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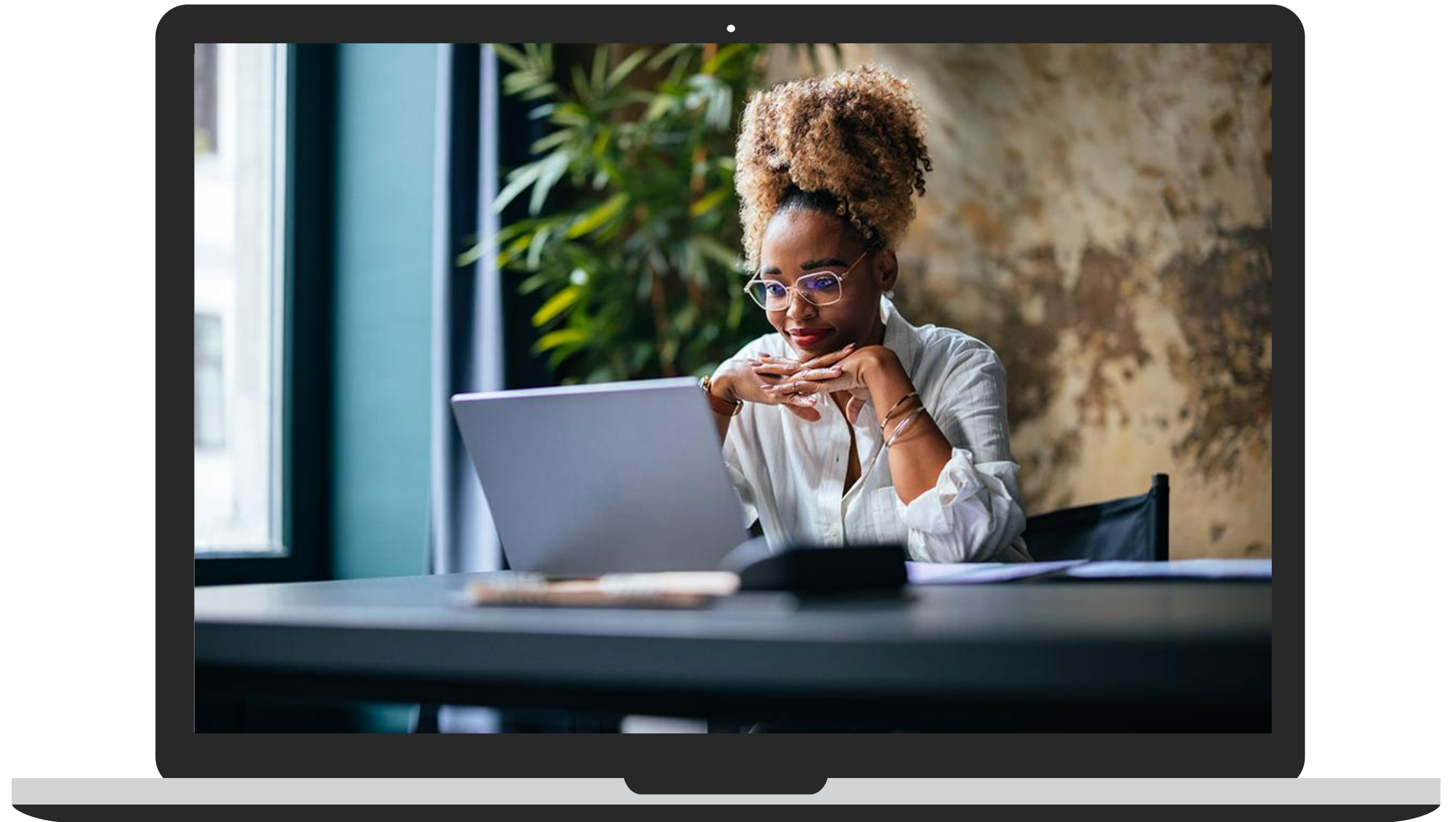
On Demand: Employment law update

Autumn 2025

Overview

Developments since April 2025:

- Case law update
- Legislation update
- What's on the horizon?



