

UK Employment Law Update – January 2026

As we start 2026, our January edition provides important updates on changes to UK law resulting from the Employment Rights Act 2025, as well as a new consultation on non-financial misconduct in financial services and changes to statutory sick pay eligibility taking effect from 6 April 2026. We also include the usual round-up of recent interesting case law, including cases on whistleblowing, access to workplace toilet and washing facilities, and the risks associated with employers issuing claims against their employees.

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Case law updates

Whistleblowing: A claimant who blew the whistle after resigning from his role and who subsequently had arbitration proceedings brought against him by a charity linked to his employer for an alleged breach of a confidentiality agreement has been permitted to proceed with his whistleblowing detriment claim by the Court of Appeal. The case largely revolves around the scope of judicial proceedings immunity (JPI), a principle that protects those involved in legal proceedings from being sued for things said or done during the litigation. The case establishes that an employer can lawfully initiate proceedings against an employee provided that the proceedings are legitimately unrelated to any protected disclosures made, and are not motivated by retaliation. (*Rogerson v. Erhard-Jensen and Ontological/Phenomenological Initiative Ltd*)

Insolvency: An employee has been denied access to the central national insurance fund to recover a basic award for unfair dismissal from his insolvent employer because the Employment Tribunal (ET) had not made an award in his favour. The employer became insolvent shortly after filing its ET3 defence, after which the proceedings were stayed (which is standard procedure when a party becomes insolvent), and the administrator refused to permit the stay to be lifted, so there was no scope for the ET to make a finding. Permission has been granted to appeal to the Court of Appeal (CA), and in the meantime, the EAT has urged administrators and liquidators of insolvent employers to consent to ET proceedings where this allows employees to claim from the central fund. (*Chaudhry v. Paperchase Products Ltd*)

Access to workplace toilet and washing facilities: The ET has found that it was neither sex discrimination nor harassment of female employees to permit access to workplace toilet facilities based on chosen gender rather than biological sex. In reaching this conclusion, the ET analysed the meaning of “men” and “women” in the context of the regulations that govern

access to workplace toilet, washing, and changing facilities – these sit separately from the Equality Act 2010 (EqA) and so did not necessarily mean that these terms had the same biological meaning as the Supreme Court found to apply for EqA purposes earlier this year. Although it is a non-binding ET decision that is likely to be appealed, the ET also emphasised the importance of a proper consultation exercise with staff when implementing or changing access to facilities. ([*Kelly v. Leonardo UK Ltd*](#))

Gender reassignment: A non-binary employee has failed with their claim of gender reassignment discrimination on the basis that they did not have the protected characteristic of gender reassignment. The ET's analysis, based on the Supreme Court's decision in *For Women Scotland*, is that gender is binary and that gender reassignment requires an intention to move from one sex to another. This decision runs contrary to other pre-Supreme Court cases, where non-binary people have been protected under gender reassignment provisions of the EqA, and so this issue will need resolving in the higher courts. The claim was brought after the claimant's colleagues repeatedly used incorrect pronouns and referred to them by their birth name, and, irrespective of the legal analysis, employers are encouraged to foster inclusive workspaces where individuals' gender identity is respected. ([*Lockwood v. Cheshire and Wirral NHS Foundation Trust*](#))

Discrimination: The EqA prohibits someone from instructing, causing, or inducing another person to discriminate. In a long-running dispute, the CA has dismissed a claimant's appeal, agreeing with earlier decisions that Stonewall (the charity supporting the LGBTQ+ community) had not induced the claimant's barrister's chambers to discriminate against the claimant in their response to her expressing gender-critical beliefs on Twitter. While Stonewall did complain about the content of the tweets, these were a protest and were not influential on the investigation and subsequent action taken; this rested entirely with the chambers. ([*Bailey v. Stonewall and Garden Court Chambers*](#))



Employment Rights Act 2025

Key points at a glance:

- The Employment Rights Act 2025 (ERA 25) received Royal Assent on 18 December 2025.
- The House of Lords (HL) conceded a removal of the compensation cap alongside a six-month qualification period. An impact assessment on the effect of the compensation cap removal has been published, and an implementation date of 1 January 2027 has been suggested by the government.
- The government has issued an [Employment Rights Act 2025 overview factsheet](#) summarising the key reforms. The changes will be phased in over the next couple of years, and the government currently remains committed to the [timeline](#) issued in summer 2025. Most changes will take effect in April or October of 2026 and 2027 respectively, although commencement regulations will be needed before the changes to implement.
- Employees will have increased protection for taking part in industrial action from 18 February 2026, and day one rights to paternity leave and parental leave will apply from 6 April 2026. Changes to statutory sick pay, whistleblowing protection for sexual harassment, and an increase in the protective award for failing to collectively consult are also expected to apply from April 2026 but this is yet to be confirmed.
- Details of many of the reforms will still need to follow, shaped by consultation.
- Two consultations launched at the end of 2025 have now closed, with three currently still live for comment. We will keep you updated here and on our Employment Law Watch blog.

