A Guide to the Employment Rights Act 2025

The Employment Rights Act 2025 (the **ERA**) became law on 18 December 2025 and will make sweeping and significant reforms to our employment law landscape over the next two years. Our guide explains the detail of all the key reforms, what they mean for employers in practice and the next steps. You may also find the practical tips set out in our **Timetable of Action Points for Employers and Implementation Dates** useful.

Unfair dismissal

Reduction of the qualifying period from two years to six months

Currently, an employee must have two years' continuous service with their employer in order to bring a claim of ordinary unfair dismissal in an Employment Tribunal. There is a limited exception, where it is shown that the dismissal was for an "automatically unfair" reason, such as for having made a protected disclosure. In such cases, the employee is able to claim automatic unfair dismissal from Day 1 of their employment. However, where there are no such aggravating factors, an employer is able to dismiss an employee with under two years' service relatively easily. There is no need to identify a fair reason for the dismissal and nor does the employer need to show it acted reasonably.

Initially, the Employment Rights Bill had proposed to remove the two-year qualifying period for ordinary unfair dismissal claims, converting it to a Day 1 employment right. However, faced with resistance to this measure from the House of Lords, the Government undertook discussions with relevant stakeholders, including major business representatives such as the Confederation of British Industry and the Federation of

Small Businesses. The outcome of those discussions was a surprise U-turn on Day 1 unfair dismissal rights. Instead, a compromise solution of a six-month qualifying period was settled upon. In addition, the ERA makes it harder for future governments to undo this change, by stipulating that primary legislation will be needed to vary the qualifying period.

Removal of the cap on compensation

Currently, the “compensatory award” for unfair dismissal is limited to the lower of either 52 weeks’ gross pay or a statutory cap. The statutory cap rises each year but is currently set at £118,223.

Initially, the Employment Rights Bill contained no proposals relating to the compensatory award. However, a surprise decision to abolish the cap was made by the Government shortly before the Bill passed into law, seemingly as a *quid pro quo* for the U-turn on Day 1 unfair dismissal rights.

This means that awards for unfair dismissal will be broadly comparable with those made in discrimination and whistleblowing dismissal claims.

What will these changes mean for employers in practice?

- These changes are certain to generate more grievances and Employment Tribunal claims. The Government’s recently published **impact assessment** estimates that the reduction of the qualifying period will lead to 9,000 additional Acas “early conciliation” notifications and 3,000 additional Employment Tribunal claims. However, this estimate does not build in additional notifications and claims flowing from the removal of the compensation cap because the Government says the response of employers and employees to this change is too uncertain.
- A rise in disputes will take time and money to deal with, with small businesses lacking a formal HR function disproportionately affected. And a rise in claims will

increase pressure on an already stretched Tribunal system which could mean even longer delays before reaching a hearing.

- In particular, the removal of the cap on compensation is likely to lead to a rise in claims from higher earners and those with valuable benefits, who will now be able to seek their full losses flowing from the dismissal. We also expect to see more claimants arguing for multi-year and even career-long loss. At the same time, settlements may be harder to achieve in these types of cases as claimants may feel they hold the upper hand. You can read our detailed article about the wider impact of the removal of the compensation cap **here**.
- All of these risks mean that employers will wish to be more cautious when it comes to recruitment so as to limit the prospect of a bad hire. Employers may wish to consider extending probationary periods to six months to mirror the qualifying period. And after recruitment, line managers will need to manage probationary periods actively to ensure that any performance or conduct issues are identified and dealt with within the first six months of employment. Once an employee has accrued six months' service, any subsequent dismissal process will need to be executed meticulously, with careful adherence to procedure and the Acas Code.
- Is there any upside for employers? Conceivably, it could lead to some reduction in whistleblowing dismissal and discriminatory dismissal claims, which are currently the only statutory claims that employees with under two years' service can bring about their dismissal and recover uncapped compensation. A decline in those types of claims could be a good thing for employers, not least from a reputational perspective and because the cost and complexity of defending those types of claims is higher. However, where a claimant believes there was a discriminatory reason at play, or they have been dismissed for whistleblowing, they are still likely to

pursue that claim.

What are the next steps?

The Government announced in Parliament that it intends to reduce the qualifying period with effect from 1 January 2027. Although it has not yet confirmed when the cap on compensation will be abolished, it is widely expected that this will come into force on the same date. If this happens, it will mean that employees engaged by 2 July 2026 would qualify for the right to bring an uncapped unfair claim on 1 January 2027.

Separately, the Government's impact assessment says that a series of meetings will be held early in 2026, to enable stakeholders to feed in their view on the unfair dismissal changes and a summary of those responses will also be published in 2026. The Government has said it will also consider what additional dedicated support or guidance might be needed.

Dismissal during pregnancy and following a period of statutory family leave

Currently, there is 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 connected 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 ERA provides that regulations may be introduced which will provide enhanced protection from dismissal during pregnancy and following return from maternity leave, adoption leave, shared parental leave, neonatal care leave and bereaved partners' paternity leave (the latter of which is due to come into force on 6 April 2026).

This would mean that such employees could not be fairly dismissed, save where the regulations allowed for an exception. The ERA also provides that the regulations will specify the notices that must be given to employees, the evidence to be produced and any additional procedures to be followed, as well as the consequences of failing to do these things.

On 23 October 2025, the Government published a consultation paper seeking views on how the enhanced dismissal protection should operate in practice. The consultation proposed two broad options:

- **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).
- **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 (and other returners). You can read what is proposed in respect of each reason in our detailed briefing **here**.

The consultation paper also asked whether the new protection should apply from Day 1 of employment or only after a qualifying period of somewhere between three to nine months. In terms of when the protection should end, the consultation paper proposed either 18 months from the birth of the child or six months after the return to work from maternity leave, whenever that is.

Further, the consultation paper asked whether the same protections should be extended to employees taking adoption leave, shared parental leave, neonatal care leave and bereaved partners’ paternity leave and, if so, when the protection should start and end.

What will these changes mean for employers in practice?

- The impact for employers can only be fully assessed once the Government decides the scope of the protections to be introduced. That said, whichever option is pursued, it is clear that employers will have their hands tied to a significant extent when it comes to dismissing employees who are pregnant, absent on certain types of family leave and following return from the same.
- It also appears that where an employer needs to dismiss an employee in a protected group there will be an increased administrative burden in terms of notices, evidence and procedures to be followed, with penalties for getting it wrong. Smaller businesses are likely to be disproportionately affected by these requirements.
- Employers will also need to take care not to make hiring decisions based on the likelihood of a candidate falling into one of these protected groups. For example, a refusal to hire a woman of child-bearing age (out of fear of being subsequently being restricted from

dismissal) would itself be discriminatory.

What are the next steps?

The consultation closed on 15 January 2026. The Government's response and final position will be published in due course.

The final measures are due to be implemented some time in 2027.

Dismissal for failing to agree a variation of contract (aka "fire and rehire") or to be replaced by a non-employee

"Fire and rehire" is a shorthand used to describe the practice of dismissing an employee then offering to re-engage them on inferior terms and conditions. Currently, if an employer wishes to deploy this practice, it must comply with the **statutory Code of Practice on dismissal and re-engagement**, which came into force in July 2024. A failure to do so may lead to an uplift of up to 25% to compensation awarded to an employee by an Employment Tribunal.

Initially, the Employment Rights Bill had proposed that it would be automatically unfair to dismiss an employee for failing to agree to any change to their terms and conditions of employment, or in order to re-engage them (or someone else) under varied terms and conditions of employment, where the role is otherwise substantially the same. A limited exception was to be made where the reason for the variation was to eliminate, prevent or significantly reduce or mitigate the effect of any financial difficulties which were affecting the employer's ability to carry on its business.

However, in July 2025, the Government announced plans to soften the fire and rehire provisions. These revised provisions are now reflected in the ERA, which provides that a dismissal will be automatically unfair where the employee is dismissed:

- for failing to agree to “restricted variations” to their terms and conditions of employment; or
- in order to re-employ them (or to employ someone else) under varied terms and conditions, where one of more of the differences between the two sets of terms is a restricted variation, but where the role is otherwise substantially the same.

A “restricted variation” means a variation relating to pay, pensions or pension schemes, working hours, the timing or duration of shifts or a reduction in the amount of time off. It also covers the inclusion of a unilateral flexibility term allowing the employer to make a restricted variation in future without the employee’s agreement. The list of restricted variations may be expanded in future and, may also provide that “pay” *excludes* expenses and benefits in kind. The ERA continues to allow for a limited exception for variations made in response to serious financial difficulties affecting the employer’s ability to carry on business as a going concern and where there is no reasonable alternative.

Where either:

- the financial difficulties exception applies; or
- an employee is dismissed (i) for refusing to agree to other types of **non-restricted** variations **or** (ii) to re-employ them (or to employ someone else) on varied terms,

then the dismissal will **<u>not</u>** be automatically unfair. However, the ERA provides that certain matters *must* then be considered by the Employment Tribunal to determine whether the dismissal is ordinarily unfair including: the reason for the variation, any consultation carried out about the proposed variation (including with a trade union), anything offered to the employee in return for agreeing to the variation and any other matters specified in regulations.

Separately, the ERA contains a provision (which was only added to the Bill in the Summer) designed to prevent employers from simply replacing an employee with a non-employee. This provision is **not** linked to contractual variations. The ERA says it will be automatically unfair to dismiss an employee in order to replace them with a non-employee (e.g. a self-employed contractor, agency worker or outsourced worker) where the non-employee would carry out the same or substantially the same role (either alone or taken together with others). This will even capture the scenario where the employee is dismissed and offered re-engagement but stripped of their employment status. However, the financial difficulties exception will apply.

What will these changes mean for employers in practice?

- These provisions are complex and contain many pitfalls. Employers considering changing terms and conditions or restructuring their workforce will certainly need to spend time familiarising themselves with the new rules and will likely require specialist legal advice before proceeding.
- In future, employers wishing to change terms and conditions will have a higher exposure to automatic unfair dismissal claims. The terms which constitute "restricted variations" if varied are the very terms that would usually lead an employer to consider the extreme solution of fire and rehire in the first place – namely, pay, benefits, hours and leave entitlements. This increased risk will reduce flexibility for employers in managing workforce changes. Instead, employers will need to seek agreement to vary terms through negotiation.
- Further, the prohibition on replacing employees with non-employees could potentially have a dramatic impact in outsourcing situations. In outsourcings, the TUPE legislation will often apply to protect the employee's employment, with the result that the employee either

transfers to the contractor or, if they are dismissed, their dismissal is automatically unfair. Yet TUPE does not apply in every outsourcing situation, for example, where the activities are split up (or “fragmented”) between multiple different service providers. In this situation, an employer could usually dismiss the employee fairly by reason of redundancy or some other substantial reason. However, under the ERA, an employee may still be regarded as unlawfully “replaced” in this scenario because the protection extends to situations where the employee’s work is performed by a mix of different non-employees (i.e. where the activities are outsourced to several different providers) or by a mix of employees and non-employees (i.e. where some of the activities are kept in-house and some are outsourced). Employees in this position may now acquire automatic unfair dismissal protection despite not being covered by TUPE.
- The Government’s **impact assessment** suggests that these measures may protect up to 125,000 employees from fire and rehire practices each year and will also lead to unquantified benefits, including greater wellbeing, productivity, and fairness.

What are the next steps?

The Government intends to bring these changes into force in January 2027.

However, the Government had planned to consult on related regulations and on updating the statutory Code of Practice in Autumn 2025. Those consultations have not yet started, which may mean that the planned implementation date will be postponed.

Collective redundancies

Currently, collective redundancy consultation is triggered where there is a proposal to dismiss as redundant 20 or more employees assigned to one "establishment" within a 90-day period. The question of what an "establishment" has been ventilated in litigation – with employees arguing it should mean the business as a whole rather than the local place of work. This would mean that collective consultation would be triggered more frequently as redundancy numbers would have to be counted across the whole business. However, the senior courts concluded that "establishment" means the local unit where the employee works, *not* the business as a whole.

Initially, the Employment Rights Bill had proposed to reverse this, so that collective consultation would be triggered where there were 20 proposed redundancies within 90 days *across the business* rather than in just one workplace.

The Government also consulted on (i) increasing the maximum protective award from 90 to 180 days (or having no upper limit at all) where an employer was found to not have properly followed a collective redundancy process, and (ii) what role interim relief could play in protecting employees who have protective award claims. In March 2025, the Government responded to that consultation and put forward amendments to the key trigger proposal, aimed at softening the impact for employers.

The ERA provides that collective consultation will be triggered where there is a proposal to dismiss as redundant within a 90-day period **either** 20 or more employees assigned to one establishment (i.e. the current position), **or** a "threshold number of employees" across the whole workforce. This new threshold number will be defined in regulations but may be *either* a specified number of redundancies *or* an overall percentage of the workforce *or* determined in another way (but in any case the threshold will not be below 20 redundancies). For example, if the threshold were to be set at 10% of the workforce, and the employer employed 500 employees across different sites, then a proposal of 50 or more redundancies across the *whole* business within a 90-day period would trigger collective consultation even where fewer than 20 redundancies were proposed at any single establishment. The trigger for providing the Secretary of State with advance notice of proposed collective redundancies via the HR1 form will also be aligned with the new threshold test.

Employers will be required to notify employee representatives in writing of the total number of proposed redundancies across the workforce and at which establishments. However, employers will not be required to consult all such representatives together, nor undertake consultation with a view to reaching the same agreement with all of them.

In terms of remedies, the maximum protective award will rise from 90 to 180 days' gross pay per employee. However, interim relief will not be extended to protective award claims.

What will this change mean for employers in practice?

- The retention of the words "at one establishment" is a concession to business and means that collective consultation will not be triggered where a multi-site employer proposes small pockets of redundancies at different sites **unless** the total numbers exceed the new threshold – whatever that is. Clearly, the level at which the new threshold is set will be important: the lower it is, the more frequently collective consultation will be required.
- The administrative burden will increase for multi-site employers, who will need to have a system in place to ensure that they keep track of proposed redundancies across the whole workforce. Where "across the workforce" consultation is triggered, they will need to have appropriate representatives in place for all affected employees no matter where they are based. This will be more time-consuming to achieve where elections are

needed.

- The consultation process itself could become more cumbersome and disjointed as employers may be consulting about several small pockets of unrelated redundancies at the same time, with different groups of representatives (albeit you are not required to consult all such representatives together, nor undertake consultation with a view to reaching the same agreement with all of them). More time and resources will need to be devoted to organising and managing multiple consultation meetings.
- Getting it wrong will also be more costly: employees will be entitled to a protective award of up to 180 days' gross pay. The Government's **impact assessment** accepts there will be an increased cost to business where collective redundancy obligations are not met. However, it envisages that the increased penalty will drive greater compliance which, in turn may have the positive effect of identifying ways to reduce the number of redundancies needed.

What are the next steps?

The protective award is due to increase in April 2026 (the precise date is to be confirmed).

The Government has promised to consult about the level at which the "across the workforce" threshold should be set. That consultation is expected to launch in early 2026. After the Government has settled on its final position, regulations will be needed to introduce the new test. The Government has said this change will come into force some time in 2027.