Case law update

Case law update

- Equality Act

For Women Scotland v Scottish Minister

- The Gender Representation on Public Boards (Scotland) Act 2018 (GRPBSA 2018) was passed in 2018. It required positive action to be taken to redress gender imbalances on Scottish public sector boards, including an objective that 50% of NEDs should be women
- In 2022, the Scottish government published statutory guidance which stated that, for the purposes of this Act, “woman” would have the meaning under ss 11 and 212(1) EQA 2010 and include trans women with a GRC
- For Women Scotland brought judicial review proceedings to contest this on the basis that the definition of "woman" in the EQA 2010 should be taken as a reference to a biological woman
- The Supreme Court held that Parliament intended the words “woman”, “man” and “sex” in the EQA 2010 to refer to biological sex; a trans woman holding a GRC was therefore excluded from the definition of “woman”. The statutory guidance was therefore incorrect and trans women holding a GRC could not be included as women for the purposes of the GRPBSA 2018

Key learning:

- Employers will need to consider their policies and procedures carefully to ensure that they align with the judgment and must continue to ensure that all staff, including any trans members, are treated with dignity and fairness and are protected from discrimination and harassment

Case law update

- Equality Act

- For Women Scotland v Scottish Minister cont.

- Following the judgment, the Equality and Human Rights Commission published an interim update on the provision of single-sex spaces to provide further clarity and to highlight the main consequences of the judgment while the EHRC works on more comprehensive guidance
 - In workplaces, the EHRC states that it is compulsory to provide sufficient single-sex toilets, as well as sufficient single-sex changing and washing facilities (where these facilities are needed)
 - For workplaces and services open to the public, the EHRC advises that:
 - Trans women should not be permitted to use the women's facilities and trans men should not be permitted to use the men's facilities. Otherwise, they are no longer single-sex facilities and must be open to all users of the opposite sex
 - In some circumstances the law also allows trans women not to be permitted to use the men's facilities, and trans men not to be permitted to use the women's facilities
 - Where facilities are available to both men and women, trans people should not be put in a position where there are no facilities for them to use
 - Where possible, mixed-sex toilet, washing or changing facilities, in addition to sufficient single-sex facilities, should be provided
 - Where toilet, washing or changing facilities are in lockable rooms (not cubicles) which are intended for the use of one person at a time, they can be used by either women or men
 - The EHRC is working on updating its statutory and non-statutory guidance

Case law update

- Disability

Stedman v Haven Leisure Ltd

- The claimant, who had diagnoses of ASD and ADHD, brought claims of disability discrimination against Haven Leisure after he was unsuccessful in his application for a job with them
- The Tribunal found that, although the claimant had a mental impairment, he was not disabled as the impairment did not have a substantial adverse effect on his ability to carry out normal day to day activities
- On appeal, the EAT held that the Tribunal had taken the wrong approach in determining the question of disability
- In considering whether the adverse effect is substantial, the Tribunal should have compared the claimant as they are against how they hypothetically would be without the impairment. It is enough if the claimant's impairment has a substantial effect on just one day to day activity

Key learning:

- Employers should bear this guidance in mind when considering whether an employee could be disabled within the meaning of the Equality Act and therefore whether the duty to make reasonable adjustments arises

Case law update

- Reasonable adjustments

Hindmarch v North-East Ambulance NHS Foundation Trust

- The claimant was a non-emergency ambulance driver during the COVID-19 pandemic. He refused to return to work unless his employer provided an FFP3 mask, rather than the FFP2 mask that was normally issued, to alleviate his heightened anxiety about catching COVID-19
- The employer refused, citing national guidance and on the basis the FFP3 mask would not provide complete protection and so was unlikely to allay his concerns given his extreme anxiety. The claimant also never confirmed he would return if given the FFP3 mask
- The claimant was dismissed on capability grounds and brought claims including failure to make reasonable adjustments and unfair dismissal
- His claims were dismissed by the Tribunal, and the EAT dismissed his appeal on the basis that if there is no real prospect of an adjustment helping to avoid or reduce the disadvantage suffered by a disabled employee, then the employer is under no duty to make the adjustment

Key learning:

- Although employers should consider all potential adjustments, it is only those where there is evidence to show the adjustment will work that the employer is required to implement

Case law update

- Disciplinary process

Handa v Station Hotel (Newcastle) Ltd and others

- The claimant was a director of the holding company of a group of companies in the hotels business. He made several disputed allegations of financial impropriety relating to the running of the business which he claimed were protected disclosures. Subsequently other employees raised grievances against him
- The hotel engaged an independent HR consultant to investigate the grievances, who found two of the grievances were substantiated and recommended the matters proceed to a disciplinary hearing. A different independent HR consultant was engaged to conduct the disciplinary hearing. She prepared a report concluding that she felt dismissal of the claimant for gross misconduct would be justified. As a result, the claimant was dismissed. His appeal was not upheld, and he brought claims against several respondents including a claim of detriment on the grounds of whistleblowing against the two HR consultants alleging they were acting as the hotel's agents in carrying out their processes and in respect of his dismissal.
- The EAT held the HR consultants were not acting as agents as the decision to dismiss had been made by the hotel

