

EMPLOYMENT BULLETIN

QUICK LINKS

[Employment Rights Bill: latest news](#)

[Competition and Markets Authority guidance on competing for talent](#)

[Misconduct dismissal not unfair despite potential procedural shortcomings](#)

[Redeployment to alternative roles was not a reasonable adjustment](#)

[Bankers' bonus reform: Cutting the red tape](#)

[Horizon scanning](#)

EMPLOYMENT RIGHTS BILL: LATEST NEWS

The Employment Rights Bill, which we had thought might become law imminently, has been delayed by further debate in Parliament. The House of Lords has declined to withdraw all the amendments it proposed, and so the House of Commons will have to reconsider them. In particular, there is disagreement about the qualifying period for bringing an unfair dismissal claim. The original Government proposal was to remove the two-year qualifying period and make it a “day one” right (with an initial period of employment during which regulations can provide for a different test for unfair dismissal and set a lower compensation cap). However, the Lords has voted for an amendment to the Bill to set the qualifying period at six months and this will now be considered by the Commons.

Amendments are also proposed to the right to guaranteed hours offers for workers on zero and low-hours, and to keep the current requirement that there must be a turnout of at least 50% of those eligible to vote in a ballot for industrial action.

Meanwhile, the Government has issued consultation papers on some of the other measures in the Employment Rights Bill:

- **Enhanced dismissal protections for pregnant women and new mothers.** The Government has said that the Bill and regulations will make it unlawful to dismiss pregnant women, mothers on maternity leave, and mothers who return to work for at least a six-month period after return to work, except in specific circumstances. The [consultation](#), which closes on 15 January, asks for views on what those specific circumstances should be; in particular, whether the existing grounds for fair dismissal (conduct, capability, redundancy, statutory prohibition and “some other substantial reason”) should apply, or whether they should be narrowed or replaced by a new fairness test. The paper also asks when the enhanced protections should start and end and whether they should apply to those who have taken other types of extended family leave. The measures are not expected to be implemented before 2027.
- **Bereavement leave.** The Bill introduces a new day-one right to unpaid bereavement leave, including pregnancy loss before 24 weeks. The [consultation](#), also ending on 15 January, asks for views on the potential scope and practical details of the leave, which also has an implementation date of 2027.
- **Duty to inform workers of their right to join a trade union.** From October 2026, employers will have a duty to give workers a written statement of their right to join a trade union. The [consultation](#), closing on 18 December, asks about the content and provision of the statement and how often it must be reissued to existing workers.
- **Trade unions: workplace access.** The Bill will establish a new right for trade unions to access workplaces, taking effect in October 2026. The [consultation](#), which also closes on 18 December, explores the operational detail, including how trade unions will request and negotiate access agreements, the role of the Central Arbitration Committee in determining disputes, and fines for breaches of access agreements.

COMPETITION AND MARKETS AUTHORITY GUIDANCE ON COMPETING FOR TALENT

The Competition and Markets Authority (CMA) has recently published [guidance: *Competing for talent*](#), explaining to employers how competition law can apply when recruiting workers and setting pay and other terms and conditions. In broad terms, the Competition Act 1998 prohibits arrangements, including formal and informal agreements and information sharing, if those arrangements limit competition. This includes businesses coordinating on salaries, benefits or other terms and conditions of employment, or agreeing not to approach or hire each other's workers, regardless of whether the businesses compete for customers.

Sanctions for breach include heavy fines, director disqualification and criminal penalties. The guidance refers to the CMA's recent £4.2m fine on sports broadcasters and production companies for engaging in exchanges of competitively sensitive information relating to pay for freelance workers - the CMA's first antitrust infringement decision in respect of labour markets.

The guidance covers three types of anti-competitive behaviour in labour markets:

- **No-poaching agreements:** This includes agreements not to hire or poach each other's employees, or not to do so without the other employer's consent. The arrangements do not have to be mutual to be caught. However, the guidance notes that non-solicitation clauses in commercial contracts, such as secondment, consultancy or service agreements, may not infringe competition law if they are necessary, proportionate to the overall objectives of the agreement, and the clause's duration, subject matter and geographical scope do not go beyond what is reasonably required.
- **Wage-fixing:** This is when businesses agree to fix pay, benefits or other terms and conditions of employment, and includes for example agreeing the same wage increase rates or setting caps on pay.
- **Exchanging competitively sensitive information:** Exchanging information between businesses competing for workers can infringe competition law if it involves information that is "competitively sensitive": if it reduces uncertainty as to the operation of the market, and/or could influence the competitive strategy of other businesses. The guidance provides some high-level principles, accompanied by examples, as to when exchanges of information are likely to raise competition concerns. Decisions relating to hiring workers or setting pay or benefits, for example, will likely be caught. Even unilateral disclosures of competitively sensitive information can be unlawful; the recipient will be presumed to have taken the information into account and to have adapted its conduct accordingly, unless it publicly distances itself or reports the contact to the authorities.

