UK Employment Law Update

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UK Employment Law Update – June 2026

Our June 2026 edition provides a round-up on interesting case law and legal updates, including confirmation that the unfair dismissal reforms will go ahead from 1 January 2027, various developments around single sex spaces, and cases providing helpful clarity around compensation reductions in unfair dismissal cases for contributory fault and reinstatement. We have also seen consultations launched on strengthening rights for carers and on shaping the detail of the proposed reforms to zero hours contracts.

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Case law update

Discrimination: The Employment Appeal Tribunal (EAT) has provided some pithy guidance for Employment Tribunals (ETs) on the burden of proof in discrimination claims, setting out the questions that should be asked: (i) what is the act of alleged discrimination towards B?; (ii) who is the alleged discriminator (A)?; (iii) did A do the act to B?; and (iv) are there facts from which the ET could decide, in the absence of another explanation, that A did the act to B because of the relevant protected characteristic? If, following a logical analysis, there are facts from which the ET could decide, in the absence of another explanation, that A did the act to B because of the relevant protected characteristic, then there will be an inference of discrimination and the burden will be on A (or their employer) to prove that the acts were not done to B because of the relevant protected characteristic. The EAT went on to clarify that unfair, unreasonable, or even appalling treatment does not necessarily justify any inference of discrimination. (*Clifton Diocese v. Parker*)

Whistleblowing: A recent EAT decision provides a helpful reminder that to constitute a "qualifying disclosure" for whistleblowing purposes, the disclosure must have sufficient factual content and be sufficiently specific about the alleged wrongdoing, and that the role and circumstances of the person making the disclosure will be relevant to whether they had a reasonable belief that the wrongdoing being alleged had occurred. In this case, a sales manager argued she had been dismissed for making a protected disclosure that patient safety was at risk due to the absence of written contracts in place with the parties supplying medical

appliances to patients. However, the EAT concluded this was not a qualifying disclosure – her allegations were general in nature with no evidence or explanation of how the lack of contracts and the risk to health and safety of patients were linked. Further, even if there had been a sufficient disclosure of information, on the evidence, the claimant's seniority and state of knowledge meant the original ET had been entitled to conclude that she did not have a reasonable belief in the connection. (*Capeling v. TFX Group Ltd*)

Equal pay: When assessing whether work is of "equal value" for equal pay claims, the Court of Appeal (CA) has approved a decision to focus on the content of job training manuals, rather than detailed witness statements and job descriptions. Although a departure from the usual approach, the CA was satisfied that in this case, the training documentation was more objective evidence of the reality of the requirements and demands of the relevant roles. (*Tesco Stores Ltd v. Element*)

Discrimination – workplace facilities: A female claimant has succeeded with her claim of discrimination and harassment on grounds of sex and her gender critical beliefs because of her employer's policy to allow staff to use single sex toilet and washing facilities in line with their gender identity once they fully presented in that gender role. It was accepted that the claimant, who is Muslim and suffers from PTSD from experiencing male sexual violence, was disadvantaged by the policy and the ET was critical that her employer had not explored less discriminatory options, such as providing gender-neutral facilities. The ET also found that the policy amounted to unwanted conduct towards the claimant, with the reasonable effect of violating her dignity and creating an intimidating environment. (*LS v. NHS England*)

Unfair dismissal – contributory fault and reinstatement: The EAT has been considering the approach to reinstatement and reductions in compensation for contributory fault after a finding of unfair dismissal. In this case the claimant was summarily dismissed after posting details of a workplace grievance on social media. The dismissal was unfair (the claimant had not committed gross misconduct in circumstances where he had not been sent a copy of the internet usage policy or guided on social media use, the employer had not asked him to take the post down, and where there was little evidence of any adverse impact of the posts on the employer) and the ET ordered reinstatement and a 10% reduction in compensation for contributory fault due to his conduct, including subsequent posts made both before and after the date of his dismissal. On appeal, the EAT explained that an employee's conduct will be relevant to whether it is just and equitable to order reinstatement, but not to whether it is practicable for the employer to comply with a reinstatement order. Further the ET had made an error in not focussing on whether the employer genuinely and rationally believed at the date of the hearing that reinstatement was not practicable, and instead making its own conclusions on what was practicable. In respect of compensation, the EAT clarified that there is a different approach in respect of basic and compensatory awards – in analysing a reduction to the basic award, the ET should consider blameworthy conduct in the period up to the date of dismissal (or notice of dismissal), whereas in analysing any reduction to the compensatory award, conduct up to the appeal outcome may be taken into account. This highlights the importance of having a clear timeline of events where arguments of contributory fault are being made. (*DHL Services v. Ignatowicz*)

