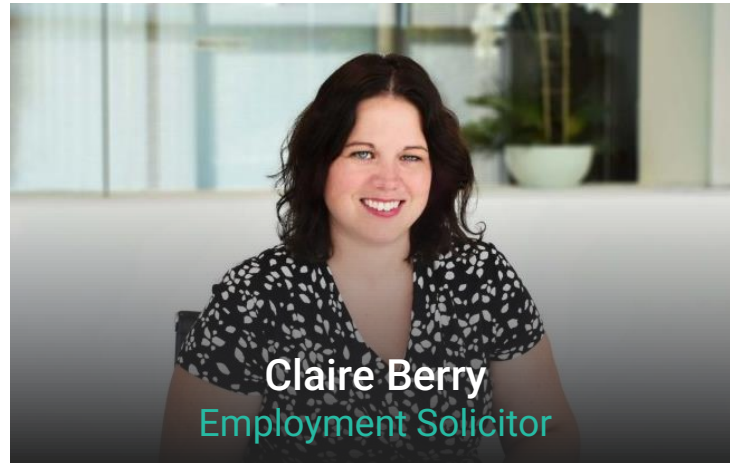


HR/Employment law update



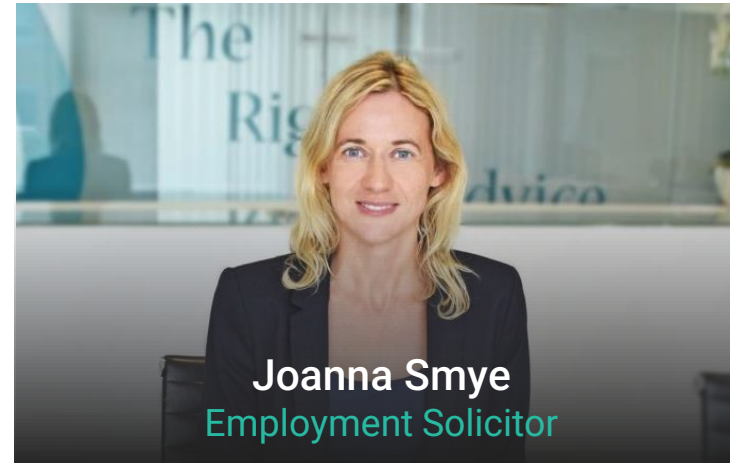
Spring 2026

Our team



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Topics for discussion



Recent Cases

- » A round up of the latest key employment cases covering:
 - » Procedural flaws did not make dismissal unfair (Lamb v Teva UK)
 - » Severe defects in internal appeal rendered capability dismissal unfair (Milrine v DHL).
 - » Poor treatment does not automatically equate to discriminatory treatment (London Ambulance Service NHS V Sodola debarred).



Employment Rights Act 2025

- » Implementation roadmap.
- » Action points for employers.



Legislation Update – recent developments

- » Bereaved partner's paternity Leave.
- » Annual increase to rates of pay.
- » New data protection legislation.
- » ACAS early conciliation period increased from 6 to 12 weeks from 1 December 2025.

Case update (1)



Lamb v Teva UK Ltd [2026] EAT 8

Minor procedural flaws did not render the overall dismissal process unfair, due to the particular circumstances.

Background

The statutory test: section 98(4) of the ERA 1996

- "The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer):

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking), the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

- Case law has developed to demonstrate the importance of a fair procedure for all of the potential reasons for dismissal.
- NB ACAS code of practice for misconduct and performance dismissal.

Facts

- Mr Lamb was an electrician who did not follow the correct process for reporting an electrical fault.
- He was dismissed following a process, where the investigating manager had also been a witness.
- Tribunal found that the dismissal was fair.
- Mr Lamb appealed to the Employment Appeal Tribunal (EAT), arguing that procedural flaws meant that the Tribunal was not entitled to find that he had been fairly dismissed.

Decision

- The EAT held that the Tribunal had been entitled to find that the minor flaws in the process did not render the process unfair as a whole.

