UK Employment Law Update

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UK Employment Law Update – February 2026

Seismic news for UK employers to contemplate in February, with the UK government confirming in the last few days that the cap on unfair dismissal compensation will be removed from 1 January 2027, paving the way for unlimited unfair dismissal awards for the first time in UK employment law history. Our February 2026 edition provides an overview of these developments as well as other Employment Rights Act 2025 reforms taking effect from April, and the latest set of consultations. We also provide the usual round-up of recent interesting case law, including cases on collective redundancy consultation, the importance of a proper investigation and a fair dismissal procedure, and the pitfalls of relying on a "some other substantial reason" for dismissal.

In this issue

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Case law updates

Redundancy – collective consultation: The duty to collectively consult is triggered in the UK when an employer proposes to dismiss as redundant 20 or more employees at one establishment within 90 days. In this important case, the Employment Appeal Tribunal (EAT) confirms that when looking at whether the duty has been triggered, it is only necessary to look at redundancies within the same employing entity (not across the corporate group). The EAT also concluded that the obligation to consult centred on a forward-looking analysis of whether, at any particular moment in time, the employer ever proposed to dismiss 20 or more employees within a 90-day period. Prior proposals to make redundancies can be disregarded, provided that at the time of each proposal there was never any intention by the employer to make 20 or more employees redundant over 90 days (even if, in fact, this is what happens – for example, due to changes in business circumstances, meaning further headcount reductions are needed). This is helpful clarification for UK employers in a highly complex area of law, where there are punitive sanctions for non-compliance. The EAT warned employers against artificial staging of dismissals to try to avoid collective consultation obligations. (*Micro Focus Limited v. Mildenhall*)

Breach of trust and confidence: A recent Employment Tribunal (ET) case highlights the challenges of relying on a breakdown of trust and confidence as the reason to dismiss, reiterating that it is not a catch-all reason to be used whenever an employer cannot easily rely on another fair reason to dismiss. In this case, the claimant was dismissed after her wife, who

also worked for the same employer, was convicted of the attempted murder of their supervisor. The claimant was dismissed due to concerns about reputational damage, but the ET noted that although the claimant had initially been arrested, she was released without charge, and there was no suggestion of her being complicit in her wife's actions. These circumstances and the mere fact of the claimant's arrest were not sufficient to justify dismissal – any reputational damage was caused by the claimant's wife rather than the claimant, and it was their reputation (not the employer's) at risk. (*Smith v. North West Ambulance Service Trust*)

Race discrimination: A claimant must establish a prima facie case of discrimination (i.e., that there is sufficient evidence to infer that discrimination has occurred) for a claim to proceed, although it is important that only relevant factors are considered. In this case, the claimant, a Black employee, was unsuccessful in an application for promotion, whereas four white applicants were successful. Despite asking for feedback, verbal comments were sparse and written feedback (which took two months to be given) lacked detail. Whereas the ET found this sufficient to infer a prima facie case of discrimination, the EAT disagreed and concluded that there was no logical reason that the delay and lack of feedback were related to the claimant's race. (*London Ambulance Service NHS Trust v. Sodola (debarred)*)

Race discrimination: A claimant who was accused of falling asleep at work and who subsequently resigned, has succeeded with a claim of race discrimination after the ET was critical of her employer's investigation and the failure to consider that the complaint was racially motivated. The claimant, a Black African nurse, was accused of falling asleep on a night shift by three of her white colleagues, but the investigator failed to challenge their evidence or interview others on duty (all of whom were Black) on the relevant date, even after the claimant raised concerns at her disciplinary hearing about the allegations being racially motivated. Although a non-binding ET decision, the case highlights the importance of a thorough and probing investigation, and the need to revisit issues (such as discrimination) if they are raised during the process. (*Mbonda v. Quarryfields Health Care Ltd*)

