UK Employment Law Update – December 2025

Our December 2025 edition provides an important update on last week's budget and the UK government's decision to cancel its flagship policy commitment to introduce day-one unfair dismissal rights. We also provide news of a consultation on reforming non-competes, as well as the usual round-up of recent interesting case law, including cases on vexatious litigants, and when false allegations and fabricated documentation can land you in prison.

In this issue

Recent publications

- The EU Commission's Digital Package: reforming GDPR, e-Privacy, Data Act, AI, and Cybersecurity

Follow us on LinkedIn to stay up to date with our latest news and publications.

Case law updates

ET claims – vexatious litigants: In the latest case in a long-running saga, the Attorney General has been granted a permanent Restriction of Proceedings Order (RPO) against notorious serial claimant Dr Christian Mallon on the basis that he is a vexatious litigant. The Employment Appeal Tribunal (EAT) concluded that it was both appropriate and proportionate to treat Dr Mallon as a vexatious litigant for "habitually and persistently, and without reasonable grounds, initiating litigation in the employment tribunal". Dr Mallon had a lengthy history of applying for jobs, believing that he has submitted as many as 4,000 job applications, and then bringing a discrimination claim thereafter. He admitted not keeping track of how many claims he had started, estimating at least 60–70, and the EAT described his applications as "hopeless", noting that he had not taken heed of warnings issued to him by employment judges, written decisions, or cost orders made against him. Noting the time and cost implications for both respondents and the tribunal system in dealing with his "completely baseless allegations", the EAT concluded that an RPO was the only way to stop his campaign of litigation. An RPO is not a bar to litigation, but Dr Mallon must now apply to the EAT for permission to continue or initiate Employment Tribunal (ET) proceedings. (*The Attorney General v. Dr Christian Mallon*)

Constructive unfair dismissal – affirmation of breach: A long delay between an employer's alleged breach of contract and an employee's subsequent decision to resign does not necessarily mean the employee has "affirmed" the contract by treating it as valid and giving up their right to terminate it and bring a constructive unfair dismissal claim. In this case, there was a six-month gap between the alleged breach and the subsequent resignation, but in the intervening period, the claimant had been actively engaging and negotiating with her employer (with trade union representation in support) to try to resolve a dispute regarding the non-payment of sick pay. The EAT concluded that the delay was due to a genuine attempt to resolve the breach rather than an affirmation of the contract. (*Barry v. Upper Thames Medical Group*)

ET claims – contempt of court: Acting as a cautionary reminder to witnesses in ET proceedings, a claimant (Mr Ajao) has been found criminally liable and imprisoned for contempt of court for knowingly and deliberately making false statements of truth and giving false evidence under oath. The ET found there was "not a shred of truth" in the claimant's claims, which included serious allegations of sexual harassment and sexual assault by a colleague, and that he had created documentation to bolster his claims. While a finding of contempt of court claims is rare, this demonstrates how deliberate attempts to deceive the court, including making false allegations and producing fabricated documentation can have serious ramifications. (*Commerzbank AG v Ajao*)

ET claims – reconsideration: A recent EAT decision confirms that, in most cases, fresh evidence will be sufficient to allow a party to apply to the original ET for a liability decision to be reconsidered. In this case, the claim turned on whether the claimant had been offered employment – his associated claims being rejected largely due to the ET's assessment of the claimant's credibility and its preference for the employer's evidence that no such offer had been made. However, the claimant subsequently found an email, which had not been disclosed as part of the initial proceedings, offering him the job.