Points to takeaway



- Although slight procedural flaws in an investigation will not necessarily undermine the fairness of a misconduct dismissal, this will depend on the circumstances. In this case the witness evidence provided by the investigator was of relatively minor importance to the dismissal decision. If a manager who is leading an investigation into alleged misconduct is also a key witness, that might well affect the fairness of the procedure.
- The EAT specifically recommended that employers read and follow the Acas Code of Practice on Disciplinary and Grievance Procedures, which it described as "clear and concise", and the Acas Guide on Conducting Investigations in the Workplace.
- If you have a misconduct investigation and you are considering doing something, or have done something, which does not comply with the Code, then we recommend that you take legal advice on how this might impact on overall fairness.

Case update (2)



Milrine v DHL Services Limited [2026] EAT 31

The employer's failure to arrange an appeal hearing meant that the dismissal was unfair.

Background

- A fair dismissal process includes providing the dismissed employee with the opportunity to appeal against the decision to terminate his or her employment.

Facts

- Mr Milrine was dismissed followed 2 years of sickness absence.
- The employer made a number of significant mistakes when attempting to arrange an appeal hearing.
- The Employment Tribunal found that the Claimant had been fairly dismissal, despite these mistakes.

Decision

- The EAT found that the Tribunal had not applied the principle requiring it to consider that a lack of appeal may render unfair an original decision to dismiss.
- It found that the defects at appeal stage were so severe that the only outcome open to the Tribunal had been to find that the dismissal had been unfair.

Points to takeaway



- When an employee exercises his or her right to appeal against dismissal, the employer should act fairly and reasonably when making arrangements for the appeal hearing
- The appeal hearing itself should not just be a tick box exercise, as it is not just a lack of appeal that can make the dismissal unfair, a procedurally defective appeal could potentially also do so.

| Any questions?

Case update (3)



London Ambulance Service NHS v Mr Sodola (Debarred) [2026] EAT 6

The Employment Appeal Tribunal overturns Employment Tribunal's decision that an employer's three-month delay in providing written feedback to a Black African employee following unsuccessful promotion interview was direct race discrimination.

Background

- Direct race discrimination occurs where:
Because of race, a person (A) treats another (B) less favourably than A treats or would treat others.

Facts

- Mr Sodola made his 4th application for a team manager position. He scored 7 out of 15.
- Four successful candidates, who were all white, scored more highly.
- He received limited verbal feedback stating that the other candidates were more qualified & experienced.
- He requested written feedback on 7 June 2020, which was provided on 23 August 2020.
- He brought 2 race discrimination claims.

Decision

- ET held that the reason he was not promoted was because he was not the most qualified candidate.
- ET upheld complaint that delay in providing feedback was less favourable treatment because of race.
- The Trust appealed.
- The EAT overturned ET's finding of race discrimination in relation to the provision of feedback. There was no inference that the reason for the delay was because of race.

Points to takeaway



- The decision provides helpful clarification of the extent to which an employer's explanation for its conduct towards an employee can be considered.
- Poor treatment does not, without more of a hook, equate to discriminatory treatment.
- It is a reminder that, while poor administrative practice will not give rise to liability for direct discrimination without some evidence that the protected characteristic actually influenced the treatment, it might leave employers open to claims of victimisation.

| Any questions?

Employment Rights Act



- The Employment Rights Bill received Royal Assent on 18 December 2025.
- This Act brings about the most comprehensive overhaul of workplace rights in many years, reshaping the employment landscape for both employers and workers.
- During this webinar we will look at:
 - The key changes
 - The timescales for implementation
 - What steps should be taken now to prepare.

Employment Rights Act



Implementation roadmap

Change that took effect on Royal Assent

- Repeal of the Strikes (Minimum Service Levels) Act 2023.

February 2026

- Protection against dismissal for taking industrial action not time limited.
- Check off in the public sector.

February 2026

- Industrial action ballots: support thresholds.
- Industrial action ballots: information required is reduced.
- Industrial action ballot: period of effectiveness increased.
- Notice of industrial action to employer and the amount of information required reduced.
- Removal of requirement to appoint picketing supervisor.

