

UK Employment Law Update - August 2026

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Our August 2026 edition provides a round-up of recent interesting case law and legal updates, including a decision that a training costs clawback provision was a restraint of trade, a reminder that consenting to conduct does not necessarily mean that the conduct was not unwanted, a reminder that the right to be accompanied requires the worker to request a companion, and news that the right to work checks regime is expanding from October. We've also seen consultations launched on pay transparency and on a revised Acas code of practice on disciplinary and grievance procedures, which requires parties to focus on informal resolution.

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Capability: Labor, Employment & Benefits

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Case law update

Restraint of trade: Employers who seek to recover training (or other) costs when an employee leaves employment should heed a recent Court of Appeal (CA) decision which found such a scheme to be an unlawful restraint of trade. In this case, a trainee employee signed a contract relating to his training costs (approximately £8,000) under which he agreed that the costs would be written off at an agreed rate and that if he left employment before the amount was fully written off, he would owe the balance. When the employee resigned after eight months of employment, he was pursued for the money owed. Whereas the county court found in favour of the employer, the CA determined that the clawback provisions fell within the restraint of trade doctrine – a financial disincentive which would or might have the effect of hindering the employee's ability to work freely. Although it was accepted that the employer had a legitimate interest in maintaining a stable and trained workforce, the clawback provisions went further than reasonably necessary to protect that interest. It was relevant that the employee was on very low pay and had not received legal advice on the contract. (*[Geeks Ltd v. Watts](#)*)

Sexual harassment: The Employment Appeal Tribunal (EAT) has been considering the issues of consent and capacity in a case of alleged sexual harassment after a work Christmas party. The EAT clarified that when considering whether conduct was “unwanted” (part of the test for harassment), consent is often indicative of the conduct not being unwanted, but consent is not always determinative – there may be circumstances, such as an imbalance of power, which mean that sexual conduct is unwanted notwithstanding consent having been given. The EAT also clarified that intoxication may impair a person's ability to consent, but it will always be a fact-sensitive question as to whether they had capacity to do so. In this case the claimant failed in her claim after findings that she had consented to the conduct despite being drunk. (*[AB v. GH Ltd](#)*)

Compensation:An Employment Tribunal (ET) has the power to award an uplift in compensation of up to 25% where there has been a failure to follow a relevant Acas code of practice. In this case, the claimant was awarded a 25% uplift to parts of her claim after successfully claiming unfair dismissal, disability discrimination, and victimisation. Her total award (including the uplift) was approximately £112,000. On appeal and after a rehearing by a new ET, her compensation payment was significantly increased to £1.7 million before any adjustments. Although the Acas uplift had not been part of the appeal, the new ET applied a 2.5% uplift. It also declined to gross up the award, instead requiring an undertaking from her employer that it would cover any tax liability, and left open the possibility of returning to the ET to assess any tax discrepancy if required. The claimant appealed. The EAT concluded that despite the uplift not being a point of appeal, the ET had been entitled to reduce it by applying the principles of justice and equity. The EAT was also satisfied that the ET had acted appropriately in declining to gross up the award in circumstances where there was genuine uncertainty over the tax treatment applicable to the payment. (*[Sheikholeslami v. University of Edinburgh](#)*)

Group companies: A recent High Court case acts as a helpful reminder that even where contractual clauses purport to grant rights to group companies, group companies cannot ordinarily enforce those rights in contracts with employees or workers. In this case, the contract was with a self-employed consultant and contained restrictive covenants. However, in circumstances where his employment status was found to be that of a “worker”, the company with which he contracted directly could enforce the covenants, but group companies could not. To ensure third-party protection, group companies should enter into direct contracts with the individual. (*[AFH Independent Financial Services Ltd and others v. Baker and another](#)*)

Continuing acts: Whether an act (or omission) is continuing can be relevant to the time limit for bringing a claim. In this case, the claimant alleged that the issuing of a warning and the continued presence on a public website of details about that warning, despite it having been later quashed, was an act of discrimination. Whereas the ET concluded that the alleged discrimination crystallised when the warning was published, the EAT disagreed and found that leaving the warning on the website was capable of being an ongoing act until the warning was removed. The EAT also provided valuable guidance when considering such issues, setting out the following questions: (i) when did the act take place? (ii) did the claimant complain that the conduct extended over a period? (iii) if so, when did that conduct end? (*[Mokhammad v. General Medical Council](#)*)

