

Employment Bulletin

July 2026

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A new wave of trade union-related changes under the Employment Rights Act 2025 (ERA 2025) is set to take effect in the next few weeks. Earlier this year, changes were made to the support threshold, mandate period and employer notices for industrial action, and the trade union recognition process was simplified. Dismissal for taking part in lawful industrial action which started on or after 18 February 2026 is now automatically unfair, regardless of when the dismissal takes place.

The Government has now [confirmed](#) the implementation of the new statutory right not to be subjected to any detrimental treatment for the purpose of preventing or deterring the worker from taking industrial action. The consultation had asked for views on whether there should be a list of specified prohibited detriments, but the Government has opted for a complete prohibition. The regulations implementing this, from 30 October 2026, will also confirm the existing position that the deduction of pay during strike action is permitted, making clear that this is not a detriment. Detriment claims for taking industrial action will be added to the list of claims for which an Employment Tribunal can increase an award by 25% for an unreasonable failure to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures. As with the extension of protection from dismissal, these new provisions increase the importance of a cautious approach when taking action against participating employees during or following strikes.

The Government has also confirmed further significant trade union developments:

- A new right of access for trade unions to request an “access to the workplace” agreement from employers (to meet, support, recruit or organise workers, or to facilitate collective bargaining) will come into effect on 30 October 2026.
- Trade unions will shortly (from August 2026) be able to conduct their statutory ballots using three new methods: electronic, hybrid (where voting materials are distributed by post, with members able to return their vote either by post or electronically) and, for industrial action ballots only, workplace voting. Postal voting remains as one of the options. The use of electronic and hybrid voting for recognition and derecognition ballots will follow in 2027.

Strategies for dealing with trade union access requests was one of the issues covered at our annual HR Spotlight webinar held on 18 June. The videos from the webinar, featuring senior members of our Employment team in conversation, are now available at: [HR Spotlight Webinar | Access sessions on demand](#). As well as trade union access, they cover the practical implications of ERA 2025 for unfair dismissal, employment contracts, redundancy, and harassment claims.

Please also see our [Employment Rights Act hub](#) for updates and insights on these and other aspects of ERA 2025.

Simplification of process for granting EMI options

Earlier this week, the Government announced a simplification of the administration of HMRC-approved Enterprise Management Incentive (EMI) options. Using these tax-efficient options, employees can be taxed at an effective rate of 18% on any growth in the value of the shares subject to the option from the time at which the options are granted (compared to an effective rate of 47% on a “normal”/ “tax-unapproved” option or award). Under this HMRC-approved regime, only smaller companies with gross assets of £120 million or less and fewer than 500 full-time employees can grant EMI options.

The Government has published an [HMRC policy paper](#) and draft legislation to go in the Finance Bill 2027, removing the requirement to notify HMRC within a short period after a company grants EMI options to its employees. Instead, reporting of the details of the grant of the EMI options will be through the existing EMI end of year return process. This change will apply to EMI share options granted on or after 6 April 2027.

Six-month non-compete restriction was too wide to be enforceable

Summary: The High Court dismissed a claim for an injunction to restrain a former sales manager from breaching a non-competition covenant that was expressed to apply for six months after termination of employment. The Court found that the covenant, which prevented the sales manager from being employed by a competitor in any capacity, was far wider than reasonably necessary to protect legitimate business interests in confidential information and customer connections and was therefore unenforceable as a restraint of trade: *Huws Gray Ltd v Gentleman*.

Key practice point: Non-compete covenants are regarded as the most restrictive form of restraint and therefore the most difficult to enforce; hence they should be drafted as narrowly as possible. It is always worth considering what in practice will be restricted by the wording of a covenant, whether the restraints can be justified and whether its scope could be defined in more precise and role-specific terms.

Facts: The defendant was employed by a nationwide builders merchant, as an area sales manager, with responsibility for customer relationships at three branches near Swindon. Shortly after he resigned, he started working as a sales representative for a direct competitor at its Swindon branch. The defendant’s employment contract contained a restriction preventing him, for six months after termination of employment, without the prior written consent of his employer, from becoming engaged, concerned or interested, directly or indirectly, in any competing business located within 20 miles of the branches for which he had responsibility in the six months prior to termination.

Non-solicitation and non-dealing covenants in the employment contract could not be relied on by the employer because some key terms were not defined in the contract, rendering them meaningless.

