Forward thinking
Straight talking

10 key employment law developments that employers need to be aware of

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Gateley

It has been a busy few months in the world of employment as always.

In our last update that we published in July 2025, we covered key developments proposed in the Employment Rights Bill (the **Bill**) but could not comment much on these proposed changes since, at the time of writing, the Bill had just completed the House of Lords Committee Stage.

Almost six months later, the Bill finally passed by both Houses ending several months of parliamentary 'ping pong'. The Bill received Royal Assent on 18 December 2025, the final Parliamentary working day before the Christmas recess. It is therefore officially the Employment Rights Act 2025, and we will refer to it as 'the **Act**' hereafter.

This milestone marked the conclusion of a lengthy parliamentary process and paves the way for the Act's provisions to come into force, with the first changes having now come into force (some of the changes relating to trade unions) as soon as the Act became law on 18 December 2025.

We have commented on some of the key changes relating to the Act, which have received widespread comment and introduce some of the most significant developments in UK employment rights for many years.

Beyond this, because believe it or not - there were other employment developments in late 2025 aside from the Act, we also cover some recent case law and general updates and guidance published by the Government.

1 The Act – Unfair dismissal (6 months qualifying and potential removal of the compensation cap)

Following backlash from business groups, Labour ministers agreed to change the proposal regarding when an employee can make a claim for unfair dismissal from the election manifesto commitment of 'day 1' rights to six months' service being needed. This comes after the House of Lords repeatedly voted against the day 1 rights proposal, arguing it would be economically damaging and cause strain in the Employment Tribunal (ET) system.

The two main changes to unfair dismissal that the Act introduces, therefore, are:

Six-Month Qualifying Period

From 1 January 2027, employees will gain unfair dismissal protection after six months of continuous service, replacing the current two-year threshold. Anyone who started work on or before 1 July 2026 will qualify for this protection immediately. This qualifying period of service will only be able to be varied by a future Government through primary legislation.

This represents a significant shift from the current position (and from what was originally proposed in the Act), but the introduction of a six-month qualifying period offers a welcome middle ground, providing employers with slightly more certainty than the initial proposals made by the Government. That said, this change means that employers will need to take into account the accelerated timeline when putting in place their performance management and onboarding strategies and this will require swift implementation measures (e.g. manager training and updated policies) in the very near future.

Removal of the Compensation Cap

Another significant amendment to unfair dismissal provisions is the Government's proposal to remove the cap on compensatory awards. Currently, awards are limited to the lower of 52 weeks' pay or a statutory maximum (currently £118,223). With both elements of the cap removed, ETs will be able to award compensation based on employees' actual losses.

While this reform aims to ensure fairness, it has sparked concerns about escalating costs and litigation risk. In practice, many dismissed employees are unlikely to hit the current £118,223 limit in their unfair dismissal claim. However, the removal of the limit will have much more impact where an executive-level employee is dismissed; in this instance, an individual could have losses that exceed the current limit by quite some distance.

It is likely this change will also impact settlement discussions for such higher-paid individuals as the individual is likely to seek a higher compensation figure over and above their notice entitlement as any claim they could seek to bring in the ET could be of a significantly higher potential value.

The House of Lords initially opposed this proposal but on 16 December 2025 withdrew its opposition, enabling the Act to complete its passage through Parliament.

The Government has said it will carry out an impact assessment following the passage of the Act, which will include analysis of the likely impact of the removal of the compensation cap. This assessment will inform whether the cap is ultimately removed. With this in mind, the planned date for implementation of this change remains unconfirmed.

We will continue to provide updates as and when the Government publishes its findings on the potential implications of this change.

2 Shared Parental Leave and changes introduced by the Act

One of the key reforms introduced by the Act, which are due to take effect from April 2026, is to make paternity leave and unpaid parental leave "day 1" rights. This means that from the first day of employment, new fathers and partners will be eligible for these entitlements – a significant change to the current requirement of 26 weeks' continuous service.

The Act also addresses a significant gap in the current regime. At present, if a parent begins Shared Parental Leave (ShPL), they lose access to Statutory Paternity Leave and Statutory Paternity Pay. From April 2026, parents will be able to benefit from both ShPL and the two-week SPL entitlement, regardless of the order in which they take them. This change aims to remove unnecessary restrictions and provide greater flexibility for families.

