UK Employment Law Update – November 2025

Our November 2025 update covers the latest developments with the Employment Rights Bill (ERB), including the launch of four consultations on the reforms, as well as the usual round-up of recent interesting case law, such as cases on the use of scripts for decision makers, harassment involving mimicking accents, and what not to say to someone who has been on sick leave.

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- UK company law – Increasing obligations taking effect in November 2025

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Case law updates

Whistleblowing: The Employment Appeal Tribunal (EAT) has overturned a decision that the manager who made the decision to dismiss the claimant was personally liable for whistleblowing detriment. The decision maker was unaware of the claimant's protected disclosures, although it was alleged that they had been manipulated by a colleague (who was aware of the disclosures) in the disciplinary process or by that colleague creating a false pretext for dismissal. Whereas the Employment Tribunal (ET) had found the dismissing manager to be personally liable, the EAT disagreed and concluded it was not appropriate to impose liability for a detriment claim on an "innocent" individual. Further, as an individual was not liable, the employer could not be vicariously liable for the detriment claim. This is a separate issue to whether the dismissal was automatically unfair because of the whistleblowing, where liability could attach – this issue has been returned to the ET for further consideration as it had failed to properly consider the allegations of manipulation. (*Henderson v. GCRM Ltd and others*)

Unfair dismissal – procedural fairness: An employee was fairly dismissed for misconduct, with no procedural unfairness arising from the failure to provide him with transcripts of the investigation interviews, no pre-judgement of the outcome simply because the dismissing officer had a script to follow at the disciplinary meeting, and no unfairness arising from a search of the claimant's work computer, which he alleged was disproportionate and a breach of his human rights (specifically, his right to respect for private and family life). The claimant was dismissed when he was found to be the author of an anonymous email to a colleague which amounted to harassment, and to have sent a further email which breached confidentiality. While the employee was entitled to sufficient information to understand the allegations against him and to defend himself, this was achieved in this case because the allegations were limited to two emails. The ET found it was not unreasonable or procedurally unfair to have withheld the investigation transcripts from him. Further, although a script had been prepared, this was not evidence of the outcome being pre-determined as on the evidence of the decision maker, the claimant's representations were considered and there was no presumption of any particular outcome. Also, on the facts, the information obtained from a search of the claimant's computer was not relied upon to support the decision to dismiss and so even if the search was disproportionate or in breach of human rights, this did not affect the fairness of the dismissal. *(Alom v. Financial Conduct Authority)*

Unfair dismissal – compensation: Compensation for unfair dismissal includes awarding sums for loss of earnings arising from the dismissal, albeit subject to a statutory maximum and the award being just and equitable. In a recent case, the claimant had been dismissed aged 61, and at the date of the hearing was 63 and working, but in a job earning less than in the role she had been unfairly dismissed from. The ET awarded losses to the age of 65, but this was overturned on appeal – there was evidence that the claimant intended to work until the age of 70 due to her personal and financial circumstances, and whilst there was a chance these intentions may have changed, it was wrong of the ET to apply an earlier cut-off without any principled basis for doing so. With employees working into later life becoming increasingly

common, employers should be prepared for lengthier future loss of earnings claims being made. (*Davidson v. National Express Ltd*)

Unfair dismissal – racial harassment: A claimant was unfairly dismissed when his employer summarily terminated his employment for racial harassment after he repeated the phrase "top of the morning to ya" in a mock Irish accent in front of a colleague and an external visitor. The judge was clear to highlight that this did not mean that using unwanted words with stereotypical racial overtones was appropriate or would never amount to harassment, but on the facts of this case a dismissal was unfair. Whilst the claimant had been involved in blameworthy misconduct, it was wrong to treat the misconduct as racial harassment in the circumstances – there was no suggestion that those present were or were believed to have been Irish, and the claimant was listening to Irish music at the time and found to have been "channelling the musical vibe", albeit in a way which was goading, annoying, embarrassing, and driven by an intention to get on others' nerves. Rather, this was a disciplinary matter, but it was not racially motivated and not conduct justifying summary dismissal. It was also relevant that the person investigating the misconduct was not impartial and that the claimant had a lengthy and unblemished employment record with the employer. As the claimant had been involved in blameworthy conduct, his compensation was reduced by 15%. (*Davies v. Oscar Mayer Ltd*)

