

Employment Bulletin

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Horizon scanning

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ERA 2025: upcoming changes to trade union law and employer duties on harassment

The end of this month sees significant changes made by the Employment Rights Act 2025 (ERA 2025). A new raft of trade union reforms will come into effect, increasing the visibility of unions and shifting the balance of power further away from employers. Employers will need new processes and strategies for union engagement. Our briefing: [Access and Accountability: the next phase of trade union reform](#) provides a run-down of what to expect in the following areas:

- Access agreements - a new process for access agreements between employers and unions will provide an opportunity for even unions with no members in that workplace to access it.
- Protection from detrimental treatment - new regulations will ban all detriments against individual workers by their employers for the sole or main purpose of penalising, preventing or deterring them from taking industrial action.
- It will be easier for trade union representatives to take time off for their duties.
- New restrictions on unfair practices will strengthen unions' positions in both recognition and derecognition procedures.

Also with effect from 30 October 2026, ERA 2025 establishes an enhanced preventative duty to take all reasonable steps to prevent sexual harassment, as well as (re)introducing liability for third-party harassment. Please see our briefing: [Raising the bar: strengthened sexual harassment duties for employers this October](#) for more on the significance of these changes.

One aspect of trade union reform, the **duty to provide workers with a written statement informing them of their right to join a trade union**, has been delayed until January 2027, but the Government has confirmed the details. It will publish a standardised statement, which cannot be amended except to add specific workplace information. The statement must be delivered directly to new workers at the same time as the written statement of employment particulars. For existing workers, the statement can be given directly (annually by 5 April, with the first one due in April 2027) or indirectly (provided it remains reasonably accessible, workers are told of its location and informed directly if the location changes). Employers will have to issue an annual reminder that the statement is available and where to find it. Where a union changes, the statement will have to be reissued within one month.

New time limits for employment tribunal claims

The Employment Rights Act 2025 has extended the time limits for employment tribunal claims from three to six months (less one day), where the date of act, omission or dismissal to which claim relates occurred on or after 1 October 2026. We have updated our [Employment Rates and Limits](#) document to reflect this change. (The document also summarises statutory rates of payment, limits on compensation and qualifying service requirements for the main types of employment claim, as well as the collective consultation timeframes.)

Aspects of the time limits regime can lead to further significant delay before employers become aware of claims, making preservation of documents and gathering of witness evidence at an early stage even more important. First, for most employment tribunal claims, employees must go through ACAS Early Conciliation before they can make a claim. The effect is to “stop the clock” on the statutory time limit for bringing a claim. In December last year, the ACAS Early Conciliation period was extended from six to 12 weeks. Secondly, if there is continuing discrimination, time only begins to run when the last act is completed. This may not always be obvious. In a recent case, the Employment Appeal Tribunal decided that the act of suspending an employee, pending a disciplinary investigation, was a continuing act for the purposes of the time limits for a whistleblowing detriment claim. This meant that time did not begin to run until the employee was dismissed, six weeks after the suspension.

ERA 2025: more details on flexible working requests and bereavement leave

The Government has published responses to consultation on two parts of ERA 2025: changes to the procedure for making flexible working requests (taking effect in Autumn 2027) and the expansion of statutory bereavement leave (from April 2027).

On **flexible working requests**, the Government has confirmed the process for the new duty to consult with the employee before refusing a request:

- The employee must be given fair and reasonable notice of the meeting and informed about its purpose.
- The meeting must be undertaken by the employer “*with the view to reaching an agreement with the employee*”. The employer must clearly communicate any challenges they identify with the request and consider potential solutions or mitigations with the employee. If the original request cannot be accommodated, the employer and employee must consider whether there are feasible alternative arrangements.
- After the meeting, the employer must provide written notification of the outcome of the meeting (a summary of conclusions or next steps agreed) and their final decision.

Acas is currently [consulting](#), until 17 December 2026, on a draft updated [statutory Code of Practice](#) (which tribunals must take into account where relevant) to reflect the new duty to consult. The draft Code expands on the Government’s official response. For example, despite the Government confirming that it is no longer pursuing its proposal to require a “decision maker” to attend the consultation meeting, the draft Code says that this should happen “wherever possible”.

There is a new section in the Code covering the new requirement from ERA 2025 that employers will only be able to refuse a request where it is reasonable to do so (for one or more of the statutory business reasons) and will have to explain why they consider the refusal reasonable. Acas says that employers should use evidence (such as workforce data, comparable situations in the organisation or elsewhere and risk assessments) and consider reasonable changes to manage the impact of the business reasons that may apply (such as adjusting work distribution or patterns, using technology to support different working arrangements, and examining whether costs are one-off or ongoing). Employers should be transparent in explaining the process to the employee and justifying why the impact is significant enough to refuse the request. Examples of how employers can act transparently and consistently include having a written flexible working policy, consulting with employees and allowing reasonable requests to be accompanied at meetings.

Other additions to the Code include a section on multiple requests, where Acas accepts that employers may need to consider the combined effect of flexible working requests, but they must still assess each case on its merits, and a reminder

of the interaction between flexible working requests and the duty to make reasonable adjustments for employees with a disability.

The Government has also confirmed details of the new day-one right to (unpaid) **bereavement leave**, which extends the right to leave beyond the existing entitlement (currently limited to parents whose child under 18 has died or who experience a stillbirth after 24 weeks of pregnancy).