Separately, the Government has indicated that when consulting about the trigger, it will also seek views on doubling the 45-day consultation period needed where 100+ redundancies are proposed. Although this proposal is outside the ERA, it is possible that this change could be taken forward at the same time as the change to the trigger.

Sexual harassment

Duty to prevent

Since 26 October 2024, all employers have been required to take reasonable steps to prevent sexual harassment of their workers (including by third parties). If this duty is breached, an uplift of 25% may be applied to compensation in relevant claims, and the Equality and Human Rights Commission (the **EHRC**) may investigate and take enforcement action.

Under the ERA, this duty will become more onerous and require employers to take **all** reasonable steps to prevent sexual harassment or risk these consequences.

The ERA provides that regulations may be introduced to specify the steps that will be regarded as reasonable for the purposes of both: (i) this new proactive duty to prevent sexual harassment; and (ii) the existing defence that an employer has taken all reasonable steps to prevent sexual harassment. This may include steps such as carrying out risk assessments, publishing plans or policies, and steps relating to the reporting and handling of complaints.

This change is expected to come into force in October 2026, with the regulations to follow at a later date.

Disclosures constitute whistleblowing

In addition, disclosures about actual or likely sexual harassment will be listed as one of the types of malpractice about which a whistleblowing disclosure may be made. All other elements of the test for qualifying as a protected disclosure (such as being made in the public interest) will still apply. This change is expected to come into force in April 2026.

What will these changes mean for employers in practice?

- It will be harder for employers to discharge the duty to prevent sexual harassment once it has been enhanced in this way, as they will need to show that they have done everything that was reasonable for them to do. In particular, a lot will be expected from large and well-resourced employers and from employers where sexual harassment is especially prevalent.
- Once regulations are made setting out the list of potentially reasonable steps, this will hopefully offer a degree of certainty about what is required. For now, the recommended steps to prevent sexual harassment are set out in the EHRC's non-statutory **Technical Guidance on Sexual Harassment and Harassment at Work** and its **8-step Guide to Preventing Sexual Harassment at Work**.
- We are likely to see an increase in employers pleading the "all reasonable steps" defence in relevant cases. Given that the work that will have gone in to take steps to discharge the duty, employers are likely to want the added benefit of avoiding liability for a sexual harassment claim.
- Making it clear that disclosures about sexual harassment may amount to whistleblowing disclosures is helpful, although arguably unnecessary. The Tribunals have already made it clear that disclosures about sexual harassment are capable of amounting to whistleblowing disclosures, since they represent breaches of the Equality Act 2010 (see for example **Mysakowski v Broxborn Bottlers Ltd**). Nonetheless, it is a helpful sign to those wishing to report sexual harassment that they may be protected as whistleblowers.

What are the next steps?

Given that these measures are expected to take effect this year, employers would be wise to begin working towards taking all reasonable steps now. Not only will this help employers be ready for the raised requirement in good time, it opens up the possibility of pleading the “all reasonable steps” defence in relevant sexual harassment claims.

As a starting point, employers should review the EHRC’s guidance on sexual harassment and their sexual harassment risk assessment and consider what further reasonable steps could be taken to prevent sexual harassment. Full implementation of those steps should be in place by October 2026.

Liability for discriminatory harassment by third parties

The ERA will reintroduce employers’ liability for discriminatory harassment of staff by third parties. This had originally been in place until 1 October 2013 under the Equality Act 2010, when it was removed by the Coalition Government.

This protection extends to all forms of discriminatory harassment under the Equality Act 2010, not just sexual harassment. Liability will also arise from the first instance of harassment (unlike the previous provisions, which required it to have taken place more than once). This means that, for example, racially motivated comments made towards a shopworker by a customer may lead to the employer being liable. However, similarly to the defence for sexual harassment claims, employers will be able to avoid liability where they can show they took “all reasonable steps” to prevent the third party harassment.

What will these changes mean for employers in practice?

- The reintroduction of liability for third party harassment is one of the most important reforms in the ERA, significantly widening an employer’s exposure to claims of discriminatory harassment. For employers operating in sectors where staff frequently come into contact with third parties (such as the transport, retail and hospitality sectors), that risk is heightened even further.

- While the “all reasonable steps” defence remains open to an employer to defend such a claim, it will be an onerous task to discharge every possible reasonable step – many employers are likely to fall short. For this reason, employers may wish to begin work on scoping out how it might meet this standard sooner rather than later.
- As far as sexual harassment is concerned, employers who are found liable for third party *sexual* harassment may also face the prospect of an uplift to compensation of up to 25%. A Tribunal may award this where it finds that the employer has breached the duty to prevent sexual harassment.

What are the next steps?

Liability for third-party harassment is expected to come into force in October 2026. Employers should be considering now what reasonable steps they could take to prevent harassment of their employees by third parties, and implement them before October.

Equality action plans

Currently, employers with 250 or more employees are required to publish information on their gender pay gap on an annual basis. However, in-scope employers must report their pay gap figures and nothing else – they are not required to explain the figures nor how they intend to close their gender pay gap (and, in fact, they are not required to close it all). The hope was simply that “what gets measured gets managed” and that reporting alone would drive employers to take steps to close their gaps. However, progress in closing gender pay gaps remains slow.

The ERA provides that regulations may be published requiring private employers with 250 or more employees to develop and publish “equality action plans” on an annual basis. These action plans must set out the steps the employer is taking in relation to addressing its gender pay gap and also supporting employees going through the menopause.

The action plan will have to meet the minimum standards, which are to be set out in regulations. There will be consequences for failure to comply, but, again, this will be dealt with in regulations.

Further, when reporting their gender pay gaps, employers will be required provide information about whom they contract with for outsourced workers. Such workers are not employees of the employer and, therefore, do not need to be included in the gender pay gap figures. It seems that the intention here is to allow a fuller understanding of an organisation's gender pay gap. For example, if an organisation's outsourced roles were typically fulfilled by low-paid female workers, this would have the effect of improving the gender pay gap figures since this pay data would not need to be factored in. The new requirement, therefore, adds a layer of transparency to show this.

What will these changes mean for employers in practice?

- Gender pay gap reporting will become more onerous for in-scope employers. Although some employers already publish sophisticated narratives and actions plans, many do not. All will need to publish an annual plan setting out what action is being taken to close the gap. A failure to do so will have consequences, but what is not clear is whether there will be consequences for publishing a compliant plan and then not implementing it or attempting to implement it but failing to actually make a dent in the gender pay gap.
- The Government has confirmed that these requirements are part of a wider reform to expand equality and pay transparency, sitting alongside the planned Equality (Race and Disability) Bill. This Bill intends to

introduce both ethnicity and disability pay reporting which would mirror the gender pay gap reporting regime, on which the Government's consultation closed on 10 June 2025 (with feedback reportedly still being analysed). Further consultation will also be needed prior to the regulations implementing the ERA's reforms.

- The forthcoming requirement to publish information about the steps taken to support menopausal workers means employers will need to give thought to what can be said in this regard. Some employers are well advanced in terms of support offered. Others will need to start work on providing appropriate support measures in order to be able to populate the action plan. That said, most employers will already have some things to say here, for example, the provision of flexible working options and relevant benefits such as discounted gym memberships or employee assistance programmes. However, more is likely to be needed.

What are the next steps?

The Government's ERA factsheet indicates that implementation of equality action plans will be voluntary from Spring 2026 and mandatory from Spring 2027. Mandatory reporting of outsourcing measures is likely to take longer to take effect.

Ban on non-disclosure agreements preventing disclosures about discrimination or harassment

The ERA will prohibit the use of non-disclosure agreements (**NDAs**) to prevent disclosures of information about harassment or discrimination by the employer or fellow workers, including allegations of "relevant harassment or discrimination". Any term purporting to do so will be void, and this includes those in any contract (e.g. the employment contract, a settlement agreement or any separate NDA).

This prohibition will also apply to allegations or disclosures of information relating to the employer’s response to the harassment or discrimination (or to the allegation / information). This could arguably include steps such as the fact of exit discussions and the existence of a settlement agreement, where the underlying matter concerns harassment or discrimination.

“Allegation” for these purposes is not defined, and there is nothing (at present) to exclude the making of false or bad faith statements. This would mean that employers would be unable to prevent a worker from repeating false or bad faith allegations even where a claim had settled. An individual against whom false or bad faith allegations have been made would have to look to the law of defamation for recourse.

Additionally, the concept of “relevant harassment and discrimination” is very broad, including all forms of harassment and discrimination under the Equality Act 2010. The provisions specific to victimisation in the Equality Act 2010 are not expressly included, although the prohibition on preventing discussion of the employer’s response may cover this in practice. It applies to any such conduct provided that it is **committed** by the employer or a co-worker or the **victim of the conduct** is the worker or a co-worker. This suggests that, once the new legal protections against third-party harassment come into effect, this will also be covered by the NDA prohibition.

The ERA anticipates that there will be certain types of “excepted agreements” (where disclosures <u>can</u> be validly restricted), but the detail of these will be set out in regulations. Regulations may also extend the protection to cover those outside the definition of “worker”, such as those undertaking work experience or training.

For a deep dive into this provision – which has not substantively changed since it was added to the Employment Rights Bill in July 2025 – you can read our earlier article here.

What will these changes mean for employers in practice?

- Currently, any provision banning workers from making protected disclosures will be void under the Section 43J of the Employment Rights Act 1996. However, this is subject to a stringent test, including that the disclosure has to be in the public interest and must be made to certain categories of persons. Equally, under section 17 of the Victims and Prisoners Act 2024, NDAs cannot be used to prevent victims of crime disclosing information to certain categories of person for the purposes of support.
- These amendments go much further and will, in effect, permit employees to make any allegation of discrimination or harassment (or about their employer's response to the same), regardless of the purpose of that statement and regardless of the recipient. In parallel, the Victims and Prisoners Act 2024 is **due to be expanded** (although it is unclear when), removing any restrictions around the purpose or recipient of disclosures that it covers.
- The key issue for employers will no doubt be clarification of what will constitute an "excepted agreement", and many may be more reluctant to resolve matters via settlement agreements (at the very least until this certainty is in place). Some employees may also be keen for this clarity, particularly those who are seeking closure via settlement and are happy for this to be on a confidential basis. It has not been set in stone that the restrictions will be forward-looking only (i.e. that they will not affect NDAs which are already in place), and so whilst commentary at the time of the proposals indicated that they would not apply retrospectively, the uncertainty may add to parties' concern.

What are the next steps?

These provisions were not anticipated in the original Employment Rights Bill, but were added via an Amendment Paper tabled in July 2025. Whilst they have therefore not been included in the Government’s roadmap for implementation, consultation on the proposals opened on 15 April 2026 and will run until 8 July 2026. The changes are expected to come into force in 2027.

Flexible working

Currently, employers may refuse flexible working requests where they consider that at least one of eight grounds specified in the Employment Rights Act 1996 applies. This includes things like the burden of additional costs, an inability to reorganise work among existing staff or detrimental impact on quality or performance. Importantly, this is a *subjective* test. In other words, as long as an employer considers that one of the eight grounds applies, and that view is based on correct facts, that is a sound basis upon which to reject a request.

There is no statutory right to appeal a refusal, but many employers offer an appeals process. Employees may also challenge the decision via other claims such as automatic unfair dismissal or indirect sex discrimination.

The ERA will require an employer’s refusal of a request to be based on one of the existing eight grounds and be an *objectively reasonable* one. Further, when refusing a request, the employer must notify the employee of the ground for refusing the request and explain why it considers that it is reasonable to refuse the application on that ground. Where an employer’s decision is not reasonable, or where it fails to explain this to the employee, the employee will be able to complain to an Employment Tribunal.

There is one further small change. From 6 April 2024, employers have been required to consult with employees before refusing a request. Under the ERA, regulations may also be issued setting out the precise steps that an employer must take in order to comply with this consultation requirement.

What will these changes mean for employers in practice?

- We think that employers are going to have to go further to be able to justify the ground or grounds for refusal. For example, if a request is refused on the basis of an inability to reorganise work among existing staff or recruit additional staff, and the employer has not consulted with existing staff about the possibility of doing so or attempted to recruit additional staff, it is likely that a refusal on such grounds would be unreasonable. Or where a request was to be refused on the basis of detrimental impact on quality or performance, again, the question will be: what is the evidence for this view? Unless there is some historical evidence (e.g. if an employee has worked the same or similar pattern in the past and it was unsuccessful), it is likely that an employer would need to allow a trial period of the proposed working pattern for a reasonable period of time in order to assess whether there was, in fact, such a detrimental impact. The end result is that more requests are likely to be accepted.
- Where an employer breaches the rules governing flexible working requests, an employee may complain to an Employment Tribunal. The Tribunal may order the employer to pay compensation of up to eight weeks' pay (currently capped at £719 per week but due to rise in April 2026) and require the employer to reconsider the application. Where an employer's refusal is found to have been unreasonable, we can expect Tribunals to more readily order employers to reconsider requests.
- Further, if a refusal is unreasonable, this could assist

the employee in other potential claims. For example, if an employer has adopted an unreasonable position this may be sufficient to amount to a repudiatory breach of contract, justifying constructive dismissal. Indeed, in the case of **Johnson v Bronzeshield Lifting Ltd**, a Tribunal held that an employer's failure to take into account relevant information before refusing a flexible working request was a repudiatory breach. This was on the basis that the hours that an employee works has a major impact on their lives, and it also matters how flexible working applications are dealt with – the outcome is not the only thing of importance. It is not a stretch to see that a Tribunal could reach a similar decision where a request has been refused unreasonably.

- It looks like specific rules are on the way governing the form of consultation needed before refusing a request. The existing **statutory Acas Code of Practice on requests for flexible working** sets out recommendations on the scope of such consultation. The Code suggests gathering all relevant information, holding a meeting with the employee to discuss the request and considering alternatives if needed. A written record of the meeting should be kept, and a right of appeal is also recommended. A failure to follow the Code does not give rise to a claim but Tribunals will take it into account when considering relevant cases. Therefore, we think it is likely that the Code's provisions on consultation will be elevated into law.
- In due course, employers will need to update policies and practices to reflect the new rules on refusing requests.

What are the next steps?

The provisions regarding flexible working under the ERA are expected to come into force in 2027, following consultation which is expected to commence imminently. Regulations regarding consultation steps prior to refusal will likely follow.

Family leave rights

There are three areas of change in the field of family leave rights under the ERA.

Unpaid parental leave

Currently, employees with one year's service have a right to take up to four weeks' unpaid parental leave per year in respect of children under the age of 18 (up to a maximum of 18 weeks' leave in total).

Under the ERA, the service requirement will be removed and unpaid parental leave will become a Day 1 employment right. This is expected to take effect in April 2026.

Paternity leave

Currently, employees with 26 weeks' service ending with the week immediately before the 14th week before the expected week of childbirth (or the week in which an adopter is notified of a match) have a right to take up to two weeks' paternity leave. The same service requirement applies in respect of eligibility for statutory paternity pay.

The ERA will remove the service requirement for paternity leave, making it a Day 1 employment right. However, there is no provision lifting the service requirement for statutory paternity pay, which suggests that it will remain at least for now.

