



UK Employment Law Update – May 2025

Our May 2025 update looks at new guidance on single-sex workplace facilities (toilets and changing rooms) following last month's Supreme Court decision on the definition of 'sex', as well as the usual round-up of interesting cases. We also provide details of two important consultations on equality issues, allowing interested parties to have their say and help shape legislation around pay gap reporting and discrimination before the June deadlines.

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Case law updates

Equality – definition of 'sex': As reported in our April update, the Supreme Court has ruled that the definition of 'man', 'woman' and 'sex' in the Equality Act 2010 (EqA) refer to the person's biological sex and a gender recognition certificate (GRC) will not alter that. In making its ruling, the Supreme Court noted that trans people (with or without a GRC) were protected from discrimination under the gender reassignment provisions of the EqA, and that many of the sex discrimination protections extended to perception or association with a particular gender. The Equality and Human Rights Commission (EHRC) has issued interim guidance (see below) in immediate response to the judgment, and there are reports of plans to challenge the decision in the European Court of Human Rights. ([For Women Scotland Limited v. Scottish Ministers](#))

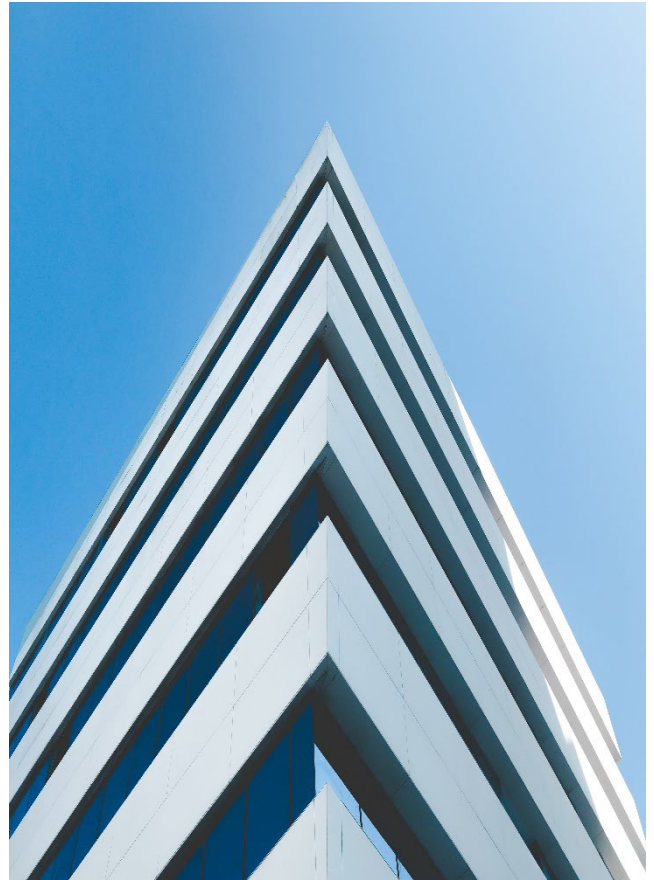
Sex discrimination: A female claimant alleged indirect sex discrimination when, following a restructure, she was required to travel for work once a month. As the primary carer for her two young children, she argued that the requirement put her, as a woman, at a disadvantage. Overturning the Employment Tribunal (ET)'s decision, the Employment Appeal Tribunal (EAT) concluded that while the ET was entitled to consider the childcare disparity (i.e., that women are more likely to take on a greater share of childcare responsibilities), the travel requirement in this particular case did not intrinsically disadvantage women and so the 'group disadvantage' part of the test had not been made out. ([Marston \(Holdings\) Ltd v. Perkins](#))

ET claims – compensation: A recent EAT claim is a helpful reminder about the tax treatment of injury to feelings awards, with a distinction made depending on whether the injury to feelings arises from the dismissal or something else. To the extent an injury to feelings award relates to the dismissal, it is subject to tax, whereas other injury to feelings awards are not. Where there is an element of both, the tax treatment should be apportioned appropriately. This apportionment had not occurred in this case, and the ET had wrongly treated everything as taxable (and awarded a grossed-up amount to compensate for this). The case also highlighted the importance of supporting evidence when assessing whether a claimant has taken reasonable steps to mitigate their losses. ([Wealmoor Ltd v. Poniatowski](#))

