EMPLOYMENT LAW UPDATE 2026

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Discrimination

Time Limits

New Six Month Time Limit

1. The time limit for bringing discrimination claims in the Employment Tribunal is set out at **Equality Act 2010**, **s. 123**. That section has been amended with effect from 1 October 2026 to increase the time limit from three to six months (see **Employment Rights Act 2025, Sch 12, Para 18** and **Employment Rights Act 2025 (Commencement No. 5 and Transitional Provisions) (Amendment) Regulations 2026** (SI 2026/954)).

2. The new limit only applies to acts which occur on or after 1 October 2026. Where a series of acts is relied upon, the last act has to occur on or after that date.

Continuing Acts

Mokhammad v General Medical Council and others [2026] EAT 79, [2026] IRLR 759.

3. M was issued with a warning by the Medical Practitioners' Tribunal on 25 January 2019 after an "incident in a car park". The warning was published on the GMC's website and stayed up until January 2021.

4. M lodged a claim on 18 February 2022 alleging discrimination. He complained both about being given the warning and about it remaining on the GMC's website. The claim was out of time on any basis and the tribunal had to consider whether it was just and equitable to extend time.

5. One factor in deciding whether justice and equity require that time be extended is the length of any delay. That, in turn, requires the tribunal to make a finding as to when the alleged act of discrimination occurred. The Act recognises that discriminatory conduct may "extend over a period". **S. 123(3)** provides as follows:

> "(3) For the purposes of this section—
>
> (a) conduct extending over a period is to be treated as done at the end of the period."

6. The EAT found that the tribunal had erred in not treating the continued presence of the warning on the website as conduct extending over a period. This is an example of a conundrum that has often arisen when applying this section: distinguishing between conduct which is continuing and conduct which has ceased but which has continuing consequences.

Protected Characteristics

Religion or Belief and Freedom of Expression

University of Bristol v Miller [2026] EAT 84, [2026] IRLR 736

7. This was a high-profile case concerning an academic sociologist and committed anti-Zionist who became involved in an escalating row in which he was accused by students (and others) of antisemitism and he himself accused the student Jewish society of being pawns. He was disciplined and ultimately dismissed.

8. M's belief consisted of an objection to: "exclusive realisation of Jewish rights to self-determination within a land that is home to a very substantial non-Jewish population".

9. The tribunal found that his anti-Zionist views were a protected belief; that he had manifested that belief; that, applying **Higgs**, the university's response had, in a number of respects, not been proportionate; and that, consequently, the manifestations (and thus his protected characteristic) had been part of the reason why he was disciplined and dismissed with the result that he had been the victim of direct discrimination.

10. The EAT agreed that M's anti-Zionism was a protected belief. It was political, but such beliefs could, in principle, be protected.

11. The EAT re-emphasised a number of other important factors arising out of a consideration of the familiar **Grainger** principles:

    * A belief does not need to amount to a full-fledged system of thought and it can relate to a single issue or cause.

    * To qualify, the belief does not need to be a "touchstone" to a person's life. It is sufficient if it "plays a significant part in [their] life".

    * The fact that the belief is based on science or research does not disqualify it.

    * Nor does the fact that a belief may change over a person's life disqualify it from protection.

* The “cogency” bar should not be set too high.

12. On the **Higgs** point, the University had an eye on trying to overturn the Court of Appeal’s decision but accepted (as it had to) that **Higgs** was binding on the EAT. However, the EAT upheld a finding that the protected belief itself was a substantial element of the University’s decision-making process, which meant that, on the face of it, it was not a **Higgs** manifestation case at all.

Ngole v Touchstone Leeds [2026] EAT 29, [2026] IRLR 387

13. The Respondent is a charity which provides mental health and well-being services. Its workforce is diverse. Roughly a third of its workforce are members of the LGBTQI+ community. Around a third identify as Christian. It has a “strong track record of specifically adapting and tailoring its services to the LGBTQI+ community”.

14. N is a Christian who believes that marriage should be between a man and a woman and that sex should only take place in that context. He had successfully sued the University of Sheffield when he had been removed from an MA course because of Facebook posts in which he had manifested his beliefs.

15. N was made a conditional offer for a role as a discharge mental health support worker. The condition was the provision of satisfactory references. Those provided were scanty. The respondent googled him and found reference to his past claims.

16. TL then withdrew the offer on the basis that his views were not “seemingly in alignment with [their] vision, values and ethos.”

17. N complained that it was being assumed he would not provide a safe and equitable service and offered to provide a further reference.

18. TL said it might consider were he to offer: “assurances that [his] role would not be compromised by [his] views, and [he] would be able to fully embrace and promote Touchstone's values and work respectfully with those [he] would come into contact with, including the promotion of homosexual rights.”

19. N responded that he would not discriminate against anyone on the basis of their sexual orientation but that he could not be asked to participate in the promotion of homosexual rights.

20. There was then a “difficult meeting”. TL took the view that there was a risk service users might not feel able to speak to him about issues they were facing regarding their sexuality or gender identity. They were also concerned that: “it could pose a significant risk to Touchstone's service users if they were to come across the comments you have made about homosexuality and gay marriage who could understandably find those comments upsetting and offensive.”

21. N complained that he had been treated less favourably by being made to attend the meeting; by having his job offer withdrawn; and by being subjected to a reverse burden of proof pursuant to which he had to prove to TL that he would not discriminate against others because of his religious beliefs.

22. The EAT gave guidance, derived from authority (principally the **Higgs** and **Page** decisions), on what questions a tribunal should ask itself in a case like this:

> "1. What is, or were, the reason, or reasons, for the treatment?
>
> 2. In respect of each reason:
>
> 2.1 Was it genuinely an objection to the manifestation of the belief rather than the holding of belief itself – if it was merely the holding of the belief the treatment cannot be justified
>
> 2.2 If the reason for the treatment was the manifestation of the belief, was there something objectionable or inappropriate in the manifestation of the belief – if not the treatment cannot be justified
>
> 2.3 If the reason for the treatment was something objectionable or inappropriate in the manifestation of the belief, was the treatment prescribed by law and proportionate – applying the Bank Mellat test – i.e.
>
> 2.3.1 whether the objective of the measure is sufficiently important to justify the limitation of a protected right
>
> 2.3.2 whether the measure is rationally connected to the objective
>
> 2.3.3 whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and
>
> 2.3.4 whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter."

