Employment law highlights from 2025

In this briefing, we look back at the key developments that took place in this significant year for employment law, reflecting on the most interesting cases and legal changes to be aware of as 2025 draws to a close.

Success at BDBF

This year at BDBF, we celebrated 13 years of excellence and 30 years of expertise and were proud to be the only firm in our category with all six of our partners top ranked by Chambers UK and by Legal 500. We were also featured as one of The Times Best Law Firms 2026 for employment law, as endorsed by our peers, and were honoured to be awarded Senior Executive Team of the Year at the International Employment Lawyer Awards 2025.

Our partners continued to share their expertise far and wide, speaking at a White Paper Conference, the International Forum of Senior Executive Advisers Forum, the ELA Annual Conference 2025, the ABA International Labor and Employment Law Committee Midyear Meeting, and the International Employment Lawyer's Spring European Employment Summit in Paris (to name a few). They were also individually recognised in the Spears Employment Lawyers Index and Lexology Index, and developed groundbreaking case law in cases such as *Lapinski*.

In 2025, we also welcomed new Managing Associate Jamie Barton,

Senior Associate Leigh Janes, Associates Edward Duthie, Esmat Faiz and Knowledge Lawyer Rose Lim. In recognition of their exceptional talent, we also promoted three of our outstanding employment lawyers (Blair Wassman, Theo Nicou and Connie Berry) and welcomed Samantha Prosser to the partnership.

Employment Rights Act 2025

The year has been a whirlwind of legal developments, primarily due to the proposals under the landmark Employment Rights Bill (the **Bill**).

The Bill completed its passage through Parliament on 16 December 2025 and is expected to receive Royal Assent in the coming days, turning the Bill into the Employment Rights Act 2025 (the **Act**). The Act will mean significant changes for day-to-day employment practices and Employment Tribunal claims. The latter will also be impacted by the increase to maximum ACAS early conciliation period from six to twelve weeks, which came into effect on 1 December 2025. Although there had been suggestion that they might do so, the Government has confirmed that they will *not* be reintroducing fees for bringing a case in the Tribunal.

In our October webinar and prior briefings, we covered the major changes expected under the Bill, including extension of Tribunal time limits, restrictions on 'fire and rehire' practices, expanded whistleblowing protections and a new prohibition on non-disclosure agreements for discrimination and harassment.

No doubt the biggest concern for many employers had been the

Bill's promise of 'Day 1' unfair dismissal rights, which would have removed the current two-year time limit for bringing claims altogether. However, the Government dropped this proposal following considerable pushback from the House of Lords. In exchange, claims for unfair dismissal will be available after six months' employment and the cap on the compensation for unfair dismissal will be removed. You can read our article on what the removal of the compensation cap means for employers here.

The first consultations on the proposed new rights were also launched this year. In particular, we looked at the requirements to engage with trade union rights and expanding protections for pregnant women and new mothers, which will impact all employers when they come into force.

Whistleblowing

- **Detriment of dismissal:** In *Rice v Wicked Vision Ltd (Protect Intervening); (2) Barton Turns Developments Ltd v Treadwell*, the Court of Appeal held that they were bound by the case of *Osipov* to conclude that employers can be vicariously liable for the detriment of dismissal (even if they cannot be directly liable). The Court made it clear in their reasoning that they disagreed with *Osipov* but were bound to apply it. Permission to appeal to the Supreme Court has been granted.

- **Innocent decision-makers:** In *Henderson v GCRM Ltd & Ors*,

the Employment Appeal Tribunal (**EAT**) decided that an 'innocent' decision-maker cannot be found personally liable for the detriment of dismissal. They concluded that unlike the way in which a state of mind can be attributed to the employer because of a tainted or manipulated decision-making process, it would not be correct to impute such knowledge in a way that exposes the innocent decision-maker to unlimited liability.

- **Consultants as agents:** In *Handa v Station Hotel (Newcastle) Ltd and others*, the EAT concluded that independent HR consultants could (in theory) be viewed as agents for the employer and liable for detrimental treatment of a whistleblower, if they are contracted to make the decision to dismiss or run a process closely related to the employment relationship.

- **Protection for job applicants:** In *Sullivan v Isle of Wight Council*, the Court of Appeal determined that whistleblowing protection for job applicants remains very limited. Unlike workers or applicants for NHS posts, who are protected by the specific whistleblowing detriment provisions, general job applicants who believe they have made a protected disclosure will not be protected (save for where their treatment amounts to discrimination based on a protected characteristic under the Equality Act 2010).

- **Judicial proceedings immunity:** In *Rogerson v Erhard-Jensen Ontological/Phenomenological Initiative Limited*, the Court of Appeal decided that judicial proceedings immunity did not apply to the initiation of arbitration abroad, and doing so could therefore constitute unlawful whistleblowing detriment. The Court considered that only statements made within litigation are protected (e.g. witness' evidence), rather than the act of commencing proceedings based on a protected disclosure.

For more information regarding planned reform to whistleblowing legislation, please watch our October webinar on the Employment Rights Bill. In December it was also announced that the Government intends to review the UK's whistleblowing framework by the end of 2027.

Sexual Harassment, Equality and Discrimination

- **Beyond the workplace:** In *AB v Grafters Group Ltd*, the EAT found that an employer's liability for sexual harassment may extend to situations where the employee is 'off the clock'. Actions can occur 'in the course of employment' even if they are not on work premises or during working hours, such as at work parties or during work-related travel. For more information regarding planned reform to the duty to prevent sexual harassment, please see our article on how employers can prepare for the changes expected under the Bill.

- **Neurodiversity:** In *Halstead v JD Wetherspoons plc*, the Tribunal assessed the powerful impact of making reasonable adjustments in the workplace for neurodivergent employees, and set out a list of 'exemplary' suggestions for employers to consider. The Tribunal took a dim view of the harsh way in which a 'zero-tolerance' policy had been applied to a colleague whose condition affected his ability to understand its requirements and agreed that his employer had failed to make reasonable adjustments when applying its standard disciplinary procedures. This year also saw new guidance from ACAS on embracing neurodiversity in the workplace, which encourages support, understanding and adjustments to processes. The requirement to make adjustments will, however, have its limits; in *Duncan v Fujitsu Services*, the EAT agreed with the Tribunal that a disabled employee's use of abusive and offensive language remained sufficient grounds to justify dismissal, despite his arguments that his behaviour resulted from neurodiversity.

- **Expressing beliefs:** In our April webinar, we explored the potential for conflicts and legal challenges surrounding controversial topics such as the war in Gaza and LGBTQ+ issues. This year saw the significant decision of *For Women Scotland Ltd v The Scottish Ministers*, which determined that 'sex' in the Equality Act 2010 refers to biological sex only and not to acquired sex or gender under a Gender Recognition Certificate. This area of law continues to generate considerable debate, and both employers and service providers eagerly await the new Code of Practice due to be published by the Equality and Human Rights

Commission. In the meantime, there have been several other significant decisions on trans issues, including:

- The Court of Appeal considered in *Higgs v Farmor's School* that the dismissal of a school pastoral administrator for gender-critical social media posts had been directly discriminatory. The employee's posts were found to have reflected her protected belief, and dismissal had been a disproportionate response in circumstances where the language used had not been grossly offensive or intended to incite hatred.

- In *Lockwood v Cheshire and Wirral NHS Foundation Trust and others*, the Tribunal concluded that a non-binary employee did not have the protected characteristic of gender reassignment under the Equality Act 2010, meaning their harassment complaints regarding incorrect use of pronouns could not succeed.

- In *Kelly v Leonardo UK Limited*, the Tribunal decided that an employer's policy of permitting trans women to access female facilities did not constitute harassment or either direct or indirect

discrimination against female employees, as it did not place them at a significant disadvantage compared to male staff.

- Most recently in *Peggie v Fife Health Board and another*, the Tribunal determined that the employer had unlawfully harassed a female employee by failing to revoke permission, temporarily, for a trans colleague to use women's changing rooms after her complaint (until replacement rotas could take effect) and by taking too long to investigate that complaint, as well as by referencing irrelevant matters and giving inappropriate instructions as to confidentiality. However, the Tribunal dismissed all remaining allegations of discrimination and harassment, noting the careful balancing required between individuals' protected characteristics and human rights.

For our top tips on managing risks associated with expressing beliefs in the workplace, see our guidance note.

- **Pregnancy and maternity:** In our July webinar, we took a closer look at the legal risks in redundancy exercises affecting pregnant employees and those on maternity, adoption or shared parental leave. This year also saw the introduction of new rights to neonatal care leave and pay as well as the Government's 18-month review of

parental leave and pay entitlements, which aims to reconsider the complex legislative framework of family rights. For further information on the rights currently available, take a look at our coverage for National Work Life Week.

- **Equality reforms:** Earlier in 2025, the Government published a call for evidence on proposed equality reforms including changes to equal pay, pay transparency, combined discrimination protection and clarity on sexual harassment at work. In addition, a consultation was launched on mandatory ethnicity and disability pay gap reporting for employers with 250 or more employees. Whilst some equality reforms are reflected in the Bill (see above), the response to these consultations is expected to predominantly shape the new Equality (Race and Disability) Bill.

