

Your Thames Valley Employment & Immigration Team



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Employment: a review of the 2024 changes

There were significant changes in employment law throughout 2024. We have covered the key changes below, as well as looking ahead to what is expected in 2025.

Flexible working

Since 6 April 2024, employees have had a day-one right to make a request for flexible working following Parliament's approval of the Employment Relations (Flexible Working) Bill coupled with the Flexible Working (Amendment) Regulations 2023.

In summary, the laws surrounding flexible working are now as follows:

1. The process is now triggered by the employee making a written request and is no longer a requirement for them to set out how their flexible working request would impact the business;
2. Employers have a legal duty to consult with employees about alternatives to their flexible working request (previously you only had to consider the specific request made by the employee), an employer is not be permitted to refuse a request unless the employee has been consulted;
3. Two flexible working requests can now be made in any 12-month period (previously only one was permitted); and
4. Employers have to respond to flexible working requests within two months (previously, you have three months).

The regulations also revoked a previous requirement for an employee to have been continuously employed for a period of at least 26 weeks. Therefore, no service is required in order to make a flexible working request, in other words it is now a day one right.

There were no changes to the eight business reasons that you can rely on to lawfully refuse a request for flexible working. So if there are legitimate concerns such as costs, recruitment and performance, you might be able to reject the request.

Family leave reforms

Protection from Redundancy for Pregnant Employees and Family-Leave Returners

Previously employees on maternity, shared paternity or adoption leave were given priority over other employees that are at risk of redundancy by having the right to be offered a suitable alternative role. From 6 April 2024, *The Protection from Redundancy (Pregnancy and Family Leave) Act 2023* and *The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024* extended the protections in relation to redundancy.

The **protected period** is now as follows: -

1. Pregnancy – the protected period will commence when the employee notifies the employer of their pregnancy. For employees who suffer miscarriages, the protected period will end two weeks after the end of the pregnancy for pregnancies ending before 24 weeks.
2. For maternity – the protected period will cover 18 months from the first day of the estimated week of childbirth. The protected period can be changed to cover 18 months from the exact date of birth, if the employee gives the employer notice of this date prior to the end of maternity leave.

3. For adoption – the protected period will cover 18 months from placement for adoption.
4. For shared parental leave – the protected period will cover 18 months from birth, provided that the parent has taken a period of at least 6 consecutive weeks of shared parental leave. If the SPL taken is less than 6 weeks, the protection will only apply during the period of SPL. This protection will not apply if the employee is otherwise protected under 1. or 2. above.

Paternity Leave Changes

Under the *Paternity Leave (amendment) Regulations 2024* there is a greater choice for employees to take paternity leave in two separate one-week blocks. Paternity leave can be taken in the first year after birth or adoption, rather than within the first 8 weeks. Equally it is worth noting that paternity leave cannot be taken after shared parental leave.

An employee is required to give just 28 days' notice prior to each period of leave.

Carer's leave

The *Carer's Leave Act 2023 and Carer's Leave Regulations 2024* introduced a new legal entitlement of one week's unpaid leave in a rolling 12 month period for employees who are providing or arranging care for a dependant with a long term care need. It applies to all employees from the start of their employment.

The new legislation helpfully defined what is meant by a dependant for the purposes of providing or arranging care. This includes:

1. a spouse, civil partner, child or parent of the employee,
2. someone who lives in the same household as the employee, or
3. someone who reasonably relies on the employee to provide or arrange care.

The legislation also set out what is meant by a long-term care need. This includes:

1. an illness or injury (whether physical or mental) that requires, or is likely to require, care for more than three months,
2. a condition which satisfies the legal definition of disability under the Equality Act 2010, or
3. situations where care is required for a reason connected with old age.

The entitlement doesn't have to be taken in a single block of 5 working days or a calendar week. It can be exercised flexibly, namely individual or half days, provided that the total amount of time taken off work in a 12-month period does not exceed the total number of days the employee normally works in a normal week.

Employees are required to give reasonable notice to take carer's leave. A leave request cannot be denied but may be postponed, provided that you:

- Allow the employee to take a period of carer's leave within a month of the original period requested.
- Give the employee a written notice within 7 days of the request, setting out the reasons for postponement and the agreed dates the leave can be taken.

Fire and Rehire

The Code of Practice on Dismissal and Re-engagement (fire and rehire) came into force on Thursday 18 July 2024. The Code seeks to ensure that employers behave fairly and reasonably when trying to change employees' contractual terms.

There are many reasons why an employer may wish to change the terms of the employment contract, but where the change is unfavourable, e.g. a detrimental change to pay or benefits, the employee may not give their consent to the proposed change. If negotiation and consultation cannot resolve the issue, the employer may as a last resort terminate the existing contract and offer a new contract on the new terms.

The key elements of the Code are set out below:

1. **Consultation Requirement:** Employers are required to consult with employees and explore alternative options before considering dismissal and re-engagement. This consultation should be as long as reasonably possible, but there is no specified minimum time period. Employers are encouraged to contact Acas at an early stage, before raising the prospect of 'fire and rehire' with the workforce.
2. **Last Resort:** The code emphasises that dismissal and re-engagement should only be used as a last resort. Employers should not threaten dismissal if it is not actually envisaged and must not use threats of dismissal to coerce employees into signing new terms and conditions. Employers should re-examine proposed changes if they are not agreed upon and consider feedback from employees and/or their representatives.
3. **Tribunal Consideration:** Employment tribunals must take the code into account in relevant cases, such as unfair dismissal claims. If an employer unreasonably fails to follow the code, tribunals can increase compensation by up to 25%. Conversely, if an employee unreasonably fails to comply, the tribunal can reduce any award by up to 25%.
4. **No Stand-Alone Claim:** There is no stand-alone claim for breach of the code's provisions. However, the code must be considered in tribunal proceedings where it is relevant. This means that while the code itself does not create a new cause of action, it influences the outcome of existing claims.
5. **Protective Awards:** Claims for a protective award for failure to inform and consult in respect of collective redundancies will not be subject to the compensation adjustment, since the relevant amending legislation was not brought into force before the general election.
6. **Employer Obligations:** Employers are advised to commit to reviewing the changes at a future set time and reconsider whether they are still needed. If more than one change is being implemented, employers might also consider introducing them on a phased basis.

Holiday entitlement and holiday pay

On 1 January 2024, the Working Time Regulations were amended to reform holiday entitlement and holiday pay calculations. The changes include:

- Introducing an accrual method of calculating holiday entitlement for workers with irregular hours and part year workers.
- Introducing rolled up holiday pay.
- Defining "normal remuneration".

How statutory holiday entitlement is accrued

Statutory holiday entitlement for part year and irregular hours workers is (for leave years starting on or after 1 April 2024) calculated as 12.07% of actual hours worked in a pay period.

As the change applies to leave years starting on or after 1 April, for employers using a calendar year as their holiday year, the change will be effective from 1 January 2025.

Rolled up holiday pay

Prior to the new rules coming into force, rolled-up holiday pay was not permitted, however for leave years starting from 1 April 2024, employers now have this option for irregular hour and part year workers. This provides an additional method for employers to calculate holiday pay by consolidating the basic pay and accrued holiday pay into one payment. The holiday pay is still calculated at a rate of 12.07% (unless contractually entitled to a higher rate) and will be calculated against the hours worked in the same pay period and itemised separately on the worker's payslip.

Employers can instead choose to just pay holiday pay when holiday is taken, calculated at the rate of a week's pay for each week's holiday. A week's pay will be the average amount of weekly pay over the previous 52 weeks. Any weeks during which no work was performed, or any weeks on sick leave or family leave, are excluded from the calculation.

Carrying leave forward

Since 1 January 2024, a worker is entitled to carry forward the leave they should have been allowed to take if:

- The employer has refused to pay a worker their paid leave;
- The employer has not given the worker a reasonable opportunity to take their leave and encouraged them to do so; or
- The employer failed to inform the worker that untaken leave must be used before the end of the year to prevent it from being lost.

A worker is also still able to carry forward leave into the following leave year if they have been unable to take the leave as a result of taking maternity or other family related leave or as a result of sick leave.

Normal Remuneration

The Regulations codify retained EU and domestic case law in relation to the definition of "normal remuneration" for holiday pay purposes. A week's pay for holiday now includes:

- Payments, including commission payments, intrinsically linked to the performance of tasks which a worker is obliged under their contract to carry out.
- Payments for professional or personal status relating to length of service, seniority, or professional qualifications.
- Payments, such as overtime payments, which have been regularly paid to a worker in the 52 weeks preceding the calculation date.

Tips

The Employment (Allocation of Tips) Act 2023 came into force on 1 October 2024 and ensures that tips, gratuities and service charges paid by customers are allocated to workers.

The new rules apply to tips, service charge and gratuities received directly by the business, as well as catching any tips that are controlled by the business. The rules say that such tips must be passed on to workers in full, and must be distributed in a 'fair' and 'transparent' manner.

What is a 'fair' and 'transparent' distribution of tips?

