UK Employment Law Update

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UK Employment Law Update – March 2026

Our March 2026 edition provides the latest news on the implementation of the Employment Rights Act 2025, with several provisions having come into force during February, more to follow in April, and several new consultations having been launched on important topics, including collective consultation thresholds, fire and rehire, and flexible working. We also include a round up of recent case law, including cases on the dangers of messaging apps, managing workers who share beliefs on social media, and managing pay differentials after a TUPE transfer.

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Case law updates

Outsourcing – race discrimination: The Employment Appeal Tribunal (EAT) has been considering an indirect race discrimination claim brought by a group of hospital cleaners who were originally employed by a third party before cleaning was brought back in-house under TUPE. On transferring employment, they retained their terms and conditions of employment, but their rate of pay was less than that of cleaners who had been directly employed by the hospital. The affected cleaners were predominantly from ethnic minorities, whereas the directly employed cleaners were predominantly white. The transferring cleaners lost their claim for race discrimination for the period before the transfer. There was no legal basis for outsourced workers to challenge the contractual terms that the end-user clients agreed with their own employees. However, they succeeded with their post-transfer indirect race discrimination claim. The individuals were put at a disadvantage by the hospital's policy to apply higher pay only to direct recruits, and relying on TUPE to justify a maintenance of existing pay rates was not sufficient to justify the hospital's approach. (*Alpha Anne and others v. Great Ormond Street Hospital for Children NHS Foundation Trust*)

Unfair dismissal – investigations: Acting as a reminder of the importance of considering the context of alleged misconduct, two claimants have won their unfair dismissal claims after being dismissed for inciting violence on a Teams chat. The chat was set up to enable a remote team of customer-facing advisors to stay in touch, discuss work matters, and let off steam. The two claimants were dismissed after they made supportive comments in response to a colleague saying what he wished he could do (which was violent in nature) to a difficult customer he had spoken to. The Employment Tribunal (ET) was critical of the employer's investigation and

process, finding that the dismissal was unfair because the employer relied only on the words said in the Teams chat, without considering the wider context, mitigating factors, and whether the words could reasonably be construed as inciting violence. (*Khokhar and Miller v. British Telecommunications Plc*)

Unfair dismissal – reason for dismissal: An employee was unfairly dismissed for gross misconduct after allegations of four incidents of fraudulent activity, with the EAT overturning the original decision by the ET that the dismissal was fair. The ET had concluded that although there was no reasonable basis for finding any of the incidents to be fraudulent, the dismissal was fair because one incident was a serious breach of the employer's policies. In overturning the ET's decision, the EAT pointed out that the employee had not been dismissed for breach of policy. Once it was established that there was no reasonable basis for the allegations of fraud (i.e., the reason the employer had dismissed the employee), the EAT found that the dismissal had to be unfair. Remedy has yet to be determined in this case, but the fact that the employer could have dismissed for breach of policy is likely to affect how much the claimant receives. (*Chand v. EE Ltd*)

Discrimination – religion or belief: In this case, an organisation withdrew a conditional job offer to a job applicant after discovering Facebook posts which expressed his Christian views that homosexuality is a sin. On discovering the posts, the organisation (a charity supporting community development) withdrew the offer and held a further interview to discuss the posts, after which the withdrawal of the offer was confirmed on the basis that the applicant's beliefs conflicted with the organisation's work with the LGBTQI+ community. In its judgment, the EAT provided valuable guidance for employers dealing with such situations. The EAT indicated that in the case of unfavourable treatment based on a protected philosophical or religious belief, an employer will act unlawfully unless: (i) there is a genuine objection to the manifestation of a protected belief (rather than simply the holding of that belief); (ii) there is something objectionable in that manifestation; and (iii) the unfavourable treatment is proportionate to the objectionable manifestation. This case has been sent back to the ET to properly analyse the issues, although the EAT noted that the mere fact that some service users may find the claimant's views on homosexuality upsetting and objectionable did not necessarily mean that the unfavourable treatment was justifiable. (*Ngole v. Touchstone Leeds*)

Settlement of claims: In an important decision for employers, the EAT has confirmed that a claimant was prevented from bringing a claim for whistleblowing detriment based on the terms of a COT3 settlement agreement. The claimant had entered into the COT3 having alleged whistleblowing detriment when she received a negative reference for a job application. The claimant alleged that the negative reference was retaliation for her having raised safeguarding concerns at her school. The COT3 included provision for a new reference and was expressed to be in "full and final settlement of all claims she had or may have in the future against the school, the employer or any of its governors, officers or employees whether arising from employment with the employer, its termination or from events occurring after this agreement has been entered including, but not limited to, claims under … the Employment Rights Act 1996". After signing the COT3, and despite the updated reference, the claimant again unsuccessfully applied for a job and sought to bring a new whistleblowing detriment claim based on the previous unfavourable reference, but the EAT agreed with the ET that the settlement terms prevented her from doing so. (*Darlington v. London Borough of Islington*)