Fixed term workers: A fixed term employee who was excluded from a training opportunity was not less favourably treated because of his fixed term status. The claimant was engaged on an 18-month fixed term contract but had not been told of a training course designed for his level to progress to the next stage of his career. The claimant subsequently became a permanent employee but later resigned, bringing claims for constructive unfair dismissal and less favourable treatment as a fixed-term employee. Aside from his claims being out of time, they were found to have no merit in circumstances where the claimant had shown no interest in progressing to the next career level, was imminently due to leave, was experiencing personal

difficulties, and resigned for a better paid role. Whereas the original ET had said the time and cost of a fixed term employee attending the training course meant his exclusion was objectively justified, the EAT clarified that cost alone cannot justify discriminatory treatment but may be a factor forming part of a wider legitimate aim. (*Komeng v. National Highways Ltd*)

ET compensation: A claimant's state benefits (specifically his personal independence payments (PIP)) could legitimately be set off against his award for unfair dismissal and disability related harassment – there was a sufficient correlation between the PIP benefit and the unlawful discrimination suffered by the claimant, and no rule in law preventing the deductions being made. The claimant also lost an argument that the PIP should be set off against notional care costs rather than lost earnings as these losses had not been claimed for. (*Foat v. DWP*)

Employment status: In a case highlighting the holistic approach needed to assess employment status, the first-tier tax tribunal has concluded that football referees' individual match contracts were not contracts of employment. Whilst the Supreme Court had already determined that the tests of both mutuality of obligation and control were met, pointing towards employment, the multi-factorial test (e.g., looking at all the other factual background and context) was referred back to the tribunal, which concluded that there were insufficient hallmarks of an employment relationship. (*Professional Game Match Officials Ltd v. The Commissioners for HMRC*)

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. Most changes will take effect in April or October of 2026 and 2027, although commencement regulations will be needed to confirm the implementation date.
- A raft of changes took effect from **6 April 2026**, including day one rights to paternity leave and parental leave, changes to statutory sick pay, whistleblowing protection for disclosing sexual harassment, an increase in the protective award for failing to collectively consult, a duty to keep records relating to annual leave, and the ability of employers with over 250 employees to develop and publish equality action plans on a voluntary basis. In addition, the Fair Work Agency was established on **7 April 2026**.
- The next wave of changes, expected in October 2026 (but subject to commencement regulations, which have not yet been published), include employer liability for harassment by third parties, a duty to take all reasonable steps to prevent sexual harassment, extended time limits for bringing ET claims, obligations to tell workers of their right to join a trade union, new rights of access and to facilities for trade unions, and tightened tip laws.
- 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 and are now 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.
- Detail of many of the remaining reforms will still need to follow, shaped by consultation.
- Consultations on the collective redundancy consultation threshold and trade union rights of access closed in May, although consultations on non-disclosure agreements (NDAs) in discrimination and harassment cases and on zero hours contracts and guaranteed hours remain open.
- We have updated our ERA 25 timeline and next steps.
- We will keep you updated here and on our Employment Law Watch blog.

Open ERA 25 consultations

- **Non-disclosure agreements:** The government has launched a consultation on proposals to crack down on the use of confidentiality provisions or NDAs preventing workers from speaking out about harassment or discrimination. The consultation explores the circumstances in which it would be appropriate for an NDA to remain valid in discrimination and harassment cases (e.g., if requested by the worker, having first received independent legal advice) and who workers will still be permitted to speak to where an NDA is valid. It also explores whether employers should be able to suggest confidentiality, whether there should be a cooling-off period (and if so, if this can be waived), a mandatory requirement to provide a signed copy of the agreement to all parties, whether valid NDAs should nevertheless be time-limited, and whether the rules should be expanded to cover NDAs with individuals who are not employees (e.g., self-employed individuals, individuals on work

experience or training, agency workers, and those on secondment). The consultation is open for comment until **8 July 2026**. The government has indicated that any new rules will be implemented during 2027.

