Employment Bulletin

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Quick links

One Bunhill Row
London EC1Y 8YY
United Kingdom
T: +44 (0)20 7600 1200

Government proposals for reform of equal pay

The Government is consulting until 27 October 2026 on a widespread revamp of equal pay and pay discrimination law. The proposals outlined in the consultation would, if implemented, have a significant impact on the ability of employees to make claims and on the enforcement of successful claims. There are no timelines, except that the proposals are to be implemented in two phases: improvements to the current regime, followed by additional protection against race and disability pay discrimination.

The proposed measures under phase 1 concentrate on pay transparency and enforcement and include:

- Requiring employers to publish pay information (and possibly other financial benefits) in job adverts or, where there is no advert, in writing before interview. Regulations will specify exact requirements, such as pay ranges.
- Reintroducing the statutory questionnaire procedure, for pay discrimination disputes only. As before, a tribunal would be able to draw inferences from a failure to answer within a set time or an evasive or equivocal answer.
- Strengthening the requirement for tribunals to order equal pay audits and job evaluation schemes where there has been an equal pay breach.
- A new Equal Pay Regulatory and Enforcement Unit, with powers to require the disclosure of evidence before a formal investigation, to impose a job evaluation scheme and/or equal pay audit to establish whether pay discrimination has occurred, and to oblige employers to respond to, and provide updates on, recommendations.

Phase 2, which will not start until the phase 1 reforms are in place, involves:

- Making the Equality Act 2010 protections against race and disability pay discrimination broadly equivalent to protection under the equal pay regime. Measures could include allowing claims where work is rated as equivalent or of equal value (rather than materially similar) and the use of hypothetical comparators in certain scenarios (such as comparison with a successor).
- Requiring all contracting parties in outsourcing arrangements (principals, intermediaries and service providers) to take "all reasonable steps" to uphold pay equality, to ensure that no worker receives less favourable terms, on grounds of sex, race or disability, than another doing equal work. By way of example, for an employer with around 100 employees, reasonable steps could include requesting pay and demographic data from other parties in the supply chain. The Equal Pay Regulatory and Enforcement Unit would be responsible for enforcement.

Direct pay offer to union members was unlawful inducement

Summary: The Employment Appeal Tribunal (EAT) has confirmed that an employer breached the unlawful inducements provisions of section 145B of the Trade Union and Labour Relations (Consolidation) Act 1992 by making a direct pay offer to trade union members before the collective bargaining process had been exhausted. The EAT found that there was a realistic chance that the parties would have agreed terms through collective bargaining: *London North Eastern Railway Ltd v Jiwanji*.

Key practice point: To reduce the risk of unlawful inducement claims, employers should ensure that collective bargaining arrangements identify clearly when negotiations will be regarded as exhausted. If this stage is reached, the reasons why the employer believed that the collective bargaining process had been exhausted should be recorded contemporaneously.

Background: Section 145B Trade Union and Labour Relations (Consolidation) Act 1992 prohibits any offer to a member of a recognised union, which, if accepted, would mean that all or any of their terms of employment would not be determined by collective agreement, and the employer's sole or main purpose in making the offer was to achieve that result.

Facts: The employer conducted pay negotiations with three recognised trade unions under the terms of a collective bargaining agreement. One of the unions (RMT) rejected a pay offer, following which the employer wrote to all the workforce announcing the pay award, saying it would be paid in December but that RMT members could opt out. The RMT successfully brought claims for breach of section 145B on behalf of over 1,000 members, with the Tribunal making an award of nearly £4,000 to each of the employees. The employers (successors to the employer that had made the offer) appealed.

Decision: The EAT dismissed the appeal and upheld the award. The conditions in section 145B were satisfied: the collective bargaining process had not been exhausted by the time that the offer was made and there was a realistic chance that the pay terms would have been collectively bargained.