Importantly, a 'fair' distribution does not mean allocating the same proportion of tips to everyone. As long as a business uses a set of clear and objective factors, they can lawfully decide to allocate different workers different proportions of tips.

The Code of Practice sets out some examples of the factors that hospitality and catering businesses can look at when deciding how to allocate tips, such as type of role (for example it may be reasonable to make a distinction between front and back of house workers), individual or team performance (it may be reasonable for individuals performing well to receive more tips than someone who is performing poorly), length of time an individual has worked for an employer and seniority or level of responsibility in the business. Hospitality and catering businesses can also use the customer's wishes as a factor – does the customer want their tip to go to a particular staff member they want to recognise as providing excellent customer service?

Employers must ensure that they carefully consider the factors they are applying to their staff. What is reasonable for one company, may not be reasonable for another, and therefore companies must check that the factors they are using are fair and reasonable in the circumstances that apply to their business.

The factors used must not discriminate against anyone, even if it is unintentional. For example, considering the length of time an individual has worked at a business as the key or only factor in allocating tips could be discriminatory against younger workers who perhaps haven't worked there as long. If length of service is used as a factor, it should be used as part of a balanced set of factors. Businesses must carefully consider all the factors they are using and consider, when taken together, if they are fair and objective.

Creating and maintaining a tipping policy

Going hand in hand with fairness and transparency, is the requirement for a business to have a clear written tipping policy. If workers are not aware of how tips are shared at their place of work, how can their employer say that they deal with tips fairly and transparently?

Consulting with workers (whether informally or as part of a formal collective consultation process) and seeking genuine agreement on the factors used to allocate tips, will help hospitality and catering businesses to show that their policy is fair, reasonable, and clear.

A Tipping Policy should clearly set out how tips are fairly and transparently distributed in the workplace and the factors that an employer is using to determine such allocation. As well as this, the policy should set out how tips are accepted by the business.

It is important to keep the policy, including the factors being used, under regular review. Business changes, such as new services being offered or an increase of staff perhaps at Christmas or in the summer months, could mean that the factors being used are no longer fair.

Indirect Discrimination

On 1 January 2024, a new section was added to the Equality Act 2010. S.19A was added putting the European decision in CHEZ on a statutory footing. This means that since 1 January 2024, claimants who do not have the protected characteristic of the disadvantaged group but share the same particular disadvantage, can now bring indirect discrimination claims.

Section 19A states that:

A person (A) discriminates against another (B) if—

- (a) A applies to B a provision, criterion or practice,
- (b) A also applies, or would apply, the provision, criterion or practice to—
 - i. persons who share a relevant protected characteristic, and
 - ii. persons who do not share that relevant protected characteristic,
- (c) B does not share that relevant protected characteristic,
- (d) the provision, criterion or practice puts, or would put, persons with the relevant protected characteristic at a particular disadvantage when compared with persons who do not share the relevant protected characteristic,
- (e) the provision, criterion or practice puts, or would put, B at substantively the same disadvantage as persons who do share the relevant protected characteristic, and
- (f) A cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

To put this into practice, a requirement for employees to work full time, 9am to 5pm Monday to Friday would particularly disadvantage women as a group (compared to men) because they are more likely to have childcare responsibilities. Under section 19A a man with childcare responsibilities who is required to work full time 9am to 5pm Monday to Friday can now also bring a claim for indirect discrimination. This is because the man faces substantially the same disadvantage as to the woman for the same reason – both would be unable to manage their childcare commitments without working part time. Section 19A has therefore widened the pool of employees who can potentially claim indirect discrimination.

We are yet to see how widely this new section will be interpreted but it does mean employers should consider the impact of rules, decisions, requirements etc. on a wider basis to ensure risks are properly taken into account.

What to expect in 2025

Employment Tribunal Compensation

The government has announced the annual changes in compensation limits for awards made in the employment tribunal, these changes are contained in *The Employment Rights (Increase of Limits) Order 2025*. The key increases are:

- The maximum compensatory award for unfair dismissal increasing from £115,115 to £118,223 (the upper limit remains the lower of a year's salary or the maximum statutory limit).
- The limit on a week's pay when calculating redundancy pay rising from £700 to £719.
- The minimum basic award for dismissal on trade union, health and safety, occupational pension scheme trustee, employee representative and on working time grounds only, increasing from £8,533 to £8,763.
- The cap for basic award for unfair dismissal and statutory redundancy payment increasing to £21,570.
- Statutory guarantee pay increases from £38 to £39 per day.

Neonatal care

The Neonatal Care (Leave and Pay) Act 2023 allows the Government to introduce statutory neonatal leave and pay for parents of sick newborns. It has now been confirmed that, starting April 6, 2025, statutory neonatal leave and pay will be available to eligible employees.

Employees will be eligible if they are parents of babies up to 28 days old who have spent 7 or more continuous days in the hospital. Neonatal leave is a "day-one right," but to qualify for neonatal pay, employees must have at least 26 weeks of continuous service and earn a minimum average of £123 per week. The leave entitlement will be based on how long the baby remains in the hospital, with parents entitled to one week of paid leave for each uninterrupted week their baby is hospitalized (up to a maximum of 12 weeks). Neonatal leave can be taken alongside other statutory family leave, as long as it is used within the first 68 weeks of the child's birth.

Fire and rehire: higher protective awards

The Government has confirmed its intention to clamp down on the practice of "fire and rehire," where employers give notice and rehire staff on less favourable terms or dismiss workers and hire new employees on different terms.

A Code of Practice on "fire and rehire" was introduced by the Conservative Government on 18 July 2024. However, Labour has described this Code as "inadequate" and intends to replace it with a stronger version. The current Code does not make the practice unlawful but encourages employers to consult with staff or their representatives before unilaterally dismissing and re-engaging employees on new terms.

From 20 January 2025, if an employer is found to have unreasonably failed to comply with the new Code, employment tribunals may increase protective awards by up to 25%. This means that instead of up to 90 days' pay, employees could be awarded up to 112.5 days' pay.

Paternity leave for bereaved partners

The Paternity Leave (Bereavement) Act 2024 was granted Royal Assent on 24 May 2024. It will require commencement legislation to be brought fully into force but, when fully implemented, it will provide for the following:

- The usual 26-week minimum service requirement to be eligible for paternity leave will be disapplied for fathers and partners where the mother has died in the first year after birth or adoption. A bereaved parent of an adopted child, or intended parent of a child born through a surrogacy arrangement, will also fall within the scope of the new provisions.
- The stipulation that a parent who has taken shared parental leave (SPL) cannot subsequently take paternity leave will be removed in such circumstances.
- In situations where the child also dies (or is returned after adoption), regulations could allow the bereaved employee to stay on paternity leave for a period, despite the fact that they would not be taking the leave for the usual purpose of supporting the mother or caring for the child.
- Regulations could provide enhanced redundancy protection to bereaved employees when they return from extended paternity leave, including provision requiring an employer to offer alternative employment and provision for the consequences of any failure to comply, which may include that any such dismissal is treated as an unfair dismissal.
- Regulations could allow bereaved employees to work for their employer without bringing their leave to an end (by way of keeping-in-touch (KIT) days).
- Although not set out in the PLB Act itself, we understand that regulations will provide for paternity leave to be extended to 52 weeks, rather than the usual two weeks, in these circumstances.

Minimum Rates

National Minimum Wage

From 1 April 2025 the national minimum wages changed to the below:

21 and over	18 to 20	Under 18	Apprentice
£12.21	£10.00	£7.55	£7.55

National Insurance Contributions

On 6 April 2025, the rate of employer National Insurance Contributions (NICs) will increase from 13.8% to 15%, a rise of 1.2%. Additionally, the secondary threshold, at which employers begin paying NICs on employee earnings, will decrease from £9,100 annually to £5,000 annually (£758 to £417 per month). This change is likely to have significant financial implications for most businesses.

The maximum Employment Allowance, which helps employers reduce their NIC liability, will increase from £5,000 to £10,500. Additionally, the £100,000 cap, based on Class 1 NICs paid in the previous tax year, will be removed. This change is expected to allow more small employers to benefit from the Employment Allowance and reduce their NIC burden.

Statutory Payments

Statutory sick pay will be increasing from £116.75 to £118.75 per week.

From 6th April 2025 statutory payments for those on family leave will be increasing as per the below:

Payments	From 6 April 2025
Statutory shared parental pay (ShPP) Statutory rate or 90% of employee's weekly earnings if this is lower.	£187.18
Statutory maternity pay (SMP) First six weeks – 90% of employee's average weekly earnings. Remaining weeks at the statutory rate or 90% of employee's weekly earnings if this is lower.	£187.18
Statutory adoption pay (SAP) First six weeks – 90% of employee's average weekly earnings. Remaining weeks at the statutory rate or 90% of employee's weekly earnings if this is lower.	£187.18
Statutory paternity pay (SPP) Statutory rate or 90% of employee's weekly earnings if this is lower.	£187.18
Statutory parental bereavement pay (SPBP) Statutory rate or 90% of employee's weekly earnings if this is lower	£187.18

The Duty to prevent Sexual Harassment

As of 26 October 2024, employers now have a new legal duty under the Worker Protection (Amendment of Equality Act 2010) Act 2023 to take proactive and reasonable steps to ensure that sexual harassment does not occur in the workplace. This marks a significant shift, as the duty goes beyond simply reacting to incidents of harassment, requiring employers to actively create a safe and respectful environment for their employees.