23. The EAT also gave the following guidance: "Generally, there is nothing unlawful in an employer deciding that they wish to support the LGBTQI+ community and requiring that their employees comply with their policies designed to put that support into effect."

24. The EAT decided that the impact of being invited to the meeting was minor and that, in effect, seeking reassurances that the claimant would comply with the

requirements of his role was justified. It did not involve a reversal of the burden of proof. The ET was upheld on its reasoning.

25. However, another reason for being called to the meeting was concern that others would find his Facebook posts and be upset by them. The EAT remitted to the ET for it to consider whether that might potentially amount to discrimination on grounds of his beliefs directly rather than because of a manifestation of his beliefs, as it was likely finding out what his beliefs were that would be the cause of any upset.

26. Turning to the withdrawal of the job offer, that was for two reasons: concerns about how he would conduct his duties and concern about others finding his posts. The ET had failed to consider those matters separately as it should have done. Refusal to provide assurances in respect of his willingness to perform the whole role might itself be a manifestation of belief, albeit one that was potentially justifiable. However, the Tribunal had not properly considered the **Bank Mellat** factors (i.e. (1) whether the objective of the measure was sufficiently important to justify the limitation of a protected right; (2) whether the measure was rationally connected to the objective; (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applied against the importance of the objective, to the extent that the measure would contribute to its achievement, the former outweighed the latter). Nor had it separated out (again) the concerns about job performance from upset that might be experienced by people encountering his views online.

Direct Discrimination

Stereotyping

Jones v ViiV Healthcare UK Ltd and others [2026] EAT 24, [2026] IRLR 340

27. In order to succeed in a claim for direct discrimination a complainant must show that they have been treated less favourably because of their protected characteristic. Less favourable treatment may occur where, in dealing with an employee, an employer relies consciously or unconsciously on stereotypes.

28. Reliance on a stereotype may express itself through a double standard. A man may be dynamic whereas the same behaviour by a woman is characterised as “pushy”.

29. J was subject to complaints of “aggressive” behaviour and dismissed on the basis that the employment relationship had broken down. J, who was black, alleged that the use of the word “aggressive” in relation to her behaviour reflected a stereotype.

30. The EAT found that it is important for a tribunal to give a "careful and nuanced consideration to whether stereotyping – conscious or not - may have been at work" when considering a case where it is alleged that an employee's behaviour has given rise to a fundamental breakdown in working relationships. However, it went on to find that "the adjective 'aggressive' … is not inherently … in itself race-related or an overt racist or sexist slur" and that "there can be no generalised rule about the implications of its use for … [the] purposes [of deciding whether or not the burden of proof has reversed]".

31. Other terms which the tribunal (and EAT) had rejected as "smoking guns" indicating stereotyping were "direct approach", "being authoritative" and "pushing back".

Harassment

Third Party Sexual Harassment

32. In October 2024, **EA 2010**, **s. 40A** made employers liable where they "permit" employees (or applicants for employment) to be sexually harassed by third parties. A third party is someone who is not the employer or one of their employees. The employer is treated as permitting harassment where they failed to take "reasonable steps" to prevent it.

33. From **30 October 2026** the obligation is now to take **all** reasonable steps. **ERA 2025**, which introduced the change, also empowers the Secretary of State to specify what counts as a reasonable step. That provision (**s. 40B**) is not yet in force but is expected to come into force towards the back end of 2027.

Protected Disclosures and NDAs

34. From **6 April 2026** disclosures about sexual harassment are qualifying disclosures for the purposes of **ERA 1996**, **s. 43B**. One consequence of the addition of this protection is that **ERA 1996**, **s. 43J** is engaged. It voids any provision in so far as it "purports to preclude the worker from making any protected disclosure". Note, it covers workers and not just employees. It applies to "agreements to refrain from instituting or continuing proceedings" under **ERA 1996** or for breach of contract.

35. In related news, the new provisions introduced by the **Victims and Prisoners Act 2024**, which also restricted the ability of someone to secure and enforce an NDA where harassment amounted to a criminal offence, came into force on 1 October 2025 and are already headed for the bin as a result of the **Victims and Courts Act 2026**, which is remodelling the restriction to match those that are to apply in (September?) 2027 when new **ERA 1996**, **s. 202A** comes into force. The latter provision will void contractual provisions which purport to preclude a worker from making:

(1) An allegation of, or a disclosure of information relating to, "relevant harassment or discrimination"; or

(2) An allegation, or a disclosure of information, relating to the response of an employer of the worker to –

(a) relevant harassment or discrimination, or

(b) the making of an allegation or disclosure relating to relevant harassment or discrimination

"Relevant harassment or discrimination" is either where the:

(c) Conduct is by the worker's employer;

(d) Conduct is by another worker employed by the worker's employer or

(e) Victim or alleged victim is the worker;

(f) Victim is another worker employed by the worker's employer

Sexual Harassment and Consent

AB v GH Ltd [2026] EAT 115, [2026] IRLR 728

36. A and B were colleagues. After their work Christmas party, B helped A back to her hotel room. A was upset and B hugged her. A then initiated a more sexual encounter. A partially undressed and B touched her breast. However, B had a change of heart and left. A's initial position was that there was no issue because they had both been drunk. A subsequently came (incorrectly) to believe that B had been sober. From then on, she considered that she had been sexually harassed.

37. The Tribunal found that she had not been because the behaviour was not "unwanted" within the meaning of **EA 2010**, s**s. 26(1)(a)** and **(2)(a)**.

38. A complained that the ET had not properly considered consent and especially whether the fact that she was drunk meant that she could not validly give it.

39. The EAT stressed that "unwanted" means unwanted by the complainant. It is a subjective test. The statute does not speak of consent, but whether or not someone consented to particular conduct will usually be relevant to the question.

40. The two are not necessarily co-extensive. Griffiths J gives the example of a case where, because of a difference in seniority, a more junior employee consents to conduct that is, in truth, unwanted.

41. The giving of consent is also to be considered a relevant circumstance going to the question whether it was reasonable for the conduct to have the necessary harassing effect under **EA 2010**, **s. 26(4)**.

42. The EAT suggests caution over the EHRC Code of Practice suggestion (at Paragraph 7.8) that "the word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'", suggesting that it might be apt to confuse and that "unwanted" is a "plain, English word easily understood by everyone".