The collective bargaining agreement did not contain any structured bargaining process or specify how it should be decided that collective bargaining was exhausted, saying only that it would occur once negotiations and discussions were concluded. The Tribunal had decided, on the facts, that there had been a real possibility of collective agreement and that the employer's purpose was that required by section 145B. The EAT took the view that the employer's business reasons for stopping collective bargaining (including wanting the pay award to take effect before Christmas) were irrelevant.

Revised Acas Code of Practice on disciplinary and grievance procedures

Acas has launched a consultation on a revised Code of Practice on disciplinary and grievance procedures, closing on 23 September. As a reminder, employment tribunals must take the Code into account if relevant and can adjust awards by up to 25 per cent for unreasonable failure to comply.

The draft Code contains substantial revisions, in particular to add content on informal resolution, including a new expectation for employers to state, when notifying a worker of a formal disciplinary meeting, what prior steps have been taken to resolve the matter informally (or, if none, the reason for that).

There is also a significant change in terminology. Instead of referring to "employee", the new draft version refers to "workers" in most cases. Acas considers it good practice to follow the Code in relation to both workers and employees, while acknowledging that the power for tribunals to adjust awards currently applies only to employees.

Other significant new additions to the draft Code include:

- A new section on mediation and facilitated conversations, with a suggestion that they could be considered for use in both formal and informal procedures.
- Clarification that suspensions should only be used in limited circumstances (to protect the investigation, the organisation, other staff or the person under investigation). The employer should communicate the decision to suspend in private, clearly explain the reason and that it is not disciplinary action, and set out next steps, a contact, and any support available.

- A reference to interaction with other regulatory regimes, with an acknowledgement that the guidance in the Code should be followed "to the extent reasonably practicable".
- Guidance on disability discrimination, with examples of adjustments that could be needed to ensure a fair process.
- New wording in the section on formal grievances, saying that workers should provide a short, clear written explanation of their concern and suggest how they would like it to be resolved. Employers should take the concern seriously and allow an opportunity to provide more information later if needed.
- A "good practice" encouragement for employers to provide training and support for managers.
- A reminder that an unreasonable refusal to postpone a disciplinary meeting (where a companion is unavailable, for example) may make a dismissal unfair and that it is good practice to consider allowing a worker to be accompanied even where the statutory right does not apply.

Non-dealing restriction on self-employed adviser was unreasonable and unenforceable by group company

Summary: The High Court decided that a 12-month non-solicitation restriction on a self-employed financial adviser was enforceable, but an additional 12-month non-dealing covenant was not. The Court also found that a group company which was not a party to the contracts imposing the covenant could not enforce it: *AFH Independent Financial Services Ltd v Baker*.

Key practice point: Three practical points for employers wishing to impose or enforce post termination restrictions emerge from this decision:

- It can be difficult to show that it is reasonable to have a non-dealing covenant in addition to a non-solicitation covenant. Although non-dealing covenants are more useful, because they have the advantage of avoiding any need to show solicitation, they are more restrictive and therefore enforceable in more limited circumstances.
- The fact that the individual is self-employed, with equal bargaining power, does not necessarily justify a greater restriction than in the case of an employee.
- Group companies cannot ordinarily enforce restrictive covenants in contracts with employees or workers. If the intention is to give group companies the benefit of post-termination restrictions, they should be party to the contract or enter into a separate deed of covenant with the individual.

Facts: The claimants were companies in a group providing retail financial advice. One of their group companies acquired a business and took on one of its employees (the defendant) as a self-employed adviser. The defendant entered into contracts with that company including a Deed of Restrictive Covenant containing 12-month post termination non-solicitation and non-dealing restrictions. When the defendant joined a competitor, the claimants alleged that she had breached the restrictions.

Decision: The High Court decided that the non-solicitation provision was reasonable and enforceable but a non-dealing restriction in addition was not justified. The evidence showed that advisers would typically meet clients once a year. The non-solicitation restriction provided the claimants with a 12-month period to introduce a new adviser and for that adviser to see all the clients while the defendant could not actively seek their custom. Preventing her from dealing with clients who of their own volition took steps to follow her went further than was reasonably necessary.