Right to be accompanied: The EAT has clarified that the right to be accompanied at a disciplinary or grievance hearing is conditional upon the worker having requested a companion. This is the case even if the employer had not told them they were entitled to be accompanied or what the purpose of the meeting was. In this claim, the claimant was dismissed at a meeting he was called to without prior notice and without knowledge of its purpose. However, his claim for a breach of his right to be accompanied failed as he had not asked to have anyone with him, and in the absence of a request there could be no breach. An employer's silence and lack of transparency may still be relevant for an unfair dismissal claim. (*[Wolfe v. Taka Mayfair](#)*)

Disability discrimination: In a case hitting the headlines, an employer failed to make reasonable adjustments for an employee with anxiety and ADHD by, among other things, failing to allow her to join a training session with her camera off (despite later allowing her to come off camera) and by requiring her to communicate with customers in voice calls rather than predominantly by email or via a chat function. Whilst the media reports have focussed on the camera issue, this was a minor part of a much bigger reasonable adjustments claim in which the employer failed to take heed of the claimant's repeated calls for adjustments to be made to her shifts and communication methods to remove the disadvantages she was experiencing as a result of her disabilities and the resulting lengthy sickness absences. The case does not mean ‘camera-on’ or ‘pick up the phone’ type policies are inherently unlawful, but reminds employers that an inflexible approach may be problematic for neurodiverse or anxious staff. (*[Tait v. Holiday Extras](#)*)

Right to work: The Supreme Court has ruled that when a penalty notice is issued to an employer for employing individuals without a right to work in the UK, the Home Office must clearly specify which of the four statutory grounds it relies upon to issue that notice. (*[Akbars Restaurant \(Middlesbrough\) Ltd v. Secretary of State for the Home Office](#)*)

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 will be phased in over the next couple of years, with the next wave of changes due in August and October 2026, although commencement regulations for some reforms are outstanding.
- Details of many of the remaining reforms are still to follow, shaped by consultation.
- There are open consultations on enforcement of holiday pay and the zero-hours contracts and guaranteed hours reforms.
- The government has published an [updated timeline](#), which we have reflected in our ERA 25 [timeline and next steps](#). It is currently unclear whether the recent change in prime minister will have any impact on the implementation timeline.
- We will keep you updated here and on our [Employment Law Watch](#) blog.

Upcoming changes

- ET time limits**
 - Regulations have been made which will extend the time limit for bringing certain ET claims in England and Wales, including breach of contract claims, from three to six months with effect from **1 October 2026**. The equivalent extensions in Scotland are expected to take effect from **9 November 2026**.
 - These regulations are a ‘mop-up’, dealing only with extending the time for bringing claims which were omitted from the schedule in the ERA 25 (which seeks to extend time to six months for most statutory employment claims). We do not currently have commencement regulations for these other extensions, although they are also expected to apply from 1 October 2026.
- Trade unions and industrial action**
 - Changes permitting workplace, electronic, and hybrid voting for statutory industrial action ballots, including a new [code of practice](#), are expected to come into force on **25 August 2026**.
 - Under changes expected to apply from **August 2026**, an employee who is dismissed for redundancy will be automatically unfairly dismissed if they were selected for redundancy because they had taken part in industrial action. This applies in respect of industrial action started on or after 18 February 2026.
 - 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 come into force on **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 come into force in October 2026.
 - The government has made regulations which provide trade unions with the right of access to workplaces. These are currently in draft form but are expected to come into force on **30 October 2026**.
- Other anticipated October 2026 changes**
 - A further wave of changes, expected in **October 2026** (but subject to commencement regulations, which have not yet been published), includes employer liability for harassment by third parties, a duty to take all reasonable steps to prevent sexual harassment, an obligation to inform workers of their right to join a trade union, new rights of access and to facilities for trade unions, and tightened tip laws.
- Unfair dismissal**
 - Commencement regulations confirming 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, have been published, with the reforms taking effect from **1 January 2027**. These changes will apply where the effective date of termination falls on or after 1 January 2027.

Other developments

Tipping: A [revised code of practice on the tipping reforms](#) published last month in response to the recent consultation has since been withdrawn following strong pushback from trade unions. A replacement draft code (and a consultation on its content) is expected in due course, but in the meantime, the tipping reforms have been pushed back from an anticipated October 2026 implementation to now being expected before the end of the year.

Open ERA 25 consultations

- Zero-hours contracts and guaranteed hours:** The government has launched a consultation on proposed reforms to zero-hours contracts and plans to give workers the right to guaranteed hours, reasonable notice of shift changes, and payment for cancelled shifts. The provisions in the ERA 25 are complicated, and this consultation provides an opportunity for interested parties to shape the detail about how the rules will work in practice. It is open for comment until **25 August 2026**.
- Holiday pay:** Enforcement of holiday pay entitlements will be the responsibility of the Fair Work Agency (FWA), established in April 2026, from 2027. The government has now launched a [consultation](#) seeking views on how the FWA should approach that enforcement, including how far the FWA can enforce claims, whether there should be any restrictions around the level of the civil penalty, and how to focus enforcement on lower paid or vulnerable workers. The consultation also seeks to understand how rolled-up holiday pay is currently used in practice. It is open for comment until **22 September 2026**.