Further, currently, where an employee is entitled to paternity leave and pay and shared parental leave and pay, the paternity leave and pay must be taken *before* the shared parental leave and pay. If the employee takes the shared parental leave and pay first, they lose their entitlement to paternity leave and pay. The ERA will remove this restriction, meaning that employees may take shared parental leave and pay first if they wish, and retain their entitlement to paternity leave and pay. These changes to paternity leave will take effect in April 2026.

Bereavement leave

Currently, employees have a Day 1 employment right to take two weeks' bereavement leave if a child under the age of 18 dies or is stillborn after 24 weeks of pregnancy (and those with 26 weeks' service ending with the week before the child died are also entitled to receive statutory parental bereavement pay). Employees taking parental bereavement leave are also protected from detriment and dismissal. However, there is no general right to take bereavement leave outside of this, for example when a spouse, parent or sibling dies, or for losses earlier in pregnancy. Of course, many employers do permit compassionate leave in such circumstances, but there is no legal requirement to do so.

The ERA amends the parental bereavement leave rules (which are set out in the Employment Rights Act 1996) to turn "parental bereavement leave" into "bereavement leave", although some special rules will still apply where a child dies. Regulations will specify the relationships which will entitle an employee to take bereavement leave, however, we can expect it to cover most close relationships such as a spouse, civil partner, other life partner, grandchild, parent, sibling or grandparent (in line with the definitions used for time off for "dependants" in emergency circumstances). The ERA also confirms that pregnancy loss occurring before 24 weeks of pregnancy will be included.

The bereavement leave entitlement in most cases must be not less than one week, however, the leave entitlement will stay at two weeks where a child has died. It appears that the leave will be unpaid, save that statutory pay will remain available where a child dies. The consultation for these rights encouraged employers to “go above and beyond” the ERA’s minimum requirements.

The substance of these changes remains to be set out in the forthcoming regulations, consultation for which closed on 15 January 2026. The changes are expected to take effect in 2027.

What will these changes mean for employers in practice?

- The removal of the service requirements for unpaid parental leave and paternity leave will mean that a larger cohort of employees will become eligible to take these forms of leave. The result is that employers will have to manage a higher number of these types of absences than is currently the case. In due course, employers will need to adjust relevant policies to reflect the wider scope.
- Many employers already offer paid bereavement leave but the new statutory right will introduce rules around how such leave is managed and provide protections for those taking the leave. Employers will need to revise their bereavement leave policy in due course and will also need to consider whether to enhance the right and offer paid leave.

What are the next steps?

The rights to unpaid parental leave and paternity leave from Day 1 (as well as the right to take both paternity and shared parental leave) will come into force in April 2026.

Implementation of the bereavement-related changes is subject to regulations, which have not yet been drafted following the closing of consultation in January 2026. The changes are not expected to take effect before 2027.

Separately, the Government acknowledges that some reforms will take longer to implement, including a full review of the entire parental leave framework and a review of the benefits of introducing paid carer's leave. No specific time frame for these reviews is given, however we note that in parallel, draft regulations have very recently been published to bring into action the Paternity Leave (Bereavement) Act 2024. These regulations are intended to take effect in April 2026, setting out the detail of the rights of co-parents to extended leave where the "primary carer" of the child has died.

Zero and low hours contracts

A **zero hours contract** is one where the employer does not guarantee any number of hours of work, but the worker is obliged to accept work whenever it is offered, without any certainty of how much work there will be or when. Sometimes the contracts are less onerous, and the worker is permitted to reject the work offered if they wish. A **low hours contract** is similar, save the employer will guarantee some hours of work, but it will be at the employer's discretion as to when the work is performed.

The ERA introduces three key changes, which will restrict the use of such contracts and penalise employers who abuse them.

First, zero and low hours workers who have worked a certain number of hours regularly over a reference period will have the right to have those hours guaranteed in their contract. The rules governing this new right are complex, but, in summary, provide as follows:

- At the end of each reference period, the employer *must* make a guaranteed hours offer to any worker within scope.
- The offer must meet certain minimum requirements (to be further set out in regulations), including that it must set out the proposed working days and hours (or specific working pattern) which must reflect the working hours

over the reference period.

- In most cases, the terms of the offer may not be less favourable to the worker, for example, making an offer on a lower rate of pay.
- On top of this, employers must also provide specified information to workers about their right to guaranteed hours within two weeks of starting employment and ensure they continue to have access to that information.
- A failure to make the offer, or making one incorrectly, will give rise to an Employment Tribunal claim for which compensation may be awarded.
- A worker will be able to complain to an Employment Tribunal where the employer fails to provide the specified information, fails to make the guaranteed hours offer or makes one incorrectly or where an employer deliberately adjusts a worker's working hours within the reference period to avoid having to make an offer.

We do not know who will qualify as a low hours worker, how many hours must be worked to trigger the right to a guaranteed hours offer, nor the length of the reference period to be used. All these finer details are to be dealt with in separate regulations.

Second, zero and low workers (and any other worker who does not have a set working pattern) will have the right to reasonable notice of shifts and changes to shift, with a right to compensation where late notice is given. Again, the rules are complex, but, in summary, provide as follows:

- Employers must give affected workers reasonable notice of a shift that the employer wants or requires the worker to work (specifying the day, time and hours to be worked).
- Employers must give notice of any change to, or cancellation of, a shift.
- Regulations will set out the minimum amount of notice

that must be given which will not be more than 7 days.

- Where an employer cancels, moves or curtails a shift at short notice, it must make a fixed payment of a to the worker – regulations will specify how much that payment must be.
- A breach of any of the notice or payment requirements will give rise to an Employment Tribunal claim for which compensation may be awarded.

Third, similar rules will be introduced for agency workers. The above changes could have encouraged employers to consider switching away from using zero and low hours workers towards using agency workers instead. However, following consultation, the Government decided to amend the Employment Rights Bill to introduce similar rules for agency workers. In summary, the rules, provide as follows:

- The responsibility to make guaranteed hours offers will rest with the **end user** who must make an offer to the agency worker to enter into a guaranteed hours contract directly with them – thereby changing the structure of the tripartite relationship. This will be a significant deterrent to using agency workers as a flexible resource.

- The requirement to provide specified information about the right to guaranteed hours within two weeks of starting employment will rest with the **agency**.

- The duty to give reasonable notice about shift changes and cancellations will be shared **jointly between the hirer and agency**. And in related claims a Tribunal may apportion liability. However, the duty to make a fixed payment following short notice cancellation of a shift will rest with the **agency** (although there is nothing to stop the agency seeking to recoup such costs from the end user in the contractual agreement).

What will these changes mean for employers in practice?

- These changes will make it considerably more difficult for employers to manage these types of contracts and introduce risks for getting it wrong.
- The requirement to monitor working hours within reference periods on a rolling basis will be administratively cumbersome, particularly where there are multiple zero or low hours workers.
- The requirement for the employer to make repeated offers of guaranteed hours contracts at the end of each reference period is onerous. These offers must continue to be made even where a worker (or agency worker) has made it clear that their preference is to remain on a zero or low hours contract – no provision is made allowing workers to opt out of receiving offers. Could one unintended consequence of the Bill be that workers who genuinely prefer to work on a zero or low hours basis feel pressured to accept a guaranteed hours contract by virtue of the repeated offers from their employer? Will employers be left overstaffed when customer demand falls? Although the ERA does provide an option for employers to use fixed term contracts instead of being caught by these rules, this is only permitted in limited situations.
- As far as the giving notice of shifts and changes to, or cancellation of, shifts is concerned, there will be a risk of tripping up on the notice requirements especially if the notice is generous, leaving an employer liable to make a payment to the worker and at risk of an Employment Tribunal claim.
- What can employers do? For now, a sensible starting point would be to audit your workforce to identify any zero and part time workers (and it may be sensible to focus your attention here on those working below 16 hours). This will help you understand the likely impact of these changes for your business. Where you have

workers regularly working in excess of their contracted hours you might consider regularising that situation before these rules come in.

What are the next steps?

Multiple sets of regulations are needed to bring in these reforms. Detailed guidance is also expected.

The Government has committed to consult further on these changes before the regulations are produced. A consultation paper is due to be published soon (having been postponed from Autumn 2025).

The Government has said the changes will come into force in 2027.

Statements of particulars of employment: notification of right to join a trade union

Currently, employers must provide employees and workers with a written statement of the particulars of their employment when they start work. The scope of those particulars is set out in section 1 of the Employment Rights Act 1996.

The ERA provides that employers must give employees and workers a written statement that they have the right to join a trade union, and that this must be given *at the same time* as the statement of particulars (although it does not require it to be included within the statement itself). It must also be given at *"other prescribed times"* which are not specified.

Regulations will set out precisely what information must be included in the statement, the form of the statement and how and when it must be given to the employee or worker. In October 2025, the Government opened a **consultation** seeking views on the following matters:

- **Content of the statement:** it was suggested that the statement included a brief overview of the functions of a trade union, a summary of the statutory rights arising in relation to trade union membership, a list of trade unions recognised by the employer (if any) and a signpost to the Gov.uk list of trade unions.

- **Form of the statement:** views were sought on where the statement should be in a standard form provided by the Government or drafted by the employer in line with specified requirements. The Government's preference is for a standard form on the basis that it would reduce the administrative burdens on employers and help ensure a clear statement is delivered to all workers.
- **Manner of delivery:** views were sought on direct methods of delivering the statement (e.g. letters or emails) versus indirect methods (e.g. posting on a notice board or intranet). The Government's preference appears to be for direct delivery.
- **Frequency of delivery:** as far as new employees and workers are concerned the statement must be delivered at the same time as the s.1 statement of particulars. Views are sought on how frequently it must be given thereafter, with three options on the table: once every six months, once a year or different frequencies for different sectors. The Government's preference appears to be for the statement (or reminders) to be provided on an annual basis.

The consultation closed on 18 December 2025 and the Government's final position is awaited.

A failure to provide the statement will give rise to an Employment Tribunal claim. A Tribunal will have the power to determine and amend the particulars and, if the claimant has been successful in certain other substantive claims before the Tribunal, award compensation of between two to four weeks' pay (currently capped at £719 per week).

What will this change mean for employers in practice?

- The Government's preference appears to be for a standard form statement to be provided directly to employees and workers on the commencement of employment and on an annual basis thereafter. If taken forward in this way, compliance should be relatively straightforward in most workplaces (e.g. sending the statement to new recruits with their contract and then sending to all staff by email once a year). However, we must await the outcome of the consultation to understand the precise requirements for employers.
- The policy aim behind this reform is to increase trade union membership. It remains to be seen whether a requirement to provide information to staff will have this effect. However, it is worth noting that certain unrecognised trade unions will also acquire the right to access workplaces under the ERA, meaning that, at the very least, awareness of trade unions is likely to increase among the workforce.

What are the next steps?

The Government has said this change will come into force in October 2026.

The consultation on the finer detail closed on 18 December 2025. The Government's response setting out its final position is awaited. Regulations providing the outstanding details will be needed before the change takes effect.

Statutory Sick Pay (SSP)

The ERA makes three small tweaks to SSP regime as follows:

- The "waiting days" will be removed, meaning that SSP will be payable from Day 1 of sickness, rather than from the fourth day as is currently the case.
- The "lower earnings limit" for SSP – which currently sits at £125 per week – will be removed meaning that workers will be entitled to SSP regardless of income

levels.
- SSP will be calculated as the lower of 80% of an employee’s average weekly earnings or the flat rate (currently £118.75 per week).

What will these changes mean for employers in practice?

- Employers will need to adjust payroll practices to ensure that SSP is paid from Day 1 of sickness and at the appropriate rate.
- Employers will need to review whether any of their workforce have been ineligible for SSP to date, because of the lower earnings limit, and ensure that they are now included as eligible to receive SSP for any period of sickness.

What are the next steps?

The changes regarding SSP are expected to take effect in April 2026.

Increase to time limits for bringing Employment Tribunal claims

Before the election, the Labour Party promised to extend the time limits to bring claims in the Employment Tribunal from three months (strictly, three months less a day) to six months (again, strictly, six months less a day). Although a few claims already have a six-month time limit (e.g. equal pay claims and statutory redundancy payment claims), the vast majority of statutory claims currently have a three-month time limit, for example, unfair dismissal and discrimination claims.

Curiously, this proposal was missing from the initial draft of the Employment Rights Bill. Then, in November 2024, the Government amended the Bill, to add a provision extending the time limits for statutory employment.

However, it should be noted that the time limit for bringing a breach of contract claim in the Employment Tribunal will not be extended and will remain subject to a three-month time limit. It is unclear whether this exclusion is a deliberate policy choice or an oversight.

What will this change mean for employers in practice?

- Of course, settlement agreements are often used where it is thought that there is a high risk of claims, and this change will not affect that practice. In fact, the longer time frame to commence a claim may allow settlements to get over the line without the individual filing a protective claim.
- However, where a settlement agreement is not used, this change will mean that employers will not be "out of the woods" in terms of potential litigation for a longer period of time. In turn, this will mean that care will need to be taken to preserve relevant documents in case they are needed in the context of a future dispute.
- Further, the final Employment Tribunal hearing may be scheduled quite a long time after a claimant's employment has ended (as a result of this change combined with the recent increase to the maximum Acas early conciliation period to 12 weeks and the ongoing backlogs in the Employment Tribunal system). This may negatively affect witness evidence due to fading of memories and also the risk that witnesses have moved on to new employment by the time the hearing takes place.
- The Government's **impact assessment** estimates this change will result in annual direct costs to business of £13.6 million, covering the costs of an estimated 5% increase in Employment Tribunal cases and an initial familiarisation cost of £13.1 million.

What are the next steps?

The Government has said this change will come into force no earlier than October 2026.

Fair Work Agency

Currently, most employment rights need to be enforced by individual workers in the Employment Tribunal system, something which is often challenging for workers with limited resources. A limited number of rights are enforced by the State on behalf of workers, namely, by the Gangmasters and Labour Abuse Authority, the Employment Agency Standards Inspectorate and HMRC’s National Minimum Wage Enforcement Team.

Under the ERA, the Secretary of State will take over responsibility for enforcing certain aspects of labour market legislation via a new public authority, expected to be called the “Fair Work Agency”. The Fair Work Agency will have responsibility for enforcement of the following areas of law, known as “relevant labour market legislation”:

- statutory payment regimes, including National Minimum Wage and Statutory Sick Pay;
- holiday pay rights;
- the regulation of employment agencies and employment businesses;
- the unpaid Employment Tribunal financial penalties scheme for failure to pay sums ordered or settlement sums;
- the licensing regime for businesses operating as “gangmasters” in certain sectors;
- parts 1 and 2 of the Modern Slavery Act 2015; and
- penalties issued by the Fair Work Agency itself.

This list may be expanded in future under powers built into the ERA, however at least for now, it appears that primary enforcement of equality law is remaining with the EHRC.