Recommendations for avoiding a breach of competition law include providing training for staff involved in recruitment and remuneration, having good internal reporting processes relating to disclosures or receipt of information that could potentially be competitively sensitive, and ensuring that employees are aware of these processes.

Our colleagues in the Competition team have recently published a Horizon Scanning piece: [Navigating the new cartel enforcement landscape](#), which includes a section on enforcement in labour markets, looking at broader trends in employment-related collusion.

MISCONDUCT DISMISSAL NOT UNFAIR DESPITE POTENTIAL PROCEDURAL SHORTCOMINGS

Summary: The Employment Appeal Tribunal (EAT) confirmed that a misconduct dismissal in relation to the sending of emails was not unfair, despite the employee not being provided with transcripts of the investigation interviews and the use of a prepared script for the disciplinary hearing (*Alom v the FCA*).

Key practice point: The case illustrates two key points about misconduct disciplinary hearings - the employee must be provided with sufficient information to give them the opportunity to respond to the charges, and the employer needs to be careful not to prejudge the outcome. The facts were unusual - the employer was relying only on the content of an email; in the majority of misconduct cases the employer is likely to be relying on witness evidence and the employee will need to have seen that evidence. Employers should also ensure that those involved in disciplinary proceedings understand their respective roles; in particular, guidance given by HR to the decision-maker should be limited to law and procedure.

Facts: The claimant was dismissed for misconduct following a disciplinary hearing. The employer concluded that he had been the author of anonymous email to a colleague which was considered, in view of its content, to amount to harassment. A further email was found to have breached confidence in relation to the report of an unsuccessful complaint by him about the alleged conduct of the colleague. The claimant contended that the dismissal was unfair because he had not been provided with transcripts of the investigation interviews with the colleague, and also because the “script” prepared by a member of the HR team for the disciplinary hearing showed that the dismissing manager had prejudged the matter.

Decision: The Employment Tribunal and EAT rejected the claim. The failure to provide transcripts did not make the dismissal unfair. The disciplinary charges related only to the two emails, and the claimant had sufficient information to defend himself. Under the ACAS Code on Disciplinary and Grievance Procedures, which Employment Tribunals will take into account when considering the reasonableness of a dismissal, the employee should be provided with “sufficient” information about the alleged conduct to enable them to respond to the charges. Although the Code states that it would normally be appropriate to provide copies of written evidence, including any witness statements, in this case the allegation was that he had sent the email, and that, in view of its content, the sending of it in itself amounted to serious misconduct. As for the second email, he had been given a copy and was told how he was alleged to have breached confidence by sending it.

The EAT also found that the script did not show that the dismissing manager had prejudged the matter, even though it was arguable that some parts of the script suggested what view the manager should put forward. Previous case law has established that guidance given by HR to a dismissing officer should be limited to matters of law and procedure. However, overall, the script (which the EAT said was more of an agenda for the meeting, listing points for the manager to raise and consider) did not presume any particular outcome. Having heard the dismissing manager’s evidence, the Tribunal had accepted that the decision was his alone, and that he took into account the claimant’s representations when reaching it.

REDEPLOYMENT TO ALTERNATIVE ROLES WAS NOT A REASONABLE ADJUSTMENT

Summary: The Employment Appeal Tribunal (EAT) decided that reasonable adjustments for disability did not include redeployment to alternative roles, or postponing dismissal to allow further time to obtain a suitable alternative role (*Chowdhury v Network Rail Infrastructure Limited*).

Key practice point: The duty to make reasonable adjustments for an employee with a disability, under section 20 of the Equality Act 2010, is not confined to adjustments to the employee’s job to remove or reduce the disadvantage. It can extend to offering alternative employment, or a trial period in a different role. The employer may have to demonstrate that making alternative arrangements was not a reasonable step to take. Here, the employer had clear evidence to show that the employee’s proposals were not reasonable.

Facts: The claimant, a customer service assistant, suffered from an inflammatory condition and had long periods of absence. After a series of meetings, he was dismissed on grounds of capability. Prior to his dismissal, he had applied for three roles: stores co-ordinator, document controller and HR administrator. He claimed that his employer should have made various alternative adjustments:

1. Redeployment into one of the three roles for which he had applied, or other roles, or providing a trial period in an alternative role.
2. Asking colleagues working on the helpdesk to swap roles with him.
3. Postponing dismissal and giving him longer to find redeployment.

