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UK Employment Law Update – April 2025

Our April 2025 update provides a summary of the annual rates and limits increases, as well as the usual round-up of interesting cases. We also highlight two important consultations on equality issues, allowing interested parties to have their say and help shape legislation around pay gap reporting and discrimination.

In this issue

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Employment Right Bill update

In addition to the changes we reported in the March update, the government has confirmed its intention to move forward with amendments to the Employment Rights Bill (ERB), which will see a right to bereavement leave after pregnancy loss before 24 weeks. It is currently unclear if this will be a paid entitlement.

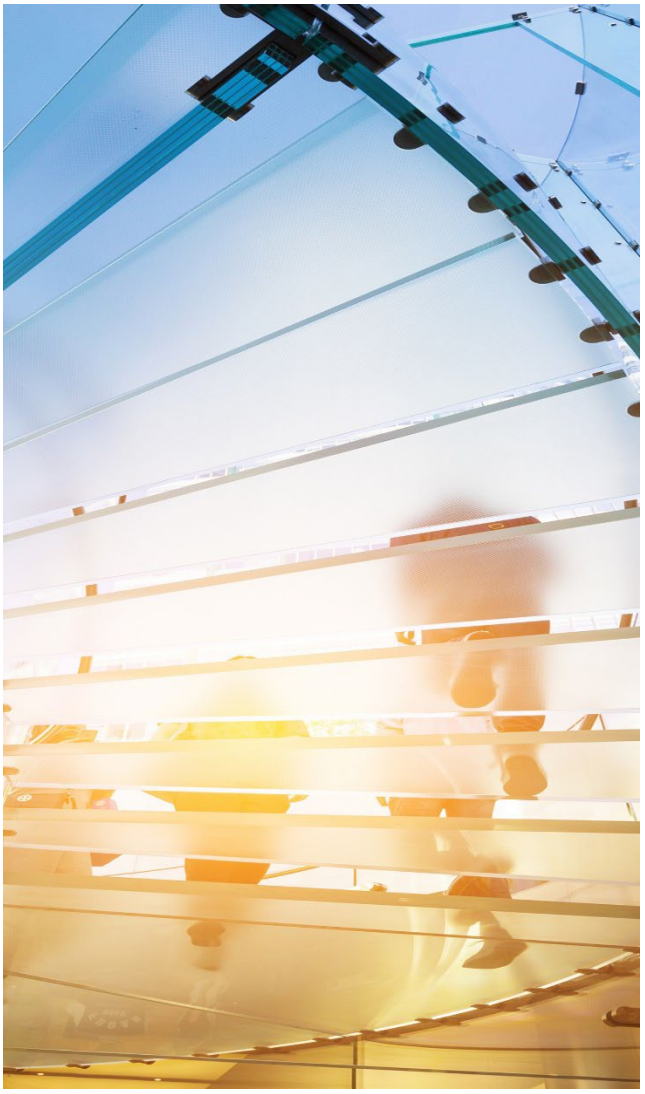
The ERB now continues its passage through the legislative process. Having passed its second reading in the House of Lords, it will be scrutinised further at the Committee stage, due to sit on 29 April and 8 May 2025.

Case law updates

Equality – definition of 'sex': On 16 April, the UK Supreme Court ruled that the definition of 'man', 'woman' and 'sex' in equality legislation refers to the person's biological sex, and a gender recognition certificate (GRC) will not alter that. It follows that it is not unlawful to exclude a transwoman from a woman-only space (provided this can be objectively justified). In making its ruling, the Supreme Court emphasised that this did not undermine existing rights of trans people (with or without a GRC) who continue to be protected from discrimination under the gender reassignment provisions of equality legislation, and that many of the sex discrimination protections extended to perception or association with a particular gender. (*For Women Scotland Limited v. Scottish Ministers*)

Non-competes: The High Court (HC) has provided useful guidance on when non-compete and non-dealing restrictive covenants are enforceable, acting as a reminder that restrictions should be carefully drafted. In this case, an account director left a marketing agency to work in-house for a long-standing client that subsequently terminated its contract with the agency. The agency sought to enforce both non-compete and non-dealing covenants against the employee, arguing that the client had effectively become a competitor by internalising the marketing services. The HC first considered whether the client was in competition with the agency. While the services provided were similar, the HC found the two companies did not actually compete in the same area. The client had exited the external marketplace by bringing work in-house, meaning no third-party provider could realistically compete for that business. The HC also rejected the idea that the agency had a legitimate proprietary interest to protect, as any knowledge the employee had was already in the hands of the client. The wording of the covenant was also fatal to enforceability. The six-month non-compete clause was drafted broadly, with no sector or geographical limitations, and was framed in general terms to cover any business "in competition"

with the agency. This was held to be unreasonably wide, especially considering the employer's later admission that it only intended to apply the clause to small marketing companies in the dental sector. The 12-month non-dealing clause was also found to be excessive when measured against the employee's salary and the industry's 'fluid' job market (*Kau Media Group Ltd v. Hart*).