43. The ET had said that it did not need to decide whether A had had capacity for consent for the purposes of criminal law. A argued that it did in order properly to decide the "unwanted" issue. The EAT decided that the ET had properly considered consent issues; it did not need to get drawn into issues of criminal law.

44. The ET had also properly considered whether or not she had been too drunk for the conduct to have been wanted.

The Greatest Decision on Harassment Yet Made

Harkins v Marks and Spencer Plc [2026] EAT 131

45. H worked as a Visual Merchandising Team Manager. She was also a disabled person, her disabilities including anxiety disorder, depression and PTSD.

46. H had difficulty with the management aspects of her role in two ways. First, she struggled with dealing with the relationships themselves. However, she was also extremely concerned about catching Covid (her husband was vulnerable) and about the risk that working on the shopfloor (which her management role required) created.

47. At meetings with managers she was asked whether she wanted to give up that aspect of her job, which (along with other matters) she considered amounted to harassment.

48. The ET found against her and she appealed.

49. The EAT judgment sets out a reasonably comprehensive account of the law of harassment. It includes a number of useful propositions:

    * **EA 2010**, **s. 26** requires that the relevant conduct should be unwanted. That is a subjective question of fact. It does not matter at this stage whether the claimant is "over-sensitive".

    * "It is open to the Tribunal to conclude that conduct is unwanted whether or not the worker has ever objected to it, even where it has continued over a period. One of the reasons harassment is so insidious is that its victims often feel under pressure to grin and bear it, even to play up to it, as a self-

defensive measure. Harassment is all too easily disguised as "banter" and "I was only joking, can't you take a joke?" is a stock line in every bully's repertoire. That is not to say that a lack of objection or participation in an exchange of "banter" is irrelevant, but the relevance is limited to what light it shines upon the true subjective position of the worker."

* The alleged harasser does not need to appreciate that the conduct is unwelcome.

* Whether, as **s. 26** requires, the conduct relates to a protected characteristic is also a question of fact. It is a broader enquiry than whether the conduct is "because of" the protected characteristic.

* As to whether (in the absence of the purpose of the conduct being to harass) the conduct has the necessary "harassing effect":

> "The statutory language is pitched at a level that suggests that it is intended to cover what one might call "serious" cases. Having one's dignity violated smacks of something more than merely being embarrassed or being legitimately upset. Intimidating, hostile, degrading, humiliating and offensive are all terms that connote something more than discomfort even where it is genuine and understandable. The warning not to "cheapen" the significance of the words is an important one. Although Lord Justice Elias goes on to speak of excluding acts which are trivial and upsets which are minor, I do not read him as suggesting that those adjectives define the boundary of harassment. It is not enough to show that the act was more than trivial and the upset more than minor."

* In deciding whether the conduct created the harassing environment, the starting point is the subjective perception of the victim (**EA 2010**, **s. 26(4)(a)**).

* One must then look at whether in all the other circumstances it was reasonable for the conduct to have had that effect. Employees are expected to demonstrate a "reasonable robustness". What that requires may depend on the particular characteristics of the employee:

> > "in assessing what degree of robustness may be reasonably expected of an employee with a mental impairment, it will be important to bear that impairment in mind in making the assessment. An employee who is known by an employer to have, say, an anxiety disorder or PTSD, may require to be

dealt with in a manner which is characterised by a greater degree of sensitivity and care than an employee might typically require if a finding of harassment is to be avoided. What might be reasonably expected of them in terms of robustness is different. There must, however, be a limit. Some mental impairments may have the effect of making it significantly harder for an employee to view good faith attempts to engage with their performance as being anything other than unjustified persecution. It cannot have been the intention of the legislature to make it impossible for an employer to discuss performance concerns without committing an act of harassment. It follows that there is a balance to be struck in determining what is reasonable. An employee's vulnerability is a factor to be taken into account but equally the tribunal cannot find itself in a position where it is imposing unrealistic expectations upon employers."

* Management must be able to raise good faith concerns about performance with employees even where that might be said to relate to the employee's disability.

* "In interactions with colleagues, it is unlikely that mere reference to a worker's protected characteristic would ever give grounds for a finding that there had been conduct that could reasonably be considered to have a harassing effect. There would, ordinarily, need to be something more. If, for instance, a worker had made it clear that it was a matter that they were particularly sensitive about and would prefer was not referred to, or if the reference was disparaging or mocking, or if the colleague was otherwise inappropriately intrusive or insensitive."

Indirect Discrimination

Contract Workers and TUPE

Anne and others v Great Ormond Street Hospital for Children NHS Foundation Trust [2026] EAT 15, [2026] IRLR 354

50. GOSH pays its staff rates set by a collective agreement called "Agenda for Change" ("AfC"). However, it contracted out its cleaning needs to OCS who paid cleaners at a lower rate.

51. The group of cleaners were 78% BAME.

52. The cleaners were contract workers within the meaning of **EA 2010**, **s. 41**. That section protects contract workers against discrimination by the "principal" which, in this context, would have been GOSH.

53. The cleaners argued that GOSH discriminated against them by not compelling OCS to pay them at AfC rates. That argument was bound to fail because of the Court of Appeal decision in **Boohene v Royal Parks Limited** [2024] EWCA Civ 583. That case decided that unless the principal had directed the terms paid, they could not be sued.

54. GOSH then brought cleaners in-house. They transferred under **TUPE**. That meant that their existing terms and conditions were preserved and GOSH fell to be treated as if they were the original contracting party to the contracts of employment. The cleaners were still not paid at the AfC rate.

55. The cleaners brought indirect race discrimination claims. They alleged that the relevant PCP was, in essence, that in order to be paid at AfC rates you should not have been transferred into direct employment.

56. The tribunal simply copied across the decision it had reached in relation to the pre-transfer period. The EAT found that that was an error.

57. The tribunal had to ask itself whether the PCP put black employees at a particular disadvantage. The "pool" of employees that should be used to make that assessment was composed of those *directly* employed by GOSH.

58. Performing that comparison, whilst 78% of the cleaners were BAME, only 58% of the relevant band of employees generally were. That was a significant disparity.

59. The EAT goes on to say that there was no objective justification for not changing the cleaners' rate of pay from the day they were TUPE'd in.

Equal Pay

The meaning of work

Tesco Stores Limited v Element and others [2026] EWCA Civ 580, [2026] IRLR 564

60. The case arises out of the ongoing litigation against Tesco in which the predominantly female group of shopworkers are claiming that they should be paid equally to the overwhelmingly male group of employees who work in distribution centres ("DCs").