Employers must now show that they've implemented targeted measures to prevent such behaviour, rather than just having a general policy in place. The new duty is limited to sexual harassment and does not extend to other forms of discrimination or harassment.

What does this new duty involve?

The change in the law requires employers to move beyond simply reacting to incidents of harassment and to focus on creating a safer, harassment-free workplace in advance. While employers can still be liable for harassment that occurs in the workplace, they will now be required to demonstrate that they took specific, targeted actions to prevent such behaviour.

Under the new legislation, employers must assess risks of sexual harassment, take action to reduce those risks, and demonstrate the steps they have taken to mitigate them. This duty will apply not only to incidents involving employees but also to harassment by third parties, such as customers, clients, or contractors. This broader scope highlights a shift in responsibility, as previously, employers were primarily focused on internal issues, but now, harassment by external parties will also be important.

What are "reasonable steps"?

The Equality and Human Rights Commission (EHRC) has provided guidance on what constitutes reasonable steps, but it emphasises that the reasonableness of these measures will vary depending on factors such as the size of the employer, the sector in which they operate, and the resources available. There is no "one size fits all" standard, but the duty is clear: all employers must make efforts to prevent sexual harassment in their workplaces. Employers should consider a set of 8 practical steps outlined by the EHRC to help them comply with the new duty. These steps include:

- 1. Develop an Effective Anti-Harassment Policy:** Employers should create a comprehensive anti-harassment policy that clearly defines what constitutes sexual harassment. The policy should outline the process for reporting incidents and how complaints will be addressed. The policy must also detail the potential consequences for individuals found guilty of harassment. It is important that the policy is accessible to all employees and communicated. Employers should also review the policy periodically to ensure it aligns with current laws and workplace dynamics.
- 2. Engage your staff:** Employers should encourage open discussions about sexual harassment, ensuring that all staff are aware of their rights and responsibilities. Employers should focus on cultivating an inclusive and respectful workplace culture. A culture where respect is actively promoted and harassment is not tolerated is one of the most effective deterrents against inappropriate behaviour. This cultural shift can be supported by regular communications, role modelling by senior staff, and a clear stance on zero tolerance for harassment.
- 3. Risk Assessment:** Employers should conduct regular, thorough risk assessments to identify where sexual harassment might occur, whether between colleagues or involving third parties. Factors like lone working, customer-facing roles, and alcohol at events can increase the risk of harassment. Proactive risk assessments can help employers identify and mitigate those risks before they escalate.

- 4. Reporting:** Ensure that there are clear, confidential, and accessible channels for employees to report incidents of sexual harassment. Employees should feel safe in coming forward without fear of retaliation. Additionally, employers should offer support to employees who report harassment, such as access to counselling services, to help them throughout the process.
- 5. Training:** Regular training for all employees is critical. Training should include information on recognising sexual harassment, understanding consent, and knowing how to respond to complaints or incidents. It should be tailored to the specific needs and risks of the organisation, with separate training provided for managers and general staff.
- 6. What to do when a harassment complaint is made:** Employers must have clear, fair, and effective procedures in place to handle complaints. This includes investigating claims promptly and impartially and taking appropriate disciplinary action where necessary.
- 7. Dealing with Harassment by Third Parties:** Employers are also responsible for addressing harassment by third parties (such as clients, customers, or contractors) and should take steps to prevent this kind of behaviour, including putting reporting mechanisms in place or assessing high-risk workplaces where staff might be left alone with customers.
- 8. Monitor and evaluate your actions:** Employers should regularly review and evaluate the effectiveness of their policies and practices in preventing sexual harassment. This ongoing assessment helps ensure that measures remain relevant and effective.

Consequences for Employers Who Fail to Comply

Failure to comply with the new duty can have serious consequences. If an employee successfully brings a claim for sexual harassment in an Employment Tribunal, the tribunal will assess whether the employer took reasonable steps to prevent the harassment. If it is found that the employer did not meet their obligations, the tribunal has the power to increase any compensation award by up to 25%.

Additionally, the EHRC has the authority to take enforcement action against employers who fail to meet the new duty. This can include conducting investigations, issuing unlawful act notices, and entering into legally binding agreements with employers to prevent future unlawful acts. Non-compliance with the new duty may also result in reputational damage, negatively impacting the employer's public image, employee morale, and retention.

The reasonable steps defence

Although not part of the new duty, it is worth remembering that if you are able to show you took all reasonable steps to prevent sexual harassment (or any other type of discrimination), this can be a defence to a claim.

The Employment Rights Bill

The highly anticipated Employment Rights Bill 2024 was published on 10 October 2024. This Bill introduces crucial changes to employment rights in the UK, introducing 28 significant reforms which align with many of Labour's manifesto promises to enhance protections for workers and employees. We have provided a summary below of the key changes the Bill will bring to employment law. The majority of reforms are anticipated to take effect from 2026, with consultations beginning this year.

Unfair dismissal day one rights

The Employment Rights Bill introduces significant changes to employee protection, particularly concerning unfair dismissal rights. Under the current system, employees must complete two years of service before they can claim unfair dismissal. The Bill also clarifies that employees who have entered into a contract but haven't started work will not have the right to claim unfair dismissal, though exceptions apply in cases of automatic unfair reasons.

The Bill proposes a new approach, offering employees the right to challenge unfair dismissal from day one of their employment. The Government plans to introduce a statutory probationary period during which employers will be required to follow a lighter tough dismissal process. A dismissal will not be unfair if the dismissal occurs during an "initial period of employment" and the principal reason for dismissal is capability, conduct, statutory restriction or "some other substantial reason relating to the employee". Dismissal on grounds of redundancy is excluded from the new provisions, meaning that the right not to be unfairly dismissed would apply to redundancy dismissals during the initial period of employment. However the Bill does not change the two-year qualifying period to be entitled to receive a statutory redundancy payment. The length of the initial period of employment will be specified in regulations. However, the government stated a preference for it to be nine months. These changes are expected to be consulted on extensively and are not expected to take effect until at least Autumn 2026.

Zero hours contracts

The Bill aims to address zero-hour contracts and, while it doesn't explicitly ban "exploitative" contracts, it requires employers to offer guaranteed hours to workers whose hours exceed a set minimum during a reference period (this will likely be 12 weeks). This applies to both zero-hour and low-hours contracts, though the definition of "low" hours and other specifics will be set in regulations. The Bill also includes exceptions for temporary needs or specific tasks, and workers not offered guaranteed hours can seek compensation through an employment tribunal. Although agency workers are not currently included, consultations are ongoing to potentially extend these provisions to them.

Additionally, the Bill introduces a right to reasonable notice for shifts, including any changes or cancellations, and compensation for short-notice alterations. Employers must provide workers with clear information on the time, day, and duration of shifts, with specific minimum notice times and compensation amounts to be defined in regulations. While these provisions do not yet apply to agency workers, consultations are being conducted to potentially extend the rules to this group as well. The government is also considering further details, such as how much notice must be given and how compensation will be calculated.

Family friendly rights

The Bill introduced enhanced protection for employees on maternity or family leave, expanding safeguards to cover dismissals during pregnancy, maternity leave, or upon return to work, as well as during other family leave periods like adoption, shared parental, neonatal care, and bereaved partners' paternity leave. Although the exact regulations are not yet clear, the Bill's explanatory notes suggest that it will prevent dismissals of

women who are pregnant, on maternity leave, or within six months of returning to work, except in specific circumstances. Additionally, the Bill proposes a day one right to bereavement leave, offering employees at least one week of leave upon the death of a close family member, with further regulations to determine eligibility. It also removes the length of service requirements for both parental and paternity leave, allowing employees to take these benefits from day one of employment, and ensures that employees can take paternity leave even after utilising shared parental leave. Finally, while the Bill does not introduce immediate changes to parental or carer's leave, the government plans to conduct a full review of the current system, with the results expected in 2025 and beyond.

Fire and rehire

The Government's manifesto promised to abolish fire and rehire practices, which involves the dismissal of employees who won't agree to less favourable contract terms and offering new contracts on the less favourable terms. The Bill falls well short of this, but does higher the legal bar for firing and re-hiring.

It will be automatically unfair to dismiss an employee for refusing to agree to a change in their contract of employment. An exception will be made where the employer can show evidence of financial difficulties and demonstrate that the need to make the change in contractual terms could not reasonably be avoided.

The government also consulted on whether to increase or remove the 90-day pay cap on protective awards for failure to consult during fire and rehire practices and whether to introduce interim relief, allowing employees to continue receiving full pay and benefits until a tribunal hearing if their claim is likely to succeed. These potential reforms are expected to be implemented around 2026, although the timing is still uncertain.

Harassment

The Bill proposes that employers will be liable for third party harassment. There will be a defence if an employer can show it has taken all reasonable steps to prevent it.

