



UK Employment Law Update – June 2024

Welcome to our monthly newsletter, with a summary of the latest news and developments in UK employment law. In this edition we look at Labour's proposals for employment law reform, explore developments in AI, and provide an update on the Sexism in the City inquiry.

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Case law updates

Employment tribunals – list of issues: Ahead of a hearing, it is usual for the parties to agree a list of issues for determination by an employment tribunal (ET). The Employment Appeal Tribunal (EAT) has been considering the status of a list of issues in circumstances where an unrepresented claimant's claim for discriminatory constructive dismissal had been included in their claim form but did not feature in the list of issues (which had been largely prepared by the respondent). In concluding that the ET should have considered the claimant's claims, the EAT clarified that a list of issues was a useful case management tool but should not be elevated to the status of a pleading. It was relevant in this case that the claim was clearly pleaded, the relevant circumstances featured in the list of issues, and there was no suggestion that the claim had been withdrawn. Against another factual background, the ET may be entitled to rely more strictly on the list of issues, highlighting the importance of the parties taking time to ensure these cover everything. ([Z v. Y](#))

Employment status – volunteers: The EAT has concluded that a coastal rescue volunteer was a worker in circumstances where there was a requirement for minimum levels of attendance for training and rescues, and where the volunteer had a right to remuneration (to cover costs of volunteering and the disruption caused to his personal life by the unsociable hours), even if it was never claimed. The EAT found, on the facts, that the arrangement gave rise to a provision of services and there was a requirement for personal service, and as a result the volunteer was a worker whilst doing work for which he was entitled to be remunerated. It remains unclear what his status was whilst carrying out activities which were not subject to remuneration. As with many status decisions, the specific facts and circumstances are highly relevant, but this case will be of interest to employers who work with volunteers, especially where there are minimum expectations on volunteering activities and some remuneration is given for the volunteers' time. ([Groom v. Maritime and Coastguard Agency](#))



Race discrimination – pay: The Court of Appeal has handed down its judgment in a group claim by outsourced contract workers claiming indirect race discrimination when they were paid less than the London Living Wage in contrast to the direct-hires of the end user client. They alleged that as contract workers they were treated less favourably in terms of pay and that this had a disparate impact on workers from a black or minority ethnic background who, they said, were more likely to work in outsourced jobs. Whereas the claims succeeded in the original ET, the Court of Appeal disagreed. The claims did not fall within the provisions of the Equality Act 2020, which allow contract workers to complain of discrimination by the end user client, because the complaint related to pay under their contract with their employer, the supplier of the services, and not their relationship with the end user client. In any event, the claimants failed to show that Black and ethnic minority workers were disproportionately affected. ([Boohene and others v. Royal Parks Ltd](#))

Vicarious liability: A claimant brought a claim of disability against her former employer following her resignation, which resulted from various incidents, and named two individual colleagues as perpetrators of discriminatory conduct as further respondents to the claim. While the ET found the employer to have been vicariously liable for the acts of its employees, it dismissed the claims against the individuals themselves. However, on appeal the EAT disagreed – if liability attaches to the employer by virtue of its employees carrying out discriminatory acts in the course of their employment, the ET did not have any discretion to find that the individuals responsible for that conduct, as named respondents, are not liable. ([Baldwin v. Cleves School and others](#))

Legislative developments

Artificial intelligence (AI): The EU Artificial Intelligence Act was approved on 21 May 2024, harmonising rules across the EU on the use of AI systems in the EU, affecting businesses not only inside the EU, but also outside the EU where the output of the AI system is used in the EU. The majority of provisions will start to apply in two years, although some will apply in six to 12 months' time.

Fire and rehire: The statutory code of practice on dismissal and re-engagement has now been formally passed and will come into force on **18 July 2024**.

Paternity leave – bereavement: The Paternity Leave (Bereavement) Act 2024, which addresses paternity leave where the mother, or person with whom a child is or is due to be placed for adoption, dies, has received royal assent. However, it requires regulations to be enacted before it can come into force.