What is Shared Parental Leave?

Introduced in 2015, ShPL allows eligible couples to share up to 50 weeks of leave (in addition to the mandatory 2 weeks – or 4 for factory workers – of maternity or adoption leave the birth parent must take immediately after the birth or placement) and 37 weeks of statutory pay following the birth or adoption of a child. The leave can be taken in separate blocks, concurrently or consecutively.

This was designed to promote flexibility and reduce gender disparity in caregiving responsibilities. However, less than 2% of new fathers have opted for ShPL in the first decade since its introduction. Furthermore, around 60% of those who take ShPL come from the top 20% of earners, while fathers in the bottom 50% account for just 5% of claims.

These figures highlight a socioeconomic divide: higher earners are more likely to take ShPL, while those in lower-paid roles often cannot afford to do so. Campaigners have criticised the policy as elitist, arguing that without better financial incentives, ShPL will remain inaccessible for many families.

What does the Act do?

The Act's reforms:

- remove service barriers by making paternity and unpaid parental leave available from day one.
- allow combined entitlements, so parents can take both ShPL and statutory paternity leave without losing any entitlement to one or the other.
- encourage greater flexibility and fairness in parental leave policies.

While these changes are positive steps, they do not directly address the financial barriers that limit ShPL uptake. Without improved pay rates or employer support, socioeconomic disparities may persist.

Looking Ahead

The Act signals a commitment to modernising family leave rights and promoting gender equality. However, for ShPL to truly achieve its goals, further reforms – such as enhanced pay, simplified eligibility, and cultural shifts in workplaces – will likely be needed.

In terms of what can be done in anticipation for these changes in April 2026, we would advise employers to consider beginning to update policies to reflect this change, communicating the upcoming changes to employees, and budgeting for a potential uptake in increased leave.

3 Extension of ACAS Early Conciliation and time limit for ET claims

ACAS and Early Conciliation

The Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2025 extended the ACAS Early Conciliation period from 6 weeks to 12 weeks. This came into effect from 1 December 2025.

The change comes following a significant increase in demand for Early Conciliation, which has been rising over the past year. Cases are also becoming increasingly more complex, which is putting pressure on the ACAS early conciliation service.

There were widespread reports of people not being contacted by ACAS during the previous 6-week period. The aim of this extension is to increase responses to prospective claimants by ACAS and subsequently to encourage more prospective claims to be settled before claims reach the ET, and in turn reduce the burden on the ET system, which continue to face significant backlogs.

What this means is that claimants now have more time to negotiate and explore settlement options. Employers will have an extended window to aim to resolve disputes amicably, looking to potentially avoid litigations and costs, as well as risk to reputation.

This extension is to be further reviewed in October 2026.

ET claims time limits

The Act will also extend the ET claim time limit from the current 3-month limit to 6-months. This change will come into effect in October 2026. This means claimants will have significantly more time to consider their position, seek legal advice and gather evidence to support their claim. Employers should therefore expect an increased number of claims, although the extended period is also intended to enable employees and employers to utilise internal grievance and appeal procedures and/or engage with ACAS Early Conciliation.

Comments

We recommend that employers factor in additional time and resources for HR and legal teams for longer negotiations and a longer wait for certainty as to whether a claim is going to arise or not. Employers won't be able to assume that a claim hasn't been brought until much closer to 12 months' post-termination of employment. We encourage employers to maintain constructive and open communication with employees during conciliation and continue to recommend employers to act early despite the extended conciliation period.

4 Review of non-competes

On 26 November 2025, the Government published a working paper inviting views on measures to reform non-compete clauses in employment contracts.

Non-compete clauses in employment contracts seek to restrict an employee's ability to work for a competing company following termination of their current employment contract. Whilst the starting point is that a non-compete clause is unenforceable unless the employer can demonstrate it is reasonable to include such clause in an employment contract, approximately 5 million UK employees still have non-compete clauses in their contracts. These typically last around 6 months, but it is not uncommon to see 12-month non-compete restrictive covenants in certain circumstances where the employee holds a senior role.