April 2026

- Paternity leave – day one right (and can be taken at the end of SPL).
- Unpaid parental leave- day one right.
- Working time records
- SSP payable from day one and removal of lower earnings limit.
- Collective consultation – increase in protective award from 90 to 180 days' pay.
- Whistleblowing protection specifically for sexual harassment disclosures.
- Fair Working Agency established.
- Voluntary equality action plans.

Employment Rights Act



Implementation roadmap

August 2026

- Electronic balloting (*no earlier than August 2026*).

October 2026

- Right to a statement of trade union rights.
- Rights of trade union access.
- Facilities for trade union officials and learning representatives (requires commencement regulations and an Acas Code of Practice).
- Time off and facilities for union equality representatives (requires commencement regulations and an Acas Code of Practice)
- Protection against detriment for taking industrial action (requires further substantive regulations).

October 2026

- Employers will be required to take “all reasonable steps” to prevent sexual harassment of their employees (with regulations specifying reasonable steps).
- Duty to prevent third party harassment in relation to all relevant protected characteristics.
- Tips and gratuities (requires commencement regulations).
- Public sector outsourcing (requires further regulations).
- Employment tribunal limits to increase from 3 to 6 months (*no earlier than October 2026*).

Key steps to take to prepare for 2026 changes



➤ Contract of employment:

- SSP

➤ Policies:

- Paternity leave and SPL
- Parental Leave
- Sickness
- Harassment – steps in relation to third parties
- Sexual harassment
- Whistleblowing

➤ Other steps:

- Working Time records
- Statement of trade union rights
- Review and implement all reasonable steps to prevent sexual harassment
- Consider voluntary equality action plans

Employment Rights Act



Implementation roadmap

1 January 2027

- Protection from unfair dismissal will become a right after 6 months of being in a job.
- Removal of cap on unfair dismissal compensatory awards.
- Ban on fire and re-hire unless in financial difficulty.

4 April 2027 (30 March 2027 for public authority employers)

- Mandatory equality action plans for those with 250 or more employees.

Later in 2027

- Parental bereavement leave to be extended to a more general bereavement leave and pregnancy loss.
- Refusal of flexible working requests must be based on a reasonable test and prescribed process.
- Collective consultation threshold for collective redundancy to be amended.
- School Support Staff Negotiating Body will be established to negotiate pay, terms and conditions and advise on training and career progression.

2027

- Additional protection for trade union members from discrimination and being 'blacklisted' and a new industrial relations framework.
- Dismissal during or after pregnancy or statutory family leave.
- Ending exploitative use of zero-hour contracts.
- Regulation of umbrella companies.
- Regulations to specify steps to prevent sexual harassment.

Key steps to take to prepare for 2027 changes



➤ Unfair dismissal – update contract:

- Reduce **probationary period** to under 6 months. Suggestion would be 3 or 4 months, with a right to extend for a further month.

➤ Bereavement leave:

- Add **bereavement leave** into 'other paid leave' in employment contracts, where leave is paid .

➤ Policies :

- **Bereavement leave policy**- detail different types of leave and associated pay, where relevant.
- **Flexible working policy** – incorporate agreed process if set out in the regulations.

➤ School Support Staff Negotiating Body (SSSNB):

- Monitor the DfE updates.
- Audit existing contracts.
- Review budgets, workforce planning and contracts to anticipate future pay alignment.

➤ Equality action plans:

- Conduct a gender pay audit.
- Evaluate menopause support
- Begin to develop targeted action plans.
- Review the government guidance on creating an equality action plan & the lists of recommended, evidence-informed actions:
www.gov.uk/government/publications/creating-an-action-plan-guidance-for-employers

➤ Zero-hour contracts:

- Start to audit workforce to identify how many are engaged on zero hours and minimum hour contracts.
- Identify any seasonal fluctuations in demand for work and identify where fixed term contracts may be more appropriate.

