

The key employment law changes to watch out for in 2025

Employment law never stops and 2025 looks to be no exception. While all eyes are on the Government's flagship Employment Rights Bill, employers should take note of a number of other developments happening this year. In this briefing, we round up the key pieces of legislation, consultations, calls for evidence, reviews and guidance to look out for, and we also highlight some of the most interesting case law decisions expected this year.

New legislation

- **The Employment Rights Bill (the ERB):** the ERB is the key piece of employment law expected to come into force this year and will make wide-ranging changes to employment law. Some of the key changes in the ERB include making unfair dismissal a Day 1 employment right, diluting the threshold at which consultation on collective redundancies is met, clamping down on the use of fire and rehire practices, introducing employer's liability for third-party harassment of workers, requiring large employers to publish equality action plans, making it harder for employers to reject flexible working requests, expanding family leave rights and increasing the time limit to bring an Employment Tribunal claim from three to six months. You can read our full analysis of the ERB [here](#) and catch up with our recent webinar on what the ERB means for employers [here](#). The

Bill is currently on its passage through Parliament and is expected to pass into law this year, however, secondary legislation will still be required to bring many of the changes into force.

- **Equality (Race and Disability) Bill:** this Bill will introduce ethnicity and disability pay gap reporting for employers with 250 or more staff, which will be along similar lines to the existing gender pay gap reporting regime. The Bill will also introduce a right for workers to bring equal pay claims on the basis of race or disability, rather than just sex as is currently the case. It will also strengthen the law on equal pay more generally by permitting comparisons with outsourced workers and creating a new regulatory and enforcement unit for equal pay law. A draft Bill is expected to be published in this Parliamentary session for pre-legislative scrutiny and a public consultation on the proposals will begin in due course.

- **Neonatal Care (Leave and Pay) Act 2023:** this Act passed into law in 2023 (under the Conservative Government), with the intention that it would come into force in April 2025. The Labour Government has since confirmed that it will come into force on 6 April 2025. The Act will provide employees with a Day 1 right to take leave where they are the parent of a baby, aged up to 28 days' old, who needs to spend at least a week in neonatal

care. Employees will be able to take up to 12 weeks' leave and this will be on top of any other leave they may be entitled to, such as maternity or paternity leave or annual leave. Employees who have at least 26 weeks' continuous service (and meet a minimum earnings threshold) will also be entitled to receive statutory neonatal pay. Employees will have a right to return to work and will be protected from detriment and dismissal as a result of taking, or seeking to take, the leave. The precise scope and mechanics of the new rights will be set out in seven new sets of regulations, which are yet to be published.

- **Paternity Leave (Bereavement) Act 2024:** this Act passed into law in 2024 (under the Conservative Government), with the intention that it would come into force in April 2025. The Labour Government has confirmed that it intends to pass the regulations needed to bring the Act into force. The Act will remove the usual 26-week minimum service requirement for fathers and partners to take paternity leave where the mother of a child dies shortly after the child's birth (or the adoptive parent or intended parent in a surrogacy arrangement dies). This would make paternity leave a Day 1 employment right in these circumstances (note that under the ERB the plan is to make paternity leave a Day 1 right for all). Separately, regulations may extend the amount of paternity leave available in such circumstances, potentially up to 52 weeks. It is not yet clear how much of this leave would be paid – will it be just the two weeks' statutory paternity pay as now, or will it mirror statutory maternity and adoption pay and be

available for up to 39 weeks? Further, regulations may provide that if the child also dies (or is returned after adoption), the father or partner will be entitled to stay on paternity leave for a period of time. Regulations may also provide enhanced redundancy protection to bereaved employees when they return from paternity leave and allow them to work on “keeping-in-touch” days during their paternity leave. The regulations are yet to be published and it is not known whether the rights will come into force in April 2025, or later in the year.