- **Practicalities of bringing claims:** This year also brought some helpful case law regarding more practical aspects of bringing discrimination (and related) claims. In *HSBC Bank plc v Chevalier-Firescu*, the Court of Appeal clarified that being unaware of a discriminatory motive could mean that it is just and equitable to allow a claim to proceed, even where it is outside of the statutory time limit. Additionally, in *Kokomane v Boots Management Services Ltd*, the EAT confirmed that workers can be protected against victimisation even if they do not expressly refer to having suffered discriminatory

treatment; the key is what the employer can have reasonably understood the worker to mean in the context.

Dismissals and HR practices

- **Importance of proper disciplinary process:** In *Alom v Financial Conduct Authority*, the EAT expressed their concerns over the extent to which HR had framed a pre-prepared disciplinary script that ultimately led to dismissal. Although they found that the employee's dismissal had been fair and non-discriminatory in all the circumstances, the EAT agreed with the submission that this had been inappropriate, particularly where the script seemed to state the decision-maker's opinion as to the nature of the conduct. Additionally, in *Woodhead v WTTV Limited and anor*, the High Court concluded that an employer had breached their duty of care not to expose an employee to a risk of psychiatric injury during an investigation and disciplinary process into allegations against him of sexual harassment. The Court noted significant failings from the employer to take account of the employee's pre-existing conditions, as well as general inadequacy in the process which had caused considerable distress.

- **Constructive dismissal:** In *Kinch v Compassion in World*

Farming, the EAT considered that an employee had not necessarily affirmed her contract by extending her notice period several times. The employer argued that by continuing to work for eight months after her resignation (including two extensions which they said she had requested), pursing a grievance and negotiating sick pay, the employee had clearly not been constructively dismissed and that the claim should be struck out. The EAT disagreed and said that this was not necessarily the case, and remitted the case for a full hearing. Delay in an employee's leaving was also considered in *Barry v Upper Thames Medical Group and others*, where the EAT held that a six-month delay in resigning did not mean the employee had affirmed their contract, in circumstances where she had been seeking to resolve the dispute that eventually led to her departure.

- **Parent company relationships:** In *Fasano v Reckitt Benckiser Group plc and anor*, the Court of Appeal found that an agency relationship did not exist between a parent company and subsidiary, as there was no basis to say that the employing subsidiary had authorised the parent entity to act on its behalf (or otherwise had control). The employee, a senior executive, had missed out on a valuable long-term incentive plan award when the rules were amended by the parent company of his employer, which he said constituted age discrimination. The Court disagreed and said that, even if the agency relationship had existed, the change would not have been discriminatory as it was a proportionate means of achieving the legitimate aim of retaining staff.

- **Competing for talent:** In September 2025, the Competition and Markets Authority published guidance for employers on staff recruitment, pay and other working conditions. This outlined how competition law may apply in the workplace, the potential consequences of anti-competitive practices (e.g. wage-fixing or sharing competitively sensitive information), and guidance as to what may constitute 'risky' behaviour.

- **Sickness absence:** In *Kitching v University Hospitals of Morecambe Bay NHS Foundation Trust*, the Tribunal held that an employee who had been dismissed for 406 days of sickness absence in four years had been discriminated against and unfairly dismissed. The Tribunal considered that the employer had failed to accommodate her disability when applying its absence policies, failed to make reasonable adjustments, and in dismissing the employee had failed to evaluate her current and future capability to work with reasonable adjustments in place.

- **Directors' duties:** In *Cheshire Estate & Legal Limited v Blanchfield & Ors*, the Court of Appeal confirmed that alleged breaches of statutory and fiduciary duties will be highly fact-sensitive. In this case, the Court considered that the directors had not crossed the line into breaching their fiduciary duties by planning to set up a competing firm prior to resigning from their roles,

as they had continued to serve their firm faithfully and had factored in a delay between their resignation and the new firm opening.

- **Be careful what you say:** Several cases this year highlighted the importance of making accurate statements and promises, including during Tribunal proceedings:

  - In *Dixon v GlobalData Plc*, an employer had provided verbal assurances regarding an employee's ability to exercise share options post-termination, and had entered into ambiguous settlement terms which incorporated those assurances. The High Court determined that the employer was bound by these assurances as a result of proprietary estoppel, emphasising the importance of checking share plan rules and exercising caution when drafting any explanations or settlement terms.

  - In *Wainwright v Cennox plc*, the EAT agreed with an employee that she had suffered a repudiatory breach of contract due to misleading statements made by her employer. The employee, who was on sick leave for cancer treatment, was informed that she had been replaced on a temporary basis; in fact, the new

colleague had been appointed permanently, and other alterations had been made to the employee's role and responsibilities. The EAT agreed that providing untrue statements could be a contractual breach and that this should have been addressed by the Tribunal, therefore remitting the case for reconsideration.

- In *Easton v Secretary of State for the Home Department (Border Force)*, the EAT considered that an employer had acted reasonably in dismissing an employee who had omitted details of a prior dismissal and a three-month employment gap on his application form. Particular attention was paid to the fact that the employer had thoroughly investigated the omissions and concluded that the employee had been dishonest in withholding this information.

- In *Commerzbank AG v Ajao*, the High Court found an employee to have been in serious contempt of court for having made false statements of truth and giving false evidence in an Employment Tribunal claim. The employee had pursued a claim against his former employer and several former colleagues, alleging (among other matters) discrimination, sexual harassment (including assault), harassment and victimisation. Following an application by his employer, the High Court found that he had knowingly made false accusations which were designed to, and did, interfere with the administration of justice.

The employee has been sentenced to 20 months' imprisonment and ordered to pay £150,000 towards his employer's legal costs.

- **Legal privilege:** In *Shawcross v SMG Europe Holdings Ltd and others*, the EAT found that the 'iniquity' exception did not apply to emails between the employer and their solicitors prior to dismissal of the employee, and therefore they were subject to legal privilege. The employee, who had been inadvertently copied into such a chain, argued that privilege could not apply where the emails showed her dismissal to be a sham and were evidence of iniquitous conduct. The EAT disagreed, finding that the emails were the sort of advice that employment lawyers would often offer around the risks of dismissal, and they were therefore privileged. The importance of careful handling of privileged materials was also considered in *Sinclair Pharmaceuticals Ltd v Burrell*, where a without notice injunction obtained by the employer regarding the treatment of inadvertently disclosed materials was set aside by the High Court, who considered that the Employment Tribunal was best placed to decide whether (among other things) the documents were disclosable.

- **Non-disclosure agreements (NDAs):** The Victims & Prisoners Act 2024 came into force on 1 October 2025, meaning that NDAs cannot be used to prevent victims of crime from making 'permitted disclosures' (such as to

regulated professionals, victim support services or family members). Shortly afterwards, the Government announced that this Act will be amended in due course to enable victims to speak to anyone for any purpose, including (for instance) the press. These changes sit alongside the planned prohibition under the Bill on NDAs preventing disclosure of discrimination and harassment.

- **Senior Managers & Certification Regime (SMCR):** Over the summer, the Treasury launched a consultation paper looking for views on changing the legal framework underpinning the SMCR to reduce the burden on the financial services sector. The Financial Conduct Authority (**FCA**) and Prudential Regulatory Authority similarly launched consultations on the same date. These consultations closed on 7 October 2025, and firms await the outcome to determine any reforms that will take place.

- **Non-financial misconduct**: In July 2025, the FCA's new rules on non-financial misconduct were published, setting out amendments to their Code of Conduct to empower firms to tackle serious misconduct such as bullying, harassment and violence. These will come into force in September 2026, and from then onwards all SMCR firms will be required to assess whether incidents of non-financial misconduct constitute breaches of the FCA conduct rules.

- **Non-compete clauses:** In November 2025, the Government published a working paper on options for reforming non-compete clauses in employment contracts. This paper, which is due to close on 18 February 2026, considers options such as limiting the length of non-competes on a blanket basis, limiting the length based on company size, banning such clauses altogether (or based on annual salary), or a combination of these suggestions.

- **Redundancy notifications:** From 1 December 2025, the Government moved to a digital-only platform for advance notification of redundancies. The HR1 form, which could previously be submitted by email, must now be completed online.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact

Uncapped unfair dismissal – a game changer for employers

The Employment Rights Bill completed its passage through Parliament on 16 December 2025 and is expected to receive Royal Assent in the coming days. Controversially, the Bill was amended at a late stage to abandon Labour's flagship manifesto pledge to make unfair dismissal a Day 1 right. In its place came a six-month qualifying period and the abolition of the statutory cap on compensation for unfair dismissal. In this briefing we consider the impact of lifting the cap on compensation for employers.

A shift in the types of claims brought

The removal of the cap on compensation for ordinary unfair dismissal means the risk profile of many employment disputes will change dramatically. While unfair dismissal will not become identical to discrimination or whistleblowing claims, the financial exposure could be very similar. For HR, this means more expensive claims, more complex cases, and far greater scrutiny of dismissal decisions.

