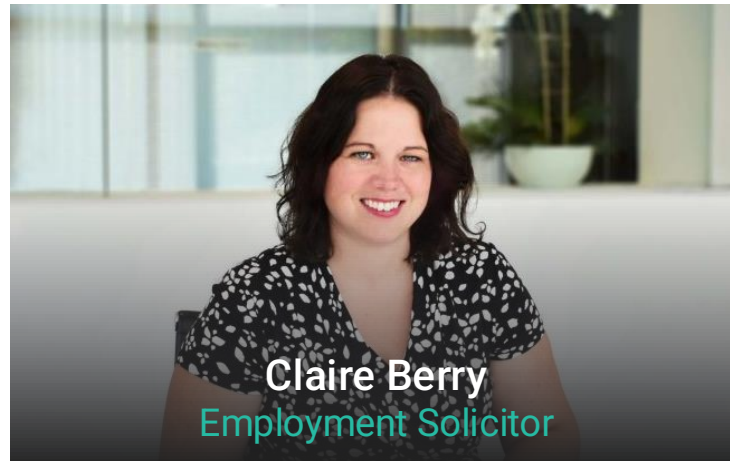


HR/Employment law update



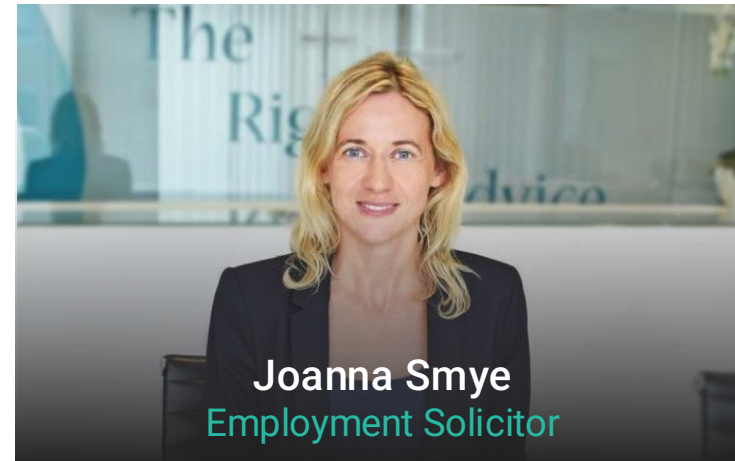
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Our team



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Topics for discussion



Hot Topic

- » Disability discrimination, focusing on neurodiversity.



Recent Cases

- » A round up of the latest key employment cases covering:
 - » Employment status.
 - » Redundancy and suitable alternative employment.



Update on the Employment Rights Bill

- » Implementation roadmap.
- » Steps to take to prepare.



Legislation Update- recent developments

- » New technical guidance on neonatal care leave and pay.
- » Review of parental leave system.
- » New data protection legislation.

Case update (1)



Stedman v Haven Leisure Limited [2025] EAT

Employment Appeal Tribunal rules on the approach for considering if Claimant is disabled

Background

- The legal definition of disability under the Equality Act is:
 - > A physical or mental impairment;
 - > Long term;
 - > And has a substantial adverse effect on ability to carry out day to day activities.

Facts

- The Claimant's health conditions were Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD)
- The Employment Tribunal found that although Mr Stedman had a mental impairment, it did not have a substantial adverse impact on day to day activities.
- The Claimant appealed to the Employment Appeal Tribunal (EAT)

Decision

- The EAT held:
 - In judging whether the adverse effect is substantial, the comparison is between the claimant as they are and as they hypothetically would be without the impairment.
 - It is sufficient if the claimant's impairment has a substantial adverse effect on just one day-to-day activity.
 - It is not permissible to weigh up a claimant's ability to carry out one day-to-day activity against another day-to-day activity to arrive at some overall assessment of ability to carry out day-to-day activities generally.
- The Employment Tribunal was not necessarily wrong in its decision, but it was wrong in its basis for making its decision.
- The case has therefore been remitted to a fresh Tribunal.

Points to takeaway



- A substantial adverse effect on just one day to day activity will be sufficient.
- The EAT also noted that a clinical diagnosis is relevant not just to the question of whether there is a mental impairment, but also to the question of whether or not there is a substantial adverse effect.
- The challenges that neurodivergent workers face in everyday life means that many of them will meet the legal definition of having a disability, for the purposes of the Equality Act.

Reasonable adjustments for neurodivergent workers



Duty arises when the employer knows or should know that the disabled person is placed at a substantial disadvantage by:

- > An employer's provision, criterion or practice.
 - > A physical feature of the employer's premises.
 - > An employer's failure to provide an auxiliary aid.
- Medical advice and discussion are key to identifying reasonable adjustments to support neurodivergent workers.
- Examples could be providing quiet spaces, a standing desk to help concentration, and flexing communication style.

| Any questions?

Case update (2)



BCA Logistics Ltd v Parker [2025] EAT 94

The Employment Appeal Tribunal rules on employment status

Background

- Under current employment law there are three categories of individuals providing their services in the job market:
 - Employee
 - Worker
 - Self-employed contractor
- Employment status determines what employment rights an individual has.

Facts

- Some drivers were employed by BCAL, while others were engaged as self-employed contractors.
- The substitution clause stated that:
"drivers could provide a substitute contractor to undertake services, with the driver being responsible for negotiating and paying any fee to the substitute and ensuring that the substitute met the BCAL's driving licence requirements".

