak to our experts.

If you'd like to request a 1:1 meeting with one of our experts to discuss how Citation can support your business let us know in the chat function





Thank you!

Citation

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Updated 10 October 2022.

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ENERGY GENERATION

18TH OCTOBER



8TH NOVEMBER

THE ENERGY MARKET AND IMPACTS ON
COLD CHAIN

10TH NOVEMBER

TRANSFORMING THE ENERGY SYSTEM &
MAXIMISING THE OPPORTUNITY FROM
RENEWABLES

11TH NOVEMBER

LAUNCH EVENT – ENERGY
BENCHMARKING TOOL FOR COLD STORAGE
SPECIAL ANNOUNCEMENT

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