Claimants may increasingly rely on straightforward unfair dismissal claims rather than bolting on weaker discrimination or whistleblowing allegations. These claims are cheaper, simpler, and will be potentially much more valuable.

Some dismissal scenarios will also take on a new seriousness. Cases involving an employee's personal beliefs or expression,

for example, may involve arguments about freedom of speech under human rights law. With uncapped compensation at stake, tribunals will expect employers to clearly justify any dismissal in these areas. Legal advice is likely to be needed at an early stage.

Higher earners: expect more claims and bigger numbers

Removing the cap opens the door to very substantial awards for employees with high salaries or valuable benefits such as bonuses, LTIPs, share options, carried interest, or final salary pensions. Once tribunals can award full financial loss, the numbers escalate fast – especially if the employee takes time to find a new job.

Expect to see larger and more sophisticated claims for financial loss, regular use of expert evidence and longer and more complex remedy hearings.

Multi-year loss claims on the table

With no cap on future loss, some claimants will push for multi-year or even career-long compensation. These may include:

- Older workers struggling to re-enter the labour market.
- Disabled workers whose prospects are limited (but where the case isn’t a discrimination claim).

- Regulated professionals whose dismissal harms their ability to continue in their profession.

HR teams will need to gather strong evidence on mitigation and future employability to challenge these claims.

Tribunals will come under greater pressure

More complex, higher-value claims will stretch limited tribunal resources even further. HR should expect:

- More prescriptive case management.
- Longer waits for hearings (which, turn, may adversely affect witness evidence).
- Increased use of experts.
- Longer hearings at both liability and remedy stages.

This may affect access to justice for lower-income workers and may also prolong litigation for employers.

Settlement dynamics will change

Without a cap, claimants may feel they have more leverage, and some may push for very high settlements, or refuse to

negotiate at all. Expect higher claimant expectations and tougher negotiations.

Employers will need to rely more heavily on tools like contributory fault, failure to mitigate, and *Polkey* reductions to reduce compensation risk.

Employer behaviour will need to change

Procedural mistakes could become far more costly, meaning that HR teams will need to tighten up dismissal processes significantly. Key changes should include:

- Longer and more strictly monitored probation periods.
- More terminations before the new 6-month qualifying period.
- Greater procedural rigour in performance and conduct cases.
- Much closer attention to the Acas Code (since uplifts could be huge in uncapped cases).

Next steps and final thoughts

As yet, it is unclear exactly when the cap will be removed. Although the Act contains the provision to abolish the cap, separate regulations are needed to bring that provision into effect. Separately, the Government has stated that it intends the new six-month qualifying period to come into force on 1 January 2027, but it has not said whether the compensation cap will be removed at the same time. For now, we think it would be sensible for employers to work on the assumption that it will be removed on 1 January 2027.

When the cap goes, ordinary unfair dismissal stops being a mid-range statutory claim and becomes a major financial threat on par with discrimination and whistleblowing in many cases. For HR, this means more careful planning, more documentation, more robust processes, and more strategic decision-making from the very start of any dismissal. This is the biggest shift in dismissal risk for employers in decades – HR leaders will need to adapt quickly.

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Non-compete restrictions in

employment contracts under the spotlight once again

On 26 November 2025 the Government published a working paper setting out options for the reform of non-compete clauses in employment contracts.

What is the background to this proposal?

Non-compete restrictions in employment contracts have come under intense scrutiny over the last decade, with repeated calls for restricting their use.

In May 2016, David Cameron's Government launched a Call for Evidence which sought views on whether non-compete clauses stifled innovation and unfairly hindered workers from moving freely between employers. The responses to that consultation were fairly polarised with established businesses favouring the current law but new ones looking for more flexibility. However, further work in this area was ultimately shelved in the wake of the Brexit vote.

Yet it was back on the table again just a few years later. In December 2020, Boris Johnson's Government launched a consultation on proposals for limiting, or potentially even banning, the use of non-compete clauses in employment contracts. The consultation put forward two proposals. The first was that non-competes should only be enforceable where the employer compensated the employee for the length of the restriction, potentially combined with a maximum length of

three, six or 12 months. The second was to ban non-competes altogether. However, the proposals were moth-balled, with no response to the consultation ever published by the Government.

Then in May 2023 Rishi Sunak's Government announced that it intended to legislate to limit the length of non-competes in employment contracts to three months (with no requirement to compensate the employee for the length of the restriction). However, the change of Government in 2024 meant this proposal never made it onto the statute books.

Given the Labour Government's focus on the wide-ranging employment law reforms contained in the Employment Rights Bill, many assumed that non-compete reform was a distant memory. It, therefore, came as a surprise to learn that reform of non-competes, is once again, back on the table. On 26 November 2025, the Government published a Working Paper inviting views on options to reform non-compete clauses in employment contracts.

What is proposed in the Working Paper?

The Government's stated aims in reforming non-competes is to advance the following objectives:

- **Boosting labour market dynamism** by making it easier for workers to move jobs or start their own business.

- **Reducing barriers to recruitment** so that businesses (particularly those scaling-up) can access the talent they need.

- **Promoting competition and innovation** by maximizing opportunities for innovators, experts and entrepreneurs.

- **Protecting workers** so that they do not have to face extended periods of time out of the labour market in their area of expertise.

The Working Paper goes on to set out five possible options for reform of non-compete clauses:

- **Option 1: Introduce a statutory limit on the length of non-compete clauses:** it is said that a statutory limit would protect workers by limiting the time they are unable to work in their area of expertise. However, the Government does not indicate what that statutory limit should be. Although arguments supporting a three-month

limit are acknowledged, the Government expresses concern that it would leave some lower-paid workers facing the prospect of three months out of work in their chosen area. Concern is also expressed that a statutory limit of any sort could be interpreted as an "industry standard" and lead to an assumption that non-competes of that length would be enforceable in *all* cases. The Government underlines that this is not the intention – the existing principles would continue to apply, namely that where the restraint of trade doctrine applied, a clause in restraint of trade will be unenforceable unless the employer can demonstrate it is reasonable.

- **Option 2: Introduce a statutory limit on the length of non-compete clauses according to company size:** as a variation on Option 1, it is suggested that the Government could apply different statutory limits according to company size – with lower limits (e.g. three months) for large companies and higher limits (e.g. six months) for smaller companies. It is said that this approach would aim to promote competition by making it easier for those working in large companies to move to competitors or start a competing business. This would also give smaller organisations an advantage over larger companies in that they could utilise longer non-compete restrictions. On the other hand, the downside of this approach is that it leaves those working in smaller companies, especially those in lower paid sectors, exposed to longer non-competes.

- **Option 3: Ban non-compete clauses:** a more radical suggestion is to ban the use of non-compete clauses in employment contracts altogether. The Working Paper says this would have the dual benefit of supporting worker mobility and boosting labour market dynamism. Further, employers might respond to a ban by offering positive incentives to retain staff (such as increased pay, bonuses or greater flexibility) which would benefit workers further. Alternatively, employers might deploy garden leave as an alternative to non-competes, which would also benefit workers since they would be paid. Concern is expressed about the possibility of employers strengthening their use of other restrictive covenants, and confidentiality and intellectual property clauses. The Government said it would need to ensure that other restrictions were not used in a way that would have a similar effect to a non-compete clause.

- **Option 4: Ban non-compete clauses below a salary threshold:** a more moderate version of Option 3 would be to permit the use of non-competes only where a worker earns over a certain salary threshold. This Working Paper highlights there is international precedent for this approach, for example, the Washington State ban on non-competes for workers earning below approximately £93,000. It is said the impact of the policy would vary depending on the level at which the threshold was set – with a suggestion of aligning it with the additional rate tax threshold of £125,140 being mooted. A partial ban such as this would achieve some of the benefits of an outright ban and provide greater protection to lower paid workers. Yet this proposal has several drawbacks including difficulties in calculating

pay (and the potential for satellite litigation about what should and should not be included in pay calculations) and the risk of creating certain incentives and cliff edges around pay levels that might lead to unintended consequences. It would also leave higher-paid and higher-skilled workers out of scope of the ban.

- **Option 5: Combining a ban below a salary threshold with a statutory limit:** a final option would be to combine Options 1 and 4, namely a ban below a salary threshold, with non-competes up to a maximum of three months allowed for those earning above the threshold. This would eliminate non-competes for lower paid workers while ensuring that non-competes could be deployed for higher paid workers in a limited way.

Finally, the Working Paper highlights that the Government is interested in hearing views and evidence on whether the threat of high legal costs presents obstacles to workers in contesting the enforceability of restrictive covenants. It is also interested in suggestions for how the Government might tackle this issue.

What don’t we know?

There are a number of important points not made clear in the

Working Paper:

- **What is an "employment contract" for these purposes?** Will the proposals apply to contracts of employment only or also to other agreements which are collateral to the employment relationship e.g. shareholders' agreements, long term incentive plans (**LTIP**) or carried interest agreements?In Duarte v Black & Decker Corp EWHC 2720 (QB), the High Court held that restrictive covenants contained in an LTIP agreement separate from the employment contract was no bar to the LTIP agreement being treated as an "individual employment contract" for the purposes of deciding the governing law. It is possible that a similar approach will be taken in the new legislation. The Working Paper is also silent on whether settlement agreements between employer and employee are within scope.