61. The store workers say that they are engaged in work of "equal value" to that done by the DC workers within the meaning of **EA 2010**, **s. 65(6)**. That requires a

comparative assessment. It is to be conducted by the tribunal with assistance from independent experts.

62. In order to enable the assessment to be made, the parties draw up (and should, in theory, agree) job descriptions. That process produced thousands of issues of fact about which the tribunal heard weeks of evidence. The tribunal then decided that since Tesco produced detailed training documents describing what they expected the employees to do, it would have been better to have started with them. It suggested that the jobs were "generic" and that individual differences in what employees did in practice might, to at least some extent, be put to one side.

63. Tesco were very unhappy with that approach. They took two major points. The first was that existing authority very clearly established that what was important was what employees do in reality and not what their contracts (or, indeed, training materials) suggest they must do. The second was that training materials could only be relied on if the employees could show that they had received the particular training.

64. The Court of Appeal rejected both arguments. On the question of what an employee's work was, the starting point was that employment is a work/wage bargain, so the work is what the employer requires should be done. If the employee is doing something different, that will only be work if it is clear that it is expressly or impliedly approved by the employer. The training materials were, therefore, a sensible starting point, particularly where those materials did, indeed, suggest that the roles were generic.

65. Since the training materials were evidence of what the employer required to be done, it did not matter whether the individual employees had received the training.

66. The Supreme Court has refused permission to appeal.

The Material Factor Defence

Next Retail Limited and another v Thandi and Others [2026] EAT

67. Where male and female workers are performing equal work but not receiving equal pay, an employer may avoid liability by establishing a "material factor defence" under **EA 2010**, **s. 69**:

> "(1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—

(a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and

(b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.

(2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's."

68. The essence of Next's position has been that it pays warehouse workers more because the "going rate" for that job is higher. The Claimants say that the going rate is higher because the going rate for jobs done principally by men always tends to be higher. In other words, Next says the market creates the difference and the workers say that the market is discriminatory.

69. The ET decided that the "market factor" relied on was not directly discriminatory (i.e. it did not offend **s. 69(1)(a)**) because there was no evidence that Next cared what sex dominated each group of employees. They were not consciously exploiting a market that they knew to be discriminatory.

70. However, the ET went on to hold that the policy of paying the market rate was indirectly discriminatory as it tended to result in lower pay for women. That then required justification. The justification defence failed in part because "saving money" was not itself a legitimate aim and because it would not explain the *difference* in pay since a less discriminatory alternative – raising store worker pay – was available and Next's profits meant it could well afford it.

71. The case of **Enderby v Frenchay Health Authority** C-127/92 established that "market forces" might amount to a material factor. In **Ratcliffe v North Yorkshire County Council** [1995] IRLR 439, a local authority had not been able to rely on the need to compete with private sector catering businesses as a defence where they paid their dinner ladies less than their comparators. It is generally understood to be an authority for the proposition that where a market is discriminatory, an employer may not be able to rely on market forces as a defence. In **Armstrong v Newcastle upon Tyne NHS Hospital Trust** [2006] IRLR 124, the Court of Appeal concluded that it was not enough for there to be discrimination in the markets; for a respondent to be liable (i.e. for the market forces defence to fail) they had to consciously exploit that discriminatory difference.

72. The EAT faced two neat arguments:

(1) Next said, in essence, "We're a business. We should not have to pay more for our labour than we have to." They relied on dicta in a case called

Heskett to the (simplified) effect that where an employer has reason to make a payment to one group but not to another, they are not obliged to pay them both.

(2) The workers said, in essence, an equal value claim only ever arises because the going rates differ. The legislation is intended to intervene in discriminatory markets. For the purposes of direct discrimination, the employer must demonstrate that the markets **do not** discriminate and, if they cannot do so, they are liable. Further, in respect of indirect discrimination, since it is the difference in pay that must be explained, the ET was right to say that if the employer can equalise it should.

73. The EAT found for Next and the workers would like to try to leapfrog an appeal to the Supreme Court.

Transfer of Undertakings

Economic Entities

Dr Bicknell v NHS Nottingham and Nottinghamshire Integrated Commissioning Board [2026] EWCA Civ 21, [2026] IRLR 367

74. The protection of workers on the transfer of an undertaking is founded in the **Transfer Directive** 77/187/EC. **Article 1(1)** applies to any "transfer of an undertaking, business, or part of an undertaking or business". It goes on to define "transfer" by reference to the transfer of an "economic entity".

75. An economic entity is an "organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary".

76. As to what counts as an economic activity, the Directive draws a distinction between economic activities and the "administrative functions" of a public administrative authority:

> "This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive". [**Article 1(1)(c)**]

77. The concepts used in the Directive are also used in EU Competition Law. In a case called **FENIN** C-205/03 the ECJ had considered whether purchasing goods and services on behalf of the Spanish National Health Service was an "economic

activity". The ECJ decided that the characteristic feature of economic activity "is the activity consisting in offering goods and services on a given market". Whether purchasing those goods and services was an economic activity depended on what the purchaser intended to do with them. If they are going to be used for a "public administrative" function, the activity is not an economic activity.

78. A UK authority, **Nicholls v Croydon London Borough Council** [2018] IRLR 988, [2019] ICR 542, applied **FENIN** to an employment situation. One had to look at the function performed by the entity and determine whether it was an economic activity or an "exercise of public powers".

79. Dr B needed to get round **Nicholls** and **FENIN** to establish that he had been TUPE'd.

80. The Court of Appeal rejected an argument that one could not read European Competition Law cases across to European Employment Law. Since both sets of laws dealt with regulating the internal market, there was no reason to give the same language different meanings in the two contexts.

81. Nor was **FENIN** wrongly decided.

82. It was true that domestic legislation could be more protective, but there was no indication that that was what Parliament had intended.

Part-time Workers

Augustine v Data Cars Ltd [2026] UKSC 30; [2026] IRLR 706

83. A was a private hire driver employed by DCL, a small business, in 2016.

84. DCL probably never regretted a decision as much as it did that one.

85. A worked fewer hours than typical full-time drivers (on average 34.8 hours a week). However, all drivers, full- or part-time, paid the same fixed weekly "circuit fee" of £148 to access the booking system, regardless of the hours that they worked.