Currently, although employers have a duty to prevent employees being sexually harassed by third parties, there is no claim an employee can bring against the employer if harassment does occur. The proposal under the Bill will fill this gap.

Statutory sick pay

Currently, statutory sick pay (SSP) is paid from the fourth day of sickness, and employees must earn above the lower earnings limit of £123 to qualify. The Bill proposes that SSP will be paid from the first day of sickness and cover the first three Qualifying Days. Additionally, the lower earnings limit will be removed, making SSP available to all eligible employees, regardless of their earnings. The government recently closed a consultation to decide on an appropriate replacement rate for those earning below the current SSP flat rate, with this adjustment expected to be introduced as the Bill moves forward.

Collective consultation

The Bill proposes a change to the collective redundancy consultation trigger by removing the reference to "at one establishment," meaning employers will now need to count redundancies across all their sites and workplaces. However, the threshold for triggering collective consultation remains the same, and redundancies will still be counted per employer, not across multiple employers within a group of companies. Additionally, the government consulted on potentially increasing the maximum protective award from 90 to 180 days' pay, or even an uncapped amount, and allowing employees to claim interim relief to preserve their pay until a tribunal hearing. There is also a proposal to double the minimum consultation period for redundancies involving 100 or

more employees from 45 to 90 days, with consultations set for 2025. These changes are expected to be implemented around 2026, though the exact timing is uncertain.

Immigration Update

Sponsor compliance measures

In 2025, the Government plans to implement a series of measures aimed at ensuring compliance with employment law and sponsor licence eligibility.

As outlined by the Minister for Migration and Citizenship in a written statement last November, the key measures include:

- **Establishing a Fair Work Agency:** This agency will have the authority to refuse or revoke a sponsor licence for businesses found guilty of serious employment law violations.
- **Strengthening Compliance Powers:** The government intends to enhance oversight and regulation of licensed sponsors.
- **Expanding the Ban on Passing Costs to Sponsored Workers:** Currently, the ban applies only to Skilled Worker sponsors who cannot pass on the costs of sponsor licences, certificates of sponsorship, and related administrative fees. This ban will be extended to other sponsored work routes.
- **Extending the Duration of Sponsor Licence Action Plans:** The maximum duration for action plans will increase from 3 months to 12 months. If a sponsor fails to pay for, comply with, or implement the required improvements by the end of the action plan, their licence may be revoked.
- **Introducing a Sponsorship Cooling-Off Period:** Businesses whose sponsor licence is revoked due to repeated non-compliance or serious immigration violations will face a cooling-off period of at least 2 years, during which they will be ineligible to apply for a new licence. While the current guidelines provide for a cooling-off period of up to 5 years in severe cases, future amendments may standardize the minimum period to 2 years and extend the maximum period beyond 5 years in certain situations.

Additionally, though not included in the ministerial statement, the Government's proposed Equality (Race and Disability) Bill may require sponsors to ensure equal pay for both sponsored and non-sponsored workers. This could pose challenges for sponsors whose sponsored workers earn more due to the salary thresholds needed for sponsorship. It remains unclear whether this legislation will be enacted in 2025 or later.

Changes to sponsor guidance, effective as of December 31 2024, will bring stricter obligations for sponsors in 2025. These updates include:

- **Banning the Transfer of Certain Sponsorship Costs to Skilled Workers:** Similar restrictions are expected for other sponsored work routes.
- **Expanding the Home Office's Oversight:** The behaviour of any Person with Significant Control (PSC) of a sponsoring business will now be considered in the Home Office's decisions regarding licence grants, compliance, and actions such as suspensions or revocations.
- **Prohibiting Personal Sponsorship:** Workers cannot be sponsored in a personal capacity.
- **Strengthening the Primary Level 1 User Requirement:** The primary Level 1 User on the sponsor management system must be a settled worker, and either an employee, director, or partner of the sponsoring business. This applies to businesses applying for a sponsor licence after December 31, 2024.

E visas

Most UK Biometric Residence Permits (BRPs) expired on 31 December 2024, and no new BRPs have been issued since the end of October 2024. BRP holders are advised to create an online UKVI account and link it to their eVisa.

To help minimise potential travel disruptions, especially for those who have not yet set up their eVisa, the Home Office has confirmed that BRPs can still be used for travel until at least 31 March 2025. However, the holder must have valid immigration permission at the time of re-entry.

At present, certain physical immigration documents remain valid, including wet ink stamps and visa vignettes (stickers) in passports. The Home Office plans to phase out other physical documents by mid-2025, though this will depend on operational readiness.

Right to work check guidance

The Home Office has released an updated version of the UK’s right to work guidance, applicable for checks conducted on or after 12 February 2025. The key updates include:

- Clarification that a "clipped" passport (where corners are cut or removed) from a British or Irish national is considered a cancelled document and is not valid proof of the right to work.
- A reminder that sponsor licence holders must perform right to work checks for individuals they sponsor, even if they are not direct employees, as part of their sponsorship obligations.
- An update to Annex D, confirming the launch of the Ukraine Permission Extension Scheme starting 4 February 2025.
- Modifications related to the removal of Biometric Residence Permits (BRPs) and Biometric Residence Cards (BRCs), including encouraging employees to create UKVI accounts to access eVisas for proof of right to work.
- Confirmation that individuals with a 90-day entry clearance vignette must create a UKVI account within 10 days of arriving in the UK or before their vignette expires (whichever comes later) to access their eVisa. Employers may conduct a manual right to work check on the vignette and a follow-up online check before the vignette expires to maintain a statutory excuse against a civil penalty.
- For any Skilled Worker category, the migrant’s National Insurance number should now be visible in their eVisa profile.

Rises to immigration and nationality fees

On 16 January 2025, the Home Office published a news story and directly informed registered sponsors about the planned fee hikes. According to the news story, the following fees are set to rise:

Category	Current Fee (GBP)	Intended Fee (GBP)	% Increase
Electronic Travel Authorisation (ETA)	£10	£16	60%
Certificate of Sponsorship (CoS) – Worker (including Skilled Worker, Senior or Specialist Worker, and International Sportsperson over 12 months)	£239	£525	120%
Certificate of Sponsorship (CoS) – Temporary Worker (including routes such as Creative Worker, Government Authorised Exchange, UK Expansion Worker, Scale-Up, and International Sportsperson under 12 months)	£25	£55	120%
Naturalisation as a British citizen	£1,500	£1,650	10%
Naturalisation as a British Overseas Territories Citizen	£810	£1,070	32%

In addition to these, there will be increases for nationality-related services, such as renouncing citizenship, amending a citizenship certificate, and issuing a certificate of entitlement to the right of abode.

The Government aims to have the new fees in place by Spring 2025. The fee rises will go through a two-stage legislative process:

- Stage 1: New maximum fees will be debated and approved by both Houses of Parliament. The speed of this process will depend on the availability of time in the parliamentary schedule and whether objections are raised during debates. Even with objections, the process may be delayed, but the maximum fee amounts proposed by the Government are likely to be approved.
- Stage 2: Once the maximum fees are approved, the Government will lay out the detailed regulations for the actual fee increases. This stage is expected to occur more quickly, as it does not require parliamentary debate.

The Home Office intends to set the fees for ETAs and CoS (at least for Worker routes) at the maximum level. The fee for naturalisation as a British citizen is also expected to be set at the maximum level, while the fee for naturalisation as a British Overseas Territories Citizen will likely be set below the maximum.

Recent case law

Tesco Stores Ltd v Union of Shop, Distributive and Allied Workers [2024] UKSC 28

Facts

In 2007, as part of a broader restructuring, the Respondent employer closed several distribution centres and offered a "retained pay" package to encourage experienced employees to relocate to other locations with a significant distance from their original workplace location. This package was incorporated into the employees' contracts through a collective agreement, explicitly stating that the retained pay would remain a permanent part of their contractual entitlements and could only be altered with mutual consent. In 2021, the Respondent attempted to remove or reduce the retained pay by proposing either an enhanced payment as compensation or the dismissal and re-engagement of employees without the retained pay (commonly known as "fire and rehire"). The affected employees, with the support of USDAW, initiated legal proceedings in the High Court.

High Court Decision

The High Court found that an implied term existed in the employees' contracts that prevented the Respondent from terminating their employment for the purpose of removing or diminishing the retained pay entitlement. The court ruled that the retained pay was a permanent contractual feature that could not be unilaterally altered or removed. An injunction was granted to restrain the Respondent from proceeding with dismissals intended to take away the retained pay.

Supreme Court Decision

The case was appealed to the Court of Appeal and then further appealed to the Supreme Court (SC) by USDAW, representing the employees. The SC unanimously upheld the decision. It interpreted the "permanent" nature of the retained pay term to mean that the employees were entitled to this benefit as long as they remained in their current role. The Court ruled that the term "permanent" in the agreement was meant to prevent the employer from removing the retained pay, even through termination and re-engagement. The SC concluded that it would have been "inconceivable" for the parties to have agreed that the entitlement could be terminated unilaterally by the employer through notice. This decision was based on the principles of business efficacy and obviousness, meaning that the employees could not have reasonably agreed to risk dismissal in exchange for the retained pay. Consequently, the SC upheld the injunction, preventing the employer from dismissing and re-hiring employees with lower pay.