- **Private Members’ Bills 2024-25:** several employment-related Private Members’ Bills sponsored by different MPs are currently on their passage through Parliament. Although not impossible, Private Members’ Bills are less likely to pass into law. The Bills of most interest are:

- the **Bullying and Respect at Work Bill:** this Bill would introduce a legal definition of “bullying” and allow employees to bring bullying claims in the Employment Tribunal. It would also introduce a “Respect at Work Code” which would set minimum standards for positive and respectful work environments and give powers to the Equalities and Human Rights Commission to investigate workplaces and take enforcement action. The Bill has its next reading on 20 June 2025.

- the **Domestic Abuse (Safe Leave) Bill:** this Bill would introduce a right for employees who are

victims of domestic abuse to take up to 10 days' paid "safe leave" from work. The Bill has its next reading on 20 June 2025.

- the **Health and Safety at Work Act 1974 (Amendment) Bill**: this Bill would amend the Health and Safety at Work Act 1974 to require employers to take proactive steps to prevent violence and harassment in the workplace, including providing relevant training to staff. The Bill would also require the Health and Safety Executive to publish a framework on violence and harassment in the workplace and publish guidance for employers. The Bill has its next reading on 7 March 2025.
- the **Office of the Whistleblower Bill**: this Bill would establish an independent "Office of the Whistleblower" to protect whistleblowers. It would set, monitor and enforce standards for the management of whistleblowing cases, provide disclosure and advice services, direct whistleblowing investigations and order redress of detriment suffered by whistleblowers. The Bill has its next reading on 25 April 2025.
- the **Public Sector Exit Payments (Limitation) Bill**: this Bill would limit exit payments made by some public sector organisations to employees. The Bill has its next reading on 13 June 2025.

Government consultations, calls for evidence, reviews and

guidance

- **Right to disconnect:** the Government has committed to introduce a new statutory Code of Practice which will provide statutory guidance on the ability for workers to disconnect outside normal working hours. However, it does not appear that a statutory right to disconnect will be introduced. We can expect a public consultation on the draft Code before it comes into force.

- **Regulating employee surveillance:** a consultation on workplace surveillance technologies has been promised.

- **Introducing a single worker status:** a consultation on introducing a single worker status has been promised. This consultation will also look at ways to improve protections for the self-employed.

- **Improving TUPE rights and protections:** a call for evidence will be launched to examine a *“wide variety of issues”*.

- **Banning unpaid internships:** a call for evidence is expected imminently.

- **Parental leave framework:** a review of all parental leave rights will be undertaken. In particular, we can expect to see the shared parental leave regime come under scrutiny given the low uptake rates. Ahead of that review, the cross party Women and Equalities Select Committee has recently opened a [Call for Evidence](#) seeking views on shared parental leave system. This closes on 7 February 2025.

- **Carer's leave:** a review of the carer's leave regime will be undertaken. In particular, consideration will be given to introducing a right to paid leave.

- **Health and safety law and guidance:** a review of the framework will be conducted "*in due course*". Among other things, the review will consider neurodiversity, extreme temperatures and Long Covid.

- **Menopause guidance:** one of the ERB's provisions is to require employers with 250 or more employees to publish equality actions plans covering, amongst other things, the steps being taken to support those going through the menopause. In addition, the Government has said it will publish non-binding guidance for all employers on menopause in the workplace. It is not yet known when this will be published. We expect that the new guidance will be along similar lines to that already published by [Acas](#) and the [Equality and Human Rights Commission](#), both of which summarise the legal position briefly, explain how managers should approach conversations about menopause and address possible adjustments that employers can make to support affected staff.

