



UK Employment Law Update – October 2024

Welcome to our monthly update, with a summary of the latest news and current trends and developments in UK employment law.

With the legislative agenda quiet due to the summer recess, Our October 2024 update includes news on the imminent new duty on employers to take proactive steps to prevent sexual harassment at work, as well as an important Supreme Court decision on ‘fire and rehire’ and an interesting disability discrimination case highlighting issues that can arise with neurodivergent employees.

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- [Transition arrangements for a change in unfair dismissal qualification](#)
- [Day-one unfair dismissal rights and a six-month probationary period – how will that work?](#)

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Case law updates

Fire and rehire: The Supreme Court has reinstated an injunction preventing an employer from terminating employment contracts as part of a ‘fire and rehire’ exercise to change terms and conditions specifically to remove an entitlement to ‘retained pay’, a historic incentive payment that had been described as a ‘permanent’ benefit. The High Court had granted an injunction, satisfied that there was an implied term on these facts that prevented employment from being terminated to remove the entitlement to retained pay – a decision overturned by the Court of Appeal but since reinstated. This decision will not mean that employees can gain injunctions to prevent fire and rehire in all cases; the circumstances and contractual wording in this case were unusual, with the contract interpreted to include an implied restriction on the ability to terminate the contract on notice, which will not apply in all cases. Employers should nevertheless be mindful of the risk of an injunction to remove benefits that have previously been held out as permanent. The case also highlights the need for employers to take care when negotiating the longevity of certain terms. ([Tesco Stores v. USDAW](#))

Disability discrimination: An autistic teacher has been awarded £850,000 in compensation after he was unfairly dismissed and discriminated against due to his disability. The claimant was purportedly dismissed for capability or some other substantial reason (a breakdown in working relationships) against a backdrop of repeated grievances, complaints and data subject access requests but on hearing the evidence, the Employment Tribunal (ET) found that there was no potentially fair reason to dismiss and that the school had failed to consider or understand the extent to which the claimant’s autism was responsible for his actions. The ET’s judgment from 2021 left the remedy to be dealt with separately and has only just been resolved. The award includes £75,000 for psychiatric injury, and £750,000 for

injury to feelings, past and future loss of earnings and pension loss, in both cases with associated interest included. As well as acting as a reminder of the uncapped nature of compensation for discrimination, the claim also highlights the importance of not overlooking how disabilities may manifest themselves in behaviours at work. ([Wright v. Cardinal Newman Catholic School](#))

Discretionary bonuses: The High Court has rejected a claim for breach of contract arising from the non-payment of a bonus in respect of which the claimant alleged she had received oral assurances. The contract provided for a discretionary bonus based on several factors, including company and individual performance, and the claimant had always received bonuses in the past. Having taken on a new and unusual role, the claimant alleged that she had received various assurances that she would be rewarded and continue to receive bonuses. However, when her bonus was lower than expected, she initiated a claim. On hearing the evidence, the High Court did not consider that the conversations held with the claimant could realistically or reasonably create any expectation of a bonus payment sufficient to create a contractual right, and did not consider the employer to have unreasonably exercised its discretionary powers when deciding not to award a bonus. Although turning in its specific facts, the case highlights there are circumstances where a court will uphold an employer's right to set the level of a discretionary bonus, including making no bonus award at all despite a past history of bonus payments being made. ([Gupta v. DB Group Services](#))

Employment status: The Supreme Court has been considering the employment status of football referees, concluding that contracts between part-time referees and their administrative body met the minimum requirements necessary to amount to a contract of employment during each period of engagement. The case, which was ultimately about tax and NIC liability, has been referred back to the tax tribunal to revisit whether the contracts are contracts of employment for tax purposes. ([HMRC v. Professional Game Match Officials Ltd](#))

Protected beliefs: The Employment Appeal Tribunal (EAT) has been considering whether a worker's belief in English nationalism, which extended to a belief that Muslims should be forcibly removed from the UK, amounted to a protected belief for discrimination purposes. The EAT, upholding the earlier ET's decision, concluded that it was not. While a belief in English nationalism may have been capable of protection, the anti-Islamic beliefs that the claimant held were not. To qualify as a protected belief, five criteria must be met – this case failing on the fifth criterion, being that the belief must be worthy of respect in a democratic society, not be incompatible with human dignity and must not conflict with the fundamental rights of others. ([Thomas v. Surrey and Borders Partnership NHS Foundation Trust](#))

Legislative developments

Sexual harassment: The duty on employers to take reasonable steps to prevent sexual harassment in the workplace comes into force on **26 October 2024**. The Equality and Human Rights Commission (EHRC) has updated its guidance and issued an eight-step set of guidelines to help navigate the new rules (see 'New guidance' below). Read more on our Employment Law Watch [blog](#).

Tips: Legislation and a [statutory code of practice](#) that deal with the fair allocation of tips, including obligations to ensure there is a fair and transparent distribution and that workers receive tips in full, came into force on **1 October 2024**.

Brexit – case law: Legislation aimed at encouraging the UK courts to depart from case law retained from the EU (known as assimilated law) was due to come into force on 1 October 2024 but has been revoked by the government. The issue will be revisited in the context of relations with the EU, and legislation in this area has not been ruled out.

Other news

Unfair dismissal: There are media reports that the government's plans to make unfair dismissal a day-one right will still allow for employers to use probationary periods of up to six months. Read more about what this might mean on our Employment Law Watch [blog](#).

Apprentices: The government has [announced plans](#) to replace the existing apprenticeship levy with a new growth and



skills levy. This will include new foundation apprenticeships and allow funding for shorter-term apprenticeships providing greater flexibility than they do at present. Further details are awaited from the Department of Education.

Minimum wage: The Low Pay Commission (LPC), the independent body responsible for advising the government on the national living wage and the national minimum wage, has published a [policy paper](#) detailing how it will respond to its updated remit from the government to factor in the cost of living and expected inflation, and that rates should not fall below two-thirds of median hourly earnings. The LPC's recommendations for rates from April 2025 are due to be submitted to the government by the end of October.

New guidance

Harassment: The EHRC has published its [updated guidance on harassment at work](#). This updated version is largely to address the new duty to prevent sexual harassment in the course of employment but also includes some other minor changes throughout. The EHRC has also published an [eight-step guide on preventing sexual harassment in the workplace](#), which is an easy and helpful read about what is expected. Read more about the new duty on our Employment Law Watch [blog](#).

Disability: The EHRC has published new [guidance for employers](#) on supporting disabled workers with hybrid working, providing practical tips and case studies about open communication and appropriate adjustments.

Consultations

ET procedure: The Tribunal Procedure Committee is consulting on proposals to change the rules around provision of [written reasons for decisions](#), including removing the requirement for them to be signed and allowing for both 'short' and 'long' form reasoned judgments. The consultation closes on **22 October 2024**.

Misconduct: Lloyd's has launched a [consultation](#) on a 'modernised framework for dealing with poor conduct and behaviours', essentially a suite of changes aimed at better managing both financial and non-financial misconduct, including proposed amendments to bylaws to clarify what is meant by 'misconduct' and explicitly reference non-financial misconduct, such as bullying, harassment and discrimination within the definition. The consultation closes on **16 December 2024**.

Upcoming events

(Register using the links below)

[Reed Smith's 2024 Diversity, Equity and Inclusion Virtual Summit – 10 October 2024, 4–7pm BST](#)

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