Disability discrimination: A claimant with dyspraxia has successfully claimed indirect disability discrimination and discrimination arising from disability following action taken against her for repeatedly using incorrect pronouns of a colleague. The claimant's dyspraxia affected her ability to process information, and when initially corrected by her colleague on which pronouns should be used, she apologised for this and any future incidences of misgendering, explaining that it might happen again. An investigation concluded that the claimant had unlawfully harassed her colleague by repeatedly misgendering them, and that she was in breach of the dignity at work policy. She was moved away from her colleagues and stood down from part of her role, although never subjected to disciplinary proceedings. The ET criticised the investigation report for being biased against the claimant and accepted that the claimant's condition meant that it took her longer than a neurotypical person to adopt the correct pronouns. The claimant's line manager and the lead investigator were found to be personally liable for the discrimination. (*Sylvester v. Phillpson and others*)

Age discrimination: An employer's ill health severance scheme with an age cap of 65 has successfully been objectively justified, confirming that four claimants (who were aged 65 or over) were not discriminated against when a payout under the scheme was denied because of their age. The employer was able to identify several legitimate aims for the policy (including fair and equitable allocation of funds for ill health across all age groups; providing financial support for ill health in a responsible manner; and cushioning the financial blow to younger workers who have to stop or reduce work due to ill health), and the ET was satisfied on the evidence and statistics around retirement and access to ill health and pension benefits that the age cap was a proportionate way to meet the desired aims, with 65 a deliberately chosen age for the cap tied into (now defunct) compulsory retirement. (*Campbell and others v. LNER*)

Employment status: The Court of Appeal (CA) has found a volunteer coastguard to be a "worker" while taking part in activities entitling them to remuneration. Although documentation denied them worker status, the reality of the situation was that when they chose to attend work, they had to obey reasonable instructions, and there was a right to be paid for doing certain activities. Although there was no overarching relationship between callouts, time spent on individual activities was sufficient to meet the worker test, and the fact that the coastguards were free to accept or decline an opportunity for work was not a bar to this. (*Maritime and Coastguard Agency v. Groom*)

Sex and gender reassignment harassment and discrimination: In a case attracting a lot of media attention, the ET has found in favour of a group of nurses who alleged harassment and discrimination against their employer for allowing a trans woman to use the female changing rooms and for failing to address their objections when they raised concerns. In a non-binding decision, the ET adopted the biological approach to sex, as determined by the recent Supreme Court decision, and found that the nurses were entitled to object to sharing a single-gender changing room with a biologically male employee. (*Hutchinson and others v. County Durham and Darlington NHS Foundation Trust*)

Employment Rights Act 2025

Key points at a glance:

- The Employment Rights Act 2025 (ERA 25) received Royal Assent on 18 December 2025.
- The government has issued an Employment Rights Act 2025 overview factsheet summarising the key reforms.
- The changes will be phased in over the next couple of years in line with a published implementation timeline. Most changes will take effect in April or October 2026 and 2027, respectively, although commencement regulations will be needed to confirm the implementation dates.
- Already confirmed is that employees will have increased protection for taking part in industrial action from 18 February 2026, seafarers will be covered by collective redundancy rules from 18 February 2026, and changes to paternity and parental leave will apply from 6 April 2026 (with provisions enabled to allow notice of leave to be given for eligible parents from 18 February 2026).
- Changes to statutory sick pay, whistleblowing protection for sexual harassment, and an increase in the protective award for failing to collectively consult are also expected to apply from April 2026, but this is yet to be confirmed.
- Although unfair dismissal reforms are not expected until January 2027, they are significant.
- Details of many of the reforms will still need to follow, shaped by consultation.
- We will keep you updated here and on our Employment Law Watch blog.

Upcoming confirmed changes

Paternity and parental leave: Parental leave will become a day one right (rather than after a year's service), and paternity leave a day one right (rather than needing 26 weeks' service) for parents of babies born, due, or placed for adoption on or after 6 April 2026. Paternity leave will also be permitted even if shared parental leave has been taken (a change to current rules, which require paternity leave to be taken first). Employees who will be eligible are able to give notice from 18 February 2026 of their intention to take leave once the rules change.

Industrial action: From 18 February 2026, employees will have increased protection from dismissal for taking part in industrial action, as the current test for automatic unfair dismissal is being simplified. Provisions that also give protection against detriment for taking part in industrial action also technically come into force on 18 February 2026, but further regulations are needed to create enforceable rights. A number of provisions that simplify the process for taking industrial action also apply from 18 February 2026.