- **Will "workers" be covered?** The Working Paper refers reforming non-competes in "employment contracts", yet in the body of the part it refers in places to "employees" and in other places to "workers". Therefore, it is unclear whether the intention is to capture workers as well as employees. If the proposals do *not* extend to workers then this would mean that longer non-competes could still be used for certain independent contractors or LLP members.

- **Will the law apply to existing employment contracts?** It is not clear whether the proposals would apply retrospectively or only to new contracts. In the event that it applied retrospectively, employers would potentially need to renegotiate non-compete restrictions (depending on which proposals are taken forward). Thought should also be given to strengthening other terms to offset the reduction in the non-compete restriction. For example, notice periods, non-solicit and non-dealing covenants. However, in order to ensure the enforceability of any revised terms some form of "consideration" would need to be given to the employee in return for their agreement.

- **How will the new law work alongside garden leave clauses?** As the Working Paper recognises, the risk is that employers will respond to the loss of non-competes by extending periods of notice in order to place the employee on garden leave and keep them out of the market that way. This would undermine the stated intention of the proposals and so it seems likely that the interplay of garden leave and non-competes will need to be addressed. In our anecdotal experience, employers in some sectors responded to the Federal Trade Commission's (now abandoned) rule banning non-competes by seeking to significantly increase employee's notice periods.

Next steps?

Responses to the Working Paper must be submitted by 18 February 2026. It is said that the responses will inform the Government's engagement with relevant stakeholders before a decision is made about which proposals (if any) are taken forward.

No indication is given about when any such proposals might be implemented but given that a further programme of stakeholder engagement is envisaged before the Government settles on a policy, it seems unlikely that any legislation would come into force in the course of 2026.

Working paper on options for reform of non-compete clauses in employment contracts

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk), Tom McLaughlin (TomMcLaughlin@bdbf.co.uk) or your usual BDBF contact.

LUNCHTIME WEBINAR – From prompt to Tribunal: dealing with AI-drafted employee

grievances and claims

LUNCHTIME WEBINAR – 27 January 2026

It’s no secret that employees are increasingly turning to AI tools to support them in the workplace, whether as an official part of their role or behind the scenes. With this growing popularity, there is a sense that employees’ use of AI should be encouraged as a force for good, increasing productivity and driving better expression and innovation.

However, when things go wrong in the employment relationship, employees’ use of AI tools can quickly turn already tricky situations into minefields for employers to manage.

In our upcoming lunchtime webinar, Senior Associate Leigh Janes and Knowledge Lawyer Rose Lim will look at the perks and pitfalls of employees using AI tools and explore the options available to employers to manage these growing risks.

Our session will cover:

- How employees are using AI to support their job role.
- Common misconceptions surrounding AI.
- What challenges do AI-generated grievances present to employers?
- How should employers deal with AI-generated grievances?
- AI and Employment Tribunal claims.

Date: Tuesday, 27 January 2026

Time: 12.00pm-12.45pm

Click here to register

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From prompt to Tribunal: dealing with AI-drafted employee grievances and claims

BDBF Lunchtime webinar: 27 January 2026

It's no secret that employees are increasingly turning to AI tools to support them in the workplace, whether as an official part of their role or behind the scenes. With this growing popularity, there is a sense that employees' use of AI should be encouraged as a force for good, increasing productivity and driving better expression and innovation.

However, when things go wrong in the employment relationship, employees' use of AI tools can quickly turn already tricky situations into minefields for employers to manage.

In our upcoming lunchtime webinar, **Senior Associate Leigh Janes** and **Knowledge Lawyer Rose Lim** will look at the perks and pitfalls of employees using AI tools and explore the options available to employers to manage these growing risks.

Our session will cover:

- How employees are using AI to support their job role.
- Common misconceptions surrounding AI.
- What challenges do AI-generated grievances present to employers?
- How should employers deal with AI-generated grievances?
- AI and Employment Tribunal claims.

Date: Tuesday, 27 January 2026
Time: 12:00pm - 12:45pm

Please click here to register for the webinar

Newsflash: Government abandons Day 1 unfair dismissal rights in favour of 6-month qualifying period

Following several rounds of debate between the House of Commons and the House of Lords on the Employment Rights Bill (**Bill**), the Government announced in a press release published on Thursday 27 November 2025 that it intends to drop its commitment to giving employees unfair dismissal rights from Day 1.

Instead, the Government has confirmed that they will implement the six-month qualifying period proposed by the House of Lords. The press release also announced that the compensation cap for unfair dismissal will be lifted, and the six-month period will only be able to be varied in future by primary legislation. The Government states that this is now intended to be a "*workable package*".

This move follows considerable pushback from the Lords on the proposal for Day 1 rights in their latest debate on 17 November 2025, in which they expressed concern over the potential impact on employment rates and the Employment Tribunal system.

The question of Day 1 unfair dismissal rights has been a key

sticking point for finalisation of the Bill, and this development therefore brings the Bill significantly closer to being passed. The House of Commons is due to consider the Lords' message on 8 December 2025.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Employers continue to be vicariously liable for "detriment of dismissal" claims brought by employee whistleblowers, for now, at least

The Court of Appeal has ruled that *Timis and Sage v Osipov* binds Employment Tribunals to permit claims brought by employee whistleblowers for the "detriment of dismissal" against co-workers and also against employers on a vicarious liability basis but only on the basis of precedent. They disagreed with the reasoning in *Osipov* and the question may now go to the Supreme Court. For now though this means employees complaining that they have been dismissed for

whistleblowing only have to meet a lower legal threshold to succeed and can sue managers in an individual capacity.

What protections do whistleblowers have in the workplace?

Since 1998, whistleblowers at work have been protected from dismissal (employees only) and detrimental treatment (employees and workers). When the law was first introduced, only detrimental treatment meted out by the employer was covered. Further, if the detrimental treatment in question amounted to a dismissal, an exclusion clause in the law meant that employees (but not workers) could not frame it as a detriment claim. Instead, they had to pursue an unfair dismissal claim.

This was significant not least because the threshold for succeeding in a detriment claim is lower than in a dismissal claim. In other words it was harder for a claimant to complain about being dismissed than otherwise being treated unfavourably for being a whistleblower.

In 2013, detriment protection was expanded to cover detrimental treatment committed by co-workers. This change meant that a co-worker could be personally liable, and the employer could be vicariously liable for the actions of the co-worker (although the employer had a defence if it could show that it had taken "all reasonable steps" to prevent the detrimental treatment). However, the exclusion clause which prevented employees from bringing detriment claims about dismissal was left unchanged.

In 2018, in the landmark case of Timis and Sage v Osipov

(**Osipov**) in which BDBF acted for the successful Claimant, the Court of Appeal considered whether an employee was entitled to bring a whistleblowing detriment claim against a co-worker, where the detriment was the dismissal, and where the compensation sought included loss of earnings flowing from the dismissal. In that case the employee did not claim that the employer was vicariously liable for that detriment because the employer was in administration.

The Court of Appeal, agreeing with the Employment Appeal Tribunal (**EAT**) and the Employment Tribunal, ruled that the purpose of the law was to protect whistleblowers, and, therefore, it was appropriate to construe the exclusion clause in such a way as to provide protection rather than deny it.

The Court said the exclusion clause only prevented employees from bringing direct detriment of dismissal claims against an employer. However, it did *not* prevent detriment of dismissal claims against *co-workers*. Nor did it prevent the employer from being vicariously liable for such a claim (albeit that this was not a live issue before the Court because the employer in that case was insolvent). The Court concluded that if employees were prevented from bringing such claims by the exclusion clause, this would lead to an unsatisfactory situation where workers (e.g. independent contractors or LLP members) could bring such claims, but employees could not and that the employee who was treated badly at work but not dismissed had a lower legal threshold to meet than the employee who had suffered the ultimate form of retaliation: dismissal.

The Court acknowledged that its interpretation did not produce *"a particularly elegant result"* insofar as it meant that a dismissed whistleblower who was an employee could claim the

employer was directly liable for their dismissal under the unfair dismissal provisions and vicariously liable for the detriment of dismissal under the detriment provisions. The inelegance was inherent in the fact that the causation test differs between the two claims (being higher in unfair dismissal claims), as does the possible compensation (with no injury to feelings award available in an unfair dismissal claim). However, the Court said these *"awkwardnesses"* were insufficient to justify a construction that would result in more serious anomalies, and which would be contrary to the underlying policy of the law.

What happened in these cases?