86. The fixed fee meant that A took home less per hour of work. A claimed that this amounted to a breach of **Reg 5** of the **Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000** SI 2000/1551 which prohibits less favourable treatment in relation to contract terms (and other detriments) "on the ground that" the worker is a part-time worker.

87. The ET decided that A was not treated less favourably since everyone was treated the same way – they all had to pay the same fee. The EAT overturned that approach.

88. In the alternative, the tribunal decided that even if there was less favourable treatment, it was not "solely" because he was part-time; the fixed fee was how such firms earned revenue.

89. The Supreme Court has decided that the test is the same as that which applies in discrimination cases: it is sufficient if the protected characteristic consciously or subconsciously influenced the treatment. It does not need to be the sole cause.

90. It is a prompt not only for platform businesses to review their flat-rate charges, but also for employers more generally to review thresholds and benefits that do not adjust for hours worked. It is also important to bear in mind that treating different situations as if they are the same can amount to discrimination.

Unfair Dismissal

Reduction of the Qualifying Period of Employment

91. From **1 January 2027** an employee will be able to bring a claim of unfair dismissal if she has 6 months' continuous employment. It will apply to any dismissal where the effective date of termination is on or after that date.

Removal of the Cap on the Compensatory Award

92. New Year's Day 2027 will also mark the repeal of **ERA 1996**, **s. 124** and the removal of the cap on unfair dismissal compensation. May God have mercy upon us.

Time Limits

93. From **1 October 2026** the time limit for unfair dismissal claims has been extended to 6 months. The old time limit continues to apply to dismissals with an effective date of termination that falls on or before 30 September 2026.

New Automatic Unfairness Reasons

(1) Dismissal for Participation in Official Industrial Action

94. On 18 February 2026, **Trade Union and Labour Relations (Consolidation) Act 1992**, **s. 238A** was amended so that it is automatically unfair to dismiss an employee where the reason or principal reason for the dismissal was that he took protected industrial action. A series of other restrictions on the right (some of which related to the now-repealed minimum service level rules) have been removed.

(2) Dismissals relating to Spent Convictions

95. **ERA 2025 Sch 3 Para 1** adds a new reason for displacing the requirement for a minimum period of service: dismissal where the reason is that the employee had a spent conviction or that they had failed to disclose one.

96. The new reason will be inserted as **ERA 1996**, **s. 108(6)** and it cross-refers to the **Rehabilitation of Offenders Act 1974**, **s. 4(3)(b)**.

New Fire and Rehire Rules

97. We covered these in depth last year. ACAS suggest that they will come into force in January 2027.

98. Sometimes an employer decides that it wants to change an employee's terms and conditions. If it's a pay rise or other favourable variation that the employer has in mind, that is seldom a problem. Otherwise, changes have to be agreed by the employee.

99. The employee can give advance consent by agreeing that an employer should have (usually within narrow parameters) a power unilaterally to vary the contract. I refer to that as a unilateral variation clause.

100. Another form of advance consent is where the employee agrees that his contract will be varied by reference to an agreement negotiated by others. Many public sector employees have terms and conditions that incorporate terms agreed between their employer and one or more trade unions.

101. What happens if the employer has no power unilaterally to vary the contract of employment and the employee refuses to agree to a variation? As a matter of Contract Law the employer can give notice to terminate the contract. Once the contract has been brought to an end, the employer can either offer the employee's job to someone else on the desired terms (which I'll call "fire and replace") or to re-engage the employee ("fire and rehire"). Whilst not exactly popular with tribunals, there has long been a line of authority (see e.g. **Catamaran Cruisers** v **Williams** [1994] IRLR 386, EAT) which has established that an employee's refusal to agree changes to terms and conditions can amount to a "substantial reason" for dismissal.

102. The **Employment Rights Act 2025** aims to very significantly restrict (if not entirely eradicate) the practice. The Government has described fire and re-hire as a "scourge". The principal means of reform is a new **ERA 1996**, **s. 104I**.

103. There are three different types of case:

(1) Cases where the dismissal relates to a so-called "restricted variation" (**S. 104I**);

(2) Cases where the dismissal relates to a variation which is not restricted (**S. 104J**); and

(3) Cases where someone is made redundant so that they can be replaced with people who are not employees (**S. 104K**).

The first category is then sub-divided into cases involving local authorities and those that don't.

(1) **Cases involving "restricted variations"**

104. What is a "restricted variation"? The new **S. 104I(5)** sets out a list:

> "(a) a reduction of, or removal of an entitlement to, any sum payable to an employee in connection with the employment (but see subsection (6))[1];
>
> (b) where the amount of any sum payable to an employee in connection with the employment is determined by reference to a measure of the amount of work done by the employee (including a measure referable to results achieved by the employee), a variation of that measure;
>
> (c) a variation of any term or condition relating to pensions or pension schemes;
>
> (d) a variation of the number of hours which an employee is required to work;
>
> (e) a variation of the timing or duration of a shift which meets such conditions as may be specified in regulations made by the Secretary of State;
>
> (f) a reduction in the amount of time off which an employee is entitled to take;
>
> (g) a variation of a description specified in regulations made by the Secretary of State;
>
> (h) the inclusion in a contract of employment of a term enabling the employer to make any variation within any of the preceding paragraphs without the employee's agreement.

[1] Sub-section **104I (6)** allows the Secretary of State to make specific provision so as to exclude from sums treated as payable to the employee, expenses incurred by the employee (or some of them) and payments or benefits in kind (or some of them).

105. The intention appears to be to focus principally on adverse variations. Two restricted variations refer expressly to reduced entitlements: to pay (**ss. (5)(a)**) and time off (**ss. (5)(f)**).

106. Two more apply, more broadly, to variations without an express requirement that they should result in reduced entitlements: variations as to how piece rates or performance pay are assessed (**ss. (5)(b)**) and variations relating to pensions (**ss. (5)(c)**).

107. Variations to the timing and duration of shifts are restricted subject to conditions which are left to the Secretary of State to specify.

108. There is a catch-all which enables the Secretary of State to specify other variations as restricted (**ss. (5)(g)**) and an anti-avoidance provision which attempts to deal with employers getting round the need for consent by varying a contract to introduce an express contractual power to vary any of the matters which would otherwise be restricted without consent (**ss. (5)(h)**). It does not appear to strike down existing clauses though. Nor is it clear how clauses which incorporate variations by reference to, for instance, collective agreements will operate.