Cairns v Royal Mail Group [2024] EAT 129

Facts

The Claimant was employed as a postal delivery person on outdoor duties. A knee injury and osteoarthritis (a disability) meant he could no longer work outdoors. He moved to a supernumerary indoor role for a period. The Respondent began a consultation to dismiss him on grounds of ill-health retirement as he could no longer do his outdoor job. At the time, no other indoor vacancy existed and the Claimant was dismissed.

He claimed unfair dismissal. He also claimed that failing to wait for the imminent merger of the Claimant's postal centre with another centre (which would have created indoor roles), was a failure to make reasonable adjustments and discrimination arising from a disability.

Tribunal Decision

The Tribunal dismissed all claims, holding that there comes a time when a surplus job must come to an end. The Claimant appealed the outcome on discrimination. Allowing the appeal, The EAT held that the Tribunal had focused too much on the situation at the time of dismissal. In doing so, it had failed to consider an essential part of the Claimant's case: that at the time of his appeal, the Respondent ought to have kept him in employment so that he could be assigned to an indoor role, on the merger of the two postal offices.

It was the Claimant's case that it would have been a reasonable adjustment to keep him in employment for this short time. He also argued that his inability to work outdoors arose from his disability. The decision to dismiss him for this was discriminatory. It was also unjustified, given the plan for new indoor roles.

HMRC v Professional Game Match Officials [2024] UKSC 29

Facts:

The case revolves around PGMOL (Professional Game Match Officials Limited), a company responsible for providing referees for major professional football matches in England. PGMOL engaged both full-time and part-time referees. The full-time referees were employed under contracts of employment, primarily for Premier League matches, while the part-time referees officiated matches in their spare time and were treated as self-employed by PGMOL. The issue at hand was whether the part-time referees were working under contracts of employment, as the fees paid to them were not treated as employment income by PGMOL. HMRC (Her Majesty's Revenue and Customs) challenged this treatment.

The referees were appointed to the pool annually, subject to passing a fitness test and attending an introductory seminar. PGMOL provided referees with a match-day procedures document and a code of conduct. Matches were offered to referees through an event management system, and when a referee accepted a match, they were effectively booked for the match, though both parties could cancel the booking. The core question was whether the individual match-day contracts between PGMOL and the part-time referees were employment contracts.

Court of Appeal:

Initially, both the First-tier Tribunal and the Upper Tribunal ruled in favour of PGMOL, determining that there was no employment relationship with the part-time referees. However, the Court of Appeal disagreed with this finding, prompting PGMOL to appeal to the Supreme Court. The Court of Appeal did not find sufficient mutuality of obligation or control to classify the part-time referees as employees.

Supreme Court:

The Supreme Court (SC) was tasked with determining whether the first two essential elements for establishing an employment contract—mutuality of obligation and control—were present.

Mutuality of Obligation: The SC concluded that there was mutuality of obligation between PGMOL and the part-time referees from the moment a referee accepted an assignment to officiate a match and submit a match report (for which they were paid). This mutual obligation existed even though there was no ongoing obligation between matches, and either party could cancel the contract after the match was accepted.

Control: The SC found that PGMOL exercised sufficient control over the referees. The company imposed contractual obligations on referees to meet required standards and had the authority to discipline referees if those standards were not met.

Having established that mutuality of obligation and control were present, the SC remitted the case back to the First-tier Tribunal. The Tribunal was tasked with determining whether, based on all circumstances, the third element of the test for employment status—whether the contract provisions were consistent with an employment contract—was met.

British Airways PLC v Rollett & Ors [2024] EAT 131

Facts

In January 2021, a group of Claimants brought a case against the Respondent, alleging that they experienced indirect discrimination following a restructuring exercise initiated by the Respondent due to the COVID-19 pandemic. The Claimants included individuals both with and without the relevant protected characteristics, such as non-British nationals and women, as well as individuals who did not have those characteristics. Those without the protected characteristics sought to bring claims of “associative” or “same disadvantage” indirect discrimination, while those with the protected characteristics pursued claims of indirect discrimination under Section 19 of the Equality Act 2010 (“EqA”). The Claimants argued that the scheduling changes disproportionately affected two groups: (i) employees who lived abroad and commuted, who were predominantly non-British nationals, compared to UK commuters, and (ii) employees with caring responsibilities, predominantly women, compared to those without such responsibilities.

Tribunal decision

The Employment Tribunal (ET) held that it had jurisdiction to consider indirect discrimination claims under Section 19 of the EqA when a provision, criterion, or practice (PCP) applied by an employer disadvantages people with a particular protected characteristic, and a claimant who does not share that characteristic also suffers the same disadvantage. The ET determined that even claimants who did not possess the protected characteristic of the disadvantaged group could still bring indirect discrimination claims if they were similarly disadvantaged. The Respondent appealed this decision.

EAT decision

The Employment Appeal Tribunal (EAT) dismissed the Respondent’s appeal, confirming that the ET had not made any legal error. The EAT reiterated that the ET has jurisdiction to consider indirect discrimination claims under Section 19 of the EqA, where a PCP disadvantages people with a protected characteristic, and the claimant, even without that characteristic, suffers the same disadvantage. Importantly, the EAT clarified that the claimant need not share the same protected characteristic as the disadvantaged group. The decision focused on this preliminary issue, with the ET to continue considering the substantive indirect discrimination claims. The EAT’s ruling also highlighted that, following the introduction of Section 19A to the EqA on 1 January 2024, claimants can now expressly bring “same disadvantage” indirect discrimination claims. This change preserves existing EU case law in UK domestic law post-Brexit and makes it clear that such claims are valid for events that took place prior to the amendment. Employers are therefore reminded that employees who do not share a protected characteristic with a disadvantaged group may still have valid indirect discrimination claims if they experience the same disadvantage.

Higgs v Farmor’s School [2025] EWCA Civ 109

Facts

Mrs. Higgs worked at Farmor’s School as a pastoral assistant and work experience manager. She held Christian beliefs, including gender-critical views, such as opposing gender fluidity and same-sex marriage. In 2018, a parent complained to the school about a Facebook post she had shared. The post criticized government policies regarding sex education, which she believed promoted gender fluidity and same-sex marriage. The parent accused Mrs. Higgs of posting “homophobic and prejudiced views” and expressed concerns about her influence on vulnerable students.

After an investigation, Mrs. Higgs was dismissed for gross misconduct, with the school citing her Facebook posts as inflammatory and potentially harmful to the school’s reputation. Mrs. Higgs argued her dismissal was discriminatory based on her religious beliefs.

ET Decision

The Employment Tribunal (ET) found that Mrs. Higgs’ beliefs were protected under the Equality Act but dismissed her claims of direct discrimination and harassment. The tribunal determined that the language in her post could lead readers to reasonably perceive her as homophobic and transphobic. The school’s disciplinary actions were based on concerns over the perception of her views, not her beliefs themselves.

EAT Decision

Mrs. Higgs appealed the ET decision to the Employment Appeal Tribunal (EAT). The EAT upheld her appeal and remitted the case back to the ET, finding that the tribunal had failed to properly consider the link between Mrs. Higgs’ Facebook posts and her protected religious beliefs. The EAT emphasized that the tribunal should have balanced the restriction of her rights with the protection of others’ rights, rather than focusing solely on the school’s perception of her views. However, Mrs. Higgs’ lawyers contested the decision to send the case back to the same ET, arguing that it would hinder her access to justice.

Court of Appeal Decision

The Court of Appeal upheld Mrs. Higgs’ appeal, ruling that the tribunal would have been bound to find that her dismissal was not objectively justified and constituted unlawful discrimination. The court noted that while her posts might have been considered objectionable, they were not grossly offensive. Additionally, there was no evidence that the school’s reputation had been harmed. The court found that dismissal was not a proportionate response, as there was no indication that Mrs. Higgs’ views influenced her work or treatment of students. Therefore, the dismissal was deemed unlawful discrimination.

The Court concluded:

- Dismissing an employee solely for expressing a religious or protected belief constitutes unlawful discrimination unless the employer can show the dismissal was due to an objectively objectionable way of expressing the belief, and it was a proportionate response.
- The school’s attempt to justify dismissal based on the inflammatory language in Mrs. Higgs’ posts or the potential reputational harm failed, as there was no evidence of her discriminatory behaviour in the workplace.

Menopause

Menopause is a natural part of life that can significantly impact an individual's health, wellbeing, and work performance. Employers have a responsibility to ensure that employees going through this transition are supported, valued, and treated fairly. Understanding the legal obligations and implementing supportive workplace practices are key to creating an inclusive environment.