Injunction – abusive communications: The Court of Appeal (CA) has confirmed that the court did have power to injunct a litigant from sending abusive communications to her opponent's lawyers, although it found it was right not to have done so on the facts of this case. After losing six ET claims, an individual embarked on a campaign of vengeance against her former employer, involving hundreds of abusive, threatening, and explicit messages which continued despite a suspended prison sentence having been imposed for breach of a previous

injunction designed to stop her behaviour. When the former employer sought a further injunction, the application was denied. Whilst the court did have power to grant an injunction without there being any live cause of action, the injunction sought was wider than necessary and the misconduct in question had ceased. The CA provided helpful guidance that (i) for an injunction to be granted, the applicant must show a threat or real prospect that the other party will engage in serious misconduct affecting the integrity of the court process; (ii) if the misconduct is not contempt of court, article 10 of the European Convention on Human Rights (freedom of expression) is relevant; and (iii) the scope of the injunction must be no wider than necessary and not interfere with the defendant's right to continue to conduct litigation. (*Titan Wealth Holdings v. Okunola)*

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 in line with a published implementation timeline. Most changes will take effect in April or October of 2026 and 2027, although commencement regulations will be needed to confirm the implementation dates.
- Some trade union measures and changes concerning the redundancy of seafarers came into force on **18 February 2026**.
- Day one rights to paternity leave and parental leave will apply to babies born, expected, or placed for adoption on or after **6 April 2026** (with provisions enabled to allow notice of leave to be given for eligible parents from **18 February 2026**), along with changes to statutory sick pay (SSP).
- Changes to whistleblowing protection for sexual harassment, and an increase in the protective award for failing to collectively consult are also expected to apply from **6 April 2026**, but this is yet to be confirmed.
- Employers with over 250 employees will be expected to develop and publish equality action plans on a voluntary basis from **6 April 2026.**
- Details of many of the reforms will still need to follow, shaped by consultation.
- There are several open consultations, including consultations on the fire and rehire reforms, flexible working, tipping, and changes to the collective redundancy consultation threshold.
- We will keep you updated here and on our Employment Law Watch blog.

Recent and upcoming changes

- **Paternity and parental leave:** Parental leave will become a day one right (rather than after a year's service), and paternity leave will also become a day one right (rather than needing 26 weeks' service) for babies born, due, or placed for adoption on or after **6 April 2026**. Paternity leave will also be permitted even if shared parental leave has been taken (in a change to current rules which require paternity leave to be taken first). Since **18 February 2026**, eligible employees have been able to give notice of their intention to take leave once the rules change.

- **Industrial action:** Since **18 February 2026**, employees have had increased protection from dismissal for taking part in industrial action as the current test for a dismissal being automatically unfair is being simplified. A number of provisions which simplify the process for taking industrial action have also applied since **18 February 2026**.
- **Seafarers:** Changes to collective redundancy rules for ships' crew took effect from **18 February 2026,** requiring employers to notify the secretary of state (as well as the competent authority of the state where the ship is registered) where they are proposing to make mass redundancies, and ensuring collective consultation obligations apply either where the ship is registered in Great Britain or is deemed a GB-linked ship, which covers domestic services and those which call at a GB harbour at least 120 times a year.
- **SSP:** SSP will become payable on day one of absence (rather than day four), and will be payable to all workers, rather than only those earning above the lower earnings limit. These changes will apply from **6 April 2026**. The weekly amount payable is the lower of (i) the prevailing statutory rate and (ii) 80% of the employee's normal weekly earnings.
- **Whistleblowing – sexual harassment:** Disclosure of sexual harassment (i.e., that it has occurred, is occurring, or is likely to occur) will become a "protected disclosure" for whistleblowing purposes. This is expected to apply from **6 April 2026**, although commencement regulations to confirm this start date have yet to be published.
- **Collective redundancy consultation:** The maximum protective award (for employers who fail to comply with collective redundancy requirements) is increasing to 180 days' pay, doubled from the current 90 days. These changes are expected to apply from **6 April 2026**, although commencement regulations to confirm this start date have yet to be published.
- **Equality action plans:** Large employers (>250 employees) will be required to develop and publish equality action plans aimed at reducing their gender pay gap and supporting employees through menopause. This is voluntary from **6 April 2026** but expected to become mandatory from **April 2027**. To help employers navigate the new rules, the government has published guidance on producing an equality action plan, and a collection of web pages supporting recommendations and actions to include. Smaller employers are also encouraged to follow the guidance and make use of the support and recommendations available. Further guidance will be issued before the requirement becomes mandatory.