Why reform?

The working paper highlights several current key concerns about non-compete clauses in employment contracts which include the following:

- Non-compete restrictive covenants can restrict job movement and entrepreneurship. Research in the USA suggested that banning non-compete clauses on a federal level would lead to 8,500 more new businesses being formed each year (an increase of 2.7%). It is also estimated that a ban would enable an increase in new patents of between 20% to 34% a year.
- They can limit competition and deter workers from moving jobs that may offer them better pay. It is suggested that restricting non-compete clauses can benefit low to medium earners, therefore, and not just those that hold higher-paying, senior positions.
- It is suggested that non-competes are disproportionately applied; they are often included in contracts for lower-paid workers (20 to 30% of lower-paid workers according to research from the Competition and Markets Authority). Such lower-paid workers may not also have the means to challenge any threat by their former employer to enforce a non-compete clause.
- The approaches taken in other jurisdictions are also prompting the Government to reflect on the use of non-compete clauses in the UK. For example, in California, North Dakota and Oklahoma, non-compete clauses have been banned, and in France, Germany and Italy, a requirement for mandatory compensation has been put in place to be paid to workers for the period that the non-compete clause operates for.

Proposed reforms

The working paper sets out a few reform pathways that are under consideration:

1. **Universal statutory duration cap.** This approach suggests that a statutory limit of 3 months is placed on the length of non-compete clauses. This is a softer approach to some of the other suggestions that are set out in the paper, but the Government notes that there is a risk with this suggestion that lower-paid workers could potentially face 3 months unable to work in their area of expertise, affecting them financially and potentially substantially.
2. **Variable cap by company size.** This approach would place different statutory limits on the period that a non-compete clause would operate depending on the size of the company. The idea behind this approach is that those working for larger companies would have shorter time limits e.g. 3 months, which would make it easier for them to move to competitors. This again raises the problem of lower-paid workers potentially being out of a job in their sector for 3 months, rising to 6 months if a lower-paid worker holds a job in a smaller-sized company.
3. **Outright ban.** The idea behind an outright ban is that it would encourage a diffusion of skills and ideas between companies, which could actually cause an increase in competition. How this might actually work in practice is uncertain as some employers may try to counteract a ban on non-compete clauses by having more robust other types of restrictive covenants, removing deferred compensation from employees who leave and join a competitor, or increasing procedures regarding information sharing within the business.
4. **Salary-based restrictions.** This approach aims to address the issue of lower-paid employees being subject to non-compete restrictions. Whilst it is advanced that a ban below a salary threshold could achieve some of the benefits put forward by an outright ban (such as reducing barriers to recruitment), it is suggested that there would be issues that would come about, mostly surrounding pay. For example, what should be included in pay calculations and how should it be calculated? What would be the salary threshold? Would a salary threshold 'cut-off' spark unintended debates and responses?
5. **Combination of a ban below a salary threshold and a statutory limit of 3 months.** This approach would suggest a complete ban on non-compete clauses for lower-paid employers and a limit of 3 months for those who earn above the threshold.

Looking to the future

The working paper asks whether similar limits and proposed reforms should also apply to non-solicitation and non-dealing clauses so we will see what comes of the reforms to non-restrictive covenants next year and whether this will be extended to other restrictive covenants. The deadline for responses via the Government online platform or email is 18 February 2026.

5 Race Discrimination and Exclusionary Language

The recent case of Kellington-Crawford v Newlands Care Angus Ltd addresses whether speaking in a language not understood by an employee during a formal meeting can amount to direct race discrimination and harassment under sections 13 and 26 of the Equality Act 2010

Facts of the case

The Claimant was employed by Newlands Care Angus Ltd, the Respondent, as a senior care assistant. The majority of employees working for the Respondent company were Polish, with the level of English spoken by these individuals varying. The Claimant brought multiple complaints against her employer, and one of these complaints included a claim of race discrimination. The Claimant alleged that three managers all spoke Polish to each other during a formal supervision meeting that she attended with them. She felt excluded, intimidated and humiliated and believed that they were talking about herbecause she did not understand what they were saying.

