UK Employment Law Update

ReedSmith

UK Employment Law Update – November 2026

Our November 2026 edition provides guidance for employers on the enhanced obligations to prevent harassment at work effective from 30 October 2026, including new guidance from the Equality and Human Rights Commission and Acas. We also provide updates on the new rules on trade union access agreements and the employment-related impact of the Autumn Budget, including plans to reform post-termination restriction use. Finally, we provide a round-up of interesting case law.

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Important new laws effective from 30 October 2026

New duties to prevent harassment

- From 30 October 2026, new rules took effect, meaning that employers in Great Britain are now required to take "all reasonable steps" to prevent sexual harassment.
- Under other new measures, employers will also be liable if they fail to take all reasonable steps to protect their workforce from any type of harassment by third parties.
- To assist employers, on 30 October the Equality and Human Rights Commission published updated technical guidance on harassment and also an updated 8-step guide for employers on preventing workplace sexual harassment.
- Acas has also updated its guidance on workplace sexual harassment.
- Powers to make regulations specifying what is reasonable will also take effect (although the actual regulations are not expected for some time).
- Read more about these developments and about the "all reasonable steps" test on our Employment Law Watch blog.

Trade union reforms

- Access agreements
  - From 30 October 2026, provisions came into effect enabling certified trade unions to request "access agreements" allowing union officials to access an employer's workforce for various purposes. This can include physical access or access to communications with workers.
  - Employers can face punitive sanctions for non-compliance with access agreements.
  - A new Code of Practice on trade union rights of access provides guidance for employers on how to handle a request. Employers faced with a request for access can respond using a government-published template.
- Other trade union reforms
  - All remaining trade union recognition provisions also came into force on 30 October 2026, along with a Code of Practice on access and unfair practices during a recognition or derecognition process. There are also new rights to time off and reasonable facilities for union officials to carry out their duties.
  - Employers are prohibited from exposing workers to any detriment that has the purpose of penalising, deterring, or preventing industrial action.
  - An updated Acas Code of Practice on time off for trade union duties and activities also took effect.

Case law update

Compensation – mitigation of loss: Employees claiming compensation for loss of earnings after being unfairly dismissed are required to make reasonable attempts to mitigate their loss by finding alternative employment. In this case, the claimant chose to prioritise growing a business over seeking new employment, and the Employment Tribunal (ET) found that the claimant had unreasonably failed to mitigate their loss. The Employment Appeal Tribunal (EAT) overturned the appeal, finding that the ET had incorrectly placed the burden on the employee to show that they had mitigated their loss. The EAT provided a helpful reminder that the burden is on the employer to show that an employee has acted unreasonably and not on the employee to show that they have acted reasonably. With the cap on unfair dismissal compensation being removed on 1 January 2027, arguments about mitigation will become more prevalent, and this case is a helpful reminder to employers that the burden is theirs to discharge. (*Kirkland v. Mason t/a Hawthorn Education Services*)

Harassment: An EAT decision this month reminds us that, for a harassment claim to succeed, the act complained of must not only have had the purpose or effect of violating dignity or creating a hostile, intimidating, or offensive environment, but it must also have been reasonable to regard the conduct as having had that effect. In this case, when the disabled claimant was returning to work after a long-term sickness absence due to anxiety and depression, she was told by occupational health that the Access to Work scheme was not for her, as it was for people in wheelchairs. While this comment was related to her disability and she felt harassed, it was found on the facts that it was unreasonable for the comment to have had this effect. Although her mental health was a factor to consider in this analysis, it did not automatically mean her reaction was reasonable. (*McManus v. British Airways*)

Unfair dismissal – decision-making: In a dismissal process, it is common for HR to attend the hearing to provide support and guidance to the decision-maker. In this case, the claimant argued unsuccessfully that the extent of HR involvement rendered the dismissal unfair. In a helpful case for employers, the EAT rejected the argument that HR involvement in advising on a decision to dismiss and an appropriate sanction necessarily rendered the dismissal unfair. While the decision ultimately rests with the disciplinary chairperson, who should not be pressured or influenced by someone else, the EAT recognised that HR plays an important role in ensuring consistency of approach. In this case, HR had not crossed the line into improper involvement. (*Shing v. University of the Arts London*)