In terms of addressing non-compliance with the laws within its remit, the Fair Work Agency will have the power to:

- obtain documents or information, including entering business premises to obtain them, requiring their production, and retaining them or taking copies;
- giving “notices of underpayment”, which may order payment to be made to any underpaid individual within 28 days of the notice (for claims going back up to six years), with accompanying penalties payable to the Secretary of State;
- bring proceedings in an Employment Tribunal on behalf of a worker, where that worker is not planning to do so, for **any employment rights under any enactment** (with limited exceptions). Any financial award would still go to the worker;
- provide or arrange for legal advice, representation or assistance in relation to employment, trade union or labour relations law (excluding settlement facilitation), with the Agency’s costs being recoverable if an award is made;
- require “labour market enforcement undertakings” to comply with prohibitions, restrictions or requirements stipulated by the Fair Work Agency (and which may last for up to two years); and
- apply to Court for a “labour market enforcement order” which prohibits or restricts certain actions or requires certain actions to be taken (and which may last for up to two years).

Where a person provides false information or documents, obstructs enforcement, fails to comply with a requirement of the Fair Work Agency and/or fails to comply with a labour market enforcement order, they will commit a criminal offence punishable by a fine or imprisonment. Notably, where an offence is committed by a company and it is shown that the offence was committed with the consent of an officer of the company, or was attributable to any neglect on their part, then that officer will also be guilty of a criminal offence. In this context, “officer” means a director, manager, secretary or other similar officer or person purporting to act in such capacity

What do these changes mean in practice for employers?

- The possibility of State enforcement of labour market laws tends not to be on the radar of most employers. Naturally, the focus is usually placed on the risk of Employment Tribunal claims by individual employees, which carry the risk of compensation awards and bad publicity. Currently, State enforcement is dispersed amongst different bodies, with low levels of knowledge about the remit of those bodies and their enforcement powers. The transition to a single State enforcement body is likely to achieve the desired impact of creating a single, recognisable brand, which, in turn, may increase the reporting of malpractice.
- The Fair Work Agency has teeth. It has strong investigatory and enforcement powers, which could lead to fines and criminal convictions, including, in certain circumstances, for the senior executives working in the offending business. This has the effect of incentivising those individuals to ensure that the business is meeting its legal obligations. A failure to do so could mean they end up with a criminal record. Further, if they work in a regulated sector, this could result in regulatory action against them and potentially jeopardise their ability to practice in their chosen career. Therefore, a lot is at stake.
- Employers may also be alarmed by the ability of the Fair Work Agency to bring Tribunal proceedings on behalf of workers and/or provide legal assistance. In the areas within its remit, the Fair Work Agency will have specific enforcement powers as covered above, meaning it will likely be unattractive for them to try and enforce

such rights via the Employment Tribunal. However, their ability to bring and/or offer support with proceedings applies to any employment rights and could in theory therefore extend to matters such as unfair dismissal or even discrimination. It remains to be seen whether these powers will be used in practice, and they will be perhaps most attractive for landmark "test" cases making their way to higher courts where the costs risk is likely to put off most employees from litigating.
- The establishment of the Fair Work Agency will take time and its success will, in large part, depend on whether it has sufficient resources to discharge its duties.

What are the next steps?

The Fair Work Agency is expected to be established in April 2026, with further details of implementation timelines for its powers being provided in due course.

What else is covered?

To complete the picture, we have rounded up below the other areas covered by the ERA, some of which are sector-specific.

Area	Reform	What are the next steps?
Holiday pay records	The ERA will require all employers to keep records demonstrating compliance with holiday entitlement, covering both the amount of leave and pay, however, there is no prescribed format for these records. The records must be retained for six years and failure to comply will be a criminal offence punishable by a fine.	Implementation to be announced.

Tipping practices	Legislation regulating the allocation of tips introduced in 2025 requires affected employers to have a written policy on how it dealt with tips and gratuities. That policy must include information on whether the employer requires or encourages customers to pay tips, gratuities and service charges and how the employer ensures that all qualifying tips, gratuities and service charges are dealt with in accordance with the law, including how they are allocated between workers. The ERA will amend the law to provide that before producing the first version of the policy, an employer must consult with trade union or other worker representatives, or, if none, with the workers affected by the policy. Further, at least once every three years employers must review the policy and carry out further consultation with workers or their representatives. Whenever consultation is carried out, the employer must make a summary of the views expressed in the consultation process available in anonymised form to all workers.	Consultation awaited. Implementation in October 2026

Umbrella companies	The ERA will amend the definition of “umbrella companies” contained in section 13(3) of the Employment Agencies Act 1973 and enable the future regulation of umbrella companies.	Consultation awaited. Implementation in 2027.
Time off for public duties	The ERA provides that within 12 months of implementation, the Secretary of State must (i) review the purposes for which employers are required to permit their employees to take time off to carry out public duties; and (ii) publish a report setting out the findings of the review.	Implemented on 18 December 2025. Review findings to be published by 18 December 2026.

Trade unions	The ERA contains various provisions aimed at strengthening trade unions including: • requiring employers to notify workers of their right to join a trade union in writing when they start employment and at other times; • enhancing the rights of trade unions to access workplaces for the purpose of meeting, recruiting and organising workers and facilitating collective bargaining; • simplifying the process for trade union recognition; • repealing rules which impeded the financing of trade unions; and • repealing or amending existing laws governing industrial action (for example, in relation to balloting, voting and the giving of notice of industrial action) with the aim of making it easier for trade unions to call such action.	Implementation in April and October 2026.

Workers involved in trade union activities	The ERA contains various detailed provisions aimed at strengthening protection for workers involved in trade union activities including: • improved access to facilities for trade union representatives taking time off to carry out their duties; • introducing a new statutory role for “union equality representatives” in workplaces with recognised unions; • introducing protection from detriment for having taken part in industrial action; • removing the cap on the number of weeks for which an employee is protected from dismissal for taking part in industrial action (i.e. the first 12 weeks), meaning they will be protected throughout; and • modernising the existing law on blacklisting to protect more people from blacklisting due to their trade union membership or activity.	Consultation awaited. Implementation in October 2026 (save for the blacklisting reforms which will be in 2027).

Public sector	The ERA contains a power for regulations to be made to ensure that, where public services are outsourced, the private sector contractor’s workforce are not treated less favourably than the incoming public sector workers, and vice versa, thereby preventing a “two-tier workforce”.	Code of Practice and Regulations awaited. Implementation in October 2026.
Ships’ crews	The ERA contains some fine-tuning amendments to the notification rules in certain collective redundancies involving ships’ crews. In addition, it contains measures to strengthen seafarers’ rights at sea and implement international conventions on seafarers’ employment.	Implementation in April and December 2026.
School support staff	The ERA gives the power to reinstate the “School Support Staff Negotiating Body”, a body which will have the power to negotiate on the pay and conditions of affected workers.	Consultation, Code of Practice and Regulations awaited. Implementation in October 2026.

Adult social care workers	The ERA gives the power to introduce a "Fair Pay Agreement" in the adult social care sector and establish an "Adult Social Care Negotiating Body", which will have the have the power to negotiate on the pay and conditions of affected workers.	Consultation closed in January 2026. Response, Code of Practice and Regulations awaited. Implementation in October 2026.

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), Rose Lim (RoseLim@bdbf.co.uk), or your usual BDBF contact

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What should employers be considering ahead of the introduction of the new unfair dismissal rules on 1 January 2027?

On 1 January 2027, the period of service needed to claim unfair dismissal will be reduced from two years to six months. At the same time, the cap on the compensatory award for unfair dismissal (currently the lower of £123,543 or 52 weeks' pay) will be removed. Employers considering making dismissals will need to take great care with the timing of

dismissals if they wish to avoid uncapped claims. In this briefing we consider how an employer should approach dismissals of employees with under two years' service and dismissals of employees who already have two or more years' service.

Dismissal of employees who have <u>under</u> two years' service before 1 January 2027

Where an employer dismisses an employee before 1 January 2027 the current unfair dismissal regime will apply. This means that an employee will qualify to bring an ordinary unfair dismissal claim only if they have two years' service by the date of dismissal. However, employers must take note of an important rule which may give employees with under two years' service a route to bring an ordinary dismissal claim.

The Employment Rights Act 1996 provides that where an employee is dismissed without notice (or without sufficient notice), their statutory minimum notice entitlement (which is one week for employees who have between one month and two years' service) is added on to their actual termination date, which is known as the "effective date of termination" (the "**actual EDT**"). This adding on of statutory notice creates a notional effective date of termination (the "**notional EDT**"), which is used for certain limited purposes, namely to:

- decide whether an employee has sufficient qualifying service to bring an unfair dismissal claim;
- decide whether the employee has sufficient qualifying service to have the right to request written reasons for

their dismissal; and

- calculate their “basic award” for unfair dismissal (which is based on complete years of service).

A similar approach is taken where inadequate notice has been given, save that here the statutory notice entitlement runs from the date that the inadequate notice is given rather than the actual EDT.

Employers cannot avoid these rules by making a payment in lieu of notice (“**PILON**”) as it cannot replace statutory notice.

The logic for this extension is that an employee should not be denied the right to bring an unfair dismissal claim as a result of being dismissed without statutory minimum notice (or with inadequate notice) shortly before they would have acquired the right to bring the claim. The exception is that the extension rule will not apply where an employee has been summarily dismissed for gross misconduct, and this is because no statutory notice is owed to them in those circumstances.

Herein lies the danger for employers, because from 1 January 2027 the qualifying period needed to bring an unfair dismissal claim will be reduced from two years to six months. Therefore, if an employee has a notional EDT extending into 2027 *and* they have at least six months’ service by that date, they should qualify to bring an unfair dismissal claim even where their actual EDT falls in 2026.

Importantly, the Employment Rights Act 1996 provides that notional EDT is only used for the three limited purposes discussed above – it is *not* used for the purposes of the compensatory award. On that basis, where the actual EDT falls in 2026 but the notional EDT extends into 2027, any compensation would fall to be assessed by the compensatory award regime in place as at the date of the actual EDT in 2026 (i.e. the capped regime with a maximum compensatory award of the lower of £123,543 or 52 weeks' pay). This significantly reduces an employer's risk exposure and provides an incentive to ensure that the actual EDT in any prospective dismissal falls in 2026 rather than 2027.

How does the extension rule work in practice?

The starting point is to identify the actual EDT. Where an employee is dismissed without notice the actual EDT will be the date on which the termination takes effect. This will be when the employee actually learns of the dismissal or has a reasonable opportunity to do so (and what is "reasonable" is not defined in law and will turn on the facts of the case). Therefore, where an employer communicates the termination to the employee face-to-face, the actual EDT will be that date. Where the employer communicates the termination by email or letter, for example, the actual EDT will be the date on which the employee reads the email or letter, or the date on which they would have had a reasonable opportunity to do so.

Once the actual EDT has been identified, assuming that no notice was given, the statutory notice period is added on to identify the notional EDT. As above, the statutory minimum notice entitlement for employees who have been employed for between one month and two years is one week. Importantly, the statutory notice only begins to run from the day *after* the actual EDT rather than from the actual EDT. The last day of the statutory notice period is counted as the notional EDT. This means that a dismissal without notice of an employee with under two years' service **would need to take effect at least eight days before 1 January 2027** to avoid a notional EDT of 1 January 2027. Where insufficient notice has been given, the statutory notice would run in parallel with any notice given by the employer.

Worked examples

The best way to understand the application of this tricky rule is to consider a few worked examples.

Example 1: Employee with eight months' service dismissed at the end of December 2026 (paid in lieu of notice):

- John starts work on 22 April 2026 and is dismissed with immediate effect on 27 December 2026 and paid in lieu of notice. This means 27 December 2026 is the actual EDT.
- John has eight months' service and so is entitled to one week's statutory notice. Because John has been dismissed without notice, his statutory notice entitlement of one week will be added on to identify his notional EDT.
- The one week's notice starts to run on 28 December 2026 and expires on 3 January 2027.
- The 3 January 2027 is the notional EDT. John has eight

months’ service on the notional EDT. On that date, the qualifying period to bring an unfair dismissal is six months’ service. Therefore, John should qualify to bring an unfair dismissal claim.

- However, John’s actual EDT is 27 December 2026. This is the date from which his time limit to bring the unfair dismissal claim will start to run (i.e. three months less one day) as time limits are not extended by the statutory notice period. Therefore, John must bring his claim by no later than 26 March 2027, subject to any extension to this date obtained by virtue of Acas Early Conciliation.

- If John wins his claim, he will not be eligible to receive a basic award as he does not have at least one continuous year’s service (and the basic award calculation is based on complete years of service). John will be eligible to claim a compensatory award, although this would be awarded under the capped compensatory award regime in operation on his actual EDT and not the uncapped compensatory award regime in force from 1 January 2027.

Example 2: Employee with just under six months’ service dismissed at the end of December 2026 (paid in lieu of notice):

- Lucy starts work on 2 July 2026, meaning her six-month service anniversary would fall on 1 January 2027.

- Lucy is dismissed with immediate effect on 24 December 2026 and paid in lieu of notice. The 24 December 2026 is the actual EDT.

- Lucy has five months' service and so is entitled to one week's statutory notice. Because Lucy has been dismissed without notice, her statutory notice entitlement of one week will be added on to identify her notional EDT.

- The one week's notice starts to run on 25 December 2026 and expires on 31 December 2026

- Lucy's notional EDT is 31 December 2026. This means she does not qualify to bring an unfair dismissal clam as the qualifying period in force on that date is two years' service, which she does not have.

- If Lucy's actual EDT had been one day later, then her notional EDT would have been 1 January 2027, and she would have qualified to bring a claim.

Example 3: Employee with three months' service dismissed in January 2027 (paid in lieu of notice):

- Alex starts work on 11 October 2026, meaning his six-month service anniversary would fall on 10 April 2027.

- Alex is dismissed with immediate effect on 15 January 2027 and paid in lieu of notice. The 15 January 2027 is the actual EDT.

- Alex has three months’ service and so is entitled to one week’s statutory notice. Because Alex has been dismissed without notice, his statutory notice entitlement of one week will be added on to identify his notional EDT.

- The one week’s notice starts to run on 16 January 2027 and expires on 22 January 2027.

- Alex’s notional EDT is 22 January 2027. This means he does not qualify to bring an unfair dismissal claim because he does not have six months’ service on that date.

Example 4: Employee with just under six months’ service dismissed at the end of December 2026 (with insufficient notice):

- Emily starts work on 30 June 2026, meaning her six-month service anniversary would fall on 29 December 2026.

- Emily is given her notice of dismissal on 25 December 2026. Her employer states that she should work until the end of the following Monday (28 December 2026) to hand over her matters, and they will pay her in lieu of the remainder of her notice. The 28 December 2026 is the actual EDT, because this is the day that her notice period expires.

- Emily has five months' service and so is entitled to one week's statutory notice. Because she has been dismissed with some notice, but not her full one week's entitlement, the remainder of her statutory notice entitlement will be added on to identify her notional EDT.

- The one week's statutory notice starts to run on 26 December 2026, the day after she is given notice by her employer. It runs in parallel to the few days' notice that they asked Emily to serve and expires on 1 January 2027.

- Emily's notional EDT is 1 January 2027. This means she does qualify to bring an unfair dismissal clam as the qualifying period in force on that date is six months' service, which she has accrued by that date.

- However, any compensation would be awarded under the capped compensatory award regime in operation on her actual EDT and not the uncapped compensatory award regime in force from 1 January 2027.