Legal Protections and Rising Legal Challenges: Menopause and Discrimination

Although the menopause is not defined as a protected characteristic, The Equality Act 2010 still offers potential protection for employees affected by menopause under the following protected characteristics:

- **Disability:** If menopause symptoms are severe and long-term enough to be considered a disability, the employee will have a protected characteristic and employers must be careful when making decisions which relate to the menopause. For example, managing poor performance or absence which may be caused by symptoms of menopause. There will also be a duty to make reasonable adjustments.
- **Age Discrimination:** As menopause usually occurs between 45-55, employers must be careful avoid age-based discrimination when managing menopause-related challenges.
- **Sex Discrimination:** Since menopause is gender-specific, employers who treat a woman less favourably for a reason related to menopause, could face a sex discrimination claim.
- **Gender Reassignment:** Transgender employees experiencing menopause are also protected under the Equality Act 2010.

Menopause-related tribunal claims are on the rise. A 44% increase in cases citing menopause in 2021 highlights the growing risk for employers failing to support affected employees.

These cases can be complex, often involving multiple discrimination claims, making them time-consuming and expensive for employers to defend. Furthermore, there is no cap on compensation in discrimination cases, meaning employers could face significant financial consequences.

In addition to the discrimination arguments, menopause may also be relevant in unfair dismissal cases where the employee's position is the menopause has contributed to or caused her misconduct or poor performance.

Cases

Davies v Scottish Courts and Tribunals Service (2018)

Ms Davies, a court clerk, advised two court users that they may have drunk water containing her cystitis medication. Ms Davies said that menopause caused her to be confused and forgetful, so she could not remember whether the medication had been in the water. However, after the court users were advised to seek medical advice, it was discovered that the medication had not been in the water.

The employer concluded that Ms Davies had lied about the medication being in the water and she was therefore dismissed. She brought a successful claim for discrimination arising from disability. It was agreed that Ms Davies' menopause symptoms amounted to a disability. The tribunal also accepted that Ms Davies' conduct was affected by confusion and forgetfulness caused by her disability. The employer argued that her dismissal was a proportionate means of achieving the legitimate aim of having trustworthy staff. While this was a legitimate aim, it was not proportionate to have dismissed Ms Davies without considering the impact of her disability on her conduct or that there were other sanctions available, such as a warning, which could have achieved the same aim but not had the discriminatory effect. Further, the employer did not have reasonable grounds to sustain its belief that Ms Davies had lied.

Ms Davies was reinstated, and awarded £19,000. £14,000 of that was back pay and £5,000 due to injury of feelings.

A v Bonmarche Ltd (2019)

Ms A had worked in retail for 37 years and was a high achiever. Her situation at work changed in around May 2017 when she began to go through menopause. Ms A's male manager would demean her and humiliate her in front of other staff who were younger than her and who would laugh at the manager's remarks. The manager also called Ms A "a dinosaur" in front of customers and continually criticised her unreasonably. On one occasion he criticised her for failing to staple together two pieces of paper and related this to her being menopausal. He made numerous other comments about Ms A being menopausal and her performance. The manager also refused to adjust the temperature in the shop to take account of Ms A's requirements. Ms A contacted higher management regarding her manager's treatment of her, but no action was taken. She suffered a breakdown in November 2018 and her manager was extremely cold and threatening towards her when she returned to work, leading to her resignation. The tribunal held that Ms A's treatment was related to her sex and age, and upheld her claims for sex and age harassment.

The claimant was awarded £28,000. £10,000 was for loss of earnings, £18,000 was injury to feelings as a result of the serious bullying and harassment she had suffered.

Lynskey v Direct Line Insurance Services Ltd (2022)

Ms. Lynskey had been employed by Direct Line as a sales consultant since 2016 and consistently received "very good" performance ratings. Three years into her role, she began experiencing menopausal symptoms, which she reported to her manager as having a negative impact on her performance. These symptoms included low mood, anxiety, mood swings, memory issues, and poor concentration. After being diagnosed with a hormone imbalance, depression, and low mood, she was prescribed antidepressants. Ms. Lynskey informed her manager about both her symptoms and the treatment she was receiving. Despite these health challenges, concerns about her performance were raised. Ms. Lynskey was reassigned to a different role that was considered a "better fit" given her health and personal circumstances. However, she began underperforming in the new role and was given a performance rating of "need for improvement." This led to a warning meeting, followed by a disciplinary meeting, where her health condition was not adequately considered. After a period of illness, her sick pay was stopped, and she ultimately resigned from her position. She subsequently brought several claims to the tribunal, including discrimination arising from a disability and failure to make reasonable adjustments. Just before the hearing, her employer acknowledged that Ms. Lynskey's menopausal symptoms amounted to a disability under the Equality Act 2010 during the period of alleged discrimination.

The tribunal upheld Ms. Lynskey's disability discrimination claims. Specifically, it found that the lower performance rating and disciplinary warning were forms of unfavourable treatment arising as a consequence of her disability. The tribunal also ruled that her employer failed to make reasonable adjustments after being made aware of her disability. Some of the adjustments that could have been made included reducing call time targets, considering a role without telephone duties, halting the disciplinary process, or accepting her disability as a mitigating factor. Ms. Lynskey was awarded £64,645 in compensation, which included £23,000 for injury to feelings.

McCabe v Selazar Ltd (2021)

An employment tribunal held that Selazar had subjected Mrs McCabe to direct age discrimination when it dismissed her at age 55. It found that the CEO's comment of "*Calm down ... don't let the hormones get out of control*" was evidence that he (who was in a younger age group) viewed Mrs McCabe as "a menopausal woman – that is, an older woman". This, together with evidence that Selazar had asked a recruiter to look for a younger person to replace Mrs McCabe and that the CEO considered older people not to be familiar with IT businesses, led the tribunal to conclude that at least part of the reason for her dismissal was her age.

Chan v Stanstead Airport Ltd (2022)

Ms Chan's main symptoms of menopause were stress and anxiety; she had never experienced difficulties with her mental health previously. The symptoms continued for over four years. During which she had three periods of absence, each around 4 weeks long.

The tribunal concluded that the menopause symptoms had a substantial adverse effect on Ms Chan's ability to carry out normal day to day activities due to her being unable to work for several weeks at a time, having to set up systems to help her remember everyday information and not being able to read a whole book, having previously done so regularly.

The tribunal noted that Ms Chan's condition was not consistent and it was hard to pinpoint when some of the symptoms manifested in such a way that the adverse impact was substantial, in particular the lack of concentration and memory loss. In deciding that the adverse effects were long term, the tribunal concluded that Ms Chan's condition was recurrent due to the three documented periods of absence from work due to menopause symptoms of stress and anxiety. She was found to be disabled.

EHRC Guidance on Supporting Employees Through Menopause

In February 2024, the Equality and Human Rights Commission (EHRC) issued new guidance aimed at helping employers better support employees experiencing menopause in the workplace. The guidance clarifies the legal obligations that employers must be aware of when supporting menopausal employees and highlights the need for greater awareness and proactive action.

The EHRC clarifies that for some employees, menopausal symptoms can be long-term and significantly impair their ability to carry out normal activities. If this is the case, the symptoms may qualify as a disability, obligating employers to make reasonable adjustments to accommodate these employees and to prevent discrimination arising from the disability. This could include changes such as varying the employees start and finish times due to the impact of menopause insomnia, providing desk fans or improved ventilation, or modifying uniforms to be more breathable for those experiencing hot flushes.

Further, employers are also subject to legal obligations under health and safety legislation which include conducting an assessment of their workplace risks. Under the Health and Safety at Work Act 1974, employers should assess workplace risks and ensure a supportive environment by considering adequate temperature control, access to drinking water, suitable restrooms and quiet spaces for breaks.

Other Practical Steps for Employers:

- **Implement Menopause Policies:** Create and communicate a clear menopause policy, ensuring it is accessible to all employees. The policy can outline the support available to employees, provide guidance

on how menopause issues should be handled and ensure confidentiality when employees choose to discuss their symptoms.

- **Training and Education:** Offer training and resources to staff and managers on the effects of menopause and how to support affected employees. Training should also ensure that employees are educated about the risks of harassment, banter, or victimisation related to menopause symptoms.
- **Encourage Open Conversations:** Foster a culture where staff feel comfortable discussing menopause symptoms and requesting necessary adjustments. This can include appointing a menopause champion to provide a point of contact for employees. Research shows that many women experiencing menopausal symptoms do not feel comfortable requesting adjustments, which can lead to significant challenges in the workplace. By normalising conversations about menopause, employers can create an environment where employees feel supported and are more likely to vocalise their needs and assert their rights.

Disability Discrimination - Reasonable adjustments

Employers are subject to a duty to make reasonable adjustments (Section 20 Equality Act 2010). The explanatory notes to the Act provide a useful overview of how it is intended to work.

"The duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. The first requirement covers changing the way things are done (such as changing a practice) the second covers making changes to the built environment (such as providing access to the building), and the third covers providing auxiliary aids and services (such as providing special software providing a different service)."

The most common type of claims we see as employment lawyers is a complaint that the claimant has been placed at a substantial disadvantage by a provision, criterion or practice (PCP) implemented by the employer.