Decision: The Court held that the covenant was an unlawful restraint of trade and therefore unenforceable. The Court gave several reasons for its decision, including:

- The covenant had “extraordinary width”. It prevented the defendant from being employed by a competitor in any capacity. This was not confined to a sales position and could therefore extend to a finance or HR role. It protected “any business” of the employer regardless of whether the defendant had anything to do with that part of its business. Online retailers supplied DIY goods to customers within the restricted area; he could not be employed by them because those entities were competing for custom within that area.
- It was relevant that there was no non-compete provision for an assistant branch manager, who had much the same access to pricing information as the defendant and was far closer to branch prices.
- The defendant was entitled to only one week’s notice during a six-month probationary period. This meant that he could be bound by a six-month restriction even though he had been employed for only a very short period with little time to develop customer relationships.

- The fact that the defendant could compete if he obtained prior consent did not make the covenant any more reasonable because the employer had an absolute discretion to grant or refuse consent.
- The employer should have used non-solicitation and non-dealing covenants instead of the non-compete; they would have given adequate protection whilst being less potentially prejudicial to the defendant. Unfortunately, those covenants were ineffective.

Comment: We are still waiting to hear the Government's decision on proposals to restrict post-termination non-compete clauses in employment contracts. A consultation, which closed earlier this year, outlined three options: statutory limits on the length of non-compete clauses, banning non-compete clauses in employment contracts, or (what seems to be the favoured approach) a combination of a ban below a salary threshold and a statutory limit of three months for those earning above the threshold.

Pub not vicariously liable for actions of contractor's door staff

Summary: The Court of Appeal has confirmed that a pub was not vicariously liable for an assault on a customer carried out by two door supervisors, employees of a security company contracted to work for the pub. The security company was an independent contractor: *Burger v Risk Solutions BG Limited*.

Key practice point: This is helpful confirmation that, despite the expansion in recent years of employers' vicarious liability for employees to include relationships "akin to employment", there is unlikely to be vicarious liability for the actions of the employees of a genuine independent contractor. However, this is inevitably fact dependent, and a key point here was that the agreement between the pub and the contractor included a term that the contractor had sole responsibility for the direction, management and control of its employees and was required to have employers' liability insurance.

Facts: The claimant suffered serious injury when he was restrained by two door supervisors outside a pub. The door supervisors were employees of a company providing door security to the pub owners under a Security Services Agreement. The Recorder in the County Court held that the pub owner was vicariously liable for the actions of the door supervisors. The High Court overturned this decision, finding that the company was an independent contractor providing specialist services under a commercial arrangement, a relationship that did not satisfy the test for vicarious liability. The claimant appealed.

Decision: The Court of Appeal dismissed the appeal, confirming that the security company was a genuine independent contractor and therefore the pub owner was not vicariously liable for the actions of the contractor's employees. The company provided door supervisors for a range of pubs, not just those run by the owner in this case. The Security Services Agreement was entirely consistent with the company carrying on a business of its own with freedom to supply its services to other clients.

Comment: The judgment contains a note of caution. The Court's view was that a business can be vicariously liable for the actions of an employee of an independent contractor in some circumstances, where there has been a transfer of control and responsibility from the contractor. In a previous case with similar facts, a nightclub operator was found to be vicariously liable for an assault committed by a member of door staff employed by a contractor because it was his "temporary employer". Although this argument was not raised by the claimant in this case, the Court of Appeal did consider it, concluding that the pub owner had not become the "temporary deemed employer" of the door supervisors. The key distinction, in the Court's view, was that the degree to which the door supervisors on duty in the nightclub case were subject to the active control of the nightclub's senior management was considerably greater than the position in this case.

Horizon scanning

What key developments in employment should be on your radar?

Expected effective date	Development
August 2026	ERA 2025: electronic and workplace balloting (other than in respect of recognition and derecognition ballots)
1 September 2026	New rules and guidance on non-financial misconduct in financial services
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)
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
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: further provisions in force, including 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

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

Discrimination / equal pay: *University of Bristol v Miller* (EAT: whether anti-Zionist beliefs were protected philosophical beliefs and summary dismissal was discriminatory); *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); *Augustine v Data Cars Ltd* (Supreme Court: whether part-time status must be the sole reason for less favourable treatment); *Bailey v Stonewall Equity Limited* (Supreme Court: whether a complaint by a third party caused or induced discrimination)

Employment contracts: *Gagliardi v Evolution Capital Management LLC* (Court of Appeal: whether employer was in breach of contract in failing to pay discretionary bonus); *Crabb v TUI Airways Limited* (Court of Appeal: whether a collectively agreed change to PHI benefits was a breach of contract)

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)

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); *Argence-Lafon v Ark Syndicate Management Ltd* (Court of Appeal: whether employee was dismissed for making protected disclosures or because of subsequent behaviour); *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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