Dismissal of employees who have two years' service or more before 1 January 2027

The position is somewhat more straightforward for employees who have accrued two years' service before 1 January 2027. These employees will already qualify to bring a claim of unfair dismissal under the current rules. This means that they do not need to rely on the extension rule discussed above in order to qualify to bring a claim (nor to qualify for the right to request written reasons for the dismissal).

However, the extension rule is still relevant to them for the limited purpose of calculating their basic award in any unfair dismissal claim. The basic award is calculated by reference to complete years of service. Therefore, if an employee is dismissed without notice (or with inadequate notice), shortly before an anniversary of their employment, the extension rule will add their statutory notice to their actual EDT to identify the notional EDT for basic award purposes. This may mean that they the pass an anniversary date and achieve a higher basic award.

As discussed above, however, the extension rule does not apply in relation to the compensatory award. This means that the applicable rules are those in force on the actual EDT. This is a crucial point for employers since means that provided the actual EDT is on or before 31 December 2026, the current capped compensatory award rules apply.

Since **actual EDT** is the key reference date for compensatory award purposes, employers will need to **ensure that the actual EDT falls no later than 31 December 2026**. If an employer dismisses without notice by this date, the employee would still be entitled to bring an unfair dismissal claim but would only be able to claim a capped compensatory award not an uncapped one.

Great care needs to be taken to ensure the actual EDT falls no later than 31 December 2026. As discussed above, the actual EDT is the date that the employee actually learns of the dismissal or has a reasonable opportunity to do so (and what is “reasonable” is not defined in law and will turn on the facts of the case). To be certain that the employee has actual knowledge of the dismissal, the employer should communicate it face-to-face. It should be remembered that where termination is communicated by email or letter, for example, the actual EDT will be the date on which the employee reads the email or letter, or the date on which they would have had a reasonable opportunity to do so. This may be different to the date on which the email or letter is sent by the employer and introduces uncertainty about when the actual EDT falls.

Clearly, there is a risk to leaving a dismissal until 31 December 2026. The employee may well be on holiday over the Christmas and New Year period, potentially leaving the employer unable to communicate the termination in person. Relying on an email or letter is extremely risky. If the employee does not see it until the following day, they would likely be able to claim the actual EDT is 1 January 2027, meaning an uncapped claim would then be available to them.

Even if the dismissal is communicated at the eleventh hour, the other major risk with rushing through a dismissal in this way is that a fair dismissal process is unlikely to have been followed. This would gift an unfair dismissal claim to the employee (albeit that it would be a capped claim). Employers can avoid this unforced error by planning ahead now to identify dismissals that are needed prior to 1 January 2027 and putting the appropriate dismissal processes in train in good time. Some fair dismissal processes take considerable time (e.g. performance or ill-health dismissals) meaning the planning around those needs to happen as soon as possible.

Key takeaways

Employers considering dismissing employees who have **under two years' service** should ensure they do so before 1 January 2027, when the reduced qualifying period comes into force. Critically, the dismissal must be timed correctly to avoid the extension rule taking the notional EDT into 2027. This will usually mean dismissing by no later than 24 December 2026.

Where the dismissal relates to an employee with **two or more years' service**, the dismissal must take place no later than 31 December 2026 and, ideally, much earlier, so as to avoid arguments that the employee did not have knowledge of the dismissal until 1 January 2027.

This briefing and the examples given above provide general guidance only and do not amount to legal advice. These calculations are complex and can be finely balanced, and employers should always seek legal advice on this issue in good time before any proposed termination. If a dismissal is on the cards, or becomes necessary shortly before 1 January 2027, employers should seek urgent legal advice.

Finally, employers should also remember that where the reason or principal reason for dismissal is one of a number of "automatically unfair" reasons, such as having blown the whistle, an employee will usually be entitled to bring the claim from Day 1 of their employment and will not need two years' service. Employees in this position with under two years' service would not need to rely on the extension rule in order to bring a claim. And in a minority of automatic unfair dismissal claims, compensatory awards are uncapped. From 1 January 2027, all such claims will be uncapped.

Government launches consultation on regulating workplace monitoring technologies

On 8 July 2026, the Government launched a consultation on options for regulating the use of workplace monitoring technologies. The proposals range from issuing guidance or a statutory Code of Practice, through to new legislation requiring employers to consult workers before introducing certain monitoring technologies, backed by protective awards where employers fail to comply.

What’s the background?

As part of its wider *Make Work Pay* agenda, the Government is seeking views on how workplace monitoring technologies (**WMT**) should be regulated. For these purposes, WMT covers any digital tool used in the workplace or remotely that collects, tracks, analyses or makes decisions using data about workers and their activities.

The consultation notes that the use of these technologies has increased significantly in recent years. A Chartered Management Institute survey found that a third of UK organisations actively monitored employees’ digital activity in 2025, compared with only a fifth in 2023. Although monitoring technologies are most commonly associated with platform-based businesses such as ride-hailing, delivery and logistics, they are increasingly being adopted across more traditional sectors, including retail. In office-based environments, WMTs are likely to include programs that monitor emails and web browsing, but can also extend to recording of screen activity, app usage and/or keyboard strokes to track productivity, attendance or employees' communications.

The use of WMT is already governed by data protection and employment law. Personal data must be processed lawfully, fairly and proportionately, with additional safeguards applying where special category data, such as health information, is involved. Workers must also receive clear information about how their data is used, including where automated decision-making is involved. Decisions informed by monitoring or algorithmic systems must also be fair, reasonable and non-discriminatory. In some cases, inappropriate monitoring could also amount to a breach of the implied duty of mutual trust and confidence.

The consultation asks whether this existing legal framework is sufficient or whether further intervention is needed. The Government identifies a number of concerns, including intrusive monitoring, disproportionate surveillance, unfair or biased outcomes where systems rely on inaccurate or incomplete data, and a lack of transparency about how monitoring technologies influence decisions affecting workers. It also highlights concerns that employees may struggle to understand, question or challenge decisions that are influenced by these systems.

Proposed principles for the responsible use of WMT

The consultation proposes eight principles which, in the Government’s view, should underpin the responsible use of WMT, regardless of whether they are ultimately underpinned by legislation, a statutory Code of Practice or non-statutory guidance.

The proposed principles are:

1. **Purpose and rationale**: employers should be clear about why monitoring technology is being used and how its outputs support that purpose. For example, if driver-facing cameras are introduced, is the aim to improve road safety, reduce insurance costs or monitor performance?

2. **Transparency and understanding**: workers should receive clear, accessible and timely information about what data is collected, how it is used and the role it plays in employment decisions, including where solely automated decision-making applies.

3. **Worker engagement and voice**: employers should engage with workers, trade unions or employee representatives before introducing monitoring technologies or using them to support significant workplace decisions. The consultation identifies piloting new systems with

representative groups before wider implementation as good practice.

4. **Fairness and equality**: monitoring technologies should not produce discriminatory or disproportionate outcomes. Employers should consider whether the underlying data is accurate, complete and free from bias.

5. **Necessity, proportionality and privacy**: employers should consider whether less intrusive measures could achieve the same objective and should ensure that monitoring does not gradually expand beyond its original purpose.

6. **Human oversight and accountability**: decision-makers should understand the systems on which they rely and exercise meaningful oversight. Workers should also have a clear route to question or challenge decisions.

7. **Dignity and wellbeing**: employers should consider the impact of monitoring on workers' mental health and wellbeing and take appropriate steps to manage any

associated risks.

8. **Accuracy, reliability and review**: employers should keep monitoring systems under regular review, taking account of worker feedback, technological developments and emerging risks.

The role of worker engagement

A recurring theme throughout the consultation is that workplace monitoring is more likely to be accepted where workers understand why it is being used and have had a genuine opportunity to contribute to the process.

The Government suggests that legal compliance alone is unlikely to deliver good outcomes. Instead, employers should engage with workers to understand how monitoring technologies operate in practice and to identify potential risks *before* systems are introduced or expanded. Employee representatives can also help employers assess whether a system is likely to achieve its intended purpose and what safeguards may be needed.

The consultation deliberately avoids prescribing a single model of engagement. Depending on the circumstances, consultation may take place through trade unions, employee representatives or directly with workers. The right approach will depend on factors such as the size of the employer, the nature of the technology and the extent to which it affects employees' day-to-day working lives.

The consultation also refers to existing Acas guidance, which encourages employers to consult employees before decisions are taken where workplace changes are proposed.

Three possible approaches to regulation

Although the consultation sets out three possible options for reform, the Government also makes clear that maintaining the current legal framework as it is remains a possible outcome if the evidence does not justify reform.

Option A: Statutory Code of Practice and guidance

The first option would be a statutory Code of Practice based on the eight principles outlined above, supported by more detailed non-statutory guidance covering the entire lifecycle of WMT.

Although the Code would not create new legal obligations, employment tribunals could take it into account in relevant proceedings. For example, where an employee successfully brought a claim for unfair dismissal or discrimination involving WMT, and the tribunal concluded that the employer had unreasonably failed to comply with the Code, compensation could potentially be increased by up to 25%.

The Government considers that this approach would build on the existing legal framework while providing greater clarity for employers and workers. At the same time, because the Code would not create standalone legal rights, its practical impact would depend on tribunal claims being brought and on tribunals choosing to place weight on the Code. There is also a risk of adding complexity if its relationship with existing legislation is not clearly explained.

Option B: A legislative requirement to consult

The second option would introduce legislation requiring employers to consult, and negotiate with a view to agreement, with trade unions or employee representatives *before* introducing or making significant changes to WMT. The proposal is broadly modelled on the collective redundancy consultation regime. Employers would be required to engage meaningfully with representatives with a view to reaching agreement, although agreement itself would not be mandatory.

The consultation suggests that this duty could range from a relatively light-touch obligation to provide information and consider employee feedback, through to a more prescriptive regime involving specified information, minimum consultation periods and genuine negotiation. Enforcement would take place through the employment tribunal system, with protective awards available where employers failed to comply.

The Government acknowledges, however, that this option raises a number of practical challenges. Defining WMT without imposing disproportionate obligations could prove difficult. It may also be unclear when consultation should be triggered, given that many technologies are introduced gradually through pilots and incremental changes rather than a single implementation date. In addition, the administrative burden could fall particularly heavily on smaller employers that do not already have established consultation arrangements. Finally, because this option would require primary legislation, it would take the longest to introduce.

Option C: Non-statutory guidance

The third option would be to publish non-statutory guidance, supported by case studies, worked examples and practical toolkits covering each stage of the WMT lifecycle.

The Government suggests that this approach offers the greatest flexibility. Because monitoring technologies vary considerably between sectors and workplaces, guidance could be updated more easily than legislation or a statutory Code of Practice and tailored to reflect evolving technologies and risks.

This would also be the least burdensome option for employers, particularly smaller organisations seeking practical guidance. However, it would carry no legal force and would rely entirely on voluntary compliance by employers. As a result, it is likely to have the least impact in workplaces where employees have little opportunity to influence how monitoring technologies are used.

What does this mean for employers?

Although the Government has not yet decided whether further regulation is needed, the consultation signals a clear direction of travel. As WMT becomes more sophisticated and widespread, there is likely to be greater scrutiny of how employers collect and use employee data. Rather than waiting for the outcome of the consultation, employers would be well advised to review their existing WMT practices now, ensuring they are transparent, proportionate and supported by appropriate employee engagement. Those organisations that can demonstrate responsible governance are likely to be in the strongest position whatever reforms are taken forward.

Employers and other interested stakeholders may respond to the consultation online, by email or by post until 30 September 2026.

Make Work Pay: Workplace monitoring technologies

Equal Pay: Government launches consultation on equal pay and pay discrimination

On 14 July 2026, the Government opened a consultation aimed at informing a "*comprehensive reform of the current equal pay framework*", seeking views on gaps in the existing system and how equality of pay can be better ensured for disabled workers, those from ethnic minority groups and outsourced workers.

This latest consultation is intended to build on the call for evidence run in April 2025 and seeks views on the most effective ways in which the identified objectives can be achieved, namely: (i) making pay discrimination less likely to happen; (ii) providing effective protection against pay discrimination for women, disabled workers, those from minority ethnic groups and outsourced workers; and (iii) making disputes over pay discrimination easier to resolve, with reduced time and expense required.

The consultation proposes a split into two ‘phases’ of reform, the first phase focusing on improving the current system by streamlining procedures and strengthening both transparency and enforcement, and the second phase looking at closing gaps in the law with broader protections. Under the new system, employers will need to grapple with a greater emphasis on transparency, proactive compliance, regulatory oversight and scrutiny of pay practices.

The consultation is due to close on 27 October 2026, and with the implementation period set to be “*extended*”, we do not expect any resulting changes to legislation to come into force any time soon. Nevertheless, employers should be aware of the options being considered and start to consider how far away their existing practices are from the potential requirements.

Phase 1

The Government considers that there are “*systemic failures*” in the current equal pay regime, both in terms of preventing pay discrimination from occurring and the significant burden on individuals, employers and the system when it comes to effective enforcement. Phase 1 of the proposed reforms would therefore look to resolve these concerns in a “*holistic and comprehensive way*”.

Pay Transparency

- The primary proposal in relation to pay transparency is a **new statutory requirement for employers to publish information on pay and conditions in job adverts**.
  - The aim of this is to encourage evaluation of job roles by the employer for consistency in pay, and reduce disparities in the information held by the candidate compared to the employer at the recruitment stage.

  - The Government also considers that this will allow candidates to make informed decisions, leading to a fairer and more efficient recruitment process, as well as increasing transparency for the existing workforce. If there is no job advertisement, the information would need to be provided directly to the candidate. At a minimum, the requirement is likely to be to publish basic salary (and potentially only a salary range), however views are also being sought on whether it should also include matters such as collective bargaining rights or other financial benefits.

- In addition, the powers of Employment Tribunals to **order**

an equal pay audit after a successful claim are proposed to be strengthened, with exceptions to this requirement significantly reduced and Tribunals being required to make such an order in the event of a successful pay discrimination claim based on race or disability. The same applies to **job evaluation schemes**, which Tribunals would newly be required to order if one does not already exist. This may impact the way in which employers determine pay for their roles, as greater scrutiny will be applied to outdated or informal grading structures and record-keeping.

- The consultation also proposes **reintroducing a statutory questionnaire process** for pay discrimination claims, whereby claimants will be able to request relevant pay information prior to litigation. This process, which was previously required by the Equality Act 2010, was repealed in 2014 (although ACAS still recommends asking an employer questions prior to pursuing a claim). Reintroducing this option makes pre-claim information requests much more likely and will lend them more strength, as failure to answer (or attempting evasive answers) is likely to be taken into account in any subsequent claim even if the questionnaire is technically optional. At the very least, this will be an administrative burden for employers to deal with, albeit that it will be limited to pay discrimination claims and not other types of dispute.

Overall, these proposals would mean that **employers must be prepared to evidence and justify the rationale behind their remuneration decision**s in a way that they have not been required to do to date. For some employers, the requirement to publish pay information as part of recruitment may be of no concern or reflect their existing practice, and they may already have clear objective methods of making internal pay decisions. For others, particularly those in sectors which tend to have wide salary ranges per role, highly negotiated hiring processes or those who discourage discussion of pay levels between colleagues, these proposals are likely to be unwelcome. This may feel particularly onerous for those who are already grappling with the potential for parallel requirements under the EU Pay Transparency Directive, which was due to be incorporated into local law by EU member states by 7 June 2026 (but which has not yet been widely implemented).