Key learning:

- This case gives reassurance that employers can continue to use independent consultants to carry out investigations and hearings but that any decision in relation to the future employment of an employee should be made by the employer itself

Case law update

- Some other substantial reason

Impact Recruitment Services Ltd v Korpysa

- The claimant was employed by an agency that supplied her services to an end-user
- The end-user's business shut down and no longer required her services. The agency said the claimant then requested holiday pay and her P45 as she had been offered a new job, which the agency provided believing she had resigned
- The claimant brought a claim for unfair dismissal, amongst other complaints
- The Tribunal upheld her claim on the basis the claimant had just requested a copy of her contract and an advance of holiday pay, and as such her action was not a clear and unequivocal resignation
- On appeal, the EAT held that the reason for dismissal was the genuine but mistaken belief that the claimant had resigned, and that such a belief is potentially capable of being a SOSR reason

Key learning:

- Employers can take comfort from this decision that a genuine but mistaken belief that an employee has resigned could be a fair reason for dismissal. It will be important that the belief is reasonable and that, prior to acting on the belief, the employer has taken steps to ascertain that the resignation has occurred

Legislation update

Legislation update

- **Data (Use and Access) Act 2025**
 - Act received Royal Assent on 19 June 2025
 - Introduces amendments to the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003
 - Most provisions won't come into force immediately but will require implementing regulations
 - However, some provisions are now in force including:
 - Requirement to carry out a reasonable and proportionate search in response to a data subject access request
 - Provisions relating to retention of biometric data
 - Other changes to be brought in which will impact employers are:
 - Removal of restrictions on making decisions solely through automated processes if suitable safeguards in place
 - New right for individuals to raise complaints directly with employers if they believe their data protection rights have been breached

Legislation update

- Victims and Prisoners Act 2024

- Comes into force from 1 October 2025 across England and Wales
- Gives more support to victims of crime – in workplaces, this will reaffirm (and in some ways extend) the rights of employees
- Applies to NDAs, confidentiality clauses in contracts and settlement agreements
- Any NDA signed on or after 1 October 2025 will not be enforceable against people who are victims of crime (or who reasonably believe they are) when they report relevant conduct about the alleged crime to specified persons or authorities (such as the police, qualified lawyers, healthcare professionals and victim support services)
- Also confirms that disclosures can be made to victim support services, a person authorised to receive information on behalf of a prescribed body or a close family member
- Guidance has also been published on the changes to non-disclosure agreements as a result of the Act

On the horizon

On the horizon

- **Employment Rights Bill**

- New Bill will apply to Great Britain
- Implements various policies set out in Labour's Plan to Make Work Pay
- Key provisions include:
 - Removing the qualifying period for unfair dismissal claims but introducing an initial period of employment during which an employee may be fairly dismissed on specified grounds provided a “light touch” process is followed
 - Increasing the time limit for bringing claims in the employment tribunal from three to six months
 - Ending “fire and rehire” by making dismissal of an employee for refusal to agree to a contractual variation where that employee or another will be employed to carry out substantially the same work, automatically unfair unless the employer can show the dismissal was to prevent or mitigate financial difficulties that affect the ability of the business to continue as a going concern and the employer cannot reasonably avoid the need to vary the contract. Employers will still need to show dismissal is fair in all the circumstances even if these circumstances exist
 - Introducing a right for zero hours and low hours workers to be offered a guaranteed hours contract as well a reasonable notice of any changes to their working hours and compensation if their shift is cancelled or ended early – this will also cover agency

workers who meet the definition of qualifying worker

On the horizon

- Employment Rights Bill

- Key provisions continued:

- Granting additional “day one” rights to all workers in respect of paternity and parental leave
- Introducing a new day one right to unpaid bereavement leave which will include pregnancy loss before 24 weeks
- Changing the eligibility requirements for SSP to remove the lower earnings limit and the waiting period
- Limiting an employer’s ability to refuse a request for flexible working to where it is reasonable to do so and requiring employers to set out in writing why the refusal is reasonable
- Retaining the establishment test for collective consultation but creating a new trigger which if met across a business will also trigger the obligation to collectively consult
- Extending the duty to prevent sexual harassment of employees to cover all reasonable steps and to introduce employer liability for third-party harassment together with restricting the use of non-disclosure agreements in harassment and discrimination cases
- Prohibiting the dismissal of pregnant women and those returning from maternity leave for 6 months after they return to work other than in certain specific situations
- Establishing a new single enforcement body, the Fair Work Agency
- Updating trade union legislation and collective bargaining in certain sectors

