

UK Employment Law Update – October 2026

Our October 2026 edition provides an update on the Employment Rights Act 2025 reforms after more commencement regulations and an updated implementation timeline have been published. We also provide a round-up of recent case updates, including some interesting cases on aggravated damages and interim relief, a decision clarifying that individuals can be liable for a failure to make reasonable adjustments, and a stark reminder about responsible use of AI in the Employment Tribunals.

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Case law update

Compensation – aggravated damages: Aggravated damages are a potential remedy for the distress caused by the manner or motive behind the committed wrong, and a recent appeal against an award is a helpful reminder of key principles on when it is appropriate. The Employment Appeal Tribunal (EAT) clarified that aggravated damages is a compensatory rather than punitive award and is premised on there being an aggravating factor causing increased injury which has not already been compensated for in, for example, an injury to feelings award. The EAT observed that double-counting is a risk where a separate award for aggravated damages is made and that, accordingly, a single award for injury to feelings to encompass the effect of any additional aggravating acts is often preferable. ([Khans Solicitors v. Kaiser](#))

Compensation – mitigation of loss – benefits: Where state welfare benefits are a consideration in compensation calculation, these should not be looked at in isolation. In this case, the claimant was awarded six months' loss of earnings, but credit was given for the universal credit (UC) he would have received in that period. When the claimant indicated that this award would take him over the savings limit for UC, the Employment Tribunal (ET) reconsidered its calculations and increased his award to reflect his inability to claim UC. On appeal, the EAT concluded this was the wrong approach – whilst the ET was entitled to reconsider the award because of the UC issue, it should also have considered what other non-means-tested benefits were available to the claimant to mitigate his losses. (*SBH Windermere v. Nunns*)

Disability discrimination – compensation: An employee with ADHD who was dismissed five months into a temporary maternity cover role, purportedly on performance grounds, has been awarded over £200,000 for direct disability discrimination, discrimination arising from disability, and a failure to make reasonable adjustments, after a liability judgment found that it had “rarely seen such a clear causal link between a protected characteristic and a dismissal, nor such an unsatisfactory explanation from a respondent”. As well as compensation for financial losses, the claimant was awarded an upper band award for injury to feelings and £30,000 for personal injury because of the significant adverse impact that the discriminatory treatment and dismissal had on her, as well as aggravated damages of £5,000 largely because the respondent had inexcusably failed to disclose vital evidence – a “smoking gun” for the claimant’s claim – until the day before the hearing. In addition, the ET ordered the former employer to pay the claimant’s legal costs in full, an exception to the usual rule that parties bear their own costs. (*Ghiotto v. Hawkwell House Hotel Ltd*)

Disability discrimination – reasonable adjustments: In a surprising and controversial decision, the EAT has decided that a claim for a failure to make reasonable adjustments can be brought against individual respondents such as a line manager, rather than just the employer. The EAT held that as the duty to make reasonable adjustments rests on the employer, and the employer acts through its employees, it follows in the EAT’s view that where an employee fails to make reasonable adjustments for which the employer is vicariously liable, the employee responsible for the failure can also be personally liable. This could prove to be a landmark decision unless it is overturned on appeal. (*Merriman v. 1st Staff Limited and others*).

TUPE: The Court of Appeal has unanimously concluded that vicarious liability to a third party does not transfer under TUPE. In this case, a psychiatric patient claimed personal injury for abuse by hospital staff whilst she was an inpatient, although those hospital employees subsequently transferred to another employer. The judgment leaves the claimant without recourse – the employer at the time of the alleged incidents was placed into liquidation, its insurance coverage did not respond because of excess arrangements, and liability did not transfer under TUPE. (*ABC v. Huntercombe (no.12) Ltd and others*)

Employment Tribunals – AI: In an appeal against the strike out of his claim for conducting proceedings in a scandalous, vexatious, and unreasonable manner, the claimant presented a 300-page AI-generated skeleton argument for a preliminary hearing, prompting the EAT to provide guidance on responsible and ethical use of AI in ET proceedings. The EAT reminded parties, whether represented or not, to ensure compliance with relevant procedural rules, take personal responsibility for verifying the output (and not, like in this case, putting the onus on the respondent to check for factual errors), and keep content relevant and focussed. In this case, the claimant’s document was deemed wholly unacceptable, serving to “obscure rather than illuminate” the issues. (*Hancox v. Sutherland and others*)

Interim relief: Interim relief is a powerful remedy which requires a dismissed employee’s former employer to continue paying the claimant their full pay and benefits on an interim basis until the claim is determined at a hearing. Even where the claimant’s claim fails, the employer cannot

recover the salary and benefit payments made to the employee pursuant to the order. It is a rare remedy, awarded exceptionally in a limited number of automatically unfair dismissal claims where the claimant can meet a high “likely to succeed” threshold. The EAT has recently clarified that the mere existence of a factual dispute is not determinative or indicative that a claimant does not meet the required threshold – in considering an application for interim relief, an ET should make a quick summary assessment based on the evidence available. Even if the facts are disputed, clear evidence that the “real” reason for the claimant’s dismissal was different to the one purported may be sufficient. (*Duffy v. Bxtr 3 Ltd t/a House of Gods*) Following an upward trend in applications for interim relief in the ET, [guidance](#) was issued in June 2026 explaining its emergency nature and limited availability as a remedy.