Enforcement

- The consultation proposes **formal reviews of the rules of procedure for pay discrimination claims and the operation of the independent panel of experts** who advise the Employment Tribunal on what constitutes work of equal value. These reviews would reflect the fact that litigation is complex, costly and time-consuming, leading to a lack of justice for claimants and commercial uncertainty for employers, and that informed reform is needed to create more efficiency.

- Additionally, a new **Equal Pay Regulatory and Enforcement Unit** (the **Unit**) would be established to enforce pay discrimination, with a focus on a preventative approach. This would build on the existing powers of the Equality and Human Rights Commission (**EHRC**), which have been historically rarely used, and may sit either within the EHRC itself or as part of the Fair Work Agency (find out more about this in our Guide to the ERA).
    - Notably, the remit of the Unit is proposed to include pay discrimination matters brought under wider discrimination law (including direct and indirect discrimination where they relate to sex, disability or race, discrimination arising from disability and failures to make reasonable adjustment obligations), and not just to equal pay claims.

    - The Unit would also offer **guidance on the 'material factor defence'** (which allows an employer to defend a difference in pay by proving it is due to a material factor which is neither directly nor indirectly discriminatory), which tends to be a highly complex element of any equal pay dispute.

    - In addition, the Unit will have **specific powers to support enforcement activities** including the ability to request evidence prior to formal investigation, aligning it with the powers of other regulators such as the Fair Work Agency. They would also be able to require equal pay audits and/or job evaluation schemes to be conducted, and require employers to give updates or responses about how recommendations have been implemented following any inquiry.

The establishment of a specific Unit with targeted enforcement powers, and the potential for new procedural rules governing pay disputes, indicate that a **higher level of scrutiny outside of traditional litigation** can be expected when it comes to pay equality. If implemented, employers' obligations in relation to ensuring and documenting pay levels within their workforce would expand significantly beyond their existing, such as the publication of pay gap reports and the proposal for action plans (see more about this in our [Guide to the ERA]).

Phase 2

Following Phase 1, the Government proposes to address gaps in the legislative framework that mean groups which are protected by the Equality Act 2010 do not all benefit equally from rights to equal pay. The proposals therefore look to extend protection to those experiencing discrimination on the basis of race or disability, and those who are supplied as 'outsourced' workers to avoid equal pay rights.

Extending Protections for Race and Disability

- The consultation proposes keeping the existing equal pay regime limited to claims based on sex, and continuing to permit pay discrimination claims under the Equality Act 2010 based on race or disability (either as direct, indirect, reasonable adjustment or discrimination arising for disability claims), but ***"levelling-up"* the protections to equalise the advantages currently available to each group**.

- These changes would require an extended implementation period with comprehensive guidance, and apply solely to discrimination occurring after any new legislation is in force (unless it is continuing).

- It is unclear how these protections could be truly equalised if the regimes remain so distinct, as the legal tests will continue to differ and therefore protection will consequently apply differently depending on the protected characteristic in question.
    - A key proposal is to **change the test which applies in direct or indirect pay discrimination claims based on race or disability** to compare the claimant's pay to that for work which is "*rated as equivalent*" or "*of equal value*", rather than the standard requirement for a comparator to have "*no material difference*" in circumstances.

    - Additionally, the **use of hypothetical comparators would be allowed in equal pay claims based on sex**, and the test for extending time limits would be changed to mirror the 'just and equitable' test for most discrimination claims.

    - Aside from this, the consultation's focus appears to be on **equalising potential remedies**, such as modifying discriminatory contract terms, ordering equal pay audits and/or ordering job evaluation schemes.

If these proposals are taken forward in law, employers will need to grapple with the significant challenge of **attempting to ensure pay parity on the basis of protected characteristics about which they may have limited insight or data**. Currently, employers do not have a right to demand race or disability information from candidates or employees as, unlike legal sex, this information is not required for payroll, pension or other checks such as their right to work. Whilst many employers ask for this information on a voluntary and/or anonymous basis for equal opportunities monitoring, the lack of obligation to respond to such questions (or ability to verify responses) means that any data obtained will not be truly representative or useful. This means that an employer's ability to identify potential pay inequality across their workforce will be severely hindered, even if they wish to take proactive steps to resolve it. Equally, employers are likely to be on the backfoot when defending claims if they do not have any reliable data to evidence how employees of all races and disability statuses are paid.

Outsourced Workers

- At present, there is nothing to prevent employers outsourcing services to avoid the equal pay obligations that would apply if the work was done in-house. The consultation also proposes a significant **new duty on contracting parties to take "*all reasonable steps*" to uphold pay equality in their contractual arrangements**.

- The new duty will apply to "*all companies involved in direct or indirect contractual relationships through which the labour of an outsourced worker*" – this means that **all principals, intermediaries and service providers who are involved in the arrangement will be caught**. Some short-term contracts (e.g. catering services for a specific event) will be excluded from the duty.

- What constitutes 'reasonable steps' will vary depending on the size and resources of the employer. The consultation gives the example of a company with 100 employees being expected to request pay and demographic data from other parties in the supply chain. It is clear that companies will not be required to equalise wages across different employers.

- Failure to comply will **not give rise to any right to compensation**, but may lead to the Employment Tribunal setting out required reasonable steps for each party to ensure pay equality going forwards. Enforcement is planned to be by way of the Unit (as described above), rather than individual employees bringing claims.

For employers, the most significant impact of this duty is likely to be the increased level of oversight and supervision expected within outsourcing and supply-chain relationships. Businesses may need to undertake greater due diligence on the employment and pay practices of contractors and suppliers. In practice, this may mean that pay equality becomes a wider compliance consideration for the whole organisation.

With thanks to Jonah Gold for his contribution to this article.

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.

Training agreements: Court of Appeal delivers a warning for employers seeking to claw back costs

In Geeks Ltd v Watts the Court of Appeal (CA) has ruled that a clawback provision for training-related costs was an unlawful, and therefore unenforceable, restraint of trade.

What happened in this case*?*

Geeks, an IT service provider, employed Mr Watts as a trainee quality assurance engineer in March 2019. He signed an employment contract, under which he would be paid £18,000, £20,000 and £22,000 in his first three years of employment respectively, and was subject to two-year restrictive covenants on departure from Geeks prohibiting his employment by certain of their clients.

The contract also gave Geeks the right to recover the "*cost of any formal training course or conferences*" (including the cost of fees and training materials) that he attended in the 18 months prior to departure, payable at full cost less 1/18th for any months worked after the training. This applied to all types of departure from employment except for redundancy.

Additionally, Mr Watts signed a training agreement which calculated a "*Training Cost Debt*", stated to be the financial cost of training him in his position. This was calculated based on:

- A mentor rate of £60 per hour, applying for one hour per day for 19 days per month during the first two months (£2,280) and half an hour per day in the following four months (also £2,280) and

- 100 hours of "*Employment Cost*" during the following five months, worth £13 per hour (£1,300).

The above was stated to be a total of £8,108 (which was "*curiously*" noted by the CA as being £2 less than the actual calculation). The training agreement stated that the calculation was not designed to capture the full cost to the business but was an appropriate figure.

The debt was described as being repayable by "*work contribution*", requiring the employee to remain employed for 12 months after which it would be deemed repaid by 1/18th per subsequent month of full-time employment. Alternatively, if the employee left before complete repayment via work contribution, the outstanding sum would be repayable in full (with a discount if it was paid within 10 days). The contract said that nothing in this section was intended to restrict other employment or trading opportunities and referenced the debt in several other places (including as part of explaining why remuneration increases wouldn't be offered).

Later that year, Mr Watts requested a pay rise which was refused. He resigned in November 2019 after eight months' employment, having obtained a comparable job elsewhere with a salary of £30,000. In September 2021, Geeks commenced proceedings against Mr Watts to recover the purported debt of £8,108.

In the County Court, it appears to have been assumed that the clawback provisions were a restraint of trade, but the Deputy District Judge found that they protected a legitimate interest and were not unreasonable.

Mr Watts appealed this decision, and Geeks sought (at the last minute) to resist on the basis that the restraint of trade doctrine was not engaged at all. However, counsel for Mr Watts successfully argued that this new point could not be pleaded so late, and the appeal must proceed on the basis that the clause was a restraint of trade. The appeal judge noted that, had they been able to consider the point, they would have felt bound by case law (*Steel v Spencer Road LLP* [2024] ICR 137) to determine that "*a clawback of monies pursuant to a contract following resignation, is not a restraint of trade clause*". She also noted that in two prior Employment Tribunal cases against Geeks, the relevant clauses had not been deemed restraints of trade and had been found lawful. The other points of appeal, including those relating to the reasonableness of the costs asserted, were dismissed.

What was decided?

Mr Watts appealed to the CA on the basis that the clawback provisions were a restraint of trade that did not protect any legitimate interest of Geeks, and even if they did they went further than reasonably necessary to do so. In response, Geeks again attempted to argue that the provisions did not amount to a restraint of trade at all, and instead were simply enforceable as a debt.

The CA upheld the appeal, concluding that the clauses were unlawful restraints of trade for the following reasons:

- It was arguable that Geeks should not be allowed to pursue the point regarding whether the clauses were a restraint of trade, as this point had been conceded in prior decisions, and had the point made a difference to the overall conclusion it may have been justifiable to consider a costs order. However, the CA were prepared to permit it on the basis that it was a pure point of law, it was closely connected to Mr Watts' two grounds of appeal, and it was desirable to resolve as an important point of principle.

- The CA considered that the clause **was** a restraint of trade. This was a question of substance rather than form, and it was not sufficient to say that the clause did not technically prevent an employee from leaving (which could not be lawfully done in any event). The question was whether "*viewed as it must be at the time of the contract being made, it will or may have the effect of hampering the employee's ability to trade freely*" – this may capture both traditional restrictive covenants (such as non-competes) and financial disincentives. The CA found that the clause was an indirect restraint that came into force after Mr Watts' departure. Whilst Geeks argued that the unconditional nature of the repayment obligation meant that it did not penalise Mr Watts if he chose to leave, the CA concluded that the doctrine was nevertheless engaged. The CA considered that this must be the case, otherwise an extreme requirement such as one to "*repay us your entire gross salary*" if departing from employment within 12 months would be enforceable as a debt without enquiry into its reasonableness.

- It was established on the basis of previous CA case law that there was a legitimate interest in "*maintaining a stable, trained workforce*". The CA therefore accepted that this was the case.

- The key question was therefore whether the repayment provisions went further than reasonably necessary to protect that interest, the burden of proof being on Geeks as the party seeking to invoke the restraint. The CA considered the fact that Mr Watts did not have independent legal advice and that there was an inequality of bargaining power (as is often the case in employment contracts for relatively low wages). They accepted that monthly instalments were more reasonable than requiring repayment of a lump sum, but this was not determinative. The CA noted that the level of cost, although it had not been a specific point of appeal, was highly artificial and assumed that the work done by Mr Watts in the remainder of each working day was of "*effectively no value to the employer*" (despite clients being billed for his services).

- Overall, the CA concluded that the repayment provisions went further than was reasonably necessary, and were therefore unenforceable, on two grounds:

- they applied whatever the reason for his departure (save for redundancy) and irrespective of whether he would use the skills in his next job. The CA gave the example that they would be chargeable even if he were leaving to "*become a carer for his grandfather who suffered from dementia*"; and

- the effect of the provisions was that in the early months of employment, Mr Watts was not paid much more than the National Minimum Wage but was "*reduced in retrospect to the equivalent of an unpaid intern albeit with a loan repayable over a period*".

What does this mean for employers?

This decision highlights the dangers of seeking to rely on clawback clauses in respect of the investment of time in training an employee after an employee leaves. No matter how aggrieved the employer may feel at having 'lost' the value of such time, this will not be enough to justify a clause that unreasonably restricts them from leaving or performing their trade freely, and the burden will be on the employer to show that the provisions only go as far as absolutely necessary. As is often the case in contractual disputes, the inequality of bargaining power that is inherent in employment contracts is likely to weigh heavily against the employer's arguments in this respect.

Employers looking to rely on such clauses should note the following key points:

- Ensure that any clawback provisions are tied to circumstances where the employee leaves and is expected to use their new skills elsewhere. This could be drafted similarly to a non-compete clause, for instance with reference to departure for a key competitor, client or in a comparable role. If possible, allow a level of discretion to ensure that the charge will always be appropriate to the circumstances and can be adjusted if required.

- The level of costs asserted should be directly related to genuine demonstrable cost to the employer, such as the cost of an external training course, examination or time directly spent on training activities (using an accurate hourly rate), rather than being an estimate of the overall time required. Where applicable, the charge should also account for the fact that outside of these specific activities, the employee’s work is of value to the employer and should not be considered as training time.

- Remember that a clause can still be a restraint of trade even if it does not explicitly prohibit competitive activities after leaving and be prepared to justify any financial disincentives in the same way as traditional restrictions (such as non-solicitation or non-compete provisions). Any such disincentive should therefore be necessary to protect an identifiable business interest and be proportionate to that aim.

- Structure repayment to take place by monthly instalments where possible, rather than as a lump sum, but remember that this will not be determinative if the overall clause goes further than reasonably necessary.

- Ensure that if effected in full, the provisions would not lead to the employee having been paid below the National Minimum Wage for their age during the time that they were employed.

- On entering into any agreement, allow the employee sufficient time to consider the provisions, ask questions and (if possible) take legal advice.

[Geeks Ltd v Joseph Henry Watts [2026] EWCA Civ 889]

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BDBF Partners Recognised in Lexology Index: Labour & Employment 2026

BDBF Managing Partner Gareth Brahams, Partner Claire Dawson and Partner Paula Chan have all been individually recognised in the Lexology Index: Labour & Employment 2026 report.

This ranking reflects the continued strength and depth of BDBF's employment law practice, which is consistently top-tier across leading legal directories. We are delighted to see our lawyers recognised by the Lexology Index.

Congratulations to our fellow leading employment law practitioners who have also been ranked, and thank you to our peers across the employment law community for their feedback.

BDBF Webinar – Culture wars at work: Navigating employee rights, beliefs and the law

In this 45-minute webinar, BDBF Managing Associate [Jamie Barton](#) and Knowledge Lawyer [Rose Lim](#) discuss the latest legal developments in an era of rapid social change and escalating "culture wars." They share practical, real-world case studies to help employers manage risk with confidence while building a respectful workplace. This webinar was originally delivered on [7 July](#) 2026 and reflects our understanding as of that date. Do get in contact with either of the speakers if you would like to discuss any of the issues raised.

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

https://www.youtube.com/watch?v=ALGSmOY936cPlease contact Jamie Barton (JamieBarton@bdbf.co.uk), Rose Lim (RoseLim@bdbf.co.uk) or your usual BDBF contact, for further advice.

Employer had enough information to know that an employee with type 2 diabetes was disabled

In *Cunningham v BBC* the EAT has held that an employer had enough information to have known that an employee with type 2 diabetes was disabled and that her late night working pattern placed her at a substantial disadvantage. In turn, the BBC had been under a duty to make reasonable adjustments and its failure to remove the employee from a late night shift must now be scrutinised again.