Wrongful dismissal: In this case, an ET found that an employee who was summarily dismissed for gross misconduct two weeks before accruing the qualifying service for unfair dismissal was wrongfully dismissed. The claimant was subject to a performance improvement plan (PIP) but was ultimately dismissed without notice for gross insubordination. The ET was satisfied that performance concerns justified a PIP and that the claimant's performance and conduct may have resulted in his eventual dismissal, but at the time of his dismissal, summary dismissal could not be justified based on his conduct. Evidence revealed that the employer acted because "time was of the essence", something for employers to be mindful of as the unfair dismissal qualifying period is set to reduce to six months from January 2027. (*Rossi v. Cell Therapy Catapult Ltd*)

Neurodiversity: In an interesting reasonable adjustments case involving a neurodivergent job applicant, an EAT decision highlights how interviewers should not assume that a neurodivergent candidate will feel or react in the same way as a neurotypical candidate, in this case, in their response to stress. The case also highlights how standard competency-based interviews may not be suitable for some neurodivergent candidates, and that employers should consider whether there is an alternative way to assess suitability for a role. It also clarifies that an employer should not simply take someone's requested adjustments at face value; while these are clearly relevant, an employer does not necessarily discharge its duty to make reasonable adjustments by making only the requested adjustments if other adjustments would be reasonable to alleviate a known disadvantage. (*Bryce v. Coventry City Council*)

Tribunal procedure – strike out: The EAT has upheld a decision to strike out a claim in circumstances where there was no reasonable prospect that the claimant, a litigant in person with post-traumatic stress disorder that was exacerbated by the litigation, could attend a final hearing in the foreseeable future. Alternatives had been considered, but in the absence of any other suitable arrangements, and after a detailed consideration of the background and medical position, it was reasonable for the ET to conclude that a fair hearing was no longer possible. (*D v. Greater Glasgow Health Board*)

Employment Rights Act 2025

Key points at a glance:

- The Employment Rights Act 2025 (ERA25) received Royal Assent on 18 December 2025.
- The reforms are being phased in over 2026 and 2027, with a wave of important reforms relating to harassment and trade union rights taking effect in October 2026. These are set out above.
- The government issued an updated timeline on 22 October 2026, which sees a more structured timetable for 2027, including the fire and rehire reforms pushed back to March (from January) and the guaranteed hours reforms on hold pending further consultation.
- Details of many of the remaining reforms are still to follow and will be shaped by consultation. Consultations on flexible working and fire and rehire are currently open (see below).
- For more information, see our ERA 25 timeline and next steps.

Recent and 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.
- **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.
  - Plans to require employers to notify workers of their right to join a trade union, which had been expected to come into force in October 2026, have been pushed back to January 2027. We await details of the prescribed wording that employers will be required to issue.
- **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 ERA25 updates

- Fire and rehire: It will become automatically unfair to dismiss employees who do not agree to changes to certain core contractual terms and conditions, except where the employer is in severe financial difficulty. Not all variations will be caught, but changes to pay, working time and time off, and pensions, as well as a new clause allowing a variation, will be covered

by the restriction. The government has now published its response to a consultation on whether to restrict changes to shift patterns, employment expenses, and benefits in kind under these rules. Changes to share schemes, non-contractual benefits, most expenses or benefits in kind (but not travel or accommodation), and availability windows will not be restricted under the new rules, but certain shift changes will be. These reforms are now expected to take effect from March 2027, having been pushed back from January 2027, and will be accompanied by a Code of Practice, the draft of which is subject to consultation (see below). Curiously, the updated Code of Practice is expected to come into force in summer 2027, despite the current 2024 Code being withdrawn in March 2027, when the fire and rehire reforms are expected to take effect.

- Enhanced dismissal protections for pregnant women and new mothers: The government has published its response to the consultation on this topic and will go ahead with plans to strengthen the legal framework for pregnant workers, new mothers, and those on other family leave during a "protected period". Protection for pregnant workers will be triggered by notifying the employer of the pregnancy, with protected periods also applying during any maternity, adoption, shared parental, neonatal care, or bereaved partner's paternity leave, and for six months after the end of that leave (or for two weeks from the end of a pregnancy where there is no entitlement to maternity leave). The reforms will require employers to objectively justify dismissal as a proportionate means of achieving a legitimate aim and to explore reasonable alternatives to dismissal. These changes are currently expected to take effect from October 2027.

- Guaranteed hours/zero-hours contracts: Complicated provisions giving workers the right to guaranteed hours, reasonable notice of shifts, and payment for cancelled shifts are on hold pending a review of the consultation that closed in August 2026.

ERA25 consultations

- 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 when employees request changes to their working arrangements, in accordance with the changes being introduced through the ERA25 reforms. The consultation is open for comment until 17 December 2026, with responses being used to shape the content of the updated Code of Practice, which will come into effect in autumn 2027, at the same time as the flexible working reforms.