PCP

In **Ahmed v Department of Work and Pensions [2022] EAT 107**, HHJ Beard said:

"A PCP, simply put, is where the employer has an expectation of the employee, and either the same expectation is made of other employees or there is an element of repetition in the expectation with the particular employee. In order to found a claim the PCP must create a disadvantage because of a disability; constructing the PCP from the disadvantage has the danger of circular reasoning. The identification of the PCP should, because of the protective nature of the legislation, follow a liberal approach and a tribunal should widely construe the statutory definition."

Examples can include requiring an employee to work late, the application of an employers sickness absence policy and a policy relating to car parking spaces.

Whilst a one-off act can be a PCP, the courts have suggested it is much more likely that an act/decision will constitute a PCP if there is some indication it will or would be done again in the future **Ishola v Transport for London [2020] IRLR 368**

Substantial disadvantage

For the duty to arise, the job applicant or employee must be disabled and also placed at a "substantial disadvantage" in comparison with persons who are not disabled. Therefore, a comparative exercise demonstrating substantial disadvantage (i.e. a more than minor or trivial disadvantage) is required.

The *EHRC Code* states:

"The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular provision, criterion, practice or physical feature or the absence of an auxiliary aid disadvantages the disabled person in question. Accordingly – and unlike direct or indirect discrimination – under the duty to make adjustments there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's." (Paragraph 6.16.)

Knowledge

An employer will not be subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know (constructive knowledge), that the claimant (i) has a disability, and (ii) is likely to be put at the substantial disadvantage in question.

For a recent example of a case in which the employer was found not to have the requisite knowledge of disability (a decision which was upheld on appeal), see ***Farley v Sunderland City Council [2024] EAT 115***. In this case:

- a. none of the fit notes or occupational health reports would have led any reasonable manager to conclude that the Claimant may be suffering from a condition which could amount to disability;
- b. in his return to work interview, the Claimant had said that: (i) he did not believe his absence from work was disability-related, and (ii) he was not in receipt of any ongoing medical treatment; and
- c. when presenting his claim form, the Claimant had answered 'no' to the question 'do you have a disability?' and originally brought claims which were limited to age and sex discrimination.

What is reasonable

The duty to make reasonable adjustments is a duty to take steps which are reasonable, considering all the circumstances of the case, for the employer to take in order to avoid the disadvantage caused to the disabled person by the PCP/physical feature/lack of auxiliary aid

It is a multi-factorial exercise. Factors might include (i) the likely effectiveness of the proposed step; (ii) its practicability; (iii) the financial and other costs of taking the proposed step, and the extent of any business disruption caused; (iv) the size/resources of the employer; and (v) whether the adjustment is referenced in R's own policy documents

Will the adjustment work?

Rentokil Initial UK Ltd v Miller [2024] IRLR 628 – Trial periods

Historically the EAT commented that it had "considerable difficulty" in seeing how an investigation or trial period could be regarded as a reasonable adjustment in itself suggesting that a trial period is a procedure that an employer should sensibly adopt in an appropriate case with a view to determining the viability of a potential adjustment, but is not an adjustment as such.

In *Rentokil* the EAT disagreed with the above approach explaining that there is no rule of law that it cannot be a reasonable adjustment to offer a trial period in a new role to a disabled employee. Nor is there any rule of law that it must be certain, or meet some other threshold of likelihood, that the employee would be successful in that trial period. The EAT said that offering a trial period is not analogous to consulting the employee or seeking a medical report, neither of which would in themselves involve any change to the employee's terms or working conditions.

Mr Miller was diagnosed with multiple sclerosis, which required various modifications to his role as pest control technician that ordinarily required him to spend about 40% of his time working at height. In due course, *Rentokil* concluded that there was no viable way for Mr Miller to continue in the role. He applied for a desk-based role, but performed poorly in the standard written tests. A manager who had no personal experience of Mr Miller decided that he did not have the relevant skills or experience, and he was not offered the role. The tribunal upheld Mr Miller's claim that *Rentokil* had failed to make a reasonable adjustment when it did not offer him a trial in the alternative role. He was entitled to be treated more favourably than other candidates, rather than undergoing a normal competitive recruitment process. There was a reasonable chance that he would have performed better in the trial than the written tests suggested, not least because the desk-based role was a support role to the operational role he had previously held, which gave him helpful knowledge.

A tribunal is not bound in every case to find that an employer ought to give an employee a trial period in an alternative role. However, in this case, Mr Miller was at almost certain risk of dismissal and it was open

to the tribunal to consider whether the proposed trial period had sufficient prospects of averting dismissal such that it was reasonable for Rentokil to offer that step. As the tribunal had estimated the chances of Mr Miller being confirmed in the new role at 50%, it was plain that there was a real prospect of "the axe being lifted entirely" from him. Whether a trial period is a reasonable adjustment is a question for the tribunal to consider, taking into account all of the circumstances including the suitability of the role and the prospects of the employee passing the trial.

It is likely to be prudent for an employer, in an appropriate case, to allow a trial period to see whether a proposed adjustment is reasonable and will alleviate the disadvantage. Once the employee has suggested an adjustment that, on the face of it, might be reasonable and might alleviate their disadvantage, the burden is on the employer to prove either that it would not be reasonable or would not alleviate the disadvantage. An employer that has not adopted a trial period in an appropriate case may find it difficult to discharge the burden of proof.

There is no rule or principle of law that a trial period in a new role cannot be a reasonable adjustment. Rather, where the substantial disadvantage is almost certain risk of dismissal, it is open to the ET to consider whether, on the particular facts, a proposed trial period in another role would remove that risk (or have sufficient prospects of averting dismissal), such that it would be a reasonable step.

This is an objective question for the ET; it is not bound to defer to the view of either the employer or the employee. What is reasonable is also to be judged by reference to the facts as they stood, and information that was available, at the relevant time when the decision fell to be taken.

Relevant to the assessment of reasonableness will be factors including (i) whether the role is in principle suitable, (ii) whether the employee meets essential requirements for it (in terms of skills, qualifications, knowledge, experience, or otherwise), and (iii) the prospects of the employee successfully passing the trial period

Further, the EAT noted that "*it is well-established that the proposed step does not have to be guaranteed to work*". Any change which would or might remove the substantial disadvantage caused by the PCP is in principle capable of amounting to a relevant step, subject to the assessment of reasonableness.

Injury to feelings

Vento guidelines:

- a. a lower band of £1,200 to £11,700 (less serious cases);
- b. a middle band of £11,700 to £35,200 (cases that do not merit an award in the upper band);
- c. an upper band of £35,200 to £58,700 (the most serious cases); and
- d. the most exceptional cases capable of exceeding £58,700.

Whilst not a case about reasonable adjustments, the recent judgment in ***Eddie Stobart Ltd v Graham [2025] EAT 14*** provides a helpful reminder of the relevant principles when considering compensation for injury to feelings. The EAT decided that the tribunal's award of £10,000 was manifestly excessive and substituted an award of £2,000. The judge noted that:

- a. a claimant should lead evidence in respect of any claim for injured feelings – there could be no award for injury to feelings if there was no evidence of injury at all;

- b. the frequency and duration of the claimant’s exposure to the discriminatory conduct are not the only measures that can support an inference of injury;
- c. relevant considerations may include:
 - i. the claimant’s description of the injury;
 - ii. the duration of any adverse consequences;
 - iii. the effect on past, current and future work; and
 - iv. the effect on personal life or quality of life (for which evidence from family members or friends may be helpful);
- d. the manner of discrimination can, in certain circumstances and if used with caution, provide a ‘benchmark’ for assessing the severity of the injury;
- e. it may validly be inferred that overt discrimination is more likely to cause distress and humiliation (because the victim has understood the motivation at the time to be discriminatory); and
- f. the existence of ridicule or exposure, e.g. where discrimination occurs in front of colleagues / others, may well cause greater harm.

EHRC guidance on supporting disabled workers with hybrid working (Sept 2024)

- a. focuses on the issue of hybrid working, i.e. combining ‘in-person’ and remote work;
- b. provides a range of practical tips, including how to conduct discussions about hybrid working (giving examples of conversation starters and follow up queries etc.) – with a view to promoting open and effective dialogue between employers and disabled employees, and facilitating the prompt implementation of any appropriate adjustments;
- c. covers both recruitment and employment;
- d. includes helpful case studies, which are likely to be of interest to employers and workers alike; and
- e. is intended to supplement existing EHRC guidance on workplace adjustments and pre-employment health questions

There is discussion around the concept of an ‘adjustment passport’ is also explained, noting that a formal system of recording adjustments which have been implemented for a disabled worker can be particularly useful where the worker changes managers or roles.

[Supporting disabled workers with hybrid working: Guidance for employers | EHRC](#)

ACAS guidance on reasonable adjustments for mental health (Jan 2025)

The focus of this guidance is on reasonable adjustments in the context of mental health. It discusses various issues which may arise in practice, including (a) adjustments to working hours/patterns, (b) changing roles and responsibilities, (c) reviewing working relationships and communication styles, (d) modifying the physical working environment (e.g. relocating a worker to a quieter area to reduce sensory demands), (e) applying policies in a flexible way, and (f) providing additional support. The guidance also provides practical tips on how to talk about reasonable adjustments for mental health, both from the perspective of the employer and a disabled worker.