What happened in this case?

The Claimant had worked for the BBC since 1987 as a presentation announcer/director for BBC Scotland. She worked according to a rota, mixing early shifts (from 5am), late shifts (the BBC Scotland Late shift finishing around midnight, and the BBC One Late shift finishing at 3am), and day shifts.

In March 2023, the Claimant told the BBC she had type 2 diabetes and was suffering with fatigue. She was referred for an occupational health (**OH**) assessment and then signed off sick for around four weeks. OH advised the BBC that the

Claimant’s health would improve with treatment in the future and recommended that she be removed from early and late shifts and be given regular rest and meal breaks. Around the same time, the Claimant told the BBC that shift working was causing problems including disrupted sleep, irregular meals and lack of routine. She asked for adjustments to accommodate her condition, which she explicitly referred to as a “disability”. The BBC removed her from the early shift and the BBC One Late shift, but not the BBC Scotland Late shift.

In June 2023, the Claimant made a broadcasting error that triggered a formal disciplinary investigation. The BBC ultimately took no formal action, but the Claimant found the process distressing and went off sick in August 2023. A further OH referral was made, which advised that she should also be taken off the BBC Scotland Late shift.

The Claimant brought claims for discrimination arising from disability (in relation to the disciplinary process) and failure to make reasonable adjustments (in relation to not taking her off the BBC Scotland Late shift). Both claims require an employer to have either actual or constructive knowledge of the employee’s disability at the relevant time.

The Employment Tribunal (**ET**) dismissed both claims. It found the BBC neither knew, nor could reasonably have known, that the Claimant was disabled during the relevant period (being June to November 2023). In any event, the BBC had not breached its duty to make reasonable adjustments, since adjustments had been made. Further, the ET found that the broadcasting error was not caused by the Claimant’s disability and that, even if it had been, the disciplinary process was a proportionate means of achieving a legitimate aim.

The Claimant appealed on three grounds, arguing the ET erred in:

- its approach to assessing knowledge of disability, by failing to consider what the BBC actually knew, what further enquiries it should have made, and what those enquiries would have revealed;
- failing properly to consider the reasonable adjustment of removal from the BBC Scotland Late shift; and
- finding that her disability played no role in the broadcasting error that led to the disciplinary process.

What was decided?

Ground 1: Knowledge of disability

The EAT concluded that the BBC knew, or ought to have known, that the Claimant was disabled throughout the relevant period. It said the ET had fallen into error on several fronts.

Type 2 diabetes is inherently a long-term condition, and the BBC's own OH report from May 2023 had flagged *ongoing* monitoring and the possibility of *future* medication. If the BBC was genuinely unsure whether the condition was long-term, it should have sought clarification from OH.

The ET had also approached the “substantial adverse effect” limb incorrectly. It weighed what the Claimant could do against what she could not, when the correct approach is to look at incapacities, not capabilities. Compounding this, the ET treated evidence that the Claimant’s symptoms were improving or being managed as a reason to doubt that she was disabled at all. This was the wrong question: where a condition is being treated or managed, the correct question is to ask what the effect would be *without* that management.

Further, the ET’s finding that there was “nothing” to suggest disability could not be reconciled with its own findings of fact that the BBC had actual knowledge of the diabetes diagnosis and the exhaustion it caused, that OH reports had recommended “reasonable adjustments”, and that the Claimant had said she needed an accommodation for a “disability”. Language of this kind should have prompted further enquiry into disability status.

Ground 2: Reasonable adjustments – the BBC Scotland Late shift

The EAT held that the ET had failed to consider whether removing the Claimant from the Scotland Late shift was a reasonable adjustment and this amounted to an error of law.

The EAT identified a series of related errors in the ET’s reasoning. Most importantly, the ET failed to make clear findings on the nature and extent of the substantial disadvantage that late shifts caused to the Claimant. Without this, it was difficult to assess whether removing her from that shift was a “reasonable” step.

The ET had reasoned that there was no medical evidence that the Claimant could not work evenings, but that was not the adjustment in issue. The Claimant’s proposal concerned late shifts specifically, not early-evening work, so this finding did not engage with what was actually being asked.

Separately, the ET failed to address whether it was reasonable for the BBC to keep the Claimant on late shifts while it queried OH’s initial advice, and nor did it examine the BBC’s reading of that advice as meaning the BBC Scotland Late shift did not count as a “late shift” for adjustment purposes.

This issue has been remitted to a new ET for fresh consideration.

Ground 3: Discrimination arising from disability – the disciplinary process

The Claimant had challenged the ET’s finding that her disability had played no material part in the broadcasting error, arguing that this was inconsistent with the separate finding that she was disabled from 7 June 2023 onwards.

However, the EAT disagreed. A general finding of disability across a period is not the same as a finding that a claimant was actually experiencing symptoms on a particular day. There was no contradiction in finding that the Claimant was disabled generally, while also finding that this specific incident was not caused by exhaustion.

The EAT emphasised that the threshold for perversity is very high. The question is not whether the EAT would have reached the same conclusion, but whether no reasonable tribunal could have done so on the evidence. The ET was entitled to weigh the Claimant’s explanation against the contemporaneous evidence, and its conclusion was one the ET was permitted to reach. Therefore, this ground of appeal failed.

What does this mean for employers?

When considering whether an employee is disabled, it is important to remember that you can be liable for disability discrimination even where you do not have *actual* knowledge that the employee is disabled. Although actual (or imputed) knowledge of the disability is required for *direct* disability discrimination, this is not the case for other disability-related legal claims. No knowledge is required for claims of indirect disability discrimination, disability-related harassment or victimisation. And for two of the most common disability-related claims – discrimination arising from disability and failure to make reasonable adjustments – liability may arise where the employer has actual, imputed or “constructive” knowledge of the disability.

Constructive knowledge of a disability will be fixed on an employer where it would have known facts relevant to an employee’s disability had it been reasonably diligent. In other words, an employer will not benefit from “turning a blind eye” to the issue. To this end, employers should take the following practical steps where there is a possibility an employee is disabled:

- **Investigate:** gather as much information as possible to understand the individual’s health. This includes things like GP certificates, correspondence and notes of your own interactions with the individual and notes of return-to-work meetings. It is advisable to reflect on this at an early stage and keep the position under review. Don’t treat improving or managed symptoms as evidence *against* disability.

- **Alarm bells:** do not ignore “alarm bells” such as the employee labelling themselves as “disabled” – this does not necessarily mean that they are disabled, but it should prompt further enquiries.

- **Decide when to obtain specialist advice:** consider carefully when its right to obtain specialist OH advice. Depending on facts, it may be appropriate to wait, but the position should be kept under review. Over time, the individual’s condition may evolve from one which does not meet the disability test, to one that does.

- **Give clear instructions when seeking specialist advice:** when instructing specialist advisers, take care to summarise accurately the knowledge of the individual’s health and ask the adviser to provide a view on whether the individual is disabled by reference to the different elements of the disability test in the Equality Act 2010.

- **Follow up where necessary:** where the specialist advice is imprecise, incomplete or contradicts other evidence, this should be followed up and further advice sought. Do not assume that silence on an issue means the employee is not disabled. In any event, OH reports should not be viewed as determinative, but should be treated as part of the overall picture.

- **Be pragmatic and don’t be afraid to make adjustments**: making adjustments will not necessarily be viewed as a concession of knowledge of disability and may help to resolve the issue in hand. Where you have information which suggests that an individual may be disabled, it would be sensible to address the issue of adjustments proactively. Where OH advises that adjustments should be made these should usually be taken forward. Again, where there is any uncertainty about what is being recommended, clarify with OH rather than taking the least favourable interpretation for the employee.

Cunningham v BBC

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Point of no return: EAT considers when entitlement to a discretionary bonus crystallises

In *Chandrashekarappa v Wipro Ltd* the Employment Appeal Tribunal considered whether an employee was entitled to full payment of a promised bonus in circumstances where the employer had sought to change the terms of the scheme after he had met the relevant criteria.

What happened in this case?

The Claimant worked for the Respondent, Wipro Ltd (a large IT outsourcing organisation), as a Practitioner Sales Hunter Manager. Since 2019, the Claimant had been working on a valuable deal with the John Lewis Partnership (a new customer). This was signed on 26 June 2020 and was considered to be a great success for the Respondent.

Employees at the Respondent were entitled to various sales incentive arrangements set out in ‘Variable Pay Plans’ (**VPPs**), which were presented to staff each financial year and could vary between years. Each VPP would contain ‘Sales Incentive Policies’ (**SIPs**) which would vary between occupations and individuals, and individual SIPs would be sent to staff members to be accepted by them.

For the financial year running April 2020 to March 2021, the Claimant claimed that his line manager, Mr Garg, told him prior to the presentation of the VPP that there was to be a new ‘kitty bonus’ available to individuals (including the Claimant). Mr Garg reportedly said that if he was successful in winning the John Lewis Partnership business, he would receive this bonus, and this would make the Claimant one of the highest-paid salespeople globally. The Tribunal later noted that this was substantially confirmed by witness evidence.

At a presentation on the year’s VPP in March 2020, the ‘kitty bonus’ did not form a core part of the presentation but was referenced in a footnote as follows:

> *“A kitty of up to 1% of new logo invoicing against first 12 months can be paid to Practitioner Sales Hunter/Hunter manager contributing to deal win based on SL [sector lead] head approval. Applicable to DOP and CIS role holders.”*

The bonus was not referred to in the section of the VPP that dealt with discretionary bonuses. The presentation contained a disclaimer that it was not a substitute for any policy, and that any final policy would override it in case of a conflict.

Any further terms on which the ‘kitty bonus’ would be paid were not documented until the SIP was reissued for the second half of the year. This was a new approach, as the Respondent’s SIPs had otherwise applied for a full financial year, and the move towards splitting financial years had not been anticipated in the original SIP for the year. The Respondent’s explanation to staff was that this reflected the challenging business climate due to COVID-19 and allowed for revision of targets. One of the changes introduced was that the cap on commission overall had changed from $300,000 for the whole year to $150,000 for each half year.

A week after the John Lewis Partnership deal was signed, Mr Garg wrote to a senior colleague (Mr Desai) proposing the Claimant for a “*1% commission for the JLP deal*” and referring directly to the terms of the ‘kitty bonus’ as set out in the presentation. This was approved by Mr Desai and copied to HR. In later correspondence, Mr Desai noted that he could only send a congratulatory email to the Claimant (and make the payment) once it was approved by more senior management, and HR confirmed they were obtaining details for the payment to “*set clear expectations*”.

In subsequent discussion, another member of HR (responsible for compensation and benefits) shared an email indicating that the ‘kitty bonus’ was for 1% of invoiced revenue as a discretionary reward, paid out at the end of the year subject to approval from the Global Head, and that it was subject to a $150,000 cap. Further discussion followed involving Mr Garg, Mr Desai and others, during which it was raised that no cap had been mentioned in the communications about this bonus and that employees would “*feel short changed*”. It was also the first time that approval from the Global Head had been mentioned as being necessary. There was suggestion of lifting the cap to $300,000 for the Claimant, as well as awarding him a separate ‘large deal bonus’ to help make up for any shortfall.

On 20 October 2020, draft figures for the calculation had been sent to the Claimant which did not indicate any cap applying. A few days later, he was able to access the revised SIP for the first time, which mentioned the $150,000 cap and Global Head approval being applied. Later, on 15 December 2020, the Claimant was informed that he would receive 1% commission for the John Lewis Partnership deal but with the cap applied. He had also received separate confirmation that he would receive $41,000 as a deal bonus.

The Claimant did not raise any complaint until July 2021, the ‘kitty bonus’ having been paid to him in February 2021; this was much earlier than expected, given that revenue from the transaction would not be apparent until December 2021. His complaint was raised as part of a discussion on incentives generally, as the Claimant was concerned about his treatment in relation to variable pay compared to other staff, as well as disputing the new approach of splitting SIPs into half-years rather than full years. By December 2021, when he had originally expected to receive the full ‘kitty bonus’, he believed that the full amount had not been paid and he therefore issued proceedings in the Employment Tribunal.

The Claimant continued to work for the Respondent, later submitting a grievance relating to not being invited to an important offsite meeting. He claimed that he was being sidelined due to his Tribunal claim. He later resigned in May 2022, citing that the workplace had become untenable for him due to ongoing retaliation for his claim. He lodged a second Tribunal claim on 27 September 2022.

It was later documented in the case that if the ‘kitty bonus’ had been paid in full rather than being subjected to a cap, it was worth £516,082 instead of the $150,000 that the Claimant had received.

Employment Tribunal Claims

The Claimant brought claims for unlawful deduction from wages, race discrimination, victimisation, constructive unfair dismissal, and wrongful dismissal. One of the claims relating to unlawful deduction from wages related to the imposition of the cap on the ‘kitty bonus’.

In this regard, the Tribunal concluded that:

- In order to proceed as a claim for unlawful deductions under Section 13 Employment Rights Act 1996 (**ERA 1996**), the full amount of the ‘kitty bonus’ needed to be wages that were properly payable to the Claimant. The fundamental question was therefore whether he had a legal entitlement to payment of the ‘kitty bonus’ in an amount that was higher than what he actually received.

- The entitlement to a quantified or quantifiable amount had not arisen until it was formally communicated to the Claimant that the decision had been made, as further approval was needed beyond Mr Desai’s authorisation. It had therefore crystallised on 15 December 2020, and at that point the payment was communicated as being subject to the cap.

- This meant that nothing above the cap was ‘properly payable’, and failure to pay the uncapped ‘kitty bonus’ was not an unlawful deduction from wages.

The Tribunal dismissed the other claims, finding that the allegations in relation to other incentive payments were out of time, the burden of proof for race discrimination had not been shifted in the circumstances, the allegations of victimisation were not substantiated, and he was not found to have resigned in response to a repudiatory breach of contract.

What was decided?

The Claimant appealed the decision on three grounds, each of which overlapped to a significant extent (as noted by the EAT).

The essential nature of all three was that the Tribunal had incorrectly relied upon approval criteria that had only occurred to the Respondent (and been communicated to him) after the announcement of the bonus parameters and after Mr Desai had communicated his approval of the bonus within those parameters. His case was that after that approval had been issued on 1 July 2020, there was a legal entitlement to a quantifiable sum (being 1% of the revenue invoiced), and the Respondent no longer had discretion to introduce any additional conditions such as a cap or additional level of approval.

The EAT characterised the essential question as therefore being as follows (**emphasis added**):

> *"whether, having informed the Claimant on 1 July 2020 that he was to receive the full 1% of the JLP revenues for the year, the Respondent was entitled, prior to the point at which the payment was subsequently due to be made (i.e.. after the relevant JLP figures had been determined) to change the basis of the calculation from that which had been communicated in July 2020. In other words,* ***although the level of the payment could not on any view be determined prior to December 2021 (when the JLP were first known), was the Respondent able to apply conditions to the bonus arrangements after 1 July 2020 and before December 2021****?"*

The EAT concluded that:

- There was no entitlement to any specific quantified sum any earlier than December 2020, when the capped bonus was communicated to Mr Chandrashekarappa, or indeed prior to the actual revenues being known later in December 2021.