Key cases

Belief and freedom of expression

- **Higgs v Farmor's School:** an employee of a school was dismissed after she made Facebook posts objecting to the Government's consultation on relationship and sex education in primary schools. She claimed she had been discriminated against because of her religion or belief. An Employment Tribunal held that the dismissal not discriminatory. She was dismissed because of the nature of her Facebook posts which may have created the impression that she was homophobic and transphobic. On

appeal, the EAT held that the Facebook posts were, in fact, a manifestation of her beliefs, meaning that the Tribunal should have probed the reason for the dismissal further. Was it because of, or related to, her protected beliefs (which would be unlawful)? Or was it because of the manifestation of her beliefs was objectionable (which could potentially be lawful). If the latter, the Tribunal would then need to assess whether dismissal was a proportionate response to any such objectionable behaviour. The EAT went on to set down some guidelines for conducting such an assessment and remitted the case to the Tribunal. However, this decision was appealed, and the Court of Appeal's decision is awaited. This decision is important as it will set a precedent in future cases concerning the manifestation of protected beliefs at work and when sanctions are lawful.

- **Ngole v Touchstone Leeds:** an employer who provided services to the LGBTQ community withdrew a job offer from a candidate after it was discovered that he had posted negative views about homosexuality on Facebook. After withdrawing the offer, the employer invited him for a second interview to explain his position and offer reassurances, however, they did not go on to reinstate the job offer. The Employment Tribunal held that the withdrawal of the job offer amounted to direct discrimination as it was not a proportionate response. Instead, the employer should have invited him to discuss the matter first and, if not reassured, it could then have withdrawn the job offer lawfully. The employer appealed to the EAT and its decision is awaited. This

is another important decision which will consider the proportionality of an employer's response to what it considers to be an objectionable manifestation of a protected belief.

- **Miller v University of Bristol:** a Professor at a University who held anti-Zionist beliefs was summarily dismissed after complaints were made that he had made anti-Semitic comments in various contexts, including to his students. An Employment Tribunal held the anti-Zionist belief in question qualified as a protected philosophical belief under the Equality Act 2010. The University's own investigation had concluded that his statements were not anti-Semitic, had not incited violence, and had not posed any threat to any person's health or safety. Accordingly, the Tribunal went on to decide that the dismissal was a disproportionate response to the manifestation of his beliefs and a sanction short of dismissal (such as a warning) would have been the appropriate response. The dismissal was held to be directly discriminatory and unfair. The University has appealed to the EAT and the hearing is due to take place later this year.

Whistleblowing protection

- **Sullivan v Isle of Wight Council:** an external job

applicant argued that she was entitled to bring a whistleblowing detriment claim against a prospective employer. The EAT held that she did not qualify as a “worker” for whistleblowing law purposes, nor should the law be interpreted widely so as to give job applicants protection (as may be done, exceptionally, for other groups such as judicial office holders and, potentially, charity trustees). The job applicant appealed, and the Court of Appeal decision is awaited. This is an important decision in determining who has whistleblowing protection.

- **Wicked Vision Ltd v Rice:** an employee brought a whistleblowing claim against the employer, arguing that it was vicariously liable for a detriment (namely, his dismissal) which had been meted out by a co-worker (namely, the owner of the business). The EAT held he could not do so. He could bring a detriment of dismissal claim against the *co-worker* and he could bring an unfair dismissal claim against the *employer*. However, if the employer was vicariously liable for the detriment of dismissal, this would effectively duplicate the unfair dismissal claim and was not permitted under the legislation. In doing so, the EAT took a narrow interpretation of the leading case on this issue – *Timis and Sage v Osipov* – holding that it was only authority for the point that a detriment of dismissal claim could be brought against a co-worker and not on the question of claims based on vicarious liability. Interestingly, a few months later, in *Treadwell v Barton Turns Developments Ltd*, the EAT reached the opposite view. Appeals have been filed in both cases and the Court of

Appeal is due to hear the combined appeal later this year. This will be an important decision in drawing the boundaries of an employer's liability where a whistleblower is dismissed.

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Court of Appeal clarifies when employees “know enough” to bring discrimination claims

In a recent Court of Appeal judgment, an Employment Tribunal was found to have erred in deciding that an employee had all the facts she needed to bring her discrimination claims. This case clarifies that being unaware of a discriminatory motive can justify a late claim.

What happened in this case?