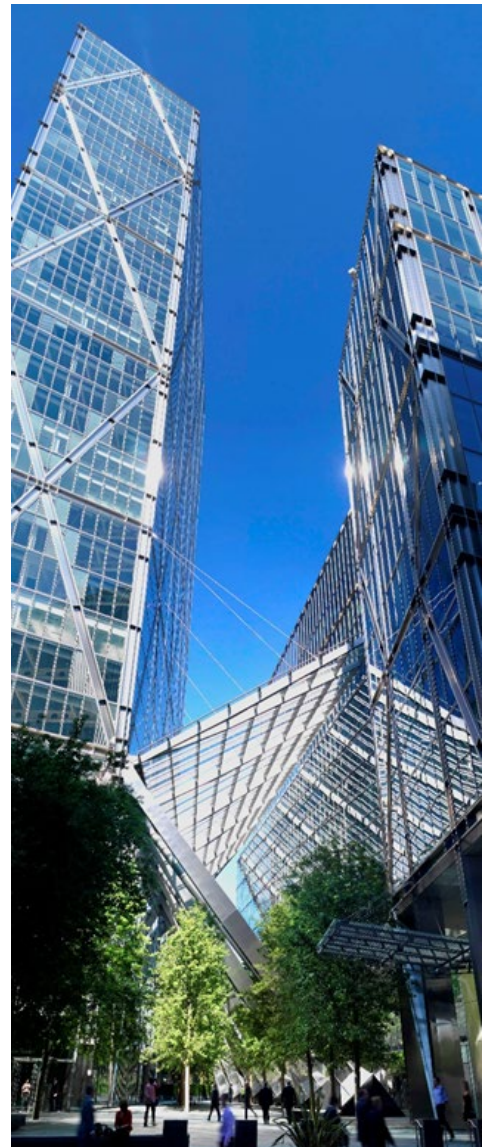
Tips: The statutory code of practice on fair and transparent allocation of tips has been approved. Together with the remaining provisions of the Employment (Allocation of Tips) Act 2023, it is expected to come into force on **1 October 2024**, pending the enactment of commencement regulations.

Other news

Employment law reform – Labour party: Labour's 'Plan to make work pay' has been published, detailing its proposals (subject to consultation and the legislative process) for employment law reform if it wins the general election on 4 July 2024. Proposals include: day-one rights to unfair dismissal claims, sick pay and parental leave; a single status of worker for all but the genuinely self-employed; mandatory ethnicity and disability pay gap reporting for larger employers; enhanced trade union powers and rights; introduction of bereavement leave; strengthened whistleblower and TUPE protections; enhanced rights for maternity returners; a 'ban' on zero hours contracts; and more restrictions around fire and rehire. For more information on these and other proposals, see our recent [client alert](#).

Equality and Human Rights Commission (EHRC): The EHRC has published its [business plan and priorities](#) for 2024/2025, which includes tackling sexual harassment in the workplace (leading the campaign to help employers understand their duties under the Worker Protection (Amendment of Equality Act 2010) Act 2023, which comes into force in October 2024, and regulating AI, particularly to help tackle bias and discrimination in AI systems.

Financial services – Sexism in the City inquiry: The government and financial regulators have responded to the Treasury Select Committee's recommendations at the conclusion of its inquiry. Whilst there is broad support for the proposals, the current government will not be pushing forward with legislative change, and the regulators will continue their review before confirming policy direction, although they have indicated that non-financial misconduct is their priority. For more details and an analysis of the responses, see our [Employment Law Watch blog](#).



Immigration – graduate visas: Following a review, the Migration Advisory Committee has recommended retaining the graduate visa route in its current form.

Mediation: An independent mediation standards board is being set up, separate from the current Civil Mediation Council, to advise on and develop standards for mediation, trainers and organisations, and for workplace mediation.

New guidance

Artificial intelligence (AI): The ICO has published a paper, '[Regulating AI: The ICO's strategic approach](#)', which includes guidance for organisations on mitigating the risks arising from AI use, as well as advice and support. For more details, see our [Employment Law Watch blog](#).

Consultations

Wages: The Low Pay Commission is seeking views and evidence relating to the economic and labour market conditions faced by business and workers, and the [impact of the NLW and NMW rates](#). The consultation closes on **7 June 2024**. Feedback is likely to feed into recommendations made for changes applying from April 2025.

Procedure – employment tribunals: Responsibility for formulating ET procedural rules is moving to the Tribunal Procedural Committee (TPC) later in 2024. In anticipation, the TPC has launched a [consultation on proposals relating to this transfer of rulemaking responsibility](#). The consultation also sets out a number of proposed changes to the ET rules of procedure which the TPC intends to implement in two tranches during 2025, following further consultation. Comments are invited by **26 June 2024**.

Corporate reporting: The Department for Business and Trade has launched a consultation [on reducing reporting burdens for medium sized businesses](#), exempting them from preparing strategic reports. It also proposes changing the definition of a medium sized business from 250 to 500 employees. The deadline for responding is **27 June 2024**.

Fit notes: The Department for Work and Pensions is looking at reforming the [fit note system](#) and is inviting views on the current regime and what can be done to provide better support. Views should be submitted [online](#) by **8 July 2024**.

TUPE: The government has launched a [consultation](#) on proposals to clarify that TUPE only applies to employees, and to prevent contact splitting where a business or service is transferred to multiple transferees. The consultation runs until **11 July 2024**.

European Works Councils (EWCs): The government has also launched a [consultation](#) on abolishing the legal framework for EWCs, again running until **11 July 2024**.

Seafarers: The government is reviewing the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 and is seeking views, to be submitted by **19 July 2024**, on their effectiveness and whether they meet objectives, with a view to determining whether they should be kept, amended, repealed or replaced.

Sexual harassment: Ahead of the new mandatory duty on employers to prevent sexual harassment in the workplace, which will apply from October, the EHRC is expected to launch a six-week consultation on the associated technical guidance in early summer.



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