- However, at the point at which Mr Desai had approved Mr Garg’s recommendation on 1 July 2020, the terms under which approval was being sought were clear and Mr Desai’s approval was entirely consistent with the parameters at that time. It was at this point that the Claimant had become entitled to the bonus, a sum equalling 1% of the revenues from the John Lewis Partnership transaction. This would be payable only once quantification could be made (i.e. once revenues were known), which would be in December 2021.

- The EAT found that the Respondent had not been entitled, when making that quantification at a later date, to move the goal posts from where they had been on 1 July 2020 at the time of Mr Desai’s approval of the full 1% ‘kitty bonus’. They could not revisit the payment level and belatedly introduce a cap which had not been communicated when introducing and explaining the policy. As a result, the declaration of the bonus and quantification made in December 2020 / December 2021 had been one that the Respondent was not entitled to make.

They further determined that the question of the Claimant's entitlement was a simple 'yes or no' matter, which did not require further factual analysis. The EAT therefore declined to remit the matter back to the Employment Tribunal, and instead substituted their own finding that "*the Claimant was entitled to 1% of the JLP year one revenue less the sterling equivalent of $150,000 that was paid to him*".

What does this mean for employers?

This decision highlights an important consideration for employers – when does an employee's entitlement to their bonus actually crystallise?

Whilst each case will always turn on its own facts, this decision makes clear that a discretionary bonus can become a legal entitlement much earlier than the date on which the amount can be quantified. If criteria are communicated to the employee and subsequently met, it unlikely to be open to the employer to retrospectively add further conditions.

This is therefore a helpful word of caution for employers that, before announcing any bonus or other incentive schemes, they should ensure that communications contain (or refer to) all applicable terms and conditions, and that they are comfortable that the proposals are commercially viable for the period covered by the incentive plan.

Chandrashekarappa v Wipro Ltd

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ICO publishes new guidance on dealing with data protection complaints

As of 19 June 2026, data controllers – including employers – must have a data protection complaints process that meets the requirements set out in the Data (Use and Access) Act 2025 (DUAA 2025). In connection with this, the Information Commissioner's Office (the ICO) has published guidance on dealing with data protection complaints. In this briefing, we summarise the key points from the guidance from the perspective of employers handling staff data protection complaints.

What are "data protection complaints"?

Where an employee considers that you have breached data protection law because of the way you have handled their personal data, they may raise a data protection complaint. This could cover things like:

- the way you have responded to a data subject access request (a **DSAR**);
- the security measures used to store their personal data; or
- how their personal data has been used.

However, where an employee is complaining about other matters, alongside *exercising* their data protection rights, this will not count as a "data protection complaint". For example, an employee may raise a grievance about discriminatory treatment and submit a DSAR alongside it – the grievance is not a data protection complaint and nor is the DSAR (although if the DSAR is mishandled this could lead to a data protection complaint later on).

Employers also need to be mindful that grievances may contain a mix of complaints about both employment and data protection matters. Where this is the case, you will need to take care to deal with the data protection element in line with the DUAA 2025 and the ICO's guidance. In particular, data protection complaints must be concluded without undue delay. For example, where the data protection complaint is bound up in a lengthy grievance about multiple employment matters, you may prefer to respond to everything in one go. However, if the data protection complaint could be resolved sooner, then you must do this.

The guidance also provides that where you are uncertain about whether an individual is raising a data protection complaint, you should ask them to clarify. Although this is not a strict legal requirement, the ICO says it expects data controllers to do this where needed, unless they have a good reason not to.

How should you prepare to handle data protection complaints?

In terms of preparation, these are several key parts of the guidance for employers to consider.

- **Give staff a way to complain to you:** the first step is to make sure there is a channel available for receiving data protection complaints. The guidance says that, for example, a form (electronic or paper), email address, phone line, online portal, live chat, or even an in-person option would all satisfy this obligation.

- **Tell staff they can complain:** you must inform staff that they can complain to you about data protection matters (and to the ICO). At the very least, this should be done at the point of collecting personal data (e.g. via a privacy notice using clear and plain language) and when responding to a DSAR.

- **Consider a written complaints procedure:** this is not a requirement, but the guidance says employers could adopt a written complaints procedure which makes it clear how to complain and what to expect. However, the guidance also underlines that employers do not need to reinvent the wheel: existing written procedures may be adapted to address data protection complaints. (e.g. a privacy notice or grievance procedure). Some employers may decide to keep things simple and deal with data protection complaints through existing grievance procedures, however, there are some potential downsides to doing this. For example, employee grievances tend to be dealt with by line managers, HR and, sometimes, in-house employment lawyers. Yet a data protection complaint may require specialist data protection input, for example, from a Data Protection Officer, information governance specialists and/or IT teams. The danger is that the complaint is treated purely as an employee relations issue and important data protection compliance considerations are missed. Therefore, you should consider the best approach and, where a single channel is chosen, take steps to ensure that data protection complaints are dealt with carefully and with input from appropriate stakeholders.

- **Consider if there are other legal frameworks and obligations to comply with:** as discussed above, data protection complaints will often overlap with other issues, such as employment or whistleblowing complaints. If you are handling the data protection element alongside other issues, you should not hold back resolution of the complaint so as to deal with everything in one go. If you are able to resolve the data protection complaint more quickly, then you must do so.

- **Train relevant staff about data protection complaints:** you will need to decide who handles these complaints. Crucially, staff who receive complaints should know how to spot a data protection complaint and where to escalate it. A data protection complaint could arise in a grievance, disciplinary concern, a flexible working request, or even in an ordinary email or message. Therefore, line managers and HR are likely to need data protection training.

What should you do when you receive a complaint?

Once a data protection complaint has been received, an employer should consider the following points.

- **Acknowledge the complaint:** you must acknowledge receipt of a data protection complaint within 30 days. The purpose of the acknowledgement is simply to confirm that the complaint has been received and will be investigated. The way the acknowledgement is given can reflect how the complaint was made, such as by email, letter, phone, or another method, provided it is appropriate in the circumstances. A record of the acknowledgement should also be kept to demonstrate compliance with the timeframe. The 30-day period begins the day after the complaint is received, and if the final day falls on a weekend or public holiday, the deadline moves to the next working day.

- **Gather the information:** the next step is tobegin gathering all relevant information needed to assess the complaint properly. This involves reviewing the facts carefully, speaking to relevant members of staff, and comparing what has been said in the complaint with your own records. You should also check whether you have complied with your own policies and procedures. If the complaint is unclear (which is a possibility where complaints have been generated using AI tools), you should seek clarification as soon as possible so that you can identify what needs to be investigated. It may also be helpful to ask the employee what outcome they are seeking, as this may allow the matter to be resolved more quickly.

- **Investigate the complaint without undue delay:** you must begin your investigation as soon as you receive the complaint. You should not wait for the 30-day acknowledgement window to lapse. The investigation must be carried out without “undue delay”, meaning there must be no unjustifiable or excessive postponement. However, there is no fixed timeframe for completing an investigation since what is reasonable will depend on the complexity of the issues raised, the scale of the complaint, and whether the complainant is experiencing harm that may be ongoing while the matter is unresolved. You must ensure that the level of investigation carried out is appropriate and proportionate to the circumstances and be prepared to justify the approach taken.

- **Keep people informed:** throughout the investigation, you must keep the employee informed of progress without undue delay. This may mean providing updates on the status of the investigation, expected timeframes, and any delays that arise, rather than detailing every investigative step taken. If the investigation is likely to take some time, you should ensure that the employee knows it is being dealt with, and it may be helpful to provide a point of contact for queries.

- **Record your actions**: you should keep a clear record of the entire process, including when the complaint was received, how and when it was acknowledged, any relevant discussions and documents, the outcome of the complaint, and any actions taken as a result. These records act as evidence that you have complied with your obligations and may be requested by the ICO. However, personal data related to complaints must not be retained for longer than is necessary.

What should you do when you have finished your investigation?

- **Provide an outcome:** once the investigation is complete, you must provide the employee with an outcome without unjustifiable or excessive delay. You should explain what you have done to resolve the complaint and any actions taken as a result. Importantly, you should provide enough information to allow the employee to understand how you have reached your conclusion. If the employee is unhappy with the outcome, the guidance suggests providing more details or offering a review process. The guidance also provides that it is good practice to tell the employee again at this stage that they have the right to complain to the ICO and provide their contact details.

- **Review the lessons learned:** once you have provided an outcome, you should review what happened and consider if there is anything you can learn or improve on to prevent future complaints.

What are the consequences of failing to respond to a complaint?

The potential consequences of failing to comply with the new data protection complaint requirements include:

- **Monetary penalties:** the ICO may impose a monetary penalty on controllers who fail to comply with the new complaint-handling obligations The maximum penalty is £17.5 million or 4% of total annual worldwide turnover, whichever is higher.

- **Complainant escalation to the ICO**: the complainant can escalate their complaint directly to the ICO, which must then investigate.

- **ICO enforcement action**: the ICO can issue information notices, assessment notices, enforcement notices, and conduct investigations into complaint-handling practices.

- **Legal claims:** individuals who suffer material or non-material damage (including distress) as a result of data protection breaches have the right to claim compensation from the data controller.

ICO Guidance: How to deal with data protection complaints

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Government consults on new employment rights for unpaid carers and parents of seriously ill children

On 9 June 2026, the Department for Business and Trade launched a consultation on potential new employment rights for unpaid carers and parents of seriously ill children. In this briefing, we consider the proposals and what they mean for employers.

What are the proposals affecting carers?

The consultation looks at whether the current framework for supporting carers is working effectively and whether additional rights are needed.

Currently, those with caring responsibilities have a right to take up to one week's unpaid carer's leave in a 12-month period – you can read more about this right in our detailed briefings here and here. Carers may be able to take other relevant forms of leave where they meet the eligibility requirements, such as unpaid time off for dependant emergencies, unpaid parental leave or neonatal care leave. Employees may also request temporary or permanent flexible working arrangements. The consultation asks whether these rights are sufficiently understood and whether further guidance would help both employers and employees navigate them more effectively.

In terms of new rights, the consultation sets out three key proposals:

- **Extending unpaid carer's leave:** one of the simpler proposals under consideration is an increase to the current entitlement of one week's unpaid carer's leave per 12 months to between six and ten days or more. This change would address a concern raised by many carers, namely that one week's leave simply does not go far. Also under consideration is the possibility of widening the purpose of carer's leave to allow carers time off to rest and recuperate or maintain their own health and wellbeing. The Government is seeking evidence on the impact of any increase, particularly on smaller employers and businesses where covering absences at short notice can be more difficult.

- **Paid carer's leave:** back in its *Make Work Pay* plan, the Government committed to considering the case for introducing paid carer’s leave.The Government’s view is that unpaid leave is of limited value to some carers because they simply cannot afford to take unpaid time away from work. It is, therefore, exploring whether a paid entitlement would help carers remain in employment and make greater use of this right. A number of options are under consideration, including the length of any entitlement, the rate of pay and the evidence employees may need to provide.

- **A statutory right to return:** a significant proposal is the introduction of a statutory right to return following an extended period of carer’s leave of up to 12 months. The proposal is broadly modelled on the protections that apply following return from maternity leave. An employee would be able to take a longer period away from work to deal with intensive caring responsibilities, while retaining the right to return to their role, or, in some circumstances, a suitable alternative role, on the same terms and conditions. The Government is considering whether the right should apply to all carers, or only in limited situations, such as end-of-life care or where a parent is caring for a seriously ill child. For employers, this proposal is likely to have much greater practical implications than a simple enhancement to the carer’s leave entitlement because it would require the employment relationship to be preserved throughout what could be a potentially lengthy absence.

What are the proposals affecting parents of seriously ill children?

The consultation also considers whether new employment protection should be introduced for parents and carers of seriously ill children.

Currently, there is no specific statutory right for employees to take paid leave when a child receives a serious health diagnosis. While parents may be able to rely on existing rights (for example, paid annual leave, unpaid carer's leave, unpaid time off for dependant emergencies or unpaid parental leave) there is no equivalent to the specific paid leave entitlement that is available to parents of babies receiving neonatal care.

The proposal – often referred to as "Hugh's Law" in memory of Hugh Menai-Davis who died from cancer aged six – would create a new statutory paid leave entitlement following a child being diagnosed with a serious illness. One of the most important questions will be how "serious illness" is defined. The broader the definition, the more people will potentially qualify, the narrower the definition, the greater the risk that families facing genuine difficulties are excluded. The Government is seeking views on how this should be defined, as well as the length of the leave entitlement.

What does this mean for employers?

At this stage, not very much. The Government is consulting on possible options rather than proposing definite legislative changes, and no decisions have yet been taken. However, the consultation suggests a shift towards treating caring responsibilities as a workplace issue requiring more structured support, rather than relying primarily on flexible working and existing unpaid leave arrangements.

Many employers already provide support through flexible working arrangements, compassionate leave policies or enhanced carer’s leave. This may be a good opportunity to review those arrangements and consider whether they would remain appropriate if statutory rights are expanded in the future.

The consultation closes on **1 September 2026**. Employers, representative bodies, carers and parents are all encouraged to provide evidence and feedback before the deadline. The Government will publish its response in due course and any legislative changes are unlikely to be introduced before 2027.

Consultation on employment rights for carers and parents of seriously ill children

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), Rose Lim (RoseLim@bdbf.co.uk) or your usual BDBF contact.

LUNCHTIME WEBINAR – Culture wars at work: Navigating employee rights, beliefs and the law

LUNCHTIME WEBINAR – 7 July 2026

In an era of rapid social change and escalating "culture wars", employers are facing increased challenges in balancing competing rights, beliefs and values in the workplace. The legal framework governing protected speech and characteristics continues to evolve, shaped by wider political and societal pressures.

In our upcoming lunchtime webinar, Knowledge Lawyer Rose Lim and Managing Associate Jamie Barton will explore what these developments mean for your business. Using case studies based on workplace scenarios, they will provide insight into how the law is adapting and how employers can respond with confidence.

Our case studies will cover:

- Key legal developments in discrimination law relating to religion, belief, sex and gender
- How to address tensions in the legal protection afforded to all workers in sensitive workplace scenarios such as grievances, social media expression and policy disagreements
- Practical steps for employers to manage risk and foster respectful workplaces

Date: Tuesday, 7 July 2026

Time: 12.00pm-12.45pm

Click here to register

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Nick Wilcox speaking at the 7th Annual IFSEA International Conference in London

On 16 June 2026, BDBF Partner Nick Wilcox will be speaking at the 7th Annual IFSEA International Conference in London. His session, entitled “Preventing Sexual Harassment: Law, Leadership and the New Standards of Accountability” will explore how employers, executives and their advisers should respond to the new legal and regulatory requirements and the impact they will have in practice. As regulators crack down on workplace misconduct, with the FCA extending scrutiny to behaviour outside work and ERA 2025 introducing new duties and remedies, organisations face heightened risks and responsibilities around sexual harassment.

Nick will be joined by Lori L. Deem (Hughes Socol Piers Resnick & Dym, Ltd), Isabo Heirbaut (Bellaw Van Eeckhoutte, Taquet & Clesse) and Bishen Jeswant (Cyril Amarchand Mangaldas), with the session chaired by Emma Sangeelee (CM Murray LLP).