109. If the employer seeks to impose a restricted variation and the employee does not agree to it (or does not agree to a number of variations which include it), the employer may be tempted to dismiss.

110. The new **S. 104I** is intended (in line with the earlier version) to apply in two different cases:

    (1) Where the reason or principal reason for the dismissal is that the employee did not agree to the restricted variation (or to a group of variations which included it) (**S. 104I(2)**). Note again that this will apply in a classic fire and re-hire situation. However, it will also apply where the employer does not offer re-engagement on varied terms;

    (2) Where the reason or principal reason is that the employer wants to fire and rehire or fire and replace on varied terms including a restricted variation. There does not need to be any express refusal on the employee's part in that case.

111. In either case a dismissal for one of the newly-defined reasons will be *prima facie* unfair.

112. Why only *prima facie*? Over-simplifying, the new law may allow dismissals where the dismissal to introduce varied terms was essential.

113. The precise size and shape of the "loophole" depends on whether the employer is a local authority or not. A little confusingly, public sector employers who are not local authorities are dealt with alongside private sector employers in some provisions and local authorities in others.

114. Starting with private sector employers, a dismissal will not be automatically unfair where:

(1) the reason for the variation was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties which at the time of the dismissal were affecting, or were likely in the immediate future to affect, the employer's ability to carry on the business as a going concern[2] (**S. 104I(7)(a)(i)**); and

(2) in all the circumstances the employer could not reasonably have avoided the need to make the variation[3] (**S. 104I(7)(b)**).

115. The loophole is *very* small. Simplifying, there have to be financial difficulties which pose an immediate existential threat to the business. If that first threshold requirement is met, the Tribunal then considers whether the variation could have been avoided. Note that the reference is to *the* variation and not *a* variation. It is not a question, therefore, of the particular variation being in the range of reasonable responses to the crisis. If another variation, less advantageous to the employer but sufficient to obviate the crisis was available, the dismissal will be unfair. This will mean Tribunals delving deeper into business decision-making than they have ever done before.

116. If the employer succeeds in showing that the necessary financial crisis existed *and* that they could not reasonably have avoided making the variation, that will prevent the dismissal from being *automatically unfair* but will not make it fair. **S. 104I(10)** stipulates matters which the tribunal must take into account in deciding whether the dismissal was unfair:

"(a) any consultation carried out by the employer with the employee about varying the employee's contract of employment;

(b) if the employee is of a description in respect of which an independent trade union is recognised by the employer, any consultation carried out by the employer with that trade union;

(c) if the employee is not of a description in respect of which an independent trade union is recognised by the employer, any

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[2] In the Bill that went to the Lords, the provision also allowed for threats to the employer's ability "otherwise to carry on the activities constituting the business".

[3] **ERA 1996**, **s. 104I(4)**

consultation carried out by the employer with any other person representing the interests of the employee that, at the time of the dismissal, had authority to receive information and to be consulted about the dismissal on the employee's behalf;

(d) anything offered to the employee by the employer in return for agreeing to the variation;

(e) any matters specified for the purposes of this subsection in regulations made by the Secretary of State."

117. If you are a public sector body the rubric about financial difficulties is modified so that the loophole opens when the difficulties affect the financial sustainability of carrying out the employer's statutory functions (**S. 104I(7)(a)(ii)**).

118. As in private sector cases, it is necessary then to show that the employer could not reasonably have avoided the need to make the restricted variation.

119. The reasonable avoidance issue is to be tested by reference to the "same principles as would be applied by a court on an application for judicial review" (**S. 104I(9)**). Quite what the difference between the ordinary Employment Law approach and the judicial review standard is in practice will have to be worked out, but it suggests that there are some intensive training courses ahead for employment judges.

120. Local authorities have their own version of the loophole. Before the loophole can be deployed, there has to be a "relevant intervention order"[4] in place. The direction has to specify that at least one reason for the giving of the direction is that the local authority is "undergoing financial difficulties" and it must contain "provision relating to the financial management or financial governance of the authority" (**S. 104I(8)**).

121. If the intervention order threshold is passed, the local authority then has to show that "the reason for the restricted variation was to eliminate or significantly reduce, or significantly mitigate the effect of any of the financial difficulties" and that "in all the circumstances the authority could not reasonably have avoided the need to make the restricted variation".

122. Again, the local authority's case is tested against the public law standard (**S. 104I(9)**).

(2) **Cases that do not involve "restricted" variations**

[4] In England that is a direction under **Local Government Act 1999**, **s. 15(5)** or **(6)(a)**.

123. The provisions are not, ahem, restricted to restricted variations. It was open to the drafters to leave the existing law as it was given that variations that are not restricted are unlikely to be materially adverse[5].

124. The provision, **S. 104J**, is in materially the same form as **S. 104I**. It covers, first, dismissals for refusal to agree a variation (albeit one that is not a restricted variation) and, second, fire and re-hire or fire and replace on varied terms. However, the critically important difference is that the dismissal is not unfair merely because either reason was the reason for termination.

125. What the section does is specify what the Tribunal must take into account in assessing the **S. 98(4)** question (**S. 104J(5)**). They are the same factors as appear in **S. 104I(10)** (see Paragraph 116 above) save that "the reason for the variation" is added as an additional factor.

(3) **Redundancy: replacement of employees with people who are not employees**

126. The third category of case is not to do with variations at all. It concerns the practice of "fire and replace" where the replacement is not an employee.

127. An employee is unfairly dismissed if the reason for the dismissal is "to enable the employer to replace the employee with an individual who is not an employee of the employer" (**S. 104K(1)(b)**).

128. The section defines what is meant by replacement:

> "(2)(a) an employer replaces an employee with an individual who is not an employee of the employer if (and only if)—
>
> (i) the individual, or the individual taken together with one or more employees of the employer or other individuals, is to carry out activities, in pursuance of a relevant contract, for the purposes of the employer's business,
>
> (ii) those activities are the same, or substantially the same, activities as the employee, or the employee taken together with one or more other employees of the employer, carried out before being dismissed, and
>
> (iii) the employee's dismissal is not wholly or mainly attributable to the fact that the requirements of the employer's business for those activities to be carried out have ceased or diminished or are expected to cease or diminish."

[5] Given the breadth of the definition of "restricted variation".