Unfair dismissal – illegality: An employee working two full-time cleaning jobs was fairly dismissed from one role because her continued employment placed her in contravention of working time rules on rest breaks. The claimant had not told her employers that she was also working another job, this only becoming apparent when one employer took over the cleaning contract operated by the other employer and the claimant's employment transferred as a result. There was no question over the claimant's performance or work ethic, but discussions to rearrange her working pattern to meet legal requirements around working hours and rest breaks had failed. A rare example of where illegality is relied upon as a fair reason for dismissal, the case also highlights how employers should take steps to identify whether workers hold multiple jobs and the impact this may have on working time rules, which are designed for health and safety. (*Ogumodede v. Churchill Contract Services*)

Disability discrimination: A teacher whose fixed term contract was not renewed and who was told that she had let her colleagues and students down by being absent from work due to her back condition has been awarded over £137,000 in compensation for disability discrimination. As well as serving as a reminder that the expiry of a fixed term contract does not mean an employment relationship can easily come to an end, this case is an interesting example of where comments made about absence from work are sufficient to amount to harassment. It is also a reminder that the ET has powers beyond an award of compensation, in this case ordering the employer to implement disability awareness training. (*Robinson v. Middlesex Learning Trust*)

Employment status: The EAT has overturned an ET ruling that a contractor working through a personal service company was both a worker and employee of the end user client. Whilst the ET had not been wrong to conclude that the client's contract was with the contractor directly rather than with the company, it had failed to properly consider the tests of mutuality of obligations and personal service. Although the claimant had worked regularly for the same client for many years, there was no obligation on the company to offer her work, nor on the claimant to accept any work offered. (*Partnership of East London Co-operatives v. Maclean*)

ET claims – anonymity: A claimant's application for permanent anonymity in a judgment is being reconsidered after the EAT found the original ET had been wrong to reject the application on the papers because of a lack of medical evidence. The claimant, a litigant in person, had been willing to self-fund a medical report addressing the impact on her mental health – including the risk of self-harm and suicide – of being identified in the judgment. Interestingly, the application came about a year after the judgment was published (an application at the time of the hearing having similarly been rejected), demonstrating that post-hearing applications for anonymity can be considered. (*DBP v. Scottish Ambulance Service*)

ET claims – early conciliation: The Court of Appeal has allowed a claimant to bring a whistleblowing detriment claim despite not complying with the early conciliation requirements. Although the failure to comply with the early conciliation requirements meant the ET had no jurisdiction to hear the claim, it was instead allowed by way of an amendment to her existing unfair dismissal claim – something which was within the ET's discretion to allow. (*Reynolds v. Abel Estate Agent Ltd*)

Employment Rights Bill

Key points at a glance:

- The final content of the ERB is not yet settled due to ongoing parliamentary disagreement about some of the provisions.
- In a debate on 28 October 2025, the House of Lords (HL) refused to back down on its attempts to water down some of the proposals, declining to accept the House of Commons' (HC) rejection of its amendments from the previous month despite being expected to concede. A process of parliamentary "ping-pong" will now follow, with the issues going back and forth between the HC and HL until consensus or compromise is reached. It is uncertain how long this will take, with royal assent delayed until then.
- Once the ERB is passed, provisions will be phased in, with most reforms not becoming law until at least April 2026, although the indicative timeline set by the government this summer is at risk of slipping.
- Changes to unfair dismissal are not expected until 2027, but whether this is a day one right (as the government wants) or subject to a six-month qualifying period (which HL is pushing for) remains unknown, this being one of the areas of disagreement.
- Detail of many of the reforms will need to follow, shaped by consultation. Four consultations have been launched since our last update (see below).