Open ERA 25 consultations

- **Fire and rehire:** The reforms will mean that it will be an automatically unfair dismissal if fire and rehire is used to make changes to certain terms and conditions of employment, known as the restricted variations. Not all variations to terms will be caught, but any changes to pay, working time, time off, or pensions are covered. The government is now consulting on two points: (i) whether changes to employment expenses and benefits in kind should be covered by the restrictions on reductions in pay, and (ii) whether there are any types of shift pattern which should be protected from change. The consultation is open until **1 April 2026**.
- **Trade unions – recognition:** The ERA 25 proposes several changes to the trade union recognition process, and the government is now seeking views on a draft code of practice before the changes take effect, expected on **6 April 2026**. The government is also consulting on proposed changes to the use of electronic balloting for recognition and derecognition ballots. The consultation closes on **1 April 2026.**
- **Tipping:** The government has launched a consultation on its plans to tighten tipping laws and introduce a requirement on employers to consult with workers when developing tipping

policies. The consultation, which is open until **1 April 2026**, seeks views on the new requirements and on where improvements could be made to existing law and guidance.

- **Industrial action – detriment:** The government has launched a consultation on which detriments should be covered by the rules protecting workers taking part in industrial action. The consultation seeks views on whether to apply a blanket prohibition (the government's preference) or whether there should be a specific list of prescribed detriments which are prohibited. The consultation also seeks views on whether a 25% uplift should be applied to successful detriment claims where the employer has failed to follow the Acas code on dismissal and grievance procedures. The consultation is open until **23 April 2026**.
- **Flexible working:** The government has launched a consultation on its planned reforms to flexible working rules, including the introduction of a new reasonableness test and a new consultation process for employers to follow, both expected from 2027. Views are sought on the proposals as well as the handling of flexible working requests generally. The consultation is open until **30 April 2026.**
- **Collective redundancy consultation:** The ERA 25 includes an organisation-wide threshold test for triggering collective consultation obligations, in addition to the current test. A consultation has been launched to seek views on how this new threshold should be set, both in terms of the method and the level. The consultation explores methods including a single fixed number of organisation-wide redundancies (the government's lead proposal); a tiered fixed-number system depending on the size of the organisation; or a variable or percentage-based test. The consultation closes on **21 May 2026**.

Legislative developments

Bereaved partner's paternity leave: New rules will allow an employee to take paternity leave within 52 weeks of the birth or adoption of their child where their partner, the child's primary carer, dies within this period. The rules are expected to be in force on **6 April 2026** and will apply where the bereavement occurs on or after that date. This right is in addition to other statutory rights which the bereaved employee may be eligible for, and is to be taken in addition to or as an alternative to those rights. Relevant policies should be updated to reflect the new rules.

2026/2027 rates and limits: April sees the usual increases in statutory rates and limits:

- SSP increases to £123.25 (from £118.75) per week on **6 April 2026**.
- Statutory maternity, adoption, paternity, shared parental leave, neonatal care, parental bereavement pay, and maternity allowance increase to £194.32 (from £187.18) per week from **6 April 2026**.
- The lower earnings limit to qualify for most statutory payments increases to £129 (from £125) per week. For maternity allowance, this remains £30 per week, and we are expecting the lower earnings limit to be removed for SSP from **6 April 2026**.
- The national living wage for workers over 21 increases to £12.71 (from £12.21) on **1 April 2026**. The rate for 18-20-year-olds increases to £10.85 (from £10), and for 16-17-year-olds and apprentices to £8 (from £7.55).
- New rates for "a week's pay", the cap on unfair dismissal compensation (until it is scrapped), and updated injury to feelings bands are yet to be announced.

Other news

Neurodiversity: Recently published data from HM Courts and Tribunals Service shows the number of employment tribunal cases linked to neurodiversity doubled in the five year period from 2020-2025, highlighting the increasing importance for employers to raise awareness and ensure policies, processes, and practices are suitable for, and adjusted to accommodate, neurodiversity. Cases mentioned in previous editions of this update have included ET criticism of employers who have, for example, failed to seek adequate medical opinion to understand the extent of a condition or how it might manifest itself; made assumptions about what individuals need; not acted on occupational health advice; and not put training in place for neurodiverse individuals and those they work with.

Immigration – electronic travel authorisation (ETA): Since **25 February 2026**, an ETA has been required for non-British/Irish passport holders travelling to the UK. Dual citizens travelling to the UK on a non-British/Irish passport will need to prove they are exempt by presenting a valid British/Irish passport or a certificate of entitlement to the right of residence. The government has published an ETA factsheet.

Non-compete clauses: The Competition and Markets Authority has backed the government's plans to restrict the use of non-compete clauses, favouring an approach that would ban them outright for low earners and cap their length for higher earners. A consultation on this topic closed on 18 February 2026 – how, and when, the government intends to respond is not currently known.

Consultations

Trade unions: Acas has launched a consultation on its proposed updates to the code of practice on time off for trade union duties and activities. Comments on the draft are invited by **17 March 2026**.

Artificial intelligence: The Civil Justice Council has published an interim report and launched a consultation on the use of AI in preparing court documents before publishing its final report. The consultation closes on **14 April 2026**.

Agency working and umbrella companies: The government has launched a consultation on simplifying and modernising the rules which govern agency working and ensuring effective regulation of umbrella companies. The consultation is open until **1 May 2026**.

Upcoming events

(Register using the links below)

HR in the AM webinar series, Thursday, 5 March – Thursday, 10 December 2026, 4:00 pm GMT

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