The key facts of Rice v Wicked Vision Ltd (**Rice**) and Barton Turns Developments Ltd v Treadwell (**Treadwell**) are the same. Both claimants were dismissed allegedly after having blown the whistle. Both brought unfair dismissal claims against the employer. As the litigation unfolded, both sought to amend their claims, arguing that they had been subjected to the detriment of dismissal by their co-workers and that their employers were vicariously liable for such detriments. In neither case did the claimants seek to bring the detriment of dismissal claim against the co-workers as individual respondents. The aim of the amendment in each case was presumably to benefit from the lower threshold for liability in detriment claims. In *Rice*, the employer opposed the amendment on the basis that a vicarious liability claim for detriment of dismissal could not proceed where no claim had been made against the co-worker.

Decisions of the Employment Tribunal

In *Rice*, the Tribunal took a wide view of Osipov, holding that it permitted the amendment. It also held that it was *not* necessary for a detriment of dismissal claim to have been brought against a co-worker in order to bring to bring the vicarious liability claim against the employer.

In *Treadwell*, the Tribunal refused the amendment on the basis that the exclusion clause meant that a detriment claim against an employer had to be about something *other than* a dismissal. The Tribunal's view was that the decision in *Osipov* was confined to the potential liability of individuals only and the exclusion clause prevented a claim that the employer was vicariously liable for the detriment of dismissal. As such, the Tribunal took a narrower view of *Osipov* than the Tribunal in *Rice*.

Decisions of the EAT

In *Rice*, the employer appealed to the EAT, again arguing that the claim could not proceed without a concurrent claim against the co-worker. The EAT considered that it was not necessary to bring a detriment claim against the co-worker. However, the EAT overturned the decision of the Tribunal, concluding that the exclusion clause prevented the vicarious liability claim against the employer. Notably, the EAT said it would be odd if Parliament had banned detriment of dismissal claims directly against employers but, at the same time, allowed them to be vicariously liable for the detriment of dismissal by a co-worker, since in virtually every case a dismissal has to be executed by a co-worker. As such, the EAT took a narrow view of *Osipov*, holding that it only determined that detriment of dismissal claims may be brought against co-workers.

In *Treadwell*, the EAT allowed the employee's appeal, taking a wide view of *Osipov* as meaning that detriment of dismissal claims could be brought against co-workers *and* against employers on a vicarious liability basis. It held that the exclusion clause only excluded direct detriment of dismissal claims against employers.

Unsurprisingly, both decisions were appealed to the Court of Appeal, and the appeals were heard together.

What did the Court of Appeal decide?

Delivering a unanimous judgment, the Court of Appeal ruled that *Osipov* was binding authority for the proposition that employers could be vicariously liable for detriment of dismissal claims. Accordingly, the Court ruled that the amendments should have been allowed in both claims. However, the Court reached this decision with a great deal of reluctance, suggesting that a further appeal to the Supreme Court may lie ahead.

The meaning of the exclusion clause

The Court's reluctance was rooted in the fact that it considered the exclusion clause was unambiguous in preventing detriment claims about dismissal. Where a detriment amounts to a dismissal within the meaning of the legislation, the exclusion clause disapplied the *entire* detriment provision, meaning that detriment of dismissal claims are not possible against *anyone*, whether employer or co-worker.

The Court rejected the argument that "dismissal" only covers dismissals by the employer, and that there exists the possibility of a dismissal by a co-worker, which would sit outside the exclusion clause (because it would not be a "dismissal" within the meaning of the legislation). The Court rejected this approach for three reasons:

- First, the Court rejected the argument that the exclusion clause only applied to dismissals by the employer as meaningless because it said a dismissal is *always* the act of the employer – it ends the contract between the employer and employee. Where the employer is a limited company the dismissal can only ever be effected by a co-worker, and the Court did not accept there was a relevant legal distinction between a dismissal by the employer and a dismissal by a co-worker.

- Second, the Court observed that under the vicarious liability provisions anything done by a co-worker is treated as having been done by the employer. The legal effect of this is that the employee is, therefore, dismissed by the employer and, in turn, that act will "amount to a dismissal" within the meaning of the legislation and so the exclusion clause applies.

- Third, the question is not about primary or vicarious liability, the correct question is simply: what does the act amount to? If it amounts to a dismissal then the employer is liable for it and *all* detriment claims about the dismissal are barred, including against a co-worker.

The decision in Osipov

Although it considered the exclusion clause was abundantly clear, the Court had to grapple with the decision in *Osipov*, which had permitted detriment of dismissal claims. The Court disagreed with the decision in *Osipov* for several reasons including:

- It ignored the clear and unambiguous statutory wording and improperly downplayed the statutory text in favour of a perceived purpose.
- It wrongly assumed that Parliament or the draftsman made mistakes.
- It misconstrued the statutory purpose and ignored the fact that Parliament deliberately chose to have distinct remedial schemes for employees and workers.
- It wrongly treated dismissal by a co-worker as distinct from dismissal by an employer.
- Its conclusion that the exclusion clause only barred direct detriment of dismissal claims against an employer because the "identical remedy" of unfair dismissal was available was fundamentally flawed.

However, the Court said that, despite its own construction of the legislation, it was bound by the decision in *Osipov*. Importantly, it concluded that *Osipov* had ruled that detriment of dismissal claims are permissible against co-workers and that employers may be vicariously liability for such claims (thus taking a wide view of the decision unlike the Tribunal in *Treadwell* or the EAT in *Rice*). The Court said it was bound by the doctrine of precedent to give the same interpretation to the exclusion clause as was given in *Osipov*, even though the context in the present cases was slightly different.

Accordingly, despite the Court's own view of the meaning of the law, it ruled that the exclusion clause did not prevent detriment of dismissal claims against the employer on a vicarious liability basis. Therefore, the employees succeeded, and their claims were allowed to proceed.

The Court observed that it was "plainly unsatisfactory" that the construction of the legislation had produced conflicting decisions at three levels of court, but noted that this could only be resolved by the Supreme Court or through a change to the legislation.

What does this decision mean for whistleblowers and employers?

This decision underlines the impact and importance of *Osipov*, for now at least. It continues to bind Tribunals to permit detriment of dismissal claims against co-workers *and* against employers on a vicarious liability basis. The exclusion clause does not bite to prevent either type of claim. Further, as the Court identified in this case, no concurrent claim against a co-worker is needed in order to bring a vicarious liability claim.

Of course, the Court of Appeal has fired a warning shot about the validity of the decision in *Osipov*. In light of the Court's profound misgivings about *Osipov*, it seems likely that permission to appeal to the Supreme Court would be given if sought. Whether there will be a further appeal remains to be seen (and it should be noted that Wicked Vision Ltd is currently in administration). However, even if there is no further appeal in this case, it seems inevitable that the point will arise in another case in due course. And when it does, there is a good chance that we will see a "leapfrog appeal" from the EAT to the Supreme Court, given that the remedies available to whistleblowers is a matter of general public importance.

In the meantime, it is business as usual for whistleblowers and employers. Employees who are dismissed for having blown the whistle should continue to bring unfair dismissal claims against their employer and should always explore the possibility of detriment of dismissal claims as well, pleading them where appropriate.

Employers wishing to avoid vicarious liability for such claims should take all reasonable steps to prevent such detriment. In practice, this will mean taking steps to ensure that anyone involved in the dismissal of a whistleblower is not materially influenced by the whistleblowing (essentially, the causation test in detriment claims). Codes of conduct should set out the standards expected from managers and emphasise the importance of honest and ethical behaviour in all dealings, and the consequences of failure. Ideally, a programme of whistleblowing training should support and reinforce this. In some sectors, relevant training may be mandatory. For example, the FCA requires financial services firms to provide tailored whistleblowing training to various stakeholders, including managers, which should explain that victimisation of

whistleblowers is prohibited.

(1) Rice v Wicked Vision Ltd (Protect Intervening); (2) Barton Turns Developments Ltd v Treadwell

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Employment Rights Bill: First Consultations Launched on Trade Union Rights

On 23 October 2025, the UK Government launched the first of their consultations on the new rights set out in the Employment Rights Bill (Bill), which is expected to be passed into law imminently.

The Bill provides the framework for numerous changes to employment law but much of the substance of the new rights will be set out in regulations. As promised earlier this year, the Government has now published a series of consultations to help shape those regulations and determine exactly how the Bill's provisions will be implemented.

Below we will briefly cover two of the consultations which look at changes to trade union rights, each of which is due to close on 18 December 2025. These changes are vital for all employers to understand as, even if their workforce is not currently unionised, they will nevertheless be impacted by the new duties.

Duty to Notify

The Bill introduces a new duty on employers to give their employees a written statement of their right to join a trade union from October 2026. The consultation paper is said to be aimed at ensuring the duty is effective, proportionate and workable for workers and employers.

The key questions considered as part of the consultation are:

- **Content:** What information needs to be included in the statement, and whether the statement should be drafted by the employer (in line with any minimum content requirements) or be based on a government standard.
- **Manner:** Whether information needs to be given directly or indirectly, and whether this should be different for new workers compared to existing workers.
- **Timing:** How often the information needs to be given, and whether this standard should be the same for all organisations regardless of sector or size.

Right of Access

The Bill sets out that trade unions will have a new right to access workplaces and engage with workers for the purpose of meeting, recruiting, supporting, representing or organising them, as well as for facilitating collective bargaining. This is expected to take effect in October 2026.