Equal pay: In an important case for employers grappling with UK equal pay litigation based on work of “equal value”, a retailer who paid its warehouse operatives more than its predominantly female retail sales consultants has successfully appealed against the employees’ successful equal pay claim. The EAT concluded that recruitment and retention factors affecting warehouse staff, which did not apply to retail staff, could justify the higher basic pay rates. The retailer’s appeal in respect of differential rates for paid breaks, overtime, and night-time premiums was not successful. (*Next Retail v. Thandi and others*)

Employment Rights Act 2025

Key points at a glance:

- The Employment Rights Act 2025 (ERA 25) received Royal Assent on 18 December 2025.
- The reforms are being phased in over 2026 and 2027. The government issued an [updated timeline](#) on 25 September 2026. A wave of reforms will take effect during October 2026, although some reforms expected this month have been pushed back to next year.
- Details of many of the remaining reforms are still to follow and will be shaped by consultation.
- For more information, see our ERA 25 [timeline and next steps](#).

Upcoming changes

- **ET time limits**
 - The time limit for bringing most ET claims in Great Britain increased from three to six months from **1 October 2026**.
 - The time limit for breach of contract claims also increased to six months in England and Wales from **1 October 2026**, and from **9 November 2026** in Scotland.
 - Transitional provisions mean that the six-month time limit will apply where the “relevant date” is on or after 1 October 2026, although the “relevant date” differs depending on the type of claim.
- **Harassment**
 - From **30 October 2026**, in an extension to rules introduced in October 2024, employers will be required to take all reasonable steps to prevent sexual harassment. Powers to make regulations specifying what is reasonable will also take effect.
 - Employers will also be liable for harassment of their workers by third parties from **30 October 2026**. This covers all forms of harassment, not only sexual harassment.

- **Trade unions and industrial action**

- Workplace, electronic, and hybrid voting for statutory industrial action ballots, including a new code of practice, came into force on **25 August 2026**. Regulations which provide trade unions with the right of access to workplaces come into effect on **30 October 2026**. All remaining trade union recognition provisions will also come into force, along with new rights to time off and reasonable facilities for union officials to carry out their duties.
- Following a consultation, the government has confirmed that it will legislate to prohibit employers from exposing workers to any detriment which has the purpose of penalising, deterring, or preventing industrial action. This is expected to be in force from **30 October 2026**.
- Also following a consultation, an updated Acas Code of Practice on time off for trade union duties and activities has been laid before parliament and is expected to be in force during October 2026.
- Plans to require employers to notify workers of their right to join a trade union, which had been expected to be in force in October 2026, have been pushed back to **January 2027**.

- **Unfair dismissal**

- The unfair dismissal reforms, including a reduction in the qualifying period from two years to six months and the removal of the cap on compensation, are confirmed to take effect from **1 January 2027**. These changes will apply where the effective date of termination falls on or after 1 January 2027.

- **Other updates**

- **Flexible working:** Following a consultation earlier this year, the government has published its [response](#), confirming that it will make regulations to introduce a reasonableness test where an employer refuses a statutory flexible working request, and to prescribe a process that employers will need to follow where they are considering a refusal. These changes are expected to come into force in **autumn 2027**. Acas has published its [consultation](#) on an updated draft code of practice, which is open until 17 December 2026, and detailed guidance on the new reasonableness test is expected by the end of 2026.
- **Bereavement leave:** The government has also published its [response to a consultation](#) on bereavement leave, confirming plans to introduce a new statutory right for employees to take up to two weeks of unpaid leave in the event of the bereavement of a spouse, civil partner, partner in a committed long-term relationship, parent, sibling, or adult child (there is already a statutory right to leave for the bereavement of a child), and any equivalent relationships arising from foster care or kinship. The right to time off will also extend to pregnancy loss before 24 weeks, including termination and IVF embryo transfer loss, for the pregnant person, the other biological parent, partners, and intended parents in a surrogacy arrangement. The right will apply from day one of employment and the leave must be taken within 56 days of the bereavement (or knowledge of it) but can be taken in minimum periods of one day. There are no evidential requirements, and the notice requirements are minimal – notice must be given as soon as reasonably practicable, being the same day in the first eight weeks after bereavement, or one week thereafter. This is expected to come into force in **April 2027**.