ET claims – costs: The EAT has criticised an ET's decision to award £20,000 of costs against the claimant when he lost his race discrimination claim. Starting as a litigant in person and later instructing solicitors, the ET had been wrong to assume that the claimant should have known his claim lacked merit while unrepresented, and that, once represented, his lawyers must have advised that his claim had no reasonable prospect of success. The EAT had also failed to properly analyse the nature, effect and gravity of the claimant's unreasonable conduct. In assessing costs applications, the EAT confirmed that discrimination claims should not necessarily be handled differently from other types of claims, as the legal test remains the same. However, it acknowledged that certain features of discrimination claims mean that special and policy considerations may be relevant. ([Madu v. Loughborough College](#))

ET proceedings – anonymity: Overturning the ET's decision, the EAT has granted anonymity to a claimant, a university lecturer, who argued that publicly disclosing his disability (autism spectrum disorder) would adversely affect his future career prospects and risk disorder in his lessons. The claimant hid his disability (including from family), and the ET had wrongly assumed that the issuance of a claim meant his details were already in the public domain. The EAT was satisfied that there was evidence that individuals, including highly experienced professionals, who disclosed autism during an application process were less likely to be taken forward for roles, and that it was reasonable for the claimant to believe that his career prospects would be negatively affected. Weighing this up with the principles of open justice, the EAT concluded that the claimant's concerns were sufficient to grant anonymity to both parties. ([F v. J](#))

ET proceedings – providing information: The EAT has given guidance on the approach to be taken where a party to ET litigation asks the ET to make an order for the provision of information by the other party. (In this case, the claimant was seeking information from the employer about disabled employees and adjustments made for them as part of his own disability discrimination claim.) Confirming that the ET has the power to order the disclosure of information, the EAT concluded that the general test was essentially the same as for requests to disclose specific documents, involving an assessment of whether the information is necessary to deal with the claim fairly. However, it noted that practical issues could arise where information sought was not available in existing documents, or where finding it in documents involved substantial work. ([Bari v. Richmond and Wandsworth Councils](#))



Employment Rights Bill

On 22 April 2025, ahead of the next stage of the legislative process, more amendments were proposed to the Bill in respect of provisions relevant to zero hours and low-paid workers.

The Bill is currently being debated at the Committee stage in the House of Lords. The committee sat for the first time on 29 April 2025, with several more sittings scheduled throughout May.

Other news

Immigration fees: Immigration fees and charges increased on **9 April 2025**. This includes the certificate of sponsorship fees under the Skilled Worker and Global Mobility – Senior or Specialist Worker routes, increasing to £525 (from £239); the naturalisation fee for British citizenship, increasing to £1,605 (from £1,500); and the electronic travel authorisation fee, rising to £16 (from £10).

Right to work checks: The government has announced plans to extend the requirement to carry out right to work checks to include gig economy workers and those on zero-hour contracts, regardless of their working pattern. The requirement will also apply to businesses that engage such workers through a third-party platform or subcontractor arrangements. The penalty for non-compliance is a £45,000 fine per illegal worker, rising to £60,000 for repeat breaches, along with the potential for director disqualification and criminal sanctions. There is currently no known timescale for this becoming law, and a consultation is expected.

New guidance

Toilet, washing and changing facilities: Following the Supreme Court's judgment on the meaning of 'sex' under the EqA, the EHRC has provided [interim guidance](#) on what this means. In a workplace context, the guidance reminds employers that there are existing laws that compel the provision of single sex facilities (except where self-contained lockable rooms are available), and says that in light of the judgment:

- access to single sex facilities should be restricted by biological sex (i.e., a trans woman should not be permitted to use women's facilities);
- trans people should not be put in a position where they have no facilities to use;
- mixed-sex facilities should be made available wherever possible, in addition; and
- facilities that are in lockable rooms, but not a cubicle, for use by one person at a time, can be used by men or women.

This guidance does not carry statutory weight, but the courts and tribunals may take it into account. The issues are far from straightforward legally or practically, and fuller guidance is expected in due course, with a consultation expected from mid-May.

Directors' remuneration: The Department for Business and Trade has published [guidance](#) on upcoming changes to the directors' remuneration reporting framework for UK quoted companies. The new regulations, which apply from **11 May 2025**, remove certain overlapping requirements introduced in 2019.

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. 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, 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**.

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