Decision

The ET found that speaking Polish in a formal meeting to each other when the Claimant was English and could not understand Polish amounted to harassment and direct race discrimination under the Equality Act 2010. In considering the extent to which the Claimant suffered injury to her feelings from the race discrimination and harassment complaints, including considering that the conduct was a 'one-off' occurrence, the ET awarded the Claimant £2,500 plus interest as compensation.

Comment

While this is only a first instance decision and therefore not binding on other ET claims, the case highlights the importance of employers creating a clear policy on language in the workplace where the workplace is one where people from various backgrounds and nationalities are employed. It is also important for employers to ensure that regular training is given to managers on this point to establish the importance of language, particularly in formal settings.

6 Calling boss a d***head was not a sackable offence, ET rules

Facts of the case

The Claimant worked as an office manager for the Respondent, a scaffolding and brickwork company. The Claimant had been working for the Respondent since October 2018.

In May 2022, the Claimant had found documents in her boss's desk regarding her and, on its contents, believed her boss was going to let her go.

Her boss then raised issues about her performance, at which the Claimant referred to her boss and his wife as 'd***heads'.

The boss then immediately fired the Claimant.

Decision

The ET reviewed the Claimant's contract, which provided that she could be fired for 'the provocative use of insulting or abusive behaviour'.

However, the ET further found that for this to happen, the Claimant would need to have been given a prior warning. Only 'threatening and intimidating language' would have amounted to gross misconduct and warranted immediate termination of her employment. On the facts of the case, the Claimant calling her boss a d***head was misconduct rather than gross misconduct and, therefore, the appropriate response should have been a staged disciplinary procedure i.e. the Claimant should have been given a warning. If misconduct had continued or become more serious, it would have then been appropriate for a final warning to be issued. This was not the process followed on the facts of the case.

On this basis, the ET ruled that the Respondent had fired the Claimant solely because of her use of the word d***head, rather than language that had amounted to gross misconduct, and had not followed proper disciplinary procedures.

The Respondent was ordered to pay £15,042.81 in compensation and a further £14,087 towards the Claimant's legal fees.

Comment

This case highlights the importance for employers to follow fair disciplinary procedures. Even where language may be unprofessional, dismissal without prior warning or proper investigation can amount to an unfair dismissal. It serves as a clear reminder that context and adherence to procedural fairness are two important factors to consider in almost every dismissal scenario.

7 EAT overturns finding that contractor working through a PSC was an employee & a worker

In this case the EAT held that a contractor invoicing through a personal service company (PSC) was not an employee, overturning the earlier ET decision.

Facts of the case

In the case of Partnership of East London Co-operatives Ltd v Maclean, the Claimant, a qualified nurse, worked for the Respondent, a provider & services to the NHS operating urgent treatment centres.

From August 2018, the Claimant worked via a PSC as a 'clinical streamer', where she carried out clinical assessments of patients. She terminated the arrangement in March 2023.

The Claimant then brought claims against the Respondent for unfair dismissal, whistleblowing detriment and holiday pay. She would have needed to have been an employee in order for these claims to be brought.

The Respondent argued that the Claimant was a self-employed contractor and operated through a PSC. The Claimant argued that she had only set up the PSC at the behest of the Respondent.

Decision

The ET found that the Claimant was both a worker and employee of the Respondent, and also concluded that there was a contract entered into between the Respondent and the Claimant personally. The Claimant did not provide a substitute and the ET was satisfied the Claimant had been fully integrated into the company.

On appeal, the EAT upheld the ET finding that the Respondent's contract was with the Claimant personally. They did, however, find that the ET erred in its conclusion that the Claimant was a worker and employee. The EAT disagreed with the ET about there being a mutuality of obligation through the relationship, and found that this conclusion made by the ET could not be sufficiently supported.

The EAT also held that the ET could not, on the facts, conclude what the parties intended in relation to a substitute providing work if the Claimant was unable to. The EAT noted that there were various accredited nurses employed by the Respondent to act as substitutes if this was required. This meant that the contract would not necessarily require personal performance. The EAT referred to Pimlico Plumbers in their decision; the key point to look at was not whether the substitution clause was used but whether personal service was the EAT's conclusion was that the claimant was neither an or a worker specifically required by the contract.

