

EMPLOYMENT BULLETIN

QUICK LINKS

[Employment Rights Act 2025: new collective redundancy threshold](#)

[Employment Rights Act 2025: gender equality and menopause action plans](#)

[Whistleblowing disclosure could be protected despite personal motive](#)

[Assessing the employer's motives in religious belief discrimination cases](#)

[Listed companies issuing shares under a share plan: changes to announcement and process requirements](#)

[Horizon scanning](#)

EMPLOYMENT RIGHTS ACT 2025: NEW COLLECTIVE REDUNDANCY THRESHOLD

The Government has issued a [consultation](#) on section 29 of the Employment Rights Act 2025. From a date in 2027 yet to be announced, section 29 will change the threshold for collective consultation and notification obligations so that the obligations will apply where the employer is proposing to dismiss as redundant within a period of 90 days or less:

- 20 or more employees at one establishment (in line with the current law); or
- (the new organisation-wide threshold) at least a threshold number of employees across the employer's organisation.

The consultation is asking for views on the level at which the new alternative organisation-wide threshold should be set. The Government's preferred option is to use a single fixed number, between 250 and 1,000 proposed redundancies. Given that the obligations apply to all dismissals for a reason not related to the individual employee (and can therefore encompass restructuring exercises), it is encouraging that the Government says it wants to set the threshold at a suitably high level "*to avoid the largest employers being left in a constant state of consultation*". The consultation paper also considers other methods - a percentage of total employees, tiered thresholds using both fixed numbers and a percentage, and (the Government's second choice method), different fixed thresholds according to employer size.

The consultation closes on 21 May 2026; employers can respond [online](#). Meanwhile, the doubling of the maximum protective award for failure to comply with information and consultation obligations, from 90 to 180 days' actual pay, is set to take effect next month (April 2026).

EMPLOYMENT RIGHTS ACT 2025: GENDER EQUALITY AND MENOPAUSE ACTION PLANS

Section 33 of the Employment Rights Act 2025 gives the Government power to require large employers (250 or more employees) to develop and publish gender equality action plans. The action plans are being introduced on a voluntary basis starting next month (April 2026) and will become mandatory from Spring 2027.

From April 2026, employers with 250 or more employees will have the option to produce and publish a voluntary action plan alongside their gender pay gap data for the 2026-2027 reporting year. The Government is encouraging employers to use this voluntary year to practise before it becomes mandatory. Voluntary submissions will be published in the same way as gender pay gap data, so that the approach being taken by those employers who choose to publish their action plans will be publicly available.

The Government has issued overview [guidance](#) for employers, together with a [list of actions](#) on how to implement action plans. There are 18 recommended actions under five gender equality headings: recruiting staff, development and promotion, diversity, transparency and menopause. Employers producing an action plan must choose at least one action to address their gender pay gap and at least one action that supports employees experiencing

menopause. Guidance on the process for publishing will be published next month and there will be further guidance before action plans become mandatory.

The recommended actions, developed using expert insight and academic research, are specific:

- Recruiting staff: the six actions include making job descriptions inclusive (such as avoiding terms associated with male stereotypes and not asking for an explanation of CV gaps), encouraging applications from a range of candidates (by offering paid “returnships”, for example), and reducing unconscious bias in CV screening (using anonymised application forms and CV templates).
- For promotion and development, there are three actions, including considering all eligible employees for promotion automatically (taking steps to avoid any disadvantage from opting out).
- Building diversity has one action - setting targets to improve gender representation.
- The two actions in the transparency collection are increasing transparency for pay, promotion and rewards and enhancing and promoting flexible working and leave policies.

WHISTLEBLOWING DISCLOSURE COULD BE PROTECTED DESPITE PERSONAL MOTIVE

Summary: The Employment Appeal Tribunal (EAT) decided that a claimant in a whistleblowing detriment case could have a reasonable belief that her disclosures were made in the public interest, as required for protection under the Employment Rights Act 1996, even if her sole motive had been to discredit a colleague (*Bibescu v Clare Jenner Limited*).

Key practice point: This is a reminder that the public interest test is whether the worker subjectively believed at the time that the disclosure was in the public interest; and if so, whether that belief was objectively reasonable; it is not a question of what a reasonable worker would have believed. Even if the motive is to discredit a colleague, or some other self-interest, the whistleblower may still have the necessary belief. It is only if a disclosure is purely self-interested that it is likely to fail the public interest test. It is important, therefore, for the employer to be able to show (as here) that a dismissal was for a reason separable from the disclosure.

Facts: The claimant, an accountant, had less than two years’ service when she was dismissed. She brought claims for automatically unfair dismissal and whistleblowing detriment, based on reports she had made of her investigations about the qualifications of a sub-contractor who had reviewed her work after concerns had been raised about her performance.

The Employment Tribunal concluded that she made the disclosure in order to provide negative information about the sub-contractor and to query his status in the business, and it was not, as required by section 43B of the Employment Rights Act 1996, in her reasonable belief made in the public interest. The Tribunal also rejected the automatic unfair dismissal claim, concluding that the reason for the dismissal was her performance rather than the making of a protected disclosure. The claimant appealed.