Other legislative developments

Equality: The updated [Code of Practice for services, public functions and associations](#) came into effect on **5 August 2026**.

Right to work checks: The right to work scheme is expanding, and from **1 October 2026**, organisations will be required to conduct right to work checks not only when employing someone under a contract of employment, but also when engaging workers and individual subcontractors, including via a third party online matching service, or certain types of self-employed contractor (although genuinely self-employed independent businesses are out of scope). The extension of checks to the gig economy and flexible labour models reflects a commitment to cracking down on illegal working, with penalties for non-compliance including a fine 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](#), currently in draft form pending approval from parliament.

Other news

Employment Tribunal claims: Acas reports a 27% increase in demand for early conciliation, the compulsory step before an ET claim can be issued, and although Acas reports high settlement rates, recent ET statistics show a 39% year-on-year increase in the number of single claims. The upcoming ERA 25 reforms are expected to increase pressure on Acas and the ETs further.

Disability and ethnicity pay gap reporting: The government's equal pay consultation (see below) reiterates the intention to introduce mandatory ethnicity and disability pay gap reporting in due course, but there remains no indication of a timeline.

New guidance

Right to work checks: The government has updated its [employer's guide to right to work checks](#) to coincide with the enhanced obligations from **1 October 2026**.

Consultations and calls for evidence

Carer's rights: The government has launched a [consultation on strengthening the employment rights of carers](#). It is exploring options to extend unpaid carer's leave (beyond the current five-day entitlement), introduce paid carer's leave (seeking views on duration and rates of pay), and introduce protections (similar to maternity leave) on return from carer's leave. The consultation is also exploring proposed leave and pay for parents and caregivers where a child receives a diagnosis of serious illness, seeking views on eligibility, duration, pay, and evidence. The consultation also seeks views on whether additional guidance would be helpful for employees and employers. The consultation is open until **1 September 2026**.

Time off for public duties: The government is [seeking views on how the right to time off for public duties](#) operates in practice at the moment, and on the list of public duties eligible for the time off. The consultation is open until **4 September 2026**.

Discipline and grievance: Acas has launched a [consultation](#) on a draft of its rewritten code of practice on discipline and grievance procedures. The proposed changes to the code of practice are substantial, including a significant focus on early informal resolution of concerns, meaning that a failure to seek early informal resolution could result in a 25% uplift to compensation. The draft also includes guidance on suspensions, reasonable adjustments, and AI. It is open for comment until **23 September 2026**.

Workplace monitoring technologies: The government has launched a [consultation on proposals to support the fair, transparent, and responsible use of workplace monitoring technology](#). It is open for comment until **30 September 2026**.

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 to increase transparency of pay practices, improve enforcement of pay discrimination claims, ensure pay equality is upheld in outsourcing arrangements, and level 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. It is open for comment until **27 October 2026**.

Publications

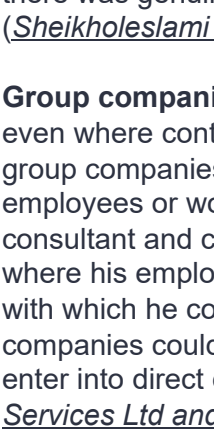
[UK Supreme Court says good faith requires more than belief](#)

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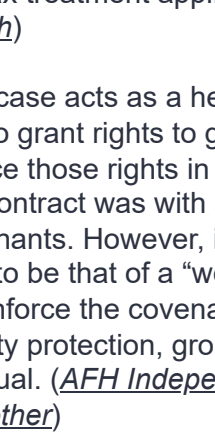
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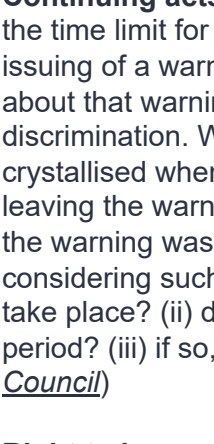
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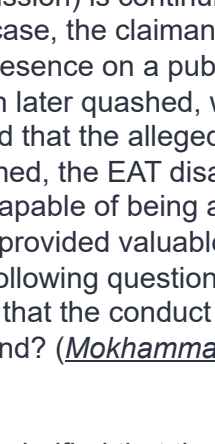
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