The Court also found that whilst the company was entitled to enforce the Deed of Restrictive Covenant as a contracting party, other group companies were not, despite a clause saying that the agreement was made for the benefit of each group company. Under the terms of the Contracts (Rights of Third Parties) Act 1999, third parties cannot enforce a contractual term against an employee or worker. The Court concluded that although the defendant was self-employed, she nonetheless had worker status (because she had undertaken to perform services personally for the company).

Summer round-up

During the holiday period there have been other developments of interest to employers:

FCA's rules on non-financial misconduct

The UK Financial Conduct Authority's new rules on non-financial misconduct came into force on 1 September 2026. The conduct rules mean that all Senior Managers and Certification Regime firms (not just banks) will have to consider the impact of "unwanted conduct" where it meets certain requirements. This briefing: Non-financial misconduct: five things we are thinking about for September 2026, prepared with our Financial Regulation colleagues, sets out practical points that firms, and their HR, Legal and Compliance teams, should be considering now.

Training costs clawback clause was unreasonable restraint of trade

Summary: The Court of Appeal decided that a provision in a trainee employee's contract of employment requiring him to repay training costs on termination was unenforceable because it went further than reasonably necessary to protect the employer's legitimate interest in maintaining a stable, trained workforce: *Geeks Ltd v Watts*.

Key practice point: Clawback clauses designed to recover costs from a departing employee, even if they are not triggered by the employee joining a competitor, can be viewed as indirectly restricting competition and subject to the same restraint of trade principles as post-termination restrictions, with the onus on the employer to show that provisions go no further than reasonably necessary. In this case, factors pointing to unreasonableness were that the employee did not have independent legal advice when signing the contract, the inequality of bargaining power, and the application of the clawback whatever the reasons for leaving (with the exception of redundancy).

Protection from discrimination applies even where part-time status is not the sole reason for less favourable treatment

Summary: The employer's imposition of a flat rate fee for access to its database on all its taxi drivers meant that the claimant, a part-time driver, would forgo a higher proportion of his earnings than a full-time comparator. The Supreme Court decided that this would be a breach of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (subject to an objective justification defence). Part-time working was an effective reason for the less favourable treatment; it did not need to be the sole cause: *Augustine v Data Cars Ltd*.

Key practice point: The decision resolves conflicting decisions on the Part-time Workers Regulations, confirming that it is sufficient for part-time status to be one of the reasons for the less favourable treatment and bringing causation under the Regulations into line with other discrimination strands. This decreases the likelihood that claims will fail on causation grounds; the focus is likely to be on whether the treatment can be justified, where the existence of other reasons for not applying a pro rata principle may be relevant.

Dismissal of employee who expressed beliefs on political Zionism was discriminatory

Summary: The Employment Appeal Tribunal confirmed that the gross misconduct dismissal of a University academic who expressed his beliefs on political Zionism was directly discriminatory. The political beliefs were protected under the Equality Act 2010, there was a sufficiently close and direct connection between those beliefs and the employee's non-objectionable manifestation of them, and the dismissal was disproportionate: *University of Bristol v Miller*.

Key practice point: Political beliefs can, in principle, be protected, even if they are controversial and/or relate to a single issue; the threshold for protection of philosophical beliefs is low. A key consideration for employers responding to allegedly inappropriate expressions of belief is to avoid a situation where something that might constitute a manifestation of a protected belief is a material factor in disciplinary action.

Horizon scanning

What key developments in employment should be on your radar?