- **Informing workers of their right to join a trade union:** As noted above, the timeline for introducing a requirement on employers to notify workers of their right to join a trade union has been pushed back from October 2026 and is now expected to apply from **1 January 2027**. In its [response to a consultation](#), the government confirmed that a prescribed standardised form of wording will be provided for employers to issue, the content of which cannot be amended other than to add specific workplace information. The statement must be provided to all new workers at the same time as they are given their written statement of particulars, and existing workers can be provided with details directly or indirectly. Where statements are delivered directly, they must be provided annually by 5 April. Where indirect methods are used, the worker must be informed where the statement is located (and if it is moved) and receive an annual reminder.
- **Procurement – two-tier code for public sector outsourcing:** The ERA 25 reforms include proposals to reintroduce a two-tier code on workforce matters, but whereas the provisions which grant power to make regulations and publish a code of practice had been anticipated to take effect during October 2026, the latest government implementation timeline is silent on these changes. It is currently unclear if this is an oversight or if the proposals have been quietly dropped.

Other legislative developments

Right to work checks: As part of a commitment to crack down on illegal working, the right to work scheme has expanded and, for new appointments from **1 October 2026**, organisations are required to conduct right to work checks not only for employees and apprentices but also when engaging workers or individual subcontractors, including via an online matching service. Employers are also potentially liable where there is no direct contractual relationship with the illegal worker under new extended liability rules. Organisations can avoid civil liability by carrying out prescribed actions. Penalties for non-compliance include a fine of up to £45,000 per illegal worker (rising to £60,000 for a repeated breach), director disqualification, and prison sentences of up to five years where a criminal offence has occurred. The new rules are accompanied by a [code of practice](#) and Home Office [guidance](#).

Pay equality: In a response to recommendations to improve disabled people's access to work, the government has repeated its commitment to introduce mandatory ethnicity and disability pay gap reporting for larger employers, although the timescale remains a vague "when parliamentary time allows".

Other news

Data: The Information Commissioner's Office was abolished on 30 September 2026. Its functions and responsibilities have been transferred to a newly established Information Commission.

Employment tribunals: The latest statistics from the Ministry of Justice reveal a 28% increase in claims from April to June 2026 compared to the same period in 2025, with the number of new claims still significantly outweighing the number of disposals.

UK autumn budget: This year's autumn budget will take place on **28 October 2026**.

Workplace health: The government has published an update on its plans and proposals for improving economic inactivity related to ill health by creating a [workplace health system](#) which promotes healthy and inclusive workplaces.

Disabled employees: Acas-commissioned independent [research into disabled employees' experiences of workplace conflict](#) has been published, exploring where conflict typically arises

and what can be done to prevent and resolve any issues. The report suggests that managerial and employer responses to disability, rather than the disability itself, are key.

Post-termination restrictions: The Prime Minister has announced an intention to reform the law on post-termination restrictions, including non-compete clauses, describing them as a barrier to recruitment. Details of the proposal have not yet been announced, and there is no indicative timeline for any changes.

New guidance

Women's health: The British Standards Institution has, in conjunction with the International Organization for Standardization, announced a new [global standard](#) on menstruation and menopause in the workplace, providing guidance for employers on workplace culture, practical support and adjustments, and policies.

Employment checks: The government's Disclosure and Barring Service (DBS) has updated its [Update Service guidance for employers](#), which sets out details of how employers can check the status of an existing standard or enhanced DBS check.

Zero-hours contracts: The government has published [guidance for employers](#) on zero-hours contracts, as the law currently stands. The guidance will be updated when the planned reforms take effect.

Consultations and calls for evidence

Equal pay and pay transparency: The Office for Equality and Opportunity has launched a [consultation seeking views on reforming the equal pay framework](#). Through the consultation, the government is exploring ways of increasing transparency in pay practices, improving enforcement of pay discrimination claims, ensuring pay equality is upheld in outsourcing arrangements, and levelling up pay protection based on sex, race, and disability. Proposals for reform include: a statutory requirement to publish details of pay in job advertisements, tribunal powers to require an equal pay audit, the introduction of a new enforcement unit, changes to equal pay comparators, and a positive duty on parties to an outsourcing agreement to take reasonable steps to uphold pay equality. The consultation is open for comment until **27 October 2026**.

Flexible working: Acas has launched a [consultation](#) on an updated Code of Practice on requests for flexible working, aimed at supporting employers to reach reasonable decisions where employees request changes to their working arrangements, in accordance with the changes being introduced through the ERA 25 reforms. The consultation is open for comment until 17 December 2026, with responses used to shape the content of the updated code of practice which will come into effect next autumn at the same time as the flexible working reforms.

Whistleblowing: A [consultation](#) has been launched on the current whistleblowing regime, calling for views on whether the system is effective and what, if anything, is needed by way of reform. It particularly asks for views on who should be protected, the public interest test, the categories of wrongdoing to which disclosures relate, to whom disclosures can be made, whether employers should be under a statutory duty to have effective processes, whether statutory guidance is required, whether a central whistleblowing body should be established, and the process for claiming interim relief. It is open for comment until **8 January 2027**.

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