- **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**.

Other legislative developments

Mandatory ethnicity and disability pay gap reporting: We recently reported how the government intended to implement plans to require large employers to report on their ethnicity and disability pay gaps. However, there was no mention of the Equality (Race and Disability) Bill in this May's King's Speech, suggesting it is not an immediate priority to take forward.

Other news

Disability: The House of Commons Work and Pensions Committee has published a report on supporting disabled people at work. It makes a number of recommendations to the government, specifically around improving access to work and improving the provision of reasonable adjustments.

Expenses – mileage rates: HMRC has announced an increase in statutory mileage allowances for the 2026-27 tax year (backdated to 6 April) to 55p a mile for the first 10,000 miles (up 10p a mile) and 25p a mile for additional miles (unchanged). Employers who reimburse mileage should consider making changes to their policy to reflect the updated rates.

Fit notes: The government has launched four pilots (in Birmingham and Solihull, Coventry and Warwickshire, Cornwall and the Scilly Isles, and Lancashire and South Cumbria) to test various proposed models to overhaul the current fit note system, which the government describes as "broken".

New guidance

Gender pay gap reporting: The Government Equalities Office has updated its guidance for employers to explain how reporting must be based on employees' biological sex, even if they have a gender recognition certificate. The guidance provides recommendations about how employers can collect the relevant data in a fair, proportionate, and confidential way.

Services, public functions, and organisations: The Equality and Human Rights Commission (EHRC) has published its updated code of practice for services, public functions, and organisations, making it clear that single sex spaces in the provision of services must be based on biological sex. The EHRC guidance for employers is also being updated to reflect developments in the law in this area, but there is no timescale for this.

Consultations and calls for evidence

Minimum wage: The Low Pay Commission has published its annual consultation on the next increases to the minimum wage rates, to apply from April 2027. As well as seeking views on the impact of the latest minimum wage rises, it asks about affordability and the effects of increasing the National Living Wage rate to between £13.02 and £13.34 (i.e., maintaining a National Living Wage of two-thirds of median earnings). The consultation is open until **26 June 2026**.

Flexible working: The Women and Equalities Committee (WEC) has launched a call for evidence on disabled people's access to flexible working. The WEC is exploring the experiences of disabled people in accessing flexibility and whether there are differing experiences across sectors, or where individuals also have other protected characteristics. The call for evidence also seeks views on disabled people's experiences of progression at work, the impact of "return to office" requirements, and employers' understanding of their duties to make reasonable adjustments. It is open for comment until **26 June 2026**.

Transfer of Employment (TUPE): The government has issued a call for evidence as part of a review and potential reform of TUPE, having previously indicated an intention to strengthen the rules where there is a relevant transfer. The government is seeking views on whether existing rules strike the right balance between supporting employers and protecting employees; on experiences with the current TUPE process; on whether the rights and protections for transferring staff can be improved; on whether TUPE is easy to understand and follow for employers; and on the value of existing guidance. It is open for comment until **1 July 2026**.

Employment Tribunals – costs: The Tribunal Procedural Committee has launched a consultation on proposed changes to the rules on costs awards in various tribunals, including the ET. Proposals include introducing express powers to order a payment on account of costs before a costs assessment, and to award costs even where a party has received pro bono representation. The consultation is open until **29 July 2026**.

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 a return from carer's leave. The consultation also explores 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**.

Upcoming events

Investigations and enforcement trends webinar series: Key priorities for Q2 2026, Tuesday, 16 June 2026, 8am PT | 10am CT | 11am ET | 4pm BST | 5pm CEST

Mid-year compliance check and emerging trends, Thursday, 25 June 2026, 8am PT | 10am CT | 11am ET | 4pm BST | 5pm CEST

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