# UK Employment Law Update – October 2025

Our October 2025 update includes the latest developments on the Employment Rights Bill and the usual round-up of recent interesting case law, including cases on sexual harassment, zero-tolerance policies, and inconsistency in dealing with grievances.

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- The CMA 'Competing for Talent' guide: its clearest message yet for the employment sector

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# Case law updates

**Sexual harassment:** An executive has successfully brought a claim of sexual harassment after her significantly older and more senior colleague was found to have acted inappropriately during an overseas business trip. Following a client dinner where alcohol was consumed, the claimant was invited to her colleague's hotel room for a post-dinner debrief. It was there that the claimant alleged she was subjected to sexually inappropriate touching and comments. The male colleague, who was named as a respondent alongside their employer, denied any wrongdoing and accused the claimant of lying. However, the Employment Tribunal (ET) found the claimant's account to be more credible. This case highlights the difficulties in resolving "he said/she said" allegations where there are no witnesses and demonstrates how even a single incident can result in employer liability. Although the events occurred before the introduction of enhanced obligations on employers to take reasonable steps to prevent sexual harassment, the case serves as a valuable reminder that factors such as seniority, power dynamics, alcohol consumption, and off-site work events can heighten the risk of sexual harassment findings being made. Employers should consider these risks as part of their overall risk assessment and take proactive steps to prevent such incidents. (*Obiagwu v. Greystoke and Pantheon International Advisors Ltd*)

**Sexual harassment:** An employer is only vicariously liable for sexual harassment that takes place "in the course of employment". In another case, looking at sexual harassment that took place outside of the workplace, the Employment Appeal Tribunal (EAT) determined that an ET was wrong to find that a male colleague who sexually harassed the claimant while offering her a lift to an off-site work location following a mix-up in transport arrangements was not acting "in the course of employment". While the lift took place outside of working hours and was not part of formal work duties, the EAT ruled that the ET should have considered whether the lift was sufficiently connected to work, or whether it constituted an extension of the working environment. As a result, the case has been remitted to the ET for further consideration of this issue. (*AB v. Grafters Group Ltd*)

**Unfair dismissal:** A claimant was unfairly dismissed despite his employer's zero-tolerance policy on bullying and harassment in the workplace, and in circumstances where he had admitted to making inappropriate noises (including orgasmic sounds and mimicking Michael Jackson) at work. These actions led to a complaint from a colleague who believed the noises were directed at him and were racist in nature. The ET acknowledged that the employer was entitled to enforce its policy and had followed a proper disciplinary process, but concluded that dismissal for gross misconduct was not a reasonable response in the circumstances. There was no evidence of race discrimination or that the claimant's behaviour was targeted at any individual. Additionally, the claimant was visibly upset and remorseful upon learning he was accused of racial bullying. The ET determined that it was unreasonable for the employer to expect employees to know that inappropriate, juvenile, or embarrassing behaviour that was not discriminatory would constitute gross misconduct. Although this is only an ET decision, the case is a reminder to employers with zero-tolerance policies that any sanctions

imposed must be proportionate to the actual conduct in question. (*Zawadzki v. The Co-operative Group*)

**Grievances:** A store manager was awarded £60,000 in compensation for constructive unfair dismissal, whistleblowing, and sex discrimination after her employer failed to take her concerns seriously. The claimant was repeatedly subjected to foul and abusive language by a male colleague, who also expressed an intention to buy an imitation gun to threaten her (shortly after she had been caught up in a violent shoplifting incident). The ET found that the employer failed to properly investigate her complaints, ignored the threat involving the imitation gun, wrongly blamed her for problems in her working relationship with her male colleague (who had Asperger's), and failed to provide her with adequate support after the shoplifting incident. The ET was critical of the employer's approach, highlighting the disparity in treatment between the two employees (the male colleague's grievance against the claimant having been progressed) and noting a lack of training and guidance for the claimant in managing her colleague's disability. This case highlights the importance of taking all complaints seriously, conducting thorough investigations, treating employees even-handedly and providing appropriate support to employees who raise concerns. (*Oziel v. Sainsbury's Supermarkets*)

**Associative disability discrimination:** In a referral from the Italian courts, the European Court of Justice has interpreted the EU Equal Treatment Directive as requiring employers to make reasonable adjustments for (and not to indirectly discriminate against) employees who are not disabled themselves, but who care for someone with a disability (in this case, their child) so that the person with a disability can receive primary care. As a post-Brexit decision, this is not binding in the UK, but if it is relevant to issues being determined in a UK case, the courts and tribunals may "have regard" to it. (*GL v. AB SpA*)

**Whistleblowing:** Statements made by an employer after the claimant's employment had ended, and around the time he brought an ET claim, were found to be capable of constituting "detriments" for whistleblowing purposes, even though they were not made during his employment. However, while the EAT accepted that the claim fell within the scope of "in employment" for whistleblowing protection, the claim ultimately failed. The EAT upheld the original finding that the protected disclosures made by the claimant had not materially influenced the employer's actions. (*Day v. Lewisham and Greenwich NHS Trust*)