Access for these purposes means both physical access and digital communications.

Under the Bill's framework, unions and employers are expected to work together to voluntarily agree access arrangements, which will then be recorded by the Central Arbitration Committee (**CAC**). Where they are unable to agree, either the union or the employer can make a referral to the CAC to determine whether (and how) access should be granted. The CAC will also have the power to enforce agreements in line with the five 'access principles' set out in the Bill, with the ability to issue fines for non-compliance.

The substantive questions asked by the consultation are as follows:

- How access requests need to be made, including whether they should follow a standard government template (provided via a new Code of Practice on Trade Union

Right of Access), and the level of information that must be included in the request and employer's response.

- How notification should be made to the CAC of successful agreements and any variations.

- The appropriate length of response and negotiation periods, and the maximum duration of an access agreement. The government proposes a relatively short initial 5 working day period for the employer to respond to a union's request, a 15 working day period to negotiate, and a maximum of 25 days from the request for a referral to be made to the CAC. The latter requirement is said to be aimed to ensure that employers are not left in a position of uncertainty about whether a referral will be made. Once an agreement is in place, the government proposes a maximum duration of two years.

- Whether small employers with fewer than 21 workers should be exempt.

- What factors the CAC will consider when assessing a request, with the government proposing that requests are likely to be unreasonable if there is already a recognised union, it would use a disproportionate level of resource, or if it would give the employer less than 5 working days to prepare. For the terms of agreements, the government suggests that weekly access may be reasonable, with a minimum of two working days' notice required.

Views are also being sought on the proposed £75,000 maximum

standard cap on fines from the CAC, with a higher amount of £150,000 for repeated breaches, as well as the factors that the CAC should consider when assessing the fine.

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Employment Rights Bill: Consultation on expanding protection from dismissal for pregnant women and new mothers

Last month, the Government opened a consultation on enhancing protection from dismissal for pregnant women and new mothers during a protected period. At its most restrictive, the proposed protection would ban capability and SOSR dismissals altogether, permit redundancy dismissals only where a business is closing and allow conduct or illegality dismissals in very limited circumstances.

What is the current legal position and what did the Employment Rights Bill propose?

In the UK, there is already extensive protection from dismissal for pregnant women, new mothers and other parents. It is unlawful to:

- treat an employee unfavourably because of her pregnancy or maternity leave during the “protected period” (which begins when a woman becomes pregnant and ends when she returns from maternity leave);

- treat an employee less favourably than a male comparator for reasons to do with her pregnancy or maternity leave outside the protected period;

- dismiss an employee for a reason connected to her pregnancy or maternity leave (or to certain types of other family leave including adoption, shared parental and neonatal care leave);

- make an employee redundant during pregnancy or maternity leave (or adoption leave, shared parental leave or neonatal care leave) where there is a suitable alternative vacancy available; or

- make an employee redundant who has recently returned to work from a period of maternity leave (or adoption leave, shared parental leave or neonatal care leave) where there is a suitable alternative vacancy available.

Despite this wide protection, the Government is concerned that pregnant women and new mothers remain especially vulnerable to mistreatment and dismissal. This is supported by a 2016 report from the Equality and Human Rights Commission which indicated that up to 54,000 mothers leave their jobs each year, including approximately 4,100 dismissals.

Accordingly, the Employment Rights Bill (the **Bill**) (currently on its passage through Parliament) provided that regulations would be introduced to allow enhanced protection from dismissal during pregnancy, maternity leave and following the return from maternity leave. This would mean that such employees could not be fairly dismissed at all, save where the law allowed for an exception. The Bill does not specify how long the protection would apply following the return from leave, however, the Government has said it should be at least six months.

The Bill also proposed extending the enhanced protection to those returning from certain other forms of extended family leave, namely, adoption leave, shared parental leave, neonatal care leave and bereaved partner's paternity leave (the latter of which is not yet in force).

What does the consultation paper propose?

On 23 October 2025, the Government published a consultation paper entitled *"Enhanced dismissal protections for pregnant women and new mothers",* seeking views on how the enhanced dismissal protection should work in practice. The Government says it wishes to strike a fair balance between strengthening the protection for employees and preserving the ability to dismiss *"…in cases where continuing employment would have serious consequences for the employer or other staff".* It is also concerned to avoid unintended consequences, such as employers becoming hesitant to hire women of child-bearing age if the protections are overly restrictive.

The consultation proposes two broad options:

- **Option 1 – Introduce a stricter fairness test:** one option is to introduce a stricter test to assess the fairness of such dismissals for any of the existing five fair reasons for dismissal (i.e. conduct, capability, redundancy, illegality or some other substantial reason (**SOSR**)).

- **Option 2 – Narrow the five fair reasons for dismissal:** an alternative option is to narrow the existing five fair reasons for dismissal (and/or potentially remove some of them entirely) when applied to pregnant women or new mothers. The proposals to narrow down the scope of each reason are as follows:

- **Conduct:** the options put forward range from permitting conduct dismissals only where the employee commits gross misconduct (as defined by the employer), to allowing dismissal only for a much narrower band of serious misconduct where continuing employment would either (i) pose a health and safety risk to a third party, (ii) have a serious negative impact on the wellbeing of others, or (iii) cause significant harm to the business.

- **Capability (covering both performance and ill-heath):** again, various options are put forward, ranging from permitting capability dismissals only if there is no suitable alternative role available (or where one was offered and refused), to allowing dismissal only for a much narrower band of incapability where continuing employment would either (i) pose a health and safety risk to a third party, (ii) have a serious negative impact on the wellbeing of others, or (iii) seriously harm the business. An even more restrictive proposal of banning capability dismissals altogether is also given.

- **Redundancy:** two options are proposed. First, permitting redundancy dismissals only where there is no suitable alternative vacancy available and where termination would mitigate any financial difficulties that were affecting (or likely to affect in the immediate future) the employer’s ability to continue the business. The

second and more restrictive option is to permit redundancy dismissals only where the business ceases to exist (and where any suitable alternative vacancy that is available has been offered).

- **Illegality:** only one possible change is put forward: to allow dismissal for illegality only if there is no suitable alternative role available (or where one was offered and refused).

- **SOSR:** various options are put forward, ranging from permitting SOSR dismissals only where there is no suitable alternative role available (or where one was offered and refused), to allowing SOSR dismissals only for a much narrower band of dismissals where continuing employment would either (i) pose a health and safety risk to a third party, (ii) have a serious negative impact on the wellbeing of others, or (iii) seriously harm the business. An even more restrictive proposal of banning SOSR dismissals altogether is given.

Additionally, in each of the above cases, the option of either making no changes to the law, or of making some other type of unspecified change are given (and in the latter case, the respondent is asked to set out what change they think should

be made).

When should the protection start and end?

The existing dismissal protections for pregnant women and new mothers are all “Day 1” employment rights. The consultation paper asks whether an employee should also be entitled to benefit from the proposed enhanced protections from Day 1 of employment. Set against that, it is acknowledged that this could require an employer to retain and pay an employee throughout pregnancy, maternity leave and for at least six months thereafter, and that this might be considered an unreasonable burden on employers especially in respect of new employees who may not have demonstrated their capability for the role. Therefore, the consultation gives the alternative option of only affording these rights to women who have completed a qualifying period of employment of somewhere between three to nine months. It is said that such a qualifying period could help to mitigate unintended consequences, such as reluctance to hire women of childbearing age.

In terms of when the enhanced protection should end, the consultation paper proposes either 18 months from the birth of the child (which has the benefit of aligning with the redundancy priority rules) or six months after the return to work from maternity leave, whenever that is. The first option would mean that all new mothers would have an 18-month window of protection – regardless of when they returned to work. The second option would mean that women taking less than 12 months maternity leave would have a shorter overall window of protection. However, it would be simpler for employers to navigate, since they would know that all returners have six months protection after their return from maternity leave. No

individual calculations would be needed.

Should the enhanced protection be available where certain other types of family leave are taken?

The consultation paper goes on to seek information and views on the extent to which parents taking either adoption, shared parental or neonatal care leave are subjected to unfair treatment, including dismissal. It goes on to ask whether the proposed enhanced dismissal protections should be extended to employees taking these forms of leave (and also bereaved partner's paternity leave) and, if so, when the protection should start and end. For adoption leave, it is proposed that the protection should end 18 months after the birth of the child or placement for adoption. For the other three types of leave, it is proposed that the protection should end either on the last day of the leave (where less than six weeks of continuous leave was taken), or 18 months from the birth or adoption placement (where more than six weeks of continuous leave was taken).

Other points and next steps

The consultation paper asks whether various unintended consequences could arise from the enhanced protection including increased discrimination, delaying dismissal decisions and unrealistic asks of small businesses. Finally, the consultation asks what the main causes of pregnancy and maternity discrimination are and what more the Government should be doing to tackle it.

The consultation closes on 15 January 2026, after which the

Government's response and final position will be published. The measures are due to be implemented some time in 2027.