Unfair dismissal rights

Having day one unfair dismissal rights was a leading manifesto pledge for the government, but this proved a controversial proposal, met with challenge by the business community. The HL repeatedly pushed back, leading to a concession by the government to reduce the qualifying period to six months in return for changes to the compensation regime. Despite initial pushback by the HL, they finally agreed to the removal of the cap (subject to an impact assessment). Currently, compensation is limited to the lower of (a) 52 weeks' pay or (b) the statutory cap, currently £118,223 (which increases annually), so removal of these limits will leave much more scope for higher awards.

These changes are expected to apply from 1 January 2027 and are significant. Employers will need to adjust working practices to ensure issues are picked up and addressed quickly, and face potentially significant financial consequences if they get things wrong. [Read more on our Employment Law Watch blog.](#)

ERA consultations

The following consultations remain live:

- **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 or employees while they are on maternity leave and in the six months after their return to work. The government is now [consulting](#) on the details, including the circumstances under which 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, how businesses can be supported, how to avoid 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 2026.
- **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 criteria for choosing a voting method, good practice for conducting ballots, and the requirements to ensure ballots meet the necessary standards. It is open for comment until 28 January 2026.

Legislative developments

Parental bereavement: The Paternity Leave (Bereavement) Act 2024 (PLB Act) was brought into force on **29 December 2025**. The PLB Act addresses leave entitlements where the mother or adopter of a child dies during childbirth or within the first year after birth or adoption, and entitles the father or partner to take bereaved partner's paternity leave regardless of their length of service or whether they have already taken shared parental leave (SPL). Ordinarily, paternity leave requires an employee to have 26 weeks' service (although this is due to become a day one right under the ERA 25) and cannot be taken if SPL has already been used. The PLB Act provides scope for further regulations to be made to extend the scope of a bereaved father or partner's rights, but it is currently unclear if this is the government's intention. The new rules will have limited application, but employers should note the changes and ensure policies reflect the different rules on paternity leave in the tragic event that the mother or adopter dies.

Right-to-work checks: In our May 2025 update, we reported the government's plans to extend the duty to prevent illegal working by requiring right-to-work checks to be carried out before engaging gig economy workers and those on zero-hours contracts. That has now become law as part of the Border Security, Asylum and Immigration Act 2025, although commencement regulations must be passed before the new rules apply. The penalty for non-compliance is a £45,000 fine per illegal worker, rising to £60,000 for repeat breaches, along with the potential for director disqualification and criminal sanctions.

Victims of crime: On 1 October 2025, new rules took effect that allow victims of crime to disclose details of the relevant crime to prescribed people for prescribed reasons without breaching a non-disclosure agreement. On **12 December 2025**, the list of persons to whom a victim of crime can make a permitted disclosure was extended and now includes the Criminal Injuries Compensation Authority (CICA) for the purposes of claiming compensation, and the court or tribunal for the purposes of issuing or pursuing proceedings related to a CICA decision.

Other news

Financial services – Non-financial misconduct (NFM): After a series of consultations, the FCA has published its [final policy statement and guidance on NFM in financial services](#). The Code of Conduct has been amended to make it clear that NFM can constitute a breach and will also form part of fitness and propriety assessments. It will also provide more comprehensive guidance to help firms navigate the new rules. The changes will apply from **1 September 2026**.

Statutory rates and limits: The Department for Work and Pensions has announced its intended rates for statutory payments to apply from April 2026:

- Statutory Sick Pay will increase to £123.25 (from £118.75) per week
- Statutory maternity, adoption, paternity, shared parental, neonatal care, and parental bereavement pay, as well as maternity allowance, will increase to £194.32 (from £187.18) per week
- The lower earnings limit to qualify for these payments (except maternity allowance) will increase to £129 (from £125) per week. The threshold remains at £30 a week for maternity allowance.

Whistleblowing: As part of its [anti-corruption strategy](#), the government has committed to reviewing and exploring reform of the UK's whistleblowing regime in an employment context by 2027.

Consultations

Data protection: The Information Commissioner's 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 2026**.

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 2023 decision to introduce a statutory limit of three months on non-competes, although this was not implemented before the election and change of government in 2024.

Contact us

For further information, please contact:



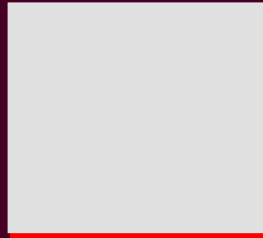
Robin Jeffcott

Partner
London
rjeffcott@reedsmith.com



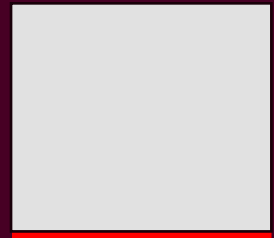
David Ashmore

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

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