Seafarers: From 18 February 2026, changes to collective redundancy rules for ships' crew will require employers to notify the Secretary of State (as well as the competent authority of the state where the ship is registered) when proposing mass redundancies. The changes also ensure that collective consultation obligations apply either where the ship is registered in Great Britain (GB) or is deemed a GB-linked ship, covering domestic services and those that call at a GB harbour at least 120 times a year.

Open ERA 25 consultations

Fire and rehire: The reforms will mean that it will be an automatically unfair dismissal if fire and rehire is used to make changes to certain terms and conditions of employment, known as the restricted variations. Not all variations to terms will be caught, but any changes to pay, working time/time off or to pensions are covered. The government is now consulting on two points (i) whether changes to employment expenses and benefits in kind should be covered by the restrictions on reductions in pay, and (ii) whether there are any types of shift pattern which should be protected from change. The consultation is open until 1 April 2026.

Trade unions: The ERA 25 proposes several changes to the TU recognition process and is now seeking views on a draft code of practice before the changes are expected to take effect on 6 April 2026. The government is also consulting on proposed changes to the use of electronic balloting for recognition and derecognition ballots. The consultation closes on 1 April 2026.

Tipping: The government has launched a consultation on its plans to tighten tipping laws and introducing a requirement on employers to consult with workers when developing tipping policies. The consultation, which is open until 1 April 2026, seeks views on the new requirements, and where improvements could be made to existing law and guidance.

Flexible working: The government has launched a consultation into its planned reforms to flexible working rules, including the introduction of a new reasonableness test and a new consultation process for employers to follow, both expected from 2027. Views are sought on the proposals as well as the handling of flexible working requests generally. The consultation is open until 30 April 2026.

Legislative developments

Bereaved partner's paternity leave: New regulations, expected to apply from 6 April 2026, entitle a parent to up to 52 weeks of paternity leave (rather than the standard two weeks) if the mother or primary adopter of the child dies during childbirth or within the first year of the child's life or placement.

Other news

Artificial intelligence: The ICO has published a report on the data protection implications for businesses that deploy agentic AI systems.

Disability: The government has announced reform of its Disability Confident scheme, which aims to improve employment opportunities for sick and disabled people. The reforms are intended to increase the meaning and impact of the scheme, while also incentivising employers to progress their status within it.

Right to work: The government has abandoned plans to introduce mandatory digital identity cards to prove the right to work in the UK.

Sexual harassment: A recent study suggests that interns are disproportionately at risk of sexual harassment. The study showed how power imbalances at this initial stage of a person's career meant issues were often not raised, heightening the risk of improper behaviour, especially at social events. Employers who offer work experience and internships should ensure that these issues are considered as part of their workplace sexual harassment risk assessments, and that reasonable steps are taken to prevent sexual harassment from taking place.

New guidance

International data transfers: The ICO has published updated guidance on international data transfers to help make compliant transfers quicker and easier for organisations.

Trade unions and industrial action: The government has issued guidance on the trade union reforms taking effect from 18 February 2026, as well as revised Codes of Practice on picketing and industrial action ballots.

Consultations

Restrictive covenants: The government has launched a consultation on reform of restrictive covenants, exploring options including placing a statutory limit on the length of non-competes; having different rules on non-competes depending on company size; an outright ban on non-competes; a complete ban only below a salary threshold; a combination of a ban below a salary threshold and a statutory limit for those above it; applying rules to other post-termination restrictions and not just non-competes; and applying rules to a wider range of workplace contracts. The consultation also seeks to understand how reform might impact inward investment and investment in training, obstacles to enforcing restrictive covenants, and any general suggestions respondents may have. The consultation is open until 18 February 2026.

Trade unions: Acas has launched a consultation on its proposed updates to the code of practice on time off for trade union duties and activities. Comments on the draft are invited by 17 March 2026.

Upcoming events

- Navigating uncertainty: Preparing your business for a shifting geopolitical landscape, Thursday 12 February 2026, 12:30pm ET
- Reed Smith's First Annual EU Product Liability Directive Virtual Conference, Tuesday 10 – Friday 13 February 2026

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