# UK Employment Law Update – June 2025

Our June 2025 update takes a look at recent developments in case law, including the circumstances in which external HR consultants can be individually liable for employment claims, and whether liability for unlawful acts committed by employees transfers to the new employer under TUPE. We also provide an update on the Employment Rights Bill.

## In this issue



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- EU accessibility overhaul: one month to go
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# Case law updates

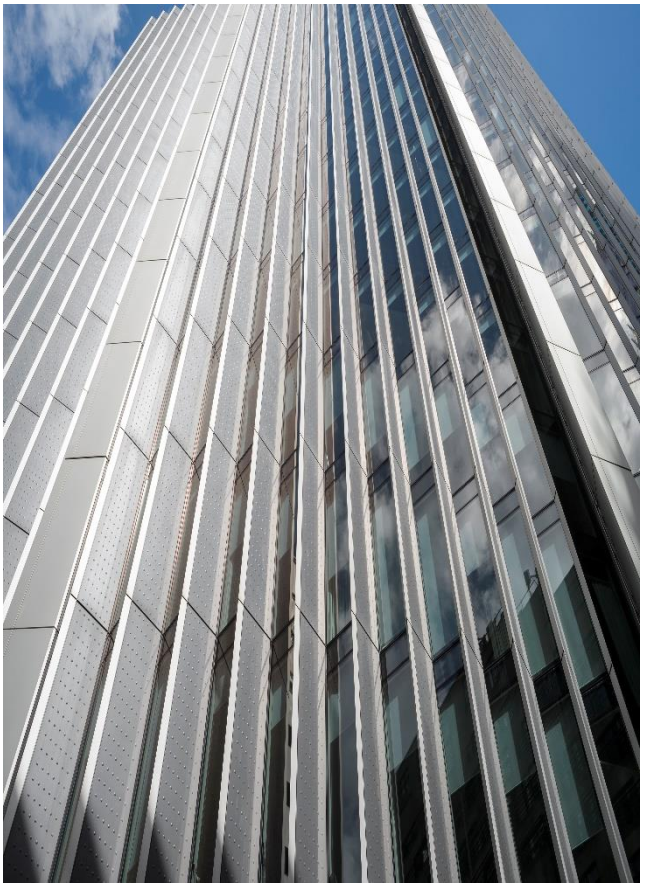
**Unfair dismissal – liability of external HR consultants:** The Employment Appeal Tribunal (EAT) has struck out claims against two HR consultants who were instructed, via solicitors, to provide independent HR advice to an employer: one to investigate grievances against the claimant, and the second to conduct a disciplinary hearing. The claimant was summarily dismissed and alleged that his dismissal was unfair and that it occurred because he had made protected disclosures, bringing a claim against five respondents. In considering the claim against the two HR consultants, the EAT concluded that in carrying out employment-related procedures they were both acting as agents for the employer but that on the facts, they were not individually liable as neither had decided upon or implemented the dismissal, whether jointly or alone, nor was a decision to dismiss within their remit. In different circumstances, for example where there is a more active role in the decision to dismiss, the finding may have been different. (*Handa v. Station Hotel (Newcastle) Ltd and others*)

**Detriments for whistleblowing:** A recent employment tribunal (ET) claim acts as a cautionary reminder of how certain elements of a claim can attract press attention. Although many elements of the claimant's claim failed, her claim for detriment for making a protected disclosure succeeded, with the nature of that detriment – a comparison to Darth Vader – hitting the headlines. The comment was not sufficient for the ET to conclude that there had been a fundamental breach of contract (for constructive unfair dismissal purposes), but it did amount to a detriment for whistleblowing. (*Rooke v. NHS Blood and Transplant*)

**Discrimination – victimisation:** To succeed with a claim of victimisation, a claimant must have been treated less favourably because they have done or intend to do a 'protected act', which includes making allegations of unlawful discrimination, and the EAT has determined that in considering whether a protected act has occurred, the wider context is relevant, not simply the words used. In this case, the claimant raised a grievance complaining of bullying and differential treatment but did not explicitly say this was because of her race. However, the EAT concluded that in circumstances where the claimant was the only black employee, her employer would have understood the complaint as a race discrimination one. Whilst fact specific, employers should be mindful of wider contextual issues when considering grievances. (*Kokomane v. Boots Management Services Ltd*)

**Discrimination – compensation:** An ET has awarded over £255,000 (including over £160,000 for loss of earnings and £80,000 for loss of pension) to a claimant following a successful race discrimination claim arising from a flawed investigation into allegations of bullying, which led to his dismissal for gross misconduct. The claimant, a consultant, was unaware of the allegations about him for about a year and the ET found the investigation to be inherently biased with racial motivation. The claim is a reminder of the uncapped nature of compensation in successful discrimination claims, which can lead to high awards for higher earners. (*Ahmed v. United Lincolnshire Hospitals NHS Trust*)

**Less favourable treatment – part-time status:** A couple of cases this month have considered the correct legal test in part-time worker cases, concluding that in a detriment claim a claimant's part-time status must be the **sole reason** for less favourable treatment. In an EAT case, the claimant was not treated less favourably when his overtime was limited to once a week and refused on a non-working day, despite this not being the case for full-time employees (*Mireku v. London Underground Ltd*). Likewise, the Court of Appeal (CA) reached the same conclusion when analysing whether a part-time mini-cab driver was treated less favourably by having to pay the same flat-rate 'circuit fee' as a full-time driver (*Augustine v. Data Cars Ltd*). In both cases, there were other reasons, unconnected to part-time status, which were relevant, but as part-time status had to be the sole reason for the treatment, their claims failed. Both cases followed existing case law, but the CA has given permission for an appeal to the Supreme Court on this issue.