129. Sub-paragraph (iii) marks the outer edge of liability: there is no unfair dismissal where the requirement for the activities formerly performed by the dismissed employee is expected to cease or diminish. This is, in effect, a narrower form of redundancy, focused on whether the need for particular activities, rather than for employees to perform them, is expected to cease or diminish, the latter being the formulation at **S. 139**.

130. The replacement, who can be the dismissed employee, stripped of their employee status (see **S. 104K(2)(b)**), must, whether alone or with others, carry out activities for the employer's business which are at least substantially the same as those carried out by the employee they replace.

131. The activities have to be carried out "in pursuance of a relevant contract". A relevant contract to which the employer is a party is a contract which is not an employment contract. The replacement does not need to be a party (**S. 104K(2)(c)**).

132. As with **S. 104I**, the employer can escape an automatic finding of unfair dismissal if the reason for replacement was the sort of financial difficulties described at paragraph 114 above. Materially identical provision is made in respect of public sector employers and local authorities as was made in **S. 104I**. The employer must also be able to show that they "could not reasonably have avoided the need to replace the employee".

133. Again, as with **S. 104I**, the provision identifies (at **S. 104K(6)**) the factors that should be taken into account when deciding whether or not the dismissal was unfair if the employer squeezes through the loophole. They are the same as those in **S. 104I** (see paragraph 116 above) save that the references to consultation relate to the proposed replacement and not a contractual variation and the factor about what the employer may have offered the employee to secure a variation also, naturally, falls away.

Defective Internal Appeals

Milrine v DHL Services Ltd [2026] EAT 31, [2026] IRLR 419

134. The President of the Employment Tribunals in England and Wales sitting in the EAT reminds tribunals that a defective appeal can render a dismissal unfair because fairness is assessed by reference to the whole process.

135. That holistic approach also means, of course, that a defective appeal will not always render a dismissal unfair.

Argence-Lafon v Ark Syndicate Management Ltd [2026] EWCA Civ 1039, [2026] IRLR 698

136. The holistic approach is stressed in this Court of Appeal case too. The appeal did not cure the defect in the original disciplinary hearing. The issue that the employer failed to deal with at the disciplinary stage was whether performance targets set were unrealistic. The appeal also failed to address that.

Unfair Dismissal and Freedom of Speech

Cherrington v University of Derby [2026] EAT 107, [2026] IRLR 773

137. An academic was summarily dismissed following complaints that he had used misogynistic, transphobic and ableist language.

138. At the disciplinary hearing the employer formed the view that he lacked insight into his wrongdoing and that they could not be confident that he would not do it again.

139. Before the tribunal the academic focused on what he considered to be the unfairness of the process but mentioned "freedom of speech" in passing.

140. He lost and on appeal argued that the tribunal should, on its own initiative, have considered whether his dismissal was inconsistent with **Art 10**.

141. The EAT decides that the tribunal is not obliged to consider **ECHR Art 10** simply because the conduct for which someone is dismissed is a form of speech.

142. Nor did the fact that he was a litigant in person mean the tribunal was obliged to embark on an investigation into such matters.

Right to be Accompanied

Wolfe v Taka Mayfair Ltd [2026] EAT 106, [2026] IRLR 669

143. **Employment Relations Act 1999**, **s. 10** confers a right on an employee to be accompanied at disciplinary and grievance hearings.

144. The EAT decided in this case that the right is dependent on the employee **asking** to be accompanied.

Contracts of Employment

Time Limits

145. While almost all time limits for tribunal cases were extended from 3 to 6 months on 1 October 2026, the time limit in Scotland for breach of contract claims was extended to 6 months from **9 November 2026**.

Contract Formation and Reasonable Notice

Kankanalapalli v Loesche Energy Systems Ltd [2026] EAT 49, [2026] IRLR 459

146. K was offered employment to begin on 1 November 2022.

147. The offer was "subject to receipt of satisfactory references, a right to work check and a successful six month probation period".

148. The offer did not specify a notice period.

149. K accepted the offer by email.

150. LESL agreed £3,000 relocation help and suggested he rent for 12 months.

151. K sent referee details and right to work documents.

152. However, in October 2022 the employer said the start was delayed, then withdrew the offer because a client contract had been delayed.

153. LESL never contacted K's referees.

154. The tribunal held there was no binding contract, because the reference and right to work conditions had not been met, and in the alternative that no notice was owed.

155. The EAT allowed the appeal and substituted its own decision: the claim for breach of contract succeeded and the employer must pay three months' notice.

156. Whether a condition must be met before a contract exists (a "condition precedent") or allows an existing contract to be ended if not met (a "condition subsequent") depends on the wording and context. "Subject to" does not settle it. Here the conditions were conditions subsequent: the offer letter set out all key terms, a security pass and starter form were arranged, the reference form said employment "may be terminated" without satisfactory references, and the probation condition could only operate after starting. A contract existed.

157. With no agreed notice term, reasonable notice was implied, judged at the time the contract was made. Given the seniority of the role, relocation and other circumstances, three months was reasonable. Claims for holiday pay and the relocation payment failed because he never started.

158. If you want your conditions to be conditions precedent, SAY SO!

Contractual Force of Disciplinary Procedures

Dr MN v NHS Foundation Trust [2026] EWCA Civ 71, [2026] IRLR 440

159. Dr MN was an NHS consultant.

160. He was the subject of an investigation which was linked to Lucy Letby.

161. His contract said conduct and capability issues would be dealt with under procedures consistent with the national framework "Maintaining High Professional Standards in the Modern NHS". The trust's local policy, E27, was agreed with the Local Negotiating Committee.

162. E27 required that in cases involving consultants, the trust's Medical Director would act as the "Case Manager". The Medical Director delegated the responsibility.

163. The Court of Appeal found the terms of E27 were "apt for incorporation" into Dr MN's contract and that the delegation was a breach of contract.

164. The language was "clear and mandatory". It was said that the Medical Director "will act" as case manager.

165. There was an implied exception allowing delegation for reasons such as a conflict of interest or illness, but none applied.

166. Time to review policies! Make sure that if exceptions are not built in, they are followed to the letter.

Gross Misconduct

XX v YY [2026] EAT 89, [2026] IRLR 649

167. XX was an assistant head teacher who sent a message of a sexual nature to someone she understood to be a boy under 18.