The ET denied a request to reconsider its judgment, concluding that the email had not been deliberately concealed and accepting the sender's evidence that they genuinely had no recollection of sending it. The EAT accepted the claimant's appeal, and the case has now been referred to a new ET to be reheard from scratch. Aside from a clarification of reconsideration rules, the case highlights the importance of a proper disclosure exercise. (*Mayanja v. City of Bradford Metropolitan District Council*)

Whistleblowing: Employees who blow the whistle are protected from dismissal and detriment for doing so, with employers being vicariously liable for the acts of their employees who subject a whistleblower to detriment. However, the law has been unclear whether this extends to situations where the detriment in question is dismissal. The Court of Appeal has considered this technical issue, concluding that a dismissal can constitute a form of detriment, meaning employers can be vicariously liable for the actions of individuals who subject whistleblowers to a detriment by dismissing them. However, that is unlikely to be the end of the matter, meaning there are now two conflicting Court of Appeal decisions on this issue, which can only be resolved by legislation or a decision of the Supreme Court. (*Rice v. Wicked Vision*)

TUPE – insolvency: A company that rescued part of another business in financial difficulties did not inherit employees under TUPE and was not liable for their dismissal, an exception to the automatic transfer and protection from dismissal provisions applying because the company was subject to terminal insolvency proceedings (a winding-up petition having been made and a provisional liquidator appointed). The case stands as a useful reminder of a limited exception in the TUPE rules that applies in respect of terminal insolvency proceedings, and demonstrates how these exceptions apply from an early stage in the insolvency process. The affected employees can claim some outstanding payments and compensation from the National Insurance Fund. Note that this exception to TUPE is narrow and would not have applied if an administrator rather than a liquidator had been appointed. (*Secretary of State for Business and Trade v. Sahonta*)

Personal injury claims: An ET does not have jurisdiction to hear personal injury claims brought by employees; however, it can award damages for psychiatric injury arising from discrimination at work. A recent EAT decision has been looking at issues of causation and medical evidence for the purposes of assessing compensation in circumstances where the claimant had a pre-existing psychiatric condition. Whereas the ET had concluded that it was not possible to determine whether the employer had exacerbated the personal injury without expert medical evidence, the EAT found that it should have done its best on the evidence available to make a finding regarding what injury was attributable to the employer. (*A and B v. C Ltd*)

Employment Rights Bill

Key points at a glance:

- The government has backed down on its manifesto commitment to introduce day-one unfair dismissal rights. Instead, the right to bring an unfair dismissal claim will be subject to a six-month qualifying period (rather than the existing two-year qualifying period). These changes are expected to apply from 1 January 2027.
- The government's concession on day-one employment rights was part of a compromise whereby they now seek a change in unfair dismissal compensation rules to remove the current maximum award which can be made. This was unexpected and is a significant proposal. It will need to get through the House of Lords (HL) on 10 December 2025.
- The ERB will not receive Royal Assent until this, and any remaining areas of disagreement, have been resolved. It is touch and go whether this will be before the Christmas recess.
- Once the ERB is passed, provisions will be phased in, with most reforms not becoming law until at least April 2026, although the indicative timeline set by the government this summer is at risk of slipping because of the recent delays.
- At a conference in November, the Business Secretary announced there would be 26 consultations on the detail of the various provisions, although it is expected that a lot of these will not be launched until after the ERB becomes law.
- Four consultations launched in October remain live, and one further consultation has been published this month on statutory union ballots. The government has launched a review into unpaid carers leave.

Unfair dismissal rights

Having day-one unfair dismissal rights (subject to a right to terminate as part of an initial period of employment) was a leading manifesto pledge by the UK government, but this proved a controversial proposal met with challenge by the business community, and the HL repeatedly pushed back on the ERB provisions.

On 27 November 2025, the government announced that it was dropping its plans for day-one unfair dismissal rights and would accept HL's proposals to lower the qualifying period of employment from the current two years to six months. This is still a significant change, and employers will need to adjust working practices to ensure any issues with new recruits are picked up and addressed quickly. Any employer who operates a six-month probationary period is likely to be caught by the reduced qualifying period.

Interestingly, the government's announcement also referred to lifting the compensation cap for unfair dismissal. Currently, compensation is limited to the lower of (a) 52 weeks' pay or (b) the statutory cap, currently £118,223 (but which increases annually). Whilst the initial understanding was that this was to be a removal of the 52 weeks' pay element of the cap, retaining the upper statutory limit, it was subsequently made clear that this was not the government's intention and that it wants the cap removed completely. This is a significant proposal, not only leaving more scope for a higher award for lower earners, but also on awards payable to unfairly dismissed higher earners, significantly increasing the financial exposure for senior exits. This proposal was introduced out of the blue without warning or consultation. We anticipate it will be rejected by HL, but watch this space.