ERB consultations: The following consultations have been launched:

- Duty to inform workers of their right to join a trade union: The duty on employers is expected to apply from October 2026, with the government now consulting on the detail of the duty, including what form the statement should take, the content to be included, the manner in which the statement should be delivered, and the frequency of reissue. It closes on **18 December 2025**.
- **Trade union rights of access to the workplace:** The ERB provides for a statutory duty on employers to allow trade union access to the workplace, which is expected to apply from October 2026. The consultation seeks views on how unions should request access, how employers should respond, the factors for consideration by the Central Arbitration Committee (CAC) when deciding whether a right of access should be granted, and the factors for the CAC to take into account when issuing fines for breach of access agreements. The consultation closes on **18 December 2025**. The government also plans to consult in spring 2026 on a code of practice on the right of access.
- **Enhanced dismissal protections for pregnant workers and new mothers:** Reforms expected to take effect in 2027 seek to make it unlawful to dismiss a worker while pregnant, on maternity leave, or in the six months after returning to work. The government is now consulting on the detail, including the circumstances where dismissal will be permissible, the timing of protections, and whether other new parents should also be covered. The consultation also seeks views on raising awareness of the policy, how businesses can be supported, how to avoid unintended consequences, and other changes which might tackle pregnancy and maternity discrimination. The consultation closes on **15 January 2026**.
- **Bereavement leave and pregnancy loss:** Plans to introduce statutory bereavement leave as a day one right in the event of the death of a close family member, including early baby loss before 24 weeks of pregnancy, are due to apply from 2027. This consultation seeks views on eligibility criteria, the types of pregnancy loss in scope, when and how bereavement leave can be taken, and notice and evidence requirements. The consultation closes on **15 January 2026**.

Legislative developments

Non-disclosure agreements (NDAs): The government has announced plans to void any confidentiality agreements which seek to silence victims and direct witnesses of crime. By extending restrictions that came into force on 1 October 2025 which allow victims of crime to talk to certain people for certain purposes, the changes will enable victims of crime to talk about criminal conduct to anyone, for any purpose, without being in breach of an NDA. The timeline for this taking effect is currently unknown.

Other news

Autumn budget: The 2025 budget will take place on Wednesday, **26 November 2025**.

Business immigration: The UK government has published a statement of changes to immigration rules. Among other things, the changes include an increase in the English language requirement for skilled worker, scale-up, and high potential individual (HPI) visa applicants to level B2 (A level) from **8 January 2026**, an expansion of the list of institutions from which individuals will be eligible to apply under the HPI route, a reduction in the graduate route visa to 18 months from **1 January 2027**, and an expansion of the visa regime to Botswanan and Palestinian nationals from **14 October 2025**. Further, the Home Office increased its fees for priority services from **21 October 2025**. Employers should seek further advice from their business immigration advisors.

Collective consultation – HR1 form: It is a legal requirement to file a HR1 form when collective consultation thresholds are met. The form has recently been amended and from **30 November 2025** must be completed online (the downloadable paper form will be unavailable).

Equality – sex and gender: The Equality and Human Rights Commission (EHRC) has withdrawn guidance it issued in April 2025 following the *For Women Scotland* decision on the meaning of sex in the Equality Act 2010. This interim guidance attracted criticism for being too simplistic and rushed. The EHRC is urging the government to implement an updated statutory code of practice on the issues – a draft code for services, public functions, and associations is awaiting approval, although there has been no progress on guidance for employers.

ET fees: Contrary to media reports last month, the government has confirmed that it does not intend to reintroduce fees in the ET system.

Real living wage: The Living Wage Foundation, a charity that campaigns for better pay and working conditions, has announced that the real living wage rate (a voluntary minimum wage) will increase by almost 7%, to £13.50 per hour outside London and £14.80 per hour in London. The legal minimum wage will increase in April 2026, with the rate for over-21s expected to increase by around 4%, but it will remain lower than the voluntary rate.

Consultations

ERB reforms: There are four live consultations (see ERB section for more detail):

- Duty to inform workers of their right to join a trade union – open until **18 December 2025**
- Trade union rights of access – open until **18 December 2025**
- Enhanced dismissal protections for pregnant women and new mothers – open until **15 January 2026**
- Bereavement leave and pregnancy loss – open until **15 January 2026**

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