The Claimant lost her job at Barclays soon after returning from maternity leave. She brought sex discrimination proceedings against Barclays. In 2018, she applied for a senior role at HSBC. Early feedback at HSBC was very positive, with managers indicating that they were keen to hire her.

However, by July 2018, HSBC told the Claimant that it would not be offering her the job. At that time, she knew someone at Barclays had given HSBC a bad reference about her. Suspecting that Barclays' negative input was linked to her previous discrimination claims, she pursued further claims against Barclays. She did not bring a claim against HSBC.

Two years later, in 2020, the Claimant received new documents from HSBC following her repeated data subject access requests. These revealed that a senior HSBC manager had, in fact, been told about her earlier sex discrimination proceedings against Barclays and had passed on disparaging comments before the decision not to hire her was finalised. She also learned about potential race-related remarks, including references to "Lebanese connections" which were said to make her hiring more difficult.

Relying on the newly disclosed information, the Claimant brought discrimination and victimisation claims against HSBC in November 2020 and May 2021, over two years out of time. An Employment Tribunal decided that the claims against HSBC could not proceed because of limitation. It concluded that the Claimant's application process ended in July 2018 and that she should have known enough by then to bring her discrimination claims. The Tribunal also treated later events in 2020 as irrelevant, finding that they did not add to the basic facts.

The Claimant appealed successfully to the Employment Appeal Tribunal (the **EAT**). The EAT held that the Tribunal had failed to consider properly whether the Claimant had the relevant knowledge in 2018 to bring a claim against HSBC, as opposed to just suspecting that her ex-employer Barclays was behind it. HSBC appealed to the Court of Appeal.

What was decided?

The Court of Appeal upheld the EAT's ruling and dismissed HSBC's appeal.

The Court of Appeal emphasised that under the standard set out in *Meek v Birmingham District Council*, Tribunals must explain their decisions adequately. It found that the Tribunal had not made the necessary findings about the precise moment that the Claimant had gained enough information to know that HSBC (rather than Barclays) might have discriminated or victimised her.

The Court of Appeal agreed that the EAT was right to criticise the original decision for failing to explain how they had concluded that the Claimant knew enough in July 2018 to pursue a discrimination claim, despite new facts arising in 2020. It emphasised that a Tribunal deciding whether to extend time must carefully consider what a claimant knew, and when, before concluding the claimant had enough information to bring a claim.

The Court of Appeal criticised the Tribunal for failing to address the Claimant's race discrimination claim, which arose from comments about "Lebanese connections" in 2020 and,

therefore, needed its own separate time-limit analysis.

In line with the principle in *Barnes v Metropolitan Police Commissioner*, the Court of Appeal noted that Tribunals should consider both what a claimant suspected and whether any delay in bringing proceedings was reasonable.

As a result, the Court of Appeal remitted the case to a new Tribunal to decide whether it was just and equitable to allow the claims to proceed outside the usual three-month limit.

What does this mean for employers?

This decision highlights the following key points for employers:

- **Understanding the true reason for a decision:** even if a candidate knows that a decision had been made to turn down their application, the ordinary time limit to bring a claim may be extended if they later uncover evidence suggesting a discriminatory or victimising motive.
- **Risk of victimisation claims:** a candidate who has previously raised discrimination complaints remains protected against victimisation – whether from a previous employer or a prospective employer treating them unfavourably as a result of their protected acts.

- **Take a cautious approach to references and subsequent internal discussions:** managers and HR teams must handle references carefully, ensuring no unlawful bias or “protected act” knowledge improperly influences hiring decisions. Feedback should be factual rather than speculative and there ought to be robust protocols in place to avoid unconscious bias.

- **Responding promptly to data subject access requests:** delayed disclosures (or failing to disclose key documents when first asked) can undermine an employer’s arguments that a claim is “too late.” If important new evidence is only provided by an organisation long after the event, a Tribunal is more likely to extend time. Check your DSAR handling procedures to ensure completeness and timeliness.