Key elements, to be set out in secondary legislation expected to take effect in April 2027, will include:

- Leave will be available to employees who experience a bereavement of their spouse, partner, parents, adult children, siblings (biological, adopted, step and half), and equivalent parental relationships for those raised in kinship arrangements or by foster carers. For pregnancy loss before 24 weeks, leave will be available to the person who experienced the pregnancy loss, the other biological parent, partners, and intended parents in a surrogacy arrangement.
- Employees will be able to take up to two weeks of leave, based on their average working pattern. Leave will have to be taken within 56 weeks of the bereavement but can be taken in discontinuous single days. The leave period will start from the date of death or pregnancy loss, or the date of knowledge of the death/loss.
- During the first eight weeks of the bereavement, notice must be given before the first day of leave, or as soon as reasonably possible thereafter. One week's notice will be required for leave taken after the eight weeks. There will be no evidence requirements.

Employer had established defence to equal pay claim by retail staff

Summary: The Employment Appeal Tribunal (EAT) has decided that a retail employer had established a defence to an equal pay claim from the predominantly female retail staff who received a lower rate of pay than warehouse operatives. The aim of paying higher rates to warehouse staff included recruitment and retention factors which did not apply to the claimants and was a legitimate aim: *Next Retail Limited v Thandi*.

Key practice point: The decision contains helpful guidance on the factors that may be capable of constituting legitimate aims and justifying pay differences. However, it was clearly a fact sensitive decision (which the claimants have indicated that they intend to appeal). It is also worth noting that the EAT agreed that the claimants had shown sex disadvantage even though the statistics were not overwhelming. Warehouse staff were just under 53% male, but it was enough that the claimant group was over 77% female.

Background and facts: Under section 69 of the Equality Act 2010, an employer will have a defence to an equal pay claim if it can show that the difference in terms is because of a "material factor", reliance on which does not involve direct or unjustified indirect discrimination.

Retail sales staff (77.5% female) received lower basic hourly pay than warehouse operatives (52.78% male). The Employment Tribunal upheld equal pay claims by retail sales staff in respect of basic pay and some other terms, finding that the employer had failed to establish a material factor defence because the justification for differences in pay - market forces and the aims of viability, resilience and successful business performance - were not legitimate aims because the sole intention was to reduce costs. The employer appealed.

Decision: The EAT allowed the employer's appeal in relation to basic pay and some of the other payments; the Tribunal should have found that it had established a material factor defence. Setting pay rates based on market forces and recruitment and retention was an appropriate means of achieving the legitimate aims of viability, resilience and successful business performance, and the employer could not reduce the warehouse market rate without the risk of jeopardising the warehouse service. The aim was not just saving expense, and whether the employer could have afforded to increase the retail workers' pay was immaterial.

Individual employees can be personally liable for failure to make reasonable adjustments

Summary: The Employment Appeal Tribunal (EAT) has decided that a claim of a failure to make reasonable adjustments for a disability can be brought against individual employees as well as against the employer: *Merriman v 1st Staff Limited*.

Key practice point: Publicity around this case may lead to an increase in multiple respondents to discrimination claims, adding to the complexity, particularly where several people have been involved in the decision making. There could also be complications where the employer has a potential defence that they have taken “all reasonable steps” to prevent the discrimination, because employees may be liable for their actions even where the employer is able to rely successfully on the reasonable steps defence. The Employment Statutory Code of Practice, to which the EAT referred, gives an example of a manager being liable personally, while the employer’s action, in providing equality and diversity training (which the manager failed to attend), could be enough to meet the defence.

Facts: The claimant was engaged through an agency to work as a tutor for a student with special needs. She developed disabilities which made travel to the premises difficult and asked for reasonable adjustments to allow her to work remotely, or to provide her with alternative work. When her requests were turned down, she brought discrimination claims against the agency and four named employees of the agency, for failure to make reasonable adjustments. The Employment Tribunal allowed claims against the agency, but struck out claims against the individuals, finding that the obligation to make reasonable adjustments lay only with her employer. The claimant appealed.

Decision: The EAT allowed the appeal, ordering that the individuals should be added to the reasonable adjustments claim. Although the duty to make reasonable adjustments is imposed on an employer, a company can only act through its employees or agents. This means that when an employee is held to have committed an act of discrimination for which an employer is vicariously liable, then the employee is equally liable.

Horizon scanning

What key developments in employment should be on your radar?

Expected effective date	Development
30 October 2026	ERA 2025: further provisions in force, including requirement for employers 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, enhanced protections for representatives, new restrictions on unfair practices during recognition/derecognition)
By end of 2026	ERA 2025: changes to tipping law
1 January 2027	ERA 2025: employer duty to inform workers of right to join trade union
January 2027	ERA 2025: reduction of unfair dismissal qualifying period to six months and removal of compensation cap, where the effective date of termination is on or after 1 January 2027; fire and rehire protections
April 2027	ERA 2025: extension of statutory bereavement leave
Autumn 2027	ERA 2025: changes to procedure and reasonableness test for flexible working requests
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; electronic and workplace balloting (recognition and derecognition)
Uncertain	Mandatory ethnicity and disability pay gap reporting 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 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); *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).

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