ERB consultations. The following consultations remain live:

- **Duty to inform workers of their right to join a trade union:** The duty on employers is expected to apply from October 2026, with the government now consulting on the detail of the duty, including what form the statement should take, the content to be included, the manner in which the statement should be delivered, and the frequency of reissue. It closes on **18 December 2025**.
- **Trade union rights of access to the workplace:** The ERB provides for a statutory duty on employers to allow trade union access to the workplace, which is expected to apply from October 2026. The consultation seeks views on how unions should request access, how employers should respond, the factors for consideration by the Central Arbitration Committee (CAC) if considering whether a right of access should be granted, and factors for the CAC to take into account for issuing fines for breach of access agreements. The consultation closes on **18 December 2025**. The government also plans to consult in spring 2026 on a code of practice on the right of access.
- **Enhanced dismissal protection for pregnant workers and new mothers:** Reforms expected to take effect in 2027 seek to make it unlawful to dismiss pregnant workers while working or while they are on maternity leave and in the six months after their return to work. The government is now consulting on the detail, including the circumstances where dismissal will be permissible, the timing of protections, and whether other new parents should also be covered. The consultation also seeks views on raising awareness of the policy, supporting businesses, avoiding unintended consequences, and other changes that might tackle pregnancy and maternity discrimination. The consultation closes on **15 January 2026**.
- **Bereavement leave and pregnancy loss:** Plans to introduce statutory bereavement leave as a day-one right in the event of the death of a close family member, including early baby loss before 24 weeks of pregnancy, are due to apply from 2027. This consultation seeks views on eligibility criteria, the types of pregnancy loss in scope, when and how bereavement leave can be taken, and notice and evidence requirements. It closes on **15 January 2025**.
- **Electronic and workplace balloting for statutory union ballots:** The government is consulting on a statutory code of practice to sit alongside the introduction of new methods for statutory union ballots. The consultation considers the factors to take into account when choosing a voting method, good practice for conducting ballots, and the requirements needed to ensure ballots meet the required standards. It is open for comment until **28 January 2026**.

Legislative developments

ET claims – Acas early conciliation (EC): With effect from **1 December 2025**, the maximum period for EC extends from six to 12 weeks for any new case notified to Acas on or after that date. This change is intended to ease pressure on Acas, in theory providing Acas with increased capacity to actively seek to conciliate and promote the settlement of a dispute to avoid litigation. As well as being prepared for increased contact from Acas, employers should also note that, as EC is the gateway for bringing a claim and limitation periods are usually extended as a result, ET claims may take longer to come through. The EC period will be revisited in October 2026.

Other news

Autumn budget: The 2025 Budget took place on Wednesday, **26 November 2025**. Key employment-related announcements include:

- **National minimum wages:** On **1 April 2026**, the National Living Wage (NLW) and National Minimum Wage (NMW) rates will increase as follows:
    - NLW rate for over 21s: £12.71 (up from £12.21)
    - NMW rate for 18–20 year olds: £10.85 (up from £10)

    - NMW rate for 16–17 year olds and apprentices: £8 (up from £7.55)
- **Income tax:** There will be a continued freeze on National Insurance and Income Tax thresholds until 2031.
- **Pensions:** From April 2029, a cap of £2,000 will apply to the amount of pension contributions that can be made into a salary sacrifice pension scheme without paying National Insurance contributions (NICs). Pension contributions above £2,000 will attract employer and employee NICs in the usual way.
- **Enterprise Management Incentives:** From April 2026, the employee eligibility limit increases to 500, the gross assets test to £120 million, and the company share option limit to £6 million. The maximum holding period for existing Enterprise Management Incentive (EMI) contracts increases to 15 years, again from April 2026, with the EMI notification requirement removed from April 2027.
- **Supporting people into work:** There is also a drive to support disabled and unwell people into work, and additional funding for employment and skills support for young people, including fully funded apprenticeships for eligible under-25s for small and medium sized businesses, and a guaranteed six-month paid work placement for eligible 18- to 21-year-olds on Universal Credit who have been looking for work for over 18 months.