[HSBC Bank plc v Chevalier-Firescu](#)

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Court of Appeal confirms that cases on breach of directors' duties will be highly fact-sensitive

In the recent case of *Cheshire Estate & Legal Limited (CEL) v Blanchfield & Ors* the Court of Appeal considered the issue of whether two directors were in breach of their statutory and fiduciary duties in preparing to set up a new competitor firm prior to resigning.

What happened in this case?

Mr Blanchfield and Mr Montaldo (the **Directors**) were Directors of CEL, a corporate firm of solicitors. Prior to resigning from their positions, the Directors had taken preparatory steps to set up a new law firm in competition with CEL, including:

- registering a trading name;
- incorporating a corporate vehicle for the new company;
- seeking professional indemnity insurance for the new company;
- applying to the Solicitors Regulation Authority (the **SRA**) to register the company;

- setting up a website;
- opening a bank account; and
- entering discussions with litigation funders, including one with whom the Directors had previously negotiated with on behalf of CEL (albeit those negotiations had failed with CEL entering into an exclusive deal with another funder).

Upon discovering this, CEL applied for an interim injunction. This was granted pending an expedited trial of the issues. At that trial, the judge found that the Directors' preparatory steps had not "crossed the line" or put them in a position of conflict so as to breach their fiduciary duties, and that there was no conspiracy between them or intention to injure the firm. CEL appealed to the Court of Appeal.

What was decided?

The appeal judge considered the case law in this area, which suggested that a director should resign as soon as his intention to compete becomes irrevocable. The judge concluded that this was too prescriptive. Instead, the court needed to consider whether preparatory steps, short of active competition, are consistent with a director's fiduciary duty to the company. This would be highly fact-sensitive in every case.

The judge described a spectrum with at the one end, discussing an intention to compete with friends and family (clearly consistent with a fiduciary duty) and at the other, actively soliciting clients from the company and diverting them to the director's new competing business (clearly inconsistent with a fiduciary duty). The court's role is to map the facts of the particular case onto this spectrum and make a decision accordingly as to whether the director is in breach.

In this case the appeal judge agreed with the trial judge that the Directors' actions had not crossed the line into breach of fiduciary duty. This was because:

- trading of the new company was not expected to start until six months after the Directors resigned;
- the venture was only capable of proceeding after getting clearance from the SRA;
- the Directors resigned four days *after* getting that clearance; and
- in the meantime, they served CEL faithfully and carried out all their duties.

CEL also failed to establish that the Directors' negotiations with the litigation funder were a conflict, as by that point CEL had entered into an exclusive relationship with a different funder and, in any event, the first litigation

funder could have worked with both CEL and the Directors' new company.

What does this mean for employers?

This case does not fundamentally change the law on directors' duties but is potentially unwelcome for employers as it illustrates how surprisingly far directors can go in taking preparatory steps to compete before they are deemed to be in breach of their fiduciary duties.

Given how fact-sensitive these cases are, companies will need to produce comprehensive evidence to persuade a court that there has been a breach and that the company has, or will, suffer loss.

Companies should also consider whether the restrictive covenants in directors' service agreements provide adequate protection against this kind of scenario and ensure these are regularly reviewed so they are relevant to the individuals' positions in the company.

[Cheshire Estate & Legal Limited \(CEL\) v Blanchfield & Ors](#)

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BDBF Webinar – Unlocking the future: what the Employment Rights Bill means for employers – 28 January 2025

In this 1-hour webinar, BDBF Managing Associate [Tom McLaughlin](#) and Principal Knowledge Lawyer [Amanda Steadman](#) discuss the “once-in-a-generation” changes the Employment Rights Bill will bring for UK employers. This webinar was originally delivered on 28 January 2025 and reflects our understanding as of that date. Do get in contact with either of the speakers if you would like to discuss any of the issues raised.

To view the PDF webinar slides please click on the image below, or view the recording of the webinar:



**Unlocking the future: what does the
Employment Rights Bill mean for employers?**

28 January 2025

<https://www.youtube.com/watch?v=dz9obtp5gRQ>

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