168. XX should have reported the message under the school's safeguarding procedures but did not do so.

169. Her former partner reported it 18 months later and she was summarily dismissed on grounds of gross misconduct.

170. The tribunal dismissed her wrongful dismissal claim, declining to take into account that she had been in a coercive controlling relationship (to which her depression made her particularly susceptible) and that she had sent the message genuinely believing that if she did not do so her then partner would have harmed her and her children.

171. The EAT overturned the decision. It emphasised that gross misconduct justifying dismissal without notice is conduct that so undermines the trust and confidence in the employment relationship that the employer should no longer have to keep the employee. Whilst that is judged objectively, the circumstances of the breach,

including pressure or duress, must be considered so far as they affect that objective assessment.

172. It is important to look at the whole context of the misconduct, including any pressure, coercion or duress the employee was under, and any decision should ideally record how it was weighed. Invocation of safeguarding does not automatically mean that mitigation is irrelevant.

Young v Royal Mail Group Ltd [2026] EAT 93, [2026] IRLR 654

173. Whilst on strike as a Royal Mail delivery driver, Y posted two messages to a CWU WhatsApp group.

174. The first said "Fuck Royal Mail" and the second threatened, he said as a joke, to blow up the cars of those who did not join the strike.

175. Neither RML, nor the tribunal nor the EAT shared his sense of humour.

176. The EAT found that the messages did not amount to participation in the activities of a trade union for the purposes of **TULR(C)A 1992**.

PHI Entitlements

McMahon v AXA ICAS Ltd [2026] CSIH 19, [2026] IRLR 478

177. M was contractually entitled to receive PHI payments when incapacitated.

178. Notwithstanding that she worked for AXA they failed to put a PHI insurance policy in place. They were treated as self-insuring, and M was able to claim the sums she should have received as unlawful deductions from wages under **ERA 1996**, **s 13**.

179. M was dismissed for incapacity. She wanted to amend her claim to payments on an ongoing basis since the contract had promised she would be paid until recovery or age 65.

180. The tribunal decided that if M was no longer an employee there were no wages from which unauthorised deductions could be made.

181. The Court of Session Inner House held that PHI payments are not wages for work done but they fall within the wider definition of "wages" in section 27 of the **ERA 1996**.

182. Since incapacity was a condition of the benefit, it made little sense for incapacity alone to end it. The Court saw force in treating the PHI obligation as "collateral" to the working relationship, so it survived dismissal.

183. Alternatively, it was impliedly agreed that AXA could not dismiss her to deprive her of the benefits, so that the attempted dismissal had no effect on the PHI obligation.

Incorporation of Collective Agreements

Crabb and others v TUI Airways Ltd [2026] EWCA Civ 988, [2026] IRLR 689

184. Pilots had contracts of employment which expressly incorporated a collective agreement between TUI and BALPA. It also included a PHI scheme.

185. TUI and BALPA agreed to replace the PHI scheme with a less generous arrangement which disadvantaged pilots who were already receiving benefits.

186. The Court of Appeal finds that the contract incorporated subsequent TUI?BALPA agreements even if they were unfavourable. This was not a case like **Tesco v USDAW** where an employer was trying to make changes unilaterally.

Redundancy

Increase in the Protective Award

187. From **6 April 2026** the maximum protective award payable where an employer fails to comply with the collective consultation obligation imposed by **TULR(C)A 1992**, **s. 188** is increased from 90 to 180 days' pay.

Restraint of Trade

Indentured Servitude

Geeks Ltd v Watts [2026] EWCA Civ, [2026] IRLR 680

188. IT companies often employee recent graduates on contracts in which they are provided with training, but then in debt to the company for the cost of the training.

189. The clause in this case was of a familiar kind: the employee could work off the debt but if they left before they'd completed 12 months service they had to pay back what was still owed in monthly instalments.

190. These contacts have proven diffiuclt to challenge because the companies usually waive the debt when court proceedings loom. However, in this case they sued an employee in the County Court and won.

191. Their luck ran out in Court of Appeal. The court said when deciding whether a clause was in unlawful restraint of trade one had to look at the practical effect of the clause and not its form.

192. That meant asking, first, whether the term was intended to protect a legitimate interest. The Court assumed that it would help maintain a stable, trained workforce.

193. The second stage is to ask whether the clause goes further than is reasonably necessary to protect that interest. The Court decided that it did. It applied when the relationship terminated for any reason other than redundancy. It had the effect of turning a low-paid employee into an unpaid intern with a debt to repay.

194. G Ltd has sought permission to appeal to the Supreme Court.

Tribunal Practice and Procedure

Strike out

Boateng v Moss Bros Group Ltd [2026] EAT 50, [2026] IRLR 470

195. A genuinely extraordinary case in which a claim was struck out because a fair trial was no longer possible as during a long period of delay, 22 of the Respondent's witnesses had left its employment.

196. There was no suggestion that the delay was the claimant's fault.

Employment Rights Act 2025 Dashboard

197. Set out below are other provisions of the **ERA 2025** which are already in force or which are due to come into force in the next couple of months.

Date in Force	**Right**
18 Dec 2025	Minimum service levels for strikes removed.
18 Feb 2026	Period of notice of industrial action reduced from 14 days to 10 Industrial action mandates last 12 months not 6 Industrial action and ballot notices simplified Public Sector action can be approved on a majority vote – no need for a minimum of 40% support amongst workforce
6 Apr 2026	Paternity Leave is a day one right. Ordinary (or "unpaid") parental leave is a day one right. Paternity Leave can now be taken after Shared Parental Leave.
6 Apr 2026	Statutory sick pay waiting days removed so sick pay now payable from the first day of illness. Lower Earnings Limit is removed.
6 Apr 2026	Employers can publish voluntary equality action plans dealing with gender equality and menopause support.

6 Apr 2026	Trade union recognition requirements simplified. Likely majority support does not need to be demonstrated at the date of application. The ballot does not require a minimum of 40% support in the bargaining group.
7 Apr 2026	Fair Work Agency established. The Chair is Matthew Taylor CBE.
25 Aug 2026	Stike ballots: Electronic and workplace voting permitted in specified circumstances.
30 October 2026	New rules on Union right of access to the workplace.
Dec 2026	New regulations to introduce higher standards for health and safety, pay, job security and rest breaks for seafarers (
1 Jan 2027	Employers to have a duty to inform workers that they have a right to join a trade union.
1 Jan 2027	Tips: Consultation required with workers or their representatives when a written tips policy is prepared or revised, and periodic review of that policy.