**Employment Tribunals – access to EAT documents:** Although a non-party was granted permission to attend an EAT hearing remotely, she was denied access to copies of the pleadings, notice of appeal, and skeleton arguments. The non-party, who described herself as a student journalist and had a lengthy history of employment litigation with previous similar applications, argued that these documents were standard public records for the proceedings she was observing. However, the EAT disagreed, determining that the requested documents extended beyond the scope of the observed hearing. Additionally, the non-party was evasive when responding to legitimate questions from the EAT regarding her intentions and her history of seeking access to ET and EAT materials. She also failed to provide a sufficient explanation for why she could not have attended the hearing in person to view the documents. This case serves as a reminder that the principles of open justice do not automatically guarantee access to tribunal materials; specific permission must be obtained. (*Cohen v. Mahmood*)

# Employment Rights Bill

**Key points at a glance:**

- The final content of the Employment Rights Bill (ERB) is not yet settled.
- The parliamentary process paused for the summer recess and resumed on 3 September, although is now paused again for the party conference season.
- In the short window between recesses, the House of Commons rejected non-government amendments proposed by the House of Lords that sought to soften some of the provisions.
- The House of Lords meets again on 28 October 2025, when they will consider those rejections, which are expected to be upheld.
- Royal Assent is expected early November.
- Provisions will be phased in, with most reforms not becoming law until at least April 2026.
- Changes to unfair dismissal are not expected until 2027 – it is looking most likely that this will be a day-one right, with a light touch approach in the first period of employment. Proposed amendments to change this to a six-month qualifying period were rejected in the latest part of the process.
- Details of many of the reforms will need to follow – consultations are expected to start in the coming months.

# Legislative developments

**Non-disclosure agreements (NDAs):** On **1 October 2025,** new rules took effect that affect the enforceability of NDAs in England and Wales with individuals who are (or reasonably believe they are) victims of crime, regardless of whether they have told anyone about that crime. The legislation applies to all sectors and all relationships and circumstances where NDAs may be used. Broadening existing rules, the changes that apply to NDAs signed on or after 1 October 2025 allow victims of crime to disclose details of the relevant crime to the following, without that disclosure breaching their NDA: (1) police or other criminal investigation/prosecution bodies (for purposes of investigating or prosecuting the crime); (2) qualified lawyers (for seeking legal advice); (3) regulated professionals and professional support services (for obtaining support); (4) regulators (for cooperation purposes); (5) persons authorised to receive information on behalf of any of the preceding; and (6) close family (parents, children, spouses/partners), but not extended family or friends. NDAs signed before 1 October 2025 remain subject to the previous legal framework.

# Other news

**Financial services – Senior Managers and Certification Regime (SM&CR):** The FCA has announced that firms no longer need to submit a nil return if they have no SM&CR conduct rule breaches to report in the given period.

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

**Gender parity at work:** A report from the British Standards Institute, "2025 Lifting the Glass Ceiling" concludes that only 46% of women are optimistic that their generation will reach parity with men in attaining leadership positions, and only 41% are optimistic that gender pay parity will be achieved. The report spans multiple countries and cites women's health and caring responsibilities as key issues affecting ongoing disparity. The report highlights that there is much more work to be done in this area, and that employers should be prioritising flexibility and support.

**Paternity and shared parental leave (SPL):** The government has published its response to the Women and Equalities Commission's (WEC) report from earlier in the year on paternity and SPL. Although the government remains committed to a general review of rights and entitlements, a process that is expected to run until 2027, it failed to commit to any specific changes recommended by WEC. However, the ERB does make paternity leave and unpaid parental leave a day-one right, changes that are expected to apply from April 2026.

**Reintroduction of Employment Tribunal fees:** Last week, *The Guardian* newspaper reported that the UK government was considering reintroducing fees to workers who want to bring a complaint to the ET. ET fees were first introduced in 2013 but were eventually removed and refunded following a 2017 Supreme Court decision that the fee regime was irrational and created an unconstitutional bar on access to justice. The government has since confirmed that it does not intend to re-introduce fees, maintaining free access to the ET system.

# New guidance

**Competition law in HR:** The Competition and Markets Authority has published guidance, 'Competing for Talent', aimed at helping employers understand where competition law is relevant when recruiting and retaining staff. The guidance reminds employers that anticompetitive behaviour can arise when businesses agree not to hire or poach each other's employees; fix wages, benefits, or other terms and conditions of employment; and exchange sensitive information. It also covers potentially anticompetitive behaviour when engaged in collective bargaining. The guidance provides helpful examples of behaviours that may be problematic, as well as tips on how to avoid falling foul of competition law. Read more here.

**NDAs:** The government has published guidance on the changes to enforceability of NDAs, which takes effect from 1 October 2025 (see above).

**Umbrella companies – tax:** HMRC has updated its employment status manual and published new rules to reflect provisions that come into effect on 6 April 2026 to address tax non-compliance in the umbrella company market.

**Worker exploitation:** The Better Hiring Institute has published guidance, "How HR can stop the worker exploitation crisis", providing employers with practical steps to identify and tackle abuse within their organisations and supply chains.

# Consultations

**Data protection:** The Information Commissioners Office (ICO) is consulting on draft guidance for organisations handling data protection complaints, which is open for comment until **19 October 2025**, and on changes to how the ICO handles data protection complaints, which is open until **31 October 2025**.

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