Consultation paper – Enhanced dismissal protections for pregnant women and new mothers

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Tribunal considers reasonable adjustments to standard processes and the application of "zero tolerance" policies for neurodivergent employees

In *Halstead v JD Wetherspoons plc*, the Employment Tribunal has considered whether an employer failed to make reasonable adjustments to their processes and the way in which they applied a "zero tolerance" policy to an employee with autism, and whether that failure amounted to disability-related harassment.

What happened in *Halstead*?

Facts

Mr Halstead started his employment with Wetherspoons as a kitchen porter in late 2018 in Berkhamsted. Although he left for a short period, he returned to work for the same branch in May 2019 and later, in 2021, moved to the Wetherspoons in Trowbridge. He had been diagnosed with autism at the age of two and had informed the Berkhamsted branch of this, however this information was not shared with Trowbridge at the time of his transfer.

In August 2023, Mr Halstead and his mother went for a family meal at a Wetherspoons pub along with five visiting family members. Mr Halstead, assisted by his mother, place the order through the Wetherspoons app and ticked the box to confirm that he accepted the employee discount policy and privacy policy. As a result, Mr Halstead's employee discount of 20% was applied to the entire order, even though the policy said the discount was only permitted to be used for groups of up to four people.

Mr Halstead was investigated and subjected to a disciplinary process in relation to his use of the discount and potential breaches of Wetherspoons' data protection and confidentiality policies (because he permitted his mother to access the app). During the investigation, the impact of Mr Halstead's autism on his day-to-day activities was discussed, including a requirement that someone directs him to read necessary documents (ideally sitting him down to go through any document with him). They explained that delay would highly impact his anxiety and that the process was causing him significant

distress. Despite this, Wetherspoons did not make any adjustments to the disciplinary process.

Mr Halstead subsequently went off sick from work, and a long-term sickness meeting was arranged prior to obtaining the outcome of his occupational health referral. The occupational health report set out clear adjustments that should be made. These included giving 1-2-1 explanations of important documents, and confirming the extent to which his mother needed to be involved in his meetings and day-to-day tasks. It also emphasised the need for additional notice and other adjustments to meetings.

Contrary to the occupational health advice, no adjustments were made to the meeting for Mr Halstead's grievance, which he had raised about his treatment. An adjusted meeting was eventually arranged, following his mother's objections. There had also been no update on the disciplinary process, Mr Halstead had not been having his appraisals, and had not been paid correctly, all of which contributed to his anxiety.

In December 2023, Wetherspoons invited Mr Halstead to a "some other substantial reason" (**SOSR**) hearing to discuss what they asserted was a breakdown in the employment relationship and his apparent failure to attend meetings about his long-term sickness and his grievance. For this hearing, Wetherspoons offered numerous adjustments including the questions being sent in advance, an option for written submissions, an option to change the meeting time and location, confirmation of his mother's eligibility as companion and an open invitation to suggest any other adjustments in advance. This meeting was successful and in January 2024, Wetherspoons ended the SOSR process and instead invited Mr Halstead to an informal meeting to enable his return to work. In March 2024, Mr Halstead

returned to work with several practical adjustments to support him.

Mr Halstead had approached ACAS for early conciliation during his grievance process and, whilst he had successfully returned to work, Wetherspoons had declined to offer him any financial compensation for the prior treatment. He therefore brought a claim under the Equality Act 2010 (**EqA**) for a failure to make reasonable adjustments (Section 20 and 21) and disability-related harassment (Section 26). It was accepted that his condition amounted to a disability under Section 6 EqA, and that Wetherspoons had known about it at the relevant time.

Tribunal's Decision

The Tribunal upheld Mr Halstead's claim of a failure to make reasonable adjustments, but did not find that Wetherspoons' actions had amounted to harassment. Their key observations were as follows:

- Wetherspoons had failed to adjust its investigation, disciplinary, grievance and long-term sickness processes to accommodate Mr Halstead's needs as an autistic person. In each case they had applied their standard process, including standard notice periods, template letters and options of companion at meetings, and had not permitted the Claimant's mother to attend the majority of the meetings with him. They had also applied their standard categorisation of the breach as gross misconduct and suspended him during investigation,

despite there being no apparent risk to the company of him working.

- In the disciplinary letter, Wetherspoons had also referred to Mr Halstead's conduct as "dishonesty" and "abuse", which had caused Mr Halstead undue distress. They remarked that this was notable given that a typical feature of autism was a strong desire to adhere to rules, and that there was no evidence of dishonesty; Mr Halstead had admitted to the breach, had explained the misunderstanding, and had confirmed it would not happen again now that he understood the rule.

- Mr Halstead had therefore been placed at a substantial disadvantage in these procedures compared to someone without his condition. The Tribunal considered that once it had been established that the breach had been caused by his condition, the matter should have been dealt with informally and not as a disciplinary matter at all.

- From December 2023 onwards, it was clear that the company had taken on board their positive duty to make adjustments. The Tribunal described their approach from this point on as "exemplary".

- Whilst it had clearly been distressing for Mr Halstead, the Tribunal did not consider that Wetherspoons' conduct had amounted to harassment. The company had addressed the conduct in a standard manner which was inherently stressful and challenging for those involved, but this did not meet the threshold of intimidation (otherwise employers would never be able to conduct performance management).

Mr Halstead was awarded £25,412, the majority of the award being made for injury to feelings.

What can employers learn from this case?

The decision in *Halstead* offers a clear demonstration of the positive impact that making reasonable adjustments can have and, conversely, the negative impact that a failure to make them can have on a neurodivergent employee's wellbeing and their ability to participate in standard processes.

Given the Tribunal's commentary regarding the "exemplary" nature of the approach taken by Wetherspoons from December 2023 onwards, the judgment can serve as a helpful guide for employers as to the type of adjustments which can be made to support neurodivergent employees. Examples include:

- Providing longer notice periods for meetings, including investigation meetings. If notice would not usually be given for fact-finding meetings, consider whether this can be adjusted to allow them sufficient time to prepare without compromising the investigation.

- Giving clear explanations of the purpose of meetings, allegations made and the potential consequences (including agendas for meetings, where possible). Ensure that the employee understands the nature of the meeting and (if applicable) the seriousness, including the next

steps after the meeting and potential outcomes.

- Allowing flexibility with the options of who can accompany the employee to meetings. This may require the employer to go beyond the standard categories of trade union or colleague companions.

- Minimising delays as much as possible and offering regular updates.

- Carefully wording allegations to ensure that they do not inappropriately presume guilt, dishonesty or cause unnecessary distress.

- Remaining open to any other adjustments suggested by occupational health providers or the employee themselves, and implementing them unless there is a very good reason not to.

Adjustments should also be considered more widely during employment to ensure that neurodivergent employees are placed on an equal footing with their colleagues. Employers should ensure that, where they know an employee has a condition that affects them at work, this is tracked through their employment journey and information is shared (with their consent) to enable proper support. This will be particularly relevant for employees whose conditions may lead to challenges in asking for support.

In addition, this case highlights for employers the danger of enforcing “zero tolerance” policies. The Tribunal was critical

of such policies, suggesting that they can be problematic if applied on a blanket basis because they fail to consider the diverse needs of employees. Whilst the employer may consider a policy breach to be serious enough for suspension and potentially dismissal, they may nevertheless need to consider adjusting the standard applied to employees whose conditions may affect their understanding of the relevant policy or ability to comply with it. This may be surprising to some employers, as the concept of reasonable adjustments is commonly thought of in terms of processes rather than substantive expectations. However, it is clear from this case that applying policies in a one-size-fits-all manner could result in a failure to make necessary adjustments for disabled employees.

Finally, employers should note that it will not always be sufficient to rely on a contractual requirement to abide by all of their policies. They need to take active steps to ensure their policies are understood: this could include training, written communication and, where necessary, individual explanation.

Halstead v JD Wetherspoons plc

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On Equal Pay Day 2025, the legal sector's gender pay gap is double the average

According to recent statistics published by Law360, male employees at the UK's top law firms are considerably out-earning their female counterparts, with a typical 26% differential in pay. And just in time for Equal Pay Day, which took place on 22 November 2025 this year, the Bar Council published a report which demonstrates that women are earning less than men across all experience levels at the self-employed Bar.

What is equal pay and how does it relate to the gender pay gap?

The principle of equal pay refers to the concept that men and women should receive equal pay for equal work, a principle which has been enshrined in UK law for more than five decades. Concerns regarding equal pay arise where there is a disparity between what men and women earn for doing the same/similar work or work of equal value. This can be between two individuals who have the same title or substantive role or do work of equal value or by reference to groups of male and female employees who have comparable roles or who argue that they do work of equal value. There have been several high-profile cases in the retail sector where mainly female shop-floor workers have argued that their work is of equal value to higher paid mainly male warehouse workers. For further detail

on those cases, see our previous briefing here.

The gender pay gap refers to the gap between the average rates of pay for all men and women in the labour market, regardless of job role. The gender pay gap in the UK as a whole in April 2025, as reported by the Office of National Statistics, was 12.8%, down slightly from 13.1% in 2024. However, the gender pay gap differs quite significantly by sector.