- Fire and rehire: The government has launched a consultation on a new Code of Practice on dismissal and re-engagement to reflect the ERA25 reforms. The draft is open for comment until 17 December 2026.

Other news

- UK autumn budget: The Chancellor delivered the autumn budget on 28 October 2026, with the following employment-related announcements:
  - Post-termination restrictions: Planned reform of the law on post-termination restrictions, including non-competes. A consultation will be launched "shortly", with detailed proposals expected in early 2027.
  - Immigration: Planned reforms to the visa system to attract talent through changes to the High Potential Individual and Graduate visa routes.

- Parental allowance: A new entitlement to parental allowance for eligible self-employed fathers, partners, and adopters has been announced, providing parental pay to individuals who currently have no entitlement. This will take effect from April 2029, with eligibility criteria to follow in due course.
- Carer's allowance: The weekly earnings limit for carer's allowance will be reformed to create a taper to the benefit once the earnings limit is reached.
- Minimum wages: The national living wage (NLW) and national minimum wage (NMW) will increase as follows from 1 April 2027:
  - NLW – £13.21 (up from £12.71)
  - NMW for 18–20-year-olds – £11.27 (up from £10.85)
  - NMW for 16–17-year-olds and apprentices – £8.31 (up from £8.00)
- Employment tax:
  - Income tax and national insurance: The lower earnings limit for national insurance contributions (NICs) will increase to £6,916 a year from 6 April 2027. There will otherwise be no change to current income tax or NIC thresholds, which are expected to remain frozen until April 2031.
  - Self-assessment for expenses: The £2,500 threshold above which employees must use self-assessment to claim income tax relief for employment expenses will be removed from 6 April 2028.
  - Immigration fees: Legislation will ensure that payment of the immigration skills charge or a certificate of sponsorship fee will not be a taxable benefit in kind for payments made on or after 28 October 2026.
  - Mileage: The temporary 55p per mile tax-free reimbursement rate for the first 10,000 business miles is being made permanent. The tax-free reimbursement rate for business mileage over 10,000 miles will increase from 25p to 35p per mile from 6 April 2027.
  - Payrolling of benefits: Mandatory payrolling of company vehicles, fuel, and medical benefits will apply from 6 April 2027, with the remaining benefits in kind subject to mandatory payrolling from 6 April 2028.
  - Image rights: Legislation will ensure that payments for image rights related to employment are taxable as employment income from 6 April 2028.

- Real Living Wage: The Living Wage Foundation has announced that the real Living Wage (which is independently calculated and reflects the cost of living) will rise to £15.45 in London and £14.10 in the rest of the UK. Accredited real Living Wage employers should implement the new rates before 1 May 2027.
- Neurodiversity at work: An independent report has been published on helping neurodivergent people succeed in the workplace, backing government action and wider initiatives to support neurodivergent and disabled people.

New guidance

Right to work checks: Following the expansion of the right to work check regime from 1 October 2026, a new Code of Practice and Home Office guidance for employers have been published.

Consultations and calls for evidence

Whistleblowing: A consultation has been launched on the current whistleblowing regime, calling for views on whether the current system is effective and what, if anything, is needed by way of reform. The consultation 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; a statutory duty on employers to have effective processes; whether statutory guidance is required; whether a central whistleblowing body should be established; the process for claiming interim relief; and whether certain whistleblowers should be rewarded financially. It is open for comment until 8 January 2027.

Employment status: The government has also launched a consultation into employment status. The consultation does not appear to propose removing "worker" status, but rather placing reduced emphasis on personal service and increased importance on control when determining whether someone is a worker. The consultation is also exploring whether there should be a presumption of worker status, with the burden on an employer to show that the individual is genuinely self-employed. It also seeks to understand the experiences of self-employed individuals and what can be done to strengthen protection for them. It is open for comment until 8 January 2027.

Financial Services – Senior Managers and Certification Regime (SM&CR): The FCA and PRA have published a consultation paper on phase two of their plans to reform the SM&CR. The consultation closes on 22 January 2027. The regulators intend to publish details of the reforms in the first half of 2027, with the new rules taking effect before the end of 2027.

Upcoming events

(Register using the links below)

Disputes Perspectives: An Afternoon of Practical Insights on Commercial Disputes, Investigations and Risk | 26 November 2026 | 2pm–5:30pm GMT | Reed Smith LLP, 1 Blossom Yard, London E1 6RS

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