Decision

- The Employment Tribunal held that the drivers were workers.
- It found that the substitution clause was not genuine and did not reflect what the parties realistically expected to occur.
- BCAL appealed, the Employment Appeal Tribunal upheld the Employment Tribunal's finding.

Points to takeaway



- The question, when it comes to substitution clauses, is not whether the individual chooses to provide personal service, but whether they are obliged to do so.
- The fact that no worker in 25 years before the start of the litigation had ever used a substitute was a strong indicator that the option was never intended to be used.
- When it comes to employment status, it is the true nature of the arrangement rather than any written agreement in place that determines employment status.

Case update (3)



Hendy Group Limited v Kennedy [2024] EAT

The Employment Appeal Tribunal rules on duty to search for suitable alternative employment for a redundant employee

Background

- To be a fair dismissal, the following must be satisfied:
 - A potentially fair reason
 - Employer must act reasonably in the circumstances, within the “range of reasonable responses”
 - If the reason is redundancy, the employer acting reasonably includes considering suitable alternative employment
- Polkey deduction

Facts

- Mr Kennedy did not question that his role was redundant, nor the fairness of his selection
- Mr Hendy’s claim was on the issue that his employer had not acted fairly in terms of exploring suitable alternative employment
- The Employment Tribunal upheld Mr Hendy’s claim.

Decision

- The Employment Appeal Tribunal agreed with the Employment Tribunal.
- It found that the Tribunal had not substituted its own view – i.e. its approach was correct in terms of the band of reasonable responses test.
- The EAT agreed that a Polkey deduction was not appropriate.

Points to takeaway



- The duty to consider suitable alternative employment will depend on the circumstances. In this case, the size and resources of the employer were fairly large, with their own HR department.
- In this case, the employer had a number of internal vacancies for which Mr Hendy was suitably qualified.
- It is clear that merely directing the employee to these vacancies was not enough.

| Any questions?

Employment Rights Bill



Implementation roadmap

The Employment Rights Bill is yet to receive Royal Assent

At Royal Assent or soon after

- Repeal of the Strikes (Minimum Service Levels) Act 2023.
- Repeal of majority of Trade Union Act 2016.
- Removing of the 10-year-old ballot requirement for trade union political funds.
- Simplifying industrial notices and industrial action ballot notices.
- Protections against dismissal for taking industrial action.

April 2026

- Paternity leave – day one right.
- Unpaid parental leave- day one right.
- SSP payable from day one and no lower earnings limit.
- Collective redundancy – increase in protective award to 180 days' pay.
- Whistleblowing protections for sexual harassment disclosures.
- Fair Working Agency to be established.
- Simplifying trade union recognition process and electronic and workplace balloting.

October 2026

- Employment tribunal limits will increase from 3 to 6 months.
- Ban on fire and rehire unless in financial difficulty.
- Employers required to take “all reasonable steps” to prevent sexual harassment of their employees.
- Duty not to permit third party harassment in relation to all relevant protected characteristics.
- Tighter tipping laws, requiring consultation on policies.
- Further Trade Union reform.

Employment Rights Bill



Implementation roadmap

The Employment Rights Bill is yet to receive Royal Assent

2027

- Day 1 right protection from unfair dismissal.
- Introduction of initial period of employment.
- Refusal of flexible working requests must be based on a reasonableness test.
- Parental bereavement leave to be extended to a more general bereavement leave.
- Extension of protection for pregnant woman and new mothers to all types of dismissal.

2027

- Dismissal during or after period of statutory family leave to be considered.
- Collective consultation threshold for collective redundancy to be amended.
- Gender pay gap and menopause action plans required for employers with 250 employees.
- Regulations to specify what are to be regarded as reasonable steps an employer should take to comply with duty to prevent sexual harassment.

2027

- Ending exploitative use of zero-hour contracts and applying zero-hour contract measures to agency workers.
- Regulation of umbrella companies.

As and when more details are released these will be shared.

Employment Rights Bill



Actions employers can take now:

- » Review all contract templates and policies to identify those that will need updating and when.
- » Put together draft wording for contract templates and policies and prepare variation letters to employees.

Specifically in preparation for unfair dismissal changes:

- » Enhance pre-employment screening and onboarding programmes
- » Update contracts and policies to reflect new initial period of employment and any dismissal procedure, when confirmed.
- » Review internal probation procedures to ensure that they align with the statutory initial period of employment;
- » Ensure managers are trained to assess performance and conduct fairly and consistently during the initial period of employment.
- » Put in place robust systems for highlighting key dates to ensure meetings happen and to gather and record evidence.
- » Review grievance and appeal procedures to address issues early.

| Any questions?

Recent developments and upcoming changes

Review of the parental leave system

- > A review is currently ongoing into all types of family leave.
- > Statutory paternity leave in the UK is one of the least generous in Europe.
- > The system is quite confusing, and the uptake of shared parental leave is relatively low.
- > Change in the future is expected, but the extent to which the current Labour government will want to overhaul the current system is unknown.



Neonatal care leave and pay

- > This has been in force since April 2025.
- > A new technical guide is available.

Other developments

Data (Use and Access) Act 2025

- ICO currently updating its guidance

EHRC code update

- Following the Supreme Court's ruling that sex under the Equality Act refers to biological sex, the EHRC has put an updated code for public services before parliament, but not yet for employment.

| Any questions?

Thanks for attending



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