On the horizon

- **Employment Rights Bill**

- The Bill is currently passing through parliament and various amendments to the original draft have already been proposed by both the House of Commons and, most recently, the House of Lords
- The Bill is currently at the Report Stage in the House of Lords. There will then be a Third Reading before the Bill passes back to the House of Commons for consideration of amendments made by the House of Lords
- It is anticipated that the Bill will receive Royal Assent by Autumn 2025
- However, most of the key provisions will require regulations or codes of practice to bring them into force, and these will require consultation before being finalised
- The government has published an implementation plan, setting out dates for various consultations and implementing regulations to help businesses prepare for all the upcoming changes: [Implementing the Employment Rights Bill - GOV.UK](#)

On the horizon

- Draft Equality (Race and Disability) Bill

- Aims to enshrine in law in Great Britain the right to equal pay for ethnic minorities and disabled people, making it easier for them to bring equal pay claims and also introduces mandatory ethnicity and disability pay gap reporting for employers with 250 or more employees
- Consultation issued on how to implement mandatory ethnicity and disability pay gap reporting for large employers in GB to shape proposals to be included in the Bill alongside a call for evidence on equality law seeking views and evidence on the plans to extend the right to equal pay
- For the pay gap reporting, the proposals follow the same approach as with gender pay gap reporting as far as possible, whilst recognising there are distinct considerations for ethnicity and disability especially with data collection and analysis
- Consultation closed on 10 June 2025 and the call for evidence closed on 30 June 2025
- Alongside the consultation, the government published the findings of the consultation on disability workforce reporting carried out in 2021-22. These findings have informed sections of the latest consultation

On the horizon

- Review of parental leave and pay entitlements
 - The government has launched a comprehensive review of all parental leave and pay rights in Great Britain
 - The review will run for 18 months until the end of 2026 before suggesting further changes to law and policy along with a roadmap and next steps for implementing any potential reforms
 - The review will look at all types of leave and pay for parents, including maternity, paternity, adoption, shared parental, neonatal care and parental bereavement leave and pay, unpaid parental leave and maternity allowance
 - A call for evidence was published which ran until 25 August 2025. It asked for views and evidence as to how well the current system meets certain key objectives, whether further objectives should be added and how important those objectives are
- Review of whistleblowing framework
 - The government published the results of a review of the whistleblowing framework in GB launched by the previous government in 2023. The review does not reach a conclusion regarding the effectiveness of the current framework, and it remains to be seen whether the current government will take any of the findings forward

On the horizon

- New growth and skills levy
 - Existing apprenticeship levy to be replaced by a growth and skills levy
 - New foundation apprenticeships to be introduced
 - Minimum duration reduced from 12 to eight months from 1 August 2025
 - Employers to have more control over English and maths requirements to pass an apprenticeship
 - Funding to be available for apprenticeships shorter than 12 months
 - Type of training eligible for funding to be set out by Skills England
 - On 17 July 2025, the government launched a call for evidence on unpaid internships and internships paid below the NMW, including voluntary work and work shadowing. The call for evidence closes on 9 October 2025

NB: The government has also announced plans to limit higher-level apprenticeship funding to individuals aged under 22. From January 2026, employers will only be able to use the apprenticeship levy to fund Level 7 (master's level) courses for existing apprentices and those aged 16 - 21

On the horizon

- Draft Finance Bill 2026 legislation to tackle tax non-compliance in the umbrella company market
 - On 21 July 2025, HMRC published a policy paper including draft Finance Bill 2026 legislation, confirming the government is proposing to make the UK agency that supplies workers to an end-client jointly and severally responsible for the PAYE liabilities of the umbrella company that employs the worker
 - If there is no UK agency in the supply chain (or the UK agency is connected to the umbrella company), joint and several liability will attach to the end-client provided it is resident in the UK
 - Applies to payments made to umbrella company workers on or after 6 April 2026
 - Legislation to empower HMRC to implement the change for NICs purposes will be introduced in due course.
 - The closing date for comments is 15 September 2025

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