There is information regarding neurodiversity in the paper.

The impact of the office environment

22% of neurodivergent applicants have declined a job offer due to certain features in offices compared to just 8% of neurotypical individuals.

15% of neurodivergent respondents have left a job due to the design of the workplace.

The biggest challenges are:

- Frequent distractions (35%)
- Anxiety in social situations (35%)
- Fatigue and burnout (34%)
- Brain fog (32%)
- Sensory overload (31%)

[Mental health adjustments - Reasonable adjustments at work - Acas](#)

Access to work scheme

The Access to work scheme provides funding to disabled people to provide practical support in the workplace. Anyone with a paid job (including employees, apprentices, the self-employed, interns and those on a work placement, trial or work experience) can obtain a grant to cover types of assistance that are outside of the scope of their employer's duty to make reasonable adjustments, for example, help getting to and from work, or support to enable working from home. The support is limited to a grant to reimburse the agreed cost of the support that is needed, rather than the provision of the support itself.

The [Access to work website](#) states that funding could cover:

- Adaptations to equipment.
- Special equipment or software.
- British Sign Language interpreters and video relay service support, lip speakers or note takers.
- Adaptations to the employee's vehicle so that they can get to work.
- Taxi fares to work or a support worker if the employee cannot use public transport.
- A support worker or job coach to help the employee in the workplace. The [DWP: Access to Work: staff guide](#) provides that the employer of a support worker could be either the individual in need of assistance or the employer (section 7, paragraph 5), or the support worker could be supplied via an agency (section 7, paragraph 61). Where a support worker will be attending the workplace, the employer should consider what measures it needs to put in place given the access the support worker will have to the workplace and other employees. This may involve, for example, seeking the support worker's agreement to comply with certain policies.
- Support with managing mental health at work, including a tailored plan to help an individual get or stay in work and one-to-one sessions with a mental health professional.
- Disability awareness training for the employee's colleagues.

The cost of moving the employee's equipment if they change location or job.

A few interesting points from an occupational health provider

- They have experienced a 400% increase in referrals to occupational health for neurodiverse issues.
- Risk assessments are not being done (e.g. stress at work)
- OH providers suggest late and badly worded referrals to OH are a problem!
- Employers do not appreciate that progress on reasonable adjustments can be slower than they want. Four weeks is not enough time but three months' is generally fine
- Multidisciplinary meetings are useful (manager, claimant, OH, HR)
- GP's aren't best placed to give advice on roles and activities.

Restructuring your business

Reorganisation and redundancy are processes that occur when a business needs to adjust its workforce due to changes in operations, such as cost-saving measures, operational efficiency improvements, or shifts in market conditions. Redundancy happens when a position is no longer needed due to a reduction in work or structural changes within the business which mean that a particular role, or roles, are required.

Employers must approach these processes carefully to avoid the risk of legal claims, including those related to unfair dismissal or discrimination. It is also critical to ensure employees are treated fairly, and their rights are respected throughout the process.

We have covered below the essential legal considerations for employers navigating reorganisation and redundancy, with a focus on consulting employees, employee entitlements, and how to reduce the risk of unfair dismissal claims.

Understanding Reorganisation and Redundancy

Reorganisation doesn't always lead to redundancy, especially when changes are made for operational reasons rather than financial necessity. However, in some cases, job cuts might be unavoidable.

Restructuring your business can involve changes to roles or the elimination of positions, especially when new technology makes certain jobs obsolete or when significant financial cuts, such as reducing payroll expenses, are required due to declining profitability.

Engaging Employees During the Process

Regardless of the reasons behind the restructuring, it is essential to engage with affected employees in a transparent and fair manner. Maintaining morale and managing employer reputation during this process can be challenging, particularly in times of uncertainty for both the business and the individual workers.

Before proceeding with redundancies, employers should explore alternatives, such as:

- Reducing or pausing overtime
- Halting new recruitment
- Laying off contractors or freelancers
- Implementing short-time working or temporary layoffs
- Offering voluntary redundancies

Voluntary redundancy can be a useful option to reduce costs without forcing layoffs, allowing employees to leave voluntarily, which may help alleviate stress and maintain morale.

Employees must be informed about their entitlements, including final pay, notice rights, and any other benefits they may be entitled to if they are made redundant. Additionally, employees should be updated on the restructuring plans and timelines to help them prepare and ease concerns.

Employee Redundancy Entitlements

Once an employee is selected for redundancy, various statutory or contractual entitlements may apply, including:

- Redundancy pay
- Notice period
- Reasonable time off to seek new employment

Redundancy Pay

Employees made redundant may be entitled to either statutory or contractual redundancy pay. For statutory redundancy pay, employees must have at least two years of continuous service.

Redundancy pay is calculated based on:

- 0.5 week's pay for each full year employed under 22 years old
- 1 week's pay for each full year employed between 22 and 40 years old
- 1.5 week's pay for each full year employed at 41 years old or older

The redundancy payment is capped at 20 years of service, with a maximum of £21,570 (from April 2025), based on maximum weekly pay of £719. Employers must provide a written statement explaining how the redundancy payment has been calculated. If an employee disputes the amount or it is not paid on time, they may take the matter to an employment tribunal.

Notice Period

Employees are entitled to a minimum statutory notice period, which can be extended by contractual agreement. The statutory notice period is based on the length of service:

- 1 week's notice for employees with between 1 month and 2 years of service
- 2 weeks' notice (plus 1 additional week for each year of service) for employees with 2 or more years of service, up to a maximum of 12 weeks

Failure to provide the correct notice or pay in lieu of notice can result in a claim for wrongful dismissal.

Reasonable Time Off to Seek Employment

Employees with two years of continuous service are entitled to reasonable time off to look for new work or attend job training during their notice period. However, employers are only required to pay up to 40% of one week's pay for this time off.

Avoiding Unfair Dismissal Claims

Redundancy is generally considered a fair reason for dismissal, provided the redundancy is genuine. Employees with at least two years of service are entitled to protection from unfair dismissal, which means a fair procedure must be followed.

A fair redundancy process typically includes:

- A fair selection process
- A fair consultation process
- Consideration of alternative employment options

Fair Redundancy Selection

When selecting employees for redundancy, employers must ensure that the selection process is fair and does not discriminate based on age, disability, sex, race, religion, or other protected characteristics.

Common selection criteria include:

- Skills, qualifications, and aptitude
- Work performance and standards
- Attendance and disciplinary records (while avoiding discrimination related to pregnancy, maternity, or disability-related absences)

Length of service may also be considered, but using a "last in, first out" method must be handled cautiously to avoid potential age discrimination claims.

Fair Consultation Process

A fair consultation process is crucial before making redundancy decisions. This process involves discussing proposed changes with employees or their representatives, providing business reasons for the changes, explaining the selection process, and exploring alternative options.

For large-scale redundancies (20 or more employees within 90 days), a collective consultation must also take place. The consultation period is 30 days before the first dismissal for 20-99 redundancies, and 45 days for 100 or more redundancies. Employers must also notify the Secretary of State using Form HR1.

At the end of the consultation, if no alternatives are agreed, employees should be formally notified of their redundancy, both face-to-face and in writing, explaining their final working day and the right to appeal.

Alternative Employment Options

If suitable alternative positions are available within the company, employees should be offered redeployment. The offer should be made unconditionally and in writing, with the new role starting within 4 weeks of the end of the original position.

Employees accepting a new role should be given a trial period of up to 4 weeks (or longer if agreed). If the new role is deemed unsuitable during the trial period, the employee retains their entitlement to redundancy pay.

If an employee refuses a suitable alternative job without a valid reason, they may forfeit their redundancy entitlement.

Haycocks v ADP RPO UK Ltd [2024] EWCA Civ 1291

In *Haycocks v ADP RPO UK Ltd*, the employer made the claimant redundant following a selection process involving scoring against criteria. The scoring exercise was conducted by the claimant's manager before the consultation period began, and the claimant received the lowest score. During the consultation period, the claimant was not provided with his scores or informed that the scoring had already occurred. After dismissal, the claimant appealed, and the appeal hearing considered his complaints about the scoring process, but the dismissal was maintained. The employment tribunal dismissed the claimant's claim of unfair dismissal. He appealed to the EAT which allowed the appeal based on its finding that there was an absence of proper consultation. The employer successfully appealed to the Court of Appeal. Allowing the appeal and restoring the decision of the employment tribunal dismissing the claimant's unfair dismissal claim, the Court of Appeal reasoned that:

- the EAT erred in holding that there is a requirement of 'general workforce consultation' in redundancy situations in non-unionised workplaces as a matter of good industrial relations practice
- the adequacy of consultation in redundancy situations must be assessed on a case-by-case basis in light of the broad statutory language, and the authorities do not support elevating general workforce consultation to a requirement
- the timing of the scoring exercise prior to commencing consultation, while bad practice, did not necessarily render the dismissal unfair if the employer was willing to redo the exercise based on feedback from the consultation
- any procedural unfairness in the initial dismissal decision could potentially be cured by a fair internal appeal process

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