Expected effective date	Development
1 October 2026	Extension of employer right to work checks to working arrangements other than under a contract of employment, under section 48 Border Security, Asylum and Immigration Act 2025
1 October 2026	ERA 2025: increase in employment tribunal time limits from three to six months
October 2026	ERA 2025: reinstatement of the two-tier code to ensure outsourced private sector employees are offered no less favourable terms and conditions to employees transferred from the public sector
30 October 2026	ERA 2025: further provisions in force, including employers required to take all reasonable steps to prevent sexual harassment of employees and employer liability for third party harassment; enhanced protections against industrial action detriment; further trade union measures (strengthening rights of access, employer duty to inform workers of right to join, enhanced protections for reps)
By end of 2026	ERA 2025: changes to tipping law
January 2027	ERA 2025: reduction of unfair dismissal qualifying period to six months for dismissals and removal of compensation cap, where the effective date of termination is on or after 1 January 2027; fire and rehire protections
2027	ERA 2025: new collective redundancy consultation threshold; certain NDAs to be unenforceable to the extent they prevent workers from making allegations or disclosures about workplace harassment or discrimination; mandatory gender pay gap action plans; right to guaranteed hours for zero hours and similar contracts; enhanced dismissal protections for pregnant women/new mothers; bereavement leave; changes to flexible working requests; electronic and workplace balloting (recognition and derecognition)
Uncertain	Mandatory ethnicity and disability pay gap reporting Requirement for employers to publish pay information in job adverts; reinstatement of statutory questionnaire procedure in pay discrimination cases; changes to enforcement of equal pay claims

We are also expecting important case law developments in the following key areas during the coming months:

Discrimination / equal pay: *Corby v Acas* (EAT: whether opposition to critical race theory was a protected belief); *Thandi v Next Retail Ltd* (EAT: whether there was a material factor defence to an equal pay claim by shop floor sales staff seeking to compare themselves with warehouse staff); *Lister v New College Swindon* (EAT: whether discrimination was due to objectionable manifestation of belief*); Bailey v Stonewall Equity Limited* (Supreme Court: whether a complaint by a third party caused or induced discrimination); *Peggie v Fife Health Board* (EAT: whether it was lawful to allow a trans woman to use a workplace female changing room); *Prähl v Lapinski* (Court of Appeal: whether the ET had international jurisdiction over non-UK domiciled respondents in Equality Act 2010 proceedings)

Employment contracts: *Gagliardi v Evolution Capital Management LLC* (Court of Appeal: whether employer was in breach of contract in failing to pay discretionary bonus)

Employment tribunals: *Afshar v Addison Lee Limited* (EAT: whether two-year backstop on unlawful deductions claims is unlawful)

Unfair dismissal: *Stobart v Zen Internet Ltd* (Court of Appeal: whether capability dismissal of senior executive was unfair; *Polkey* assessment of compensation)

Whistleblowing: *Wicked Vision v Rice* (Supreme Court: whether employer could be vicariously liable for whistleblowing dismissal detriment); *Bibescu v Clare Jenner Limited* (Court of Appeal: whether a whistleblower could have reasonable belief that a disclosure was in the public interest where the sole motive was to discredit a colleague).

Contact

Phil Linnard
Partner
T: +44 (0)20 7090 3961
E: Phil.Linnard@SlaughterandMay.com

Philippa O’Malley
Partner
T: +44 (0)20 7090 3796
E:Philippa.O'Malley@SlaughterandMay.com

David Rintoul
Senior Counsel
T: +44 (0)20 7090 3795
E: David.Rintoul@SlaughterandMay.com

Simon Clark
Senior Counsel
T: +44 (0)20 7090 5363
E: Simon.Clark@SlaughterandMay.com

Ian Brown
Senior Counsel and
Head of Incentives Knowledge
T: +44 (0)20 7090 3576
E:Ian.Brown@SlaughterandMay.com

Clare Fletcher
Knowledge Counsel
T: +44 (0)20 7090 5135
E: Clare.Fletcher@SlaughterandMay.com

Helena Davies
Knowledge Lawyer
T: +44 (0)20 7090 5140
E:Helena.Davies@SlaughterandMay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650