**Pay equity and race discrimination – contract workers:** The EAT has upheld a decision that a cleaner employed by an outsourced service provider who had the contract to provide cleaning services to a client, could not claim indirect race discrimination against that client based on her pay being less than she would have received if she had been employed directly by them. She argued that workers employed through the outsourced cleaning company were disproportionately Black or ethnic minority. The ET struck out her claim, a decision which was supported by the EAT on appeal, confirming that there was no cause of action against the client, regardless of the level of influence they had over the pay rates set by the employer. (*Djalo v. Secretary of State for Justice*)

**Employment tribunal procedure – anonymity:** The EAT has rejected attempts by a claimant to remove a permanent anonymity order which prevents the respondent, including a named individual, being named. The claimant withdrew her claim of sexual harassment before a hearing, but continued to make allegations of wrongdoing, threatened to go to the media, and wrote to her colleague's new employer falsely claiming that she had won a sexual harassment claim against him. Balancing the claimant's rights to freedom of expression against her former colleague's right to privacy, the EAT agreed with the ET that an anonymity order should remain in place permanently, although was critical of both parties for using tribunal time and resource to air what was a dispute arising from the breakdown in their personal relationship. (*XY v. AB*)

**TUPE – vicarious liability:** The High Court has determined that vicarious liability for torts committed by employees prior to a TUPE transfer **does not** transfer to the transferee. In reaching its decision, the court pointed out that for rights and liabilities (whether arising in tort or contract) to transfer under TUPE, they must be rights or liabilities owed between the parties to the relevant employment contract, and as vicarious liability involves liability to a third party (in this case to a claimant who suffered injuries whilst an inpatient in hospital) it was too remote to transfer. The court also ruled that if this conclusion was wrong, and the liabilities did transfer, then so did the right to claim on a relevant insurance policy. This is an issue which is likely to be considered further in the appellate courts. (*ABC v. Huntercombe (No 12) and others*)

# Employment Rights Bill

The House of Lords Committee stage continued during May, and this has extended into June, with ongoing debate and consideration of the ERB and its proposed amendments.

In addition, the government has published its response to recommendations made by the Business and Trade Committee in respect of the ERB and other proposals for employment law reform. In this response the government confirms:

- Longer-term plans to consult on reforming employment status, recognising it is a complex issue.
- An intention to consult on the low-hours threshold for guaranteed hours contracts.
- A commitment to ensuring adequate resource and power is given to the new Fair Work Agencies (for labour market enforcement). They will not, however, handle equality issues; instead, the government will work with the Equalities and Human Rights Commission (EHRC) to develop guidance on equality issues arising from the ERB.
- Plans to consult on changes to the trade union recognition process, and to introduce a revised code of practice on unfair practices whilst the recognition process is underway.
- Consideration is being given to how the modern slavery regime can be strengthened.

# Other news

**Age discrimination:** In response to a report by the Women and Equalities Committee earlier this year, which suggested that older workers were failed by existing discrimination laws, the government has reiterated its commitment to bring into force part of the Equality Act 2010 which allows for claimants to bring claims in relation to two or more characteristics ('dual discrimination'), and to require, through the ERB, that larger employers provide menopause action plans.

**Apprenticeships:** The UK government has announced plans to limit apprenticeship funding for those aged under 22. From **January 2026**, the apprenticeship levy will only be available to employers to fund Level 7 (master's level) courses for existing apprentices and those aged 16 to 21.

**Immigration:** The government has launched a new paper, 'Restoring control over the immigration system', outlining its plans to reform the immigration system. Proposals include tightening the qualification requirement for skilled workers, introducing a new temporary shortage list, removing the social care worker visa for new applicants, and increasing English language requirements. Businesses reliant on overseas labour should seek further advice from their specialist business immigration advisers.

**Parental leave:** There are calls on the government to review and reform parental leave, including maternity, paternity and shared parental leave arrangements. The government had committed to a review within its first year of government, although there has been no sign of it yet.

**Whistleblowing – breach of sanctions:** The government has announced plans to expand the list of 'prescribed persons' for the purposes of whistleblowing on breaches of UK sanctions. This includes broadening the types of matters which can be disclosed to the Secretaries of State for Transport, and Business and Trade, and designating HM Treasury as a new prescribed person for disclosures concerning breaches of UK sanctions. There is currently no timescale for when these changes will take effect.

# New guidance

**Employment status:** The government has updated its 'Check Employment Status for Tax' (CEST) tool and accompanying CEST guidance.

# 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.

**Toilet, washing and changing facilities – services, public functions and associations:** The EHRC has launched a consultation on its update to its statutory code of practice on services, public functions and associations following the recent Supreme Court decision on the definition of sex. It will close on **30 June 2025**. We expect the EHRC to also update its code of practice for employers, but there is currently no timescale for this.

**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, remedies for discrimination and sexual harassment. 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**.

**Minimum wages:** The Low Pay Commission (LPC) has launched its annual consultation on the impact of the national living and minimum wages, the results of which will inform its proposals for the April 2026 increases. The consultation suggests that the LPC is contemplating an increase in the highest rate, from £12.21 to somewhere between £12.50 and £12.80. The consultation closes on **30 June 2025**.

# Upcoming events

(Register using the links below)

Reed Smith's webinar: AI risk and impact assessments – Wednesday, 18 June 2025, 3:00-4:00 pm BST

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