Decision: Both the Employment Tribunal and the EAT rejected the reasonable adjustments claim. The Tribunal had found that he did not have the required specialist knowledge, skills and experience for redeployment, and that training would not have been able to compensate. The essential criteria for appointment were also necessary for the trial period; the alternative employment was not suitable for someone who needed to obtain the relevant experience by doing the role itself. The second suggested adjustment was not reasonable because those who were allocated the helpdesk role either had been through an expression of interest process or had a contractual right to be allocated that work. In any event, it would not have been an effective adjustment because, given that helpdesk staff operated as cover for customer service assistant duties, it would not have relieved the claimant of the obligation to stand and walk for lengthy periods.

As to postponing dismissal, it was unclear both whether further delay would achieve anything and how long the employer would have to wait. The claimant had been off sick entirely or only fit to undertake sedentary duties (often on a part-time basis) for over a year, and there was no clear prognosis for recovery. He had not fully engaged with the redeployment scheme. There was a financial cost to employing someone indefinitely to do a job that was not required, and the employer had acted reasonably in concluding that it was an appropriate time to end the situation.

BANKERS' BONUS REFORM: CUTTING THE RED TAPE

Our Incentives and Financial Regulation colleagues have issued a [newsflash](#) on final proposals for significant relaxations to the rules governing remuneration for banks and designated investment firms. The proposals are intended to increase flexibility around senior banker pay and to link bonuses more closely with responsible risk-taking. If you would like to discuss any of the issues with us, please get in touch with your Employment and Incentives contact at Slaughter and May.

HORIZON SCANNING

What key developments in employment should be on your radar?

2025	Certain provisions of the Employment Rights Bill relating to trade unions and industrial action to come into force at or soon after Royal Assent
April 2026	Certain Employment Rights Bill provisions to come into force, including on the collective redundancy protective award, family leave, whistleblowing protections, Statutory Sick Pay, trade union recognition and workplace balloting
By June 2026	Data (Use and Access) Act 2025 in force: organisations required to have data protection complaints procedure
October 2026	Further Employment Rights Bill provisions to come into force, including on dismissal and re-engagement, protection from harassment, tribunal time limits, protections against industrial action detriment, trade unions (rights of access, employer duty to inform workers of right to join, protections for reps)
2027	Further Employment Rights Bill provisions to come into force, including on collective redundancy consultation threshold, protection from unfair dismissal as a Day One right, zero hours contracts, gender pay gap and menopause action plans, pregnancy rights, bereavement leave, flexible working
2027 or before	Employment Rights Bill: non-disclosure agreements to be unenforceable to the extent they prevent worker from making allegations or disclosures about workplace harassment or discrimination
Uncertain	• Publication of the Equality (Race and Disability) Bill, extending pay gap reporting to ethnicity and disability for employers with 250+ staff, extending equal pay rights to race and disability, and preventing outsourcing from being used to avoid equal pay • Extension of employer right to work checks to working arrangements other than under a contract of employment • Three-month limit on non-compete clauses in employment and worker contracts proposed by the previous government

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

Discrimination / equal pay: *Bailey v Stonewall Equality Limited* (Court of Appeal: whether third party had caused employer to discriminate); *Randall v Trent College Ltd* (EAT: whether worker's treatment was belief discrimination or was treatment because of objectionable manifestation of belief); *University of Bristol v Miller* (EAT: whether anti-Zionist beliefs were protected philosophical beliefs and summary dismissal was discriminatory); *Dobson v North Cumbria Integrated Care NHS Foundation Trust (No 2)* (EAT: whether dismissal for refusal to work at weekends because of childcare responsibilities was objectively justified and not discriminatory); *Corby v Acas* (EAT: whether opposition to critical race theory was a protected belief); *Ngole v Touchstone Leeds* (EAT: whether the withdrawal of a conditional job offer for a Christian mental health support worker because of Facebook posts was discriminatory); *Legge v Environment Agency* (EAT: whether employee discriminated against for not holding feminist belief); *Thandi v Next Retail Ltd* (EAT: whether there was

a general material factor defence to an equal pay claim by shop floor sales staff seeking to compare themselves with warehouse staff)

Employment status: *Groom v Maritime and Coastguard Agency* (Court of Appeal: whether volunteer could be worker in relation to remunerated activities)

Industrial relations: *Jiwanji v East Coast Main Line Company Ltd* (EAT: whether a pay offer directly to staff during collective negotiations was an unlawful inducement)

TUPE: *Bicknell v NHS Nottingham* (Court of Appeal: whether merger of NHS commissioning groups was a TUPE transfer)

Whistleblowing: *Rice v Wicked Vision Ltd* (Court of Appeal: whether an employer could be vicariously liable for the acts of a co-worker where the alleged detriment was a dismissal); *Barton Turns Development Ltd v Treadwell* (Court of Appeal: whether employer could be vicariously liable for whistleblowing detriment of dismissal).

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



- 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

Published to provide general information and not as legal advice. © Slaughter and May, 2025.
For further information, please speak to your usual Slaughter and May contact.

www.slaughterandmay.com

591860879