Since 2017, all private and voluntary sector employers with 250 or more employees have been obliged to report statistics related to their organisation's gender pay gap. These reports have tended to show the underrepresentation of women at the most senior and highly paid levels within organisations. The aim of such reporting is to shine a light on the disparity and to encourage employers to close these gaps, such as by taking proactive steps to improve progression of women to senior levels. For further information on gender pay reporting, see our more in-depth briefing here.

What is Equal Pay Day?

Equal Pay Day marks the point in the calendar when, as a result of the average gender pay gap, women are no longer earning compared to men. Each year, it is calculated by the Fawcett Society based on data obtained from the Office for National Statistics.

How does the gender pay gap affect law firms, and why?

The gender pay gap in UK law firms stands at an average of

26%. The figures and conclusions published by Law360 follow their review of gender pay gap reports from over 100 law firms, which show wide variation within the legal sector. The data is taken from mandatory pay gap reports for employees, as well as voluntary partnership pay gap reports provided by 51 of the 100 firms (there being no legal obligation to report on partnership pay gaps).

Notably, the analysis shows that many firms report far greater pay equality at the junior level, with the median employee gender pay gap varying between 1.9% and 65.3%, but with the majority of firms' figures sitting between 20 – 30%. This is significant compared to partner-level roles, where nearly one third of the reporting firms had partnership pay gaps of over 30%, with the highest reported gap of over 100%.

Where partner figures are included within a firm's overall figure this leads to a stark increase in their median pay gap; the highest combined employee and partner pay gap reported was 48%, and even firms whose employee gap was as low as 2.4% reported a much higher combined pay gap of 27.7%.

Statistics for the gender bonus gap also varied significantly, with eight firms reporting a 0% difference but over 20 firms reporting a gap of at least 40%.

Putting the very wide-ranging variations between law firms to one side, it is clear that the overall pay gap within law firms is considerably higher than the current UK average pay gap of 12.8%. So why is the legal sector lagging so far behind when it comes to pay equality?

Law360's analysis suggests several key factors that may be contributing to this.

Lack of leadership representation

While improvements are slowly being made, law firms have historically been (and largely remain) male-dominated at the senior levels. This can, in itself, be a factor that deters women from seeking promotion, as they are less likely to see themselves taking on those roles in future. Equally, it may contribute to attrition away from male-dominated firms towards firms that already have a strong female leadership presence, or even towards other industries that are seen as offering more opportunities for advancement. It is worth noting that smaller firms are not required to produce gender pay gap reports (although many do voluntarily), and, therefore, the available figures are skewed towards larger firms where the senior leadership has been dominated by men.

Law360's analysis notes that women in leadership positions are more likely to encourage enhancements to benefits and policies, such as parental leave and flexible working. The lack of representation at decision-making levels may mean slower improvements to those benefits which may directly impact the ability or motivation of women to remain at certain firms long enough to reach a senior role and access the highest levels of pay. This is a problem across many sectors but the slow speed of change in the legal profession may mean that its impact is more pronounced.

Unique promotion cycle

The slow rate of progress to improve the gender pay gap within law firms may also be impacted by the difference between many firms' partnership processes and traditional promotion paths in other sectors. Partnership processes in larger firms are often only run annually, with opportunities in many cases depending on the retirement or departure of another partner. There is often fierce competition between candidates (including external candidates) for only a few potential roles and, depending on business demand, in some years there may be no opportunities available at all.

A considerable amount of work is often required to prepare a business case to join a partnership and, as noted by those interviewed by Law360, the timing of partnership will often coincide with motherhood. Periods of time spent on maternity leave at this crucial career juncture may mean a candidate is "out of sight and out of mind" and/or their business case appears less compelling. Undoubtedly, the fact that women still bear a higher proportion of responsibility for childcare within families – and may work part-time as a result – has an impact too. While many law firms have taken steps to address the impact on candidates for partnership, it remains a factor. Could an uptick in men taking longer periods of shared parental leave and assuming greater childcare responsibilities level the playing field?

Or are these just attempts to explain away systemic discrimination and the general undervaluing of what women do?

As noted by the Financial Times, men are more likely to be optimistic about their client book, which can lead to them being more successful in landing available roles, as well as demanding higher compensation, particularly when moving firms.

And becoming a partner is only the starting point: remuneration between partners within a practice area or more widely across a firm continues to vary greatly.

Practice area disparities

Differences in the level of fees earned across practice areas can be stark. This can disproportionately benefit men, who are both more likely to be hired into the most profitable practices within firms, and more likely to stay in those areas long-term. As published by the Financial Times, 80% of partners hired between 2019 and 2024 into corporate and finance practices (often the highest-billing departments in commercial law firms) were male. By contrast, employment and private client practice areas were closer to 50/50 in terms of partners hired but higher billing practices such as private equity had a significant majority of male compared to female partnership hires.

It is clear that lack of participation in these more lucrative practice areas has an impact on women's ability to achieve the highest levels of remuneration. At the employee level, this is particularly notable when it comes to bonuses. As Law360 noted, even objective factors such as billing targets can indirectly disadvantage women. Such targets tend to favour the highest-billing (and most likely male-dominated) teams, where there is generally a steady demand for long hours of work or a lot of ebb and flow of work with periods of time when exceptionally long hours are required (on deals for example). Women (especially mothers) may face more practical challenges in reaching their targets if they are juggling the competing demands of caring responsibilities.

In addition, discretionary bonuses have a big impact on overall pay which can be difficult to unravel, particularly where there is a culture of avoiding pay transparency and colleagues are discouraged from comparing remuneration. This can make it harder for women to identify any disparities, to advocate for themselves and call out unequal treatment. We know that any difference in pay early in a lawyer's career is likely to compound over time and affect the starting point for any pay or bonus negotiations in subsequent years and on moving firms.

Not just law firms: the gender pay gap at the Bar

It is not only women working in law firms who are affected by the legal sector's gender pay gap. The Bar Council's recent report found that:

- Women were earning less than men across all experience levels at the self-employed Bar.
- Junior women were earning 76% of what junior men were earning.
- Women silks were earning on average 72% of their male colleagues' median gross earnings.
- Earnings gaps persist across every level of seniority at the Bar: the highest earning men were consistently earning more than the highest earning women.

- There were earnings gaps in every area of practice. The widest gaps were in commercial and Chancery practice, where women at 11-15 years PQE were earning 63% of their male colleagues' median fee income.

- During the previous 4 years (2021-2024), median earnings at the Bar increased for both men and women. However, women's earnings increased by less than men's. This means the gap is still increasing.

There is always a temptation to speculate about the "reasons" for the gender pay gap, but where it is so significant and persistent, is it not reasonable to assume that it arises from a difference in value assigned to work depending on whether it is done by a man or a woman – the very evil that equal pay law has been attempting to address for over five decades?

How does gender pay reporting help?

In addition to revealing the limited level of progress made in closing the gender pay gap within UK law firms, Law360's analysis of law firm pay gaps reveals an element of scepticism within firms towards gender pay reporting. They note that gender pay gap reporting can be seen as a "blunt tool" incapable of fixing a complex and historic cultural problem for firms, and a sense that statistics can be too easily skewed.

Reporting is seen by some as a 'tick box' exercise rather than an active commitment towards closing the gender pay gap. On

International Women's Day this year, the Law Society Gazette noted a report from 2022 by the 'Next 100 Years Project' which revealed that while 92% of legal professionals agreed that the gender pay gap is a concern, 62% said that fixing it is not a priority for their firm's senior management. This report also noted that 84% of female lawyers believed they would not see true gender pay equality in their working life and that, at the current rate of change, the legal sector remained 86 years away from achieving pay equity.

This lack of faith in the effectiveness of gender pay reports is particularly interesting in the context of the Government's plans to expand pay reporting obligations even further. Under the Equality (Race and Disability) Bill, employers will be required to report on their ethnicity and disability pay gaps as well as their gender pay gap. Whilst some firms have already made such reports voluntarily, it appears that most are unprepared and there are significant concerns around firms' abilities to obtain the required data. In addition, through the Employment Rights Bill a new obligation will be introduced to produce gender equality plans to explain what steps are being taken to address the gender pay gap, as well as simply reporting it.

While there is scepticism about the value of gender pay gap reports, it is clear that the current Government sees pay gap reporting as a mechanism to drive pay equity: shining a light on the problem in the hope that what gets measured gets managed.

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BDBF wins Senior Executive Team of the Year at IEL Awards 2025

BDBF has been named **Senior Executive Team of the Year** at the prestigious International Employment Lawyer (IEL) Awards 2025.

These annual awards celebrate the very best private practice and in-house legal teams from across the globe, honouring excellence, innovation and outstanding contributions to the field of employment law.

This recognition underscores our unwavering commitment to delivering powerhouse results in high-stakes employment disputes, and we are grateful to our dedicated team and valued clients.

Christmas parties: Top tips for avoiding the HR hangover 2025

The party season is here, and it’s time to celebrate. But before the mulled wine flows and the dance floor calls… ho-ho-how do you keep the festivities merry, bright and free of the dreaded HR hangover?