Decision: The EAT allowed the appeal on whistleblowing detriment and the claim was sent back to be decided by another Tribunal. The Tribunal had failed to assess whether the claimant had a reasonable belief that the disclosure was in the public interest. It had focused exclusively on her motive rather than whether she genuinely believed that her disclosure was in the public interest.

However, the appeal in relation to automatically unfair dismissal was rejected. The Tribunal had correctly identified the main reason for the dismissal: a combination of her performance and inability to work with a sub-contractor.

ASSESSING THE EMPLOYER’S MOTIVES IN RELIGIOUS BELIEF DISCRIMINATION CASES

Summary: The Employment Appeal Tribunal (EAT) has given guidance on how to analyse whether the withdrawal of a job offer following discovery of the applicant’s views was discrimination because of a protected religious belief. The Employment Tribunal had to assess whether the employer’s actions were because of the expression of a belief, which would be direct discrimination, or because of the manifestation of that belief, which might be justified indirect discrimination (*Ngole v Touchstone Leeds*).

Key practice point: This decision illustrates the significance in religion or belief discrimination cases of establishing the precise reason for the employer's actions. In this case, had the employer's concerns been solely about the applicant's ability to carry out his role, they might have succeeded in establishing that their decision was a proportionate response to the manifestation of his beliefs. The problem was their expressed apprehension about how their clients might react to discovering his beliefs; the EAT thought that this was treatment because of his belief, and not capable of justification.

Facts: A job applicant received a conditional offer for a role at a charity, a substantial proportion of whose workforce and service users were from the LGBTQI+ community. Following difficulties obtaining references, the charity carried out an internet search and found historic Facebook posts by the applicant expressing his traditional Christian belief on homosexuality. The charity withdrew the offer and then arranged a further meeting, asking him to provide assurances that his role would not be compromised by his views. Following that meeting, the charity confirmed the withdrawal of the offer.

The Employment Tribunal found that the initial withdrawal of the offer amounted to direct religious belief discrimination, because the applicant had not been given the opportunity to provide the assurances sought by the charity, but it rejected the claims in relation to the requirement to attend a further meeting and the refusal to reinstate the offer. The applicant appealed.

Decision: The EAT sent the claim back to the Tribunal for decision because it had failed to analyse, for each alleged discriminatory act, why the charity had acted as it did. Previous cases have confirmed that the actions of an employer in response to an employee's manifestation of their protected beliefs may constitute unlawful discrimination unless they are a justified response to the manner of that manifestation.

The Tribunal had found that the main reason for the applicant being called to a second interview was the charity's concern that he might express his views inappropriately with service users and staff and not comply with the full requirements of the role. The EAT agreed that the charity was entitled to require commitment to, and promotion of, its equal opportunities and anti-discrimination policies. However, another reason for the second interview was that service users might find out about the posts. To the extent that the charity's decision was because of a concern that service users might have reacted badly to the fact that he held the religious beliefs, that would be treatment because of the belief and not capable of justification. Likewise, in relation to the decision not to reinstate the offer, the question was whether the reason for this could be separated from the holding of the belief; a concern that his beliefs were objectionable and upsetting to many people would not be enough.

LISTED COMPANIES ISSUING SHARES UNDER A SHARE PLAN: CHANGES TO ANNOUNCEMENT AND PROCESS REQUIREMENTS

As a result of changes to Financial Conduct Authority (FCA) Rules made on 19 January 2026, companies need to adjust their processes for issuing shares under a share plan. This [briefing](#) from colleagues in our Incentives and Corporate teams highlights the key points. The briefing was originally published on 16 February 2026. Since then, the FCA has published a statement about how its rules apply, and this updated briefing summarises the current position and what companies need to do.

HORIZON SCANNING

What key developments in employment should be on your radar?

| Effective Date | Developments |
|------------------------------|---|
| 6 April 2026 | ERA 2025: further provisions in force, including increase in maximum collective redundancy protective award; day-one statutory paternity leave and unpaid parental leave; Statutory Sick Pay (removal of Lower Earnings Limit and waiting period); establishment of Fair Work Agency (7 April); confirmation of sexual harassment whistleblowing protection; voluntary action plans on gender equality and menopause; simplification of trade union recognition process |
| 19 June 2026 | Data (Use and Access) Act 2025: organisations required to have data protection complaints process |
| August 2026 | ERA 2025: electronic and workplace balloting (for trade union ballots) in force |
| 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) |
| No earlier than 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 from 1 January 2027 and removal of compensation cap; fire and rehire protections |
| Spring 2027 | ERA 2025: gender pay gap and menopause action plans to become mandatory |
| 2027 or before | ERA 2025: NDAs to be unenforceable to the extent they prevent workers from making allegations or disclosures about workplace harassment or discrimination |
| 2027 | ERA 2025: further provisions in force, including new collective redundancy consultation threshold; zero hours workers - right to guaranteed hours; enhanced dismissal protections for pregnant women/new mothers; bereavement leave; changes to flexible working requests; electronic and workplace balloting (recognition and derecognition) |

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

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

Discrimination / equal pay: *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); *Corby v Acas* (EAT: whether opposition to critical race theory was a protected belief); *Legge v Environment Agency* (EAT: whether employee discriminated against for not holding feminist 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); *Augustine v Data Cars Ltd* (Supreme Court: whether part-time status must be the sole reason for less favourable treatment)

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).

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