Comment

In this case, the key factors considered by the EAT were the lack of mutual obligation and the presence of genuine substitution rights. This reinforces that contractual terms and working arrangements determine status, but also highlights that every case on this issue is highly fact specific.

It is therefore important to obtain legal advice in these scenarios and to ensure that any consultancy agreements that are entered into accurately reflect the intended relationship.

8 EAT helps clarify documents an employee requires following a disciplinary hearing

In this case, the EAT upheld the fairness of a dismissal by the FCA despite minor procedural flaws, rejecting claims of discrimination and privacy breaches.

Facts of the case

In Alom v Financial Conduct Authority, the Claimant had been employed by the Respondent since 2015. He worked with another colleague, Ms S. Their friendship started around late 2017 or early 2018. There was various email correspondence between the two and the Claimant started giving Ms S a number of gifts. However, the friendship between the two soured and Ms S accused the Claimant of stalking her, after which Ms S received an abusive email that she believed was from the Claimant and that she described as threatening.

As the emails had been sent on an anonymous basis, a review of the Claimant's work emails was carried out. This review did not confirm who sent the emails but based on its contents and a recent argument between the Claimant and Ms S, the Respondent concluded that the Claimant had sent them. A disciplinary process began and the Claimant was subsequently dismissed.

The Claimant raised various claims, one of which that his dismissal was procedurally unfair because he was not provided with a transcript of the investigation interviews that had taken place with Ms S. He also complained that a script prepared by the HR team to be used at the disciplinary hearing indicated that a conclusion had already been reached, and the search of the Claimant's work computer was a breach of his right to privacy under the European Convention of Human Rights. The ET dismissed Mr Alom's claims. He appealed to the EAT.

Decision

The EAT who held that it was not an absolute requirement for interview transcripts to be provided and, in this case, it did not make the process unfair because (a) the Respondent had relied solely on the email the Claimant had sent Ms S and not Ms S's witness evidence itself, and (b) the disciplinary hearing manager was also not provided with the interview transcripts either.

The EAT held that the 'script' the Claimant referred to was more of an agenda of points for the line manager to cover in the hearing, although there were two places where it suggested that HR were telling the line manager what to conclude. The EAT did still reject that these two parts of the script indicated a pre-decided conclusion. This was, however, based on the evidence given by the line manager at the ET hearing.

Regarding the Respondent's decision to search the Claimant's work computer, the EAT seemed to accept the Claimant's argument but concluded that it did not affect the fairness of the dismissal because the search result had not been relied upon in the decision to dismiss the Claimant.

Comment

This case does help clarify what documents are required to be provided to an employee in relation to a disciplinary investigation, and also helps assist with what steps can be reasonably taken by an employer in conducting information searches on employees' work computers.

For example, the EAT commented that there will not be an absolute obligation to provide interview transcripts in every case because it may simply not be required on the facts of the case.

The case does also highlight how employers should be cautious regarding the contents of a script. Sticking to an agenda and bullet point style which contain neutral comments such as "...consider what penalty would be appropriate..." rather than "...confirm that the conduct amounts to gross misconduct..." can be helpful in avoiding the potential argument that a decision has been decided prior to a disciplinary meeting taking place.

Employers also need to take care when carrying out any forensic investigations of work computers. If the employer believes such a search is required, they should clearly set out what is and is not being looked for in the search and this should be documented. It should be explained why this search is therefore relevant and proportionate to the issue.

9 Limits on NDAs

Non-disclosure agreements (NDAs), commonly included in settlement agreements, are intended to protect corporate secrets and sensitive information. However, they cannot lawfully suppress individuals from reporting criminal conduct or exercising protected statutory rights. Their use is to be further restricted under the Act too.

New from 1 October 2025

From 1 October 2025, section 17 of the Victims and Prisoners Act 2024 introduced a further restriction on the use of NDAs: victims of crime (including those who reasonably believe they are victims) will not be legally bound by NDAs when disclosing relevant information to:

- Police or criminal investigators
- Qualified lawyers seeking legal advice
- Regulated professionals (e.g. therapists, doctors)
- Victim support services
- Professional regulators
- Criminal Injuries Compensation Authority or courts
- Close family members (spouse, parent, child) – when disclosure may be needed as part of the individual's familiar support measures

NDAs remain enforceable regarding non-criminal, commercial, or reputationally sensitive information, and do not protect public or media disclosures if the intent is public dissemination.