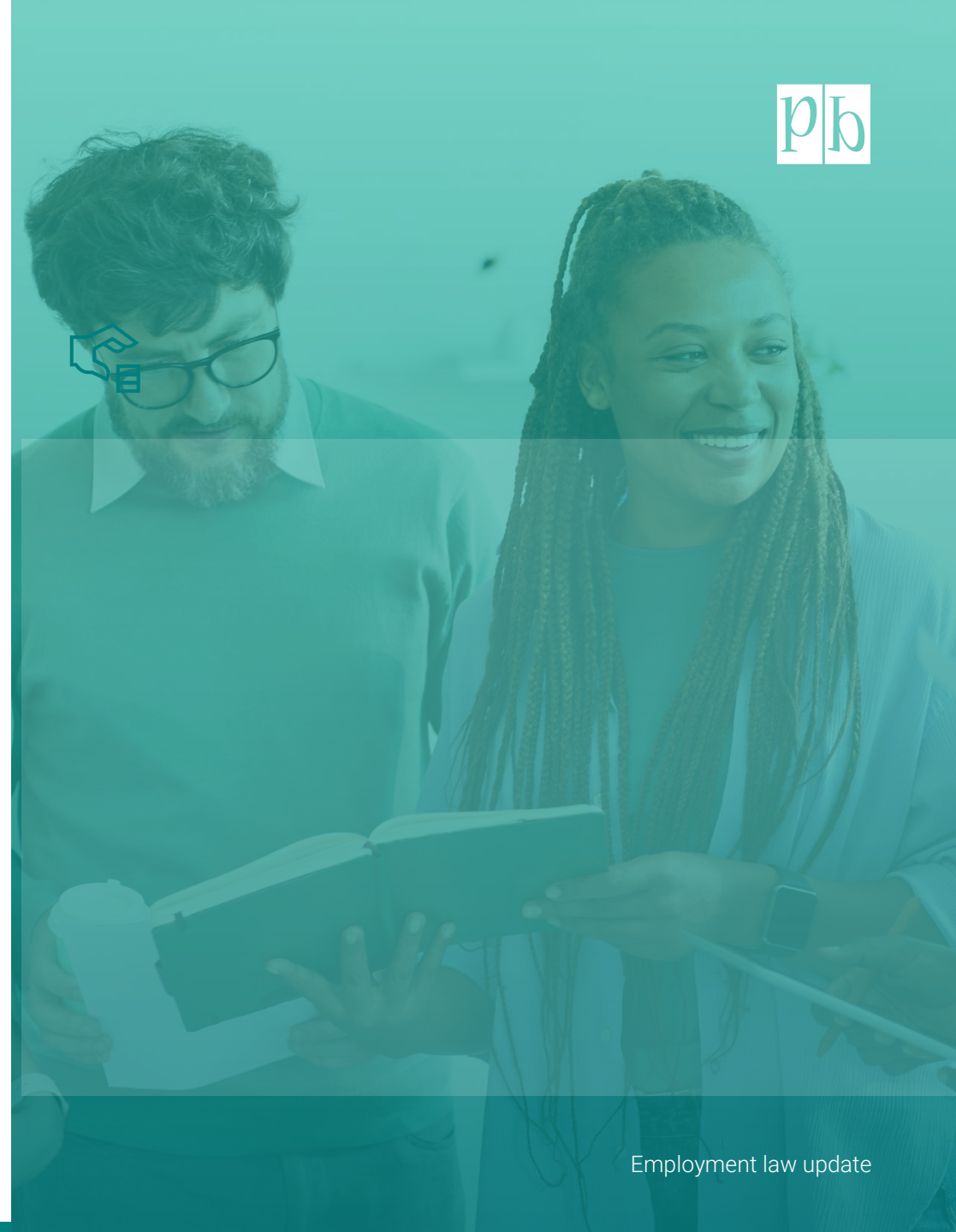
➤ Sexual harassment obligations:

- Sexual harassment policy.
- Risk assessment- consider risks and consider what reasonable steps to take.
- Training- on what constitutes sexual harassment, how to report it and the steps that will be taken.
- Action plan- record of ongoing steps taken.
- Monitor and evaluate actions.

| Any questions?

Recent developments and upcoming changes

- » Bereaved partner's paternity leave.
- » Annual increase to rates of pay.
- » New data protection legislation.
- » ACAS early conciliation period increased from 6 to 12 weeks from 1 December 2025.



| Any questions?

Thanks for
attending



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