Collective consultation – HR1 form: It is a legal requirement to file a form HR1 when collective consultation thresholds are met. The form has recently been amended, and from **1 December 2025,** it must be completed online as the downloadable paper form will be unavailable.

Rights for unpaid carers: The government has launched a review into unpaid carers leave, which has been a statutory right since April 2024. The review will explore what is working well, identify barriers to access, consider whether additional interventions are required to support carers, and examine options for the leave to be paid. The review will also consider introducing rights for parents of seriously ill children and other situational leave to support carers in specific circumstances, such as end-of-life care. The review is expected to take much of next year.

New guidance

Mental health – suicide: The British Standards Institution has published a standard on addressing the risk of suicide and its impact in the workplace. The standard provides guidance for businesses in how to identify, prevent, and respond to suicide risks at work; strengthen their culture of awareness; provide appropriate support to staff affected by suicide; and handle sensitive communications.

Consultations

Right to work: As part of a crackdown on preventing illegal working, the government has launched a consultation on extending the existing right to work regime to gig economy workers, proposing a requirement on those who engage casual or temporary workers, individual subcontractors, and online matching services to carry out right to work checks. The consultation, which is open for comment until **10 December 2025**, seeks views on how these changes should operate.

Data protection: The Information Commissioners Office (ICO) is consulting on new guidance regarding its process for investigating concerns. The draft guidance includes sections on what to expect during an investigation, including the ICO's powers to compel people to answer questions and provide reports. The consultation is open for comment until **23 January 2025**.

Whistleblowing: The Law Society has issued draft guidance for in-house solicitors on reporting concerns as part of regulatory obligations and seeks feedback on the draft content by **25 January 2026**.

Restrictive covenants: The government has launched a consultation on reform of restrictive covenants, exploring options including placing a statutory limit on the length of non-competes; having different rules on non-competes depending on company size; an outright ban on non-competes; a complete ban only below a salary threshold; a combination of a ban below a salary threshold and a statutory limit for those above it; applying rules to other post-termination restrictions, not just non-competes; and applying rules to a wider range of workplace contracts. The consultation also seeks to understand how reform might impact inward investment and investment in training, obstacles for enforcing restrictive covenants, and any general suggestions respondents may have. The consultation is open until **18 February 2026**, and is somewhat of a déjà vu, there having been a consultation under the previous government on similar issues, which resulted in a decision in 2023 to introduce a statutory three-month limit on non-competes, although this was not acted upon before last year's election and change of government.

Key contacts

Robin Jeffcott
Partner, London
rjeffcott@reedsmith.com

David Ashmore
Partner, London
dashmore@reedsmith.com

Carl De Cicco
Partner, London
cdecicco@reedsmith.com

Alison Heaton
Knowledge Management Lawyer,
Global Solutions - Leeds
alison.heaton@reedsmith.com

Follow us on LinkedIn

Reed Smith is a dynamic international law firm, dedicated to helping clients move their businesses forward.

Our belief is that by delivering smarter and more creative legal services, we will not only enrich our clients' experiences with us, but also support them in achieving their business goals. Our long-standing relationships, international outlook, and collaborative structure make us the go-to partner for the speedy resolution of complex disputes, transactions, and regulatory matters.

For further information, please visit reedsmith.com.

ABU DHABI
ASTANA
ATHENS
ATLANTA
AUSTIN
BEIJING
BRUSSELS
CENTURY CITY
CHICAGO
DALLAS
DENVER
DUBAI
FRANKFURT
HONG KONG
HOUSTON
LONDON
LOS ANGELES
MIAMI
MUNICH
NEW YORK
ORANGE COUNTY
PARIS
PHILADELPHIA
PITTSBURGH
PRINCETON
RICHMOND
RIYADH
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
SINGAPORE
TYSONS
WASHINGTON, D.C.
WILMINGTON

reedsmith.com