Whistleblowing – job applicants: In a significant judgment on the limits of protection for whistleblowers, the Court of Appeal (CA) held that an external job applicant could not bring a claim for detriment arising from protected disclosures. The claimant, who had applied unsuccessfully for a role with the respondent, alleged that she had been subjected to a detriment on account of whistleblowing. However, as an external applicant, she fell outside the statutory definition of a 'worker' or 'employee' under the Employment Rights Act 1996. The CA rejected the argument that external applicants were in an analogous position to workers or NHS job applicants (the latter being granted protection under specific regulations). The CA also rejected arguments that a job applicant should be protected under the European Convention on Human Rights, finding that the exclusion of applicants from whistleblowing protection was objectively justified. The legislation pursued a legitimate aim, and the differential treatment was a proportionate means of achieving that aim (*Sullivan v. Isle of Wight Council*).

Discrimination – interviews: The Employment Tribunal (ET) found in favour of a claimant who was asked why she wanted to work when her husband had a good job, concluding that this was a discriminatory and sexist question amounting to direct sex discrimination. The ET found that the question would not have been asked of a man and reflected stereotypical assumptions about gender roles and caregiving responsibilities. It rejected the employer's defence that the question had been asked out of genuine concern, concluding that the discriminatory nature of the question could not be neutralised by good intentions. The ET noted that the question had caused the claimant to feel undermined and embarrassed and awarded compensation for injury to feelings (*Pereira v. Wellington Antiques Ltd and J M Wellington*).

Unfair dismissal: In a case turning on its facts and highlighting the importance of having clear policies, the CA has found that it was unfair to have dismissed an employee, a school inspector, for a one-off incident of touching a pupil during an inspection visit. The school inspector had brushed water off the hair of a 12-year-old pupil and put his hand on the pupil's shoulder, resulting in his dismissal for gross misconduct when it was reported. Whereas the ET found the dismissal to have been fair, this was overturned by the Employment Appeal Tribunal (EAT), a decision that was supported by the CA. In the absence of a 'no touch' policy or relevant training, it would not have been obvious to the inspector that he had done anything wrong or that he could expect to be dismissed for touching a student in the manner he had, and it was unreasonable of Ofsted in such circumstances to treat it as conduct which amounted to gross misconduct. Although the inspector showed little remorse for his behaviour, this in itself did not justify dismissal. The CA ruled it was inappropriate for an employer to bump up the seriousness of conduct not itself capable of justifying dismissal because an employee fails to show proper contrition. In the CA's view, that placed the employee in an impossible situation by preventing them from defending themselves at the disciplinary hearing. The CA also upheld the EAT's decision that the dismissal was procedurally unfair, as the inspector had not been shown the school's complaint letter or the pupil's statement during the disciplinary proceedings (*Ofsted v. Hewston*).

Vicarious liability – trade unions: The EAT has clarified the scope of an employer's liability for harassment where the alleged incident arises in a trade union context. The claimant, a trade union branch secretary, brought a claim of racial harassment against a fellow employee following a heated argument about union fee deductions. The EAT found that although the comment was made during working hours and on the employer's premises, it was not "in the course of employment" but rather in the context of union activity between two union members, and so the employer was not vicariously liable. The EAT also found that the employer had taken all reasonable steps to prevent harassment, including mandatory equality, diversity and inclusion training, a values-based induction programme, annual performance assessments and visible promotion of their 'PROUD' values. No further steps were identified that could have prevented the incident (*Campbell v. Sheffield Teaching North Hospitals NHS Foundation Trust & Hammond*).

Legislative developments

'Small company' thresholds: Many rules only apply only to companies that are not 'small', but from **6 April 2025**, the threshold for determining this has changed. The new test means that a company will be small if two of these three conditions are met: (i) turnover is no more than £15 million (up from £10 million); (ii) balance sheet totals no more than £7.5 million (up from £5.1 million); and (iii) monthly average number of employees is not more than 50 (unchanged). Businesses that have previously been deemed small should check whether this remains the case. From an employment law perspective, no longer being small will require compliance with off-payroll working rules where self-employed contractors are engaged through personal service companies.