What this means in practice

Employers and legal advisers should review all settlement agreement templates and confidentiality clauses. Specific actions include:

- Inserting statutory carve-outs for allowed disclosures about criminal conduct
- Ensuring NDAs explicitly allow disclosures to victim support services, regulated professionals, and close family – mirroring Government guidance
- Recognising that fresh agreements or significant modifications post 1 October 2025 will trigger these new rules even if parties are aware of them

These steps ensure that victims are supported and not silenced by confidentiality terms.

The Act: Further NDA Reform

The Act introduces additional limits on NDAs linked to harassment and discrimination:

- From October 2026, NDAs used to silence workplace victims of harassment or discrimination – or prevent disclosures about the employer's response, or lack of, to a complaint – will be void, unless they meet future regulatory exemptions
- This extends to witnesses and covers both allegations and substantive disclosures
- These exemptions – referred to as "excepted agreements" – will be defined in subsequent secondary legislation. It is expected that the exceptions will include an NDS which has been requested by the individual

As a result, employers will no longer be permitted to use NDAs to suppress allegations or investigation outcomes in harassment and other discrimination cases – preserving workers' ability to speak out.

Final Points

Combined, these reforms reflect a broader shift towards transparency and victim empowerment: from allowing crime victims to speak out without fear of legal backlash, to ensuring workplace victims of harassment and discrimination retain their voice. Employers must act promptly to update all NDA and confidentiality wording included in contracts, if not already, in readiness for the wider changes from the Act.

10 Rate increases

All employers are obliged to ensure their workers are paid at least the National Minimum Wage or National Living Wage.

The updated hourly rates, which are to take effect from 1 April 2026, are set out below:

National Living Wage	Rate up to 30 March 2026	Rate from 1 April 2026
21 and over	£12.21	£12.71
18–20-year-old rate	£10.00	£10.85
16-17-year-old rate	£7.55	£8.00
Apprentice rate	£7.55	£8.00
Accommodation offset	£10.65	£11.10

New statutory rates relating to statutory sick pay and family leave sick pay have been set out.

From 6 April 2026, the new weekly statutory rates are set out below:

	Old Rate	New Rate
Statutory maternity pay	£187.18 per week	£194.32 per week
Statutory paternity pay	£187.18 per week	£194.32 per week
Statutory shared parental pay	£187.18 per week	£194.32 per week
Statutory adoption pay	£187.18 per week	£194.32 per week
Statutory parental bereavement pay	£187.18 per week	£194.32 per week
Statutory neonatal care leave pay	£187.18 per week	£194.32 per week
Statutory sick pay	£118.75 per week	£123.25 per week

In addition to the above, the Lower Earnings Limit required to qualify for the various forms of family leave pay is proposed to increase from £125.00 or more per week to £129.00 or more per week from 6 April 2026.

Questions?

If you require any assistance or advice in relation to any of the issues raised in this article, please feel free to contact a member of our expert employment team who would be happy to help with your query.

Key contacts

Andrew Macmillan
Partner
andrew.macmillan@gateleylegal.com
0115 983 8242
07875 386 704

Paul Ball
Partner
paul.ball@gateleylegal.com
0113 261 6793
07526 169 938

Helen Burgess
Partner
helen.burgess@gateleylegal.com
0115 988 4782
07566 791 107

Avril England
Partner
avril.england@gateleylegal.com
0161 836 7932
07500 665 051

Benedict Gorner
Partner
benedict.gorner@gateleylegal.com
0121 234 0088
07595 070 448

Chris Kisby
Partner
chris.kisby@gateleylegal.com
0115 983 8257
07936 365 110

Merran Sewell
Partner
merran.sewell@gateleylegal.com
0121 234 0252
07720 096 640

Lorna Harris
Partner
lorna.harris@gateleylegal.com
0161 836 7946
07741 272 315

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