Neonatal care leave and pay: Legislation giving a statutory right to leave and pay for parents of babies requiring neonatal care came into force on **6 April 2025**. The new right provides for up to 12 weeks of leave and pay in the first 68 weeks after birth (where eligibility criteria are met), where babies need a continuous stay of seven days or more in hospital in the first 28 days of their life. The new statutory right sits alongside existing statutory rights (for example, maternity leave). Read more about the new statutory right on our Employment Law Watch blog.

Other news

Proposed increases to court and tribunal fees: The Ministry of Justice announced proposed increases to selected court and tribunal fees from **8 April 2025**, which have now been accepted by Parliament. The Court and Tribunal Fees (Miscellaneous Amendments) Order 2025 raises 171 court and tribunal fees to account for changes to the Consumer Price Index. Most of these fees will increase by 3.2%, but a small number will increase by 13.5%. 24 fees will be reduced.

Standards of behaviour for the creative industries: The Creative Industries Independent Standards Authority has launched new minimum standards of behaviour for the creative industries to prevent and tackle bullying and harassment, including discriminatory behaviour. There are four standards of behaviour: safe working environments, inclusive working environments, open and accountable reporting mechanisms, and responsive learning culture. Organisations, productions and projects can use these standards to assess their existing policies and procedures or create new ones.

Annual rate increases

- **Minimum wages:** The national living wage for workers aged 21 and over increased to £12.21 per hour on **1 April 2025**. The new national minimum wage rates for other groups are as follows: £10 per hour for 18–20-year-olds, and £7.55 for 16–17-year-olds and apprentices.

- **Statutory rates and limits:** The annual increase to various statutory payments took effect on **6 April 2025** (7 April for maternity allowance). Statutory Sick Pay (SSP) increased to £118.75 per week. The statutory rates for maternity pay, maternity allowance, paternity pay, adoption pay, shared parental leave pay, parental bereavement pay and neonatal leave pay increased to £187.18 per week, and the lower earnings limit increased to £125. In addition, the rate of a 'week's pay' (which is relevant to compensation and redundancy calculations) increased to £719, and the maximum compensatory award for unfair dismissal increased to £118,223.

- **Discrimination compensation:** The annual increase to awards for injury to feelings in discrimination cases (known as the Vento bands) took effect from **6 April 2025**. These see the lower band (for less serious cases) set at £1,200–£12,100, a middle band of £12,100–£36,400 and an upper band (for the most serious of cases) of £36,400–£60,700. Awards over £60,700 should be reserved for only the most exceptional of cases.

We have prepared a printable at-a-glance overview of the 2025/2026 rates and limits for easy reference.

Immigration: Since 8 January 2025, eligible non-European travellers to the UK need an electronic travel authorisation. This extended to eligible European travellers on **2 April 2025.**

New guidance

Neonatal care leave and pay: Following the introduction of the new statutory right to neonatal care leave and pay (see 'legislative developments' above), there is new Acas guidance and the government has also published a series of guidance: Employee guide; Employer guide; Guide for employers where there is a business change (e.g., redundancy of employee, takeover of the business, insolvency); Guidance on how employment status or type affects neonatal care pay; Guidance on how employee circumstances may affect entitlements; How to manually calculate pay entitlements; and a form to inform an employee they are not entitled to pay. The guidance promotes clarity over how employees request leave and encourages flexibility and understanding to employees.

Data: The Information Commissioner's Office (ICO) has published new guidance on anonymisation and pseudonymisation to help employers provide a way to share data in a privacy-friendly way. It acts as good practice rather than law, but the ICO will consider compliance with their guidance if they are reviewing an anonymisation issue.

Modern slavery: The government has updated its guidance on improving transparency and accountability in supply chains. Last updated in 2017, the new guidance introduces a more structured and detailed approach to tackling modern slavery, providing practical advice on modern slavery statements, risk assessments and continuous improvement.

Neurodiversity: Acas has published guidance for employers on neurodiversity at work, providing advice on understanding and raising awareness of neurodiversity and making the workplace more inclusive for neurodivergent employees.

Consultations

Pay gap reporting – ethnicity and disability: The government is consulting on its proposal to introduce mandatory ethnicity and disability pay gap reporting for employers with 250 or more employees, following a similar set of measures currently in place for gender pay gap reporting. It is open for comment until **10 June 2025**.

Equality: The government has launched a call for evidence on equality law to help shape the content of the Equality (Race and Disability) Bill, which formed part of the Labour government's legislative agenda, as well as equality issues in the ERB. It seeks views on a range of equality issues, including equal pay, pay transparency, dual discrimination, sexual harassment and remedies for discrimination. This call for evidence provides an opportunity for interested parties to share their views and help shape the legislation. It remains open until **30 June 2025**.

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