

HR/Employment law update



Autumn 2026

Our team



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Topics for discussion



Employment Rights Act 2025

- » Recap on changes that have been implemented.
- » Changes that require immediate attention:
 - » Duty to take all reasonable steps to prevent sexual harassment.
 - » Reinstatement of duty relating to third party harassment.
 - » Probation clauses.
- » Longer term changes.



Recent Cases

- » A round up of the latest key employment cases covering:
 - » Training fees clawback clause (Geeks).
 - » Six month non-compete clause (Huws Gray).



Legislation Update – recent developments

- » Revised EHRC Services Code.
- » New data protection legislation.
- » Consultation on disciplinary and grievance procedures.

Employment Rights Act



RECAP: Changes that have taken place already

- Paternity leave – day one right (and can be taken at the end of shared parental leave).
- Unpaid parental leave- day one right.
- SSP payable from day one and removal of lower earnings limit.

Employment contracts and policies should have been updated to reflect these changes.

- Working time records – duty to keep records of compliance with annual leave and pay for annual leave.
- Time limits for bringing tribunal claims has extended from 3 months to 6 months from 1 October 2026.

Employment Rights Act



30 October 2026

Duty to take all reasonable steps to prevent sexual harassment

- **Current position:** duty to take reasonable steps to prevent sexual harassment.
- **New position:** duty to take **all** reasonable steps to prevent sexual harassment.
- Regulations will specify reasonable steps which are expected to include:
 - Having a sexual harassment policy.
 - Carry out a risk assessment.
 - Training employees.
 - Put in place steps relating to reporting sexual harassment.
 - Put in place steps relating to the handling of complaints.

Third party harassment

- Duty to prevent third party harassment in the workplace in relation to all relevant protected characteristics.
- Steps to take include:
 - Update policies including anti-harassment policy and lone working policy.
 - Regularly assess risks for third party harassment and take action to avoid or reduce risk.
 - Monitor and record incidents and action taken.
 - Train workers and ensure they know how to raise a concern.
 - Set boundaries with external parties.

Employment Rights Act



1 January 2027

Qualifying service for unfair dismissal will change

- Protection from unfair dismissal will become a right after **6 months'** of being in a job (currently 2 years').
- This means that anyone who starts from 1 July 2026 will have protection from unfair dismissal on 1 January 2027.
- Likewise, someone who started on 1 January 2026 will also have protection from unfair dismissal on 1 January 2027.

Impact of this change on probation periods

- Need to review probation period and processes.
- Probation periods should be under 6 months.
- Suggestion would be 3 or 4 months, with a right to extend for a further month.
- Statutory notice needs to be given before the 6 month mark otherwise this will take employees over 6 months' service.
- If no notice is given or payment in lieu of notice, statutory notice will still be added on to the date of dismissal.

Steps to take

- Update contracts and offer letters to reflect new probation period.
- Update probation policies and procedures.
- Consider impact on any benefits.
- Train managers on the importance of effective probation management.
- Keep records of all objectives, deadlines, shortcomings and feedback.
- Review fixed term contracts.
- Review new starters and accelerate dismissals where relevant.

Employment Rights Act



Longer term changes

1 January 2027

- Removal of cap on unfair dismissal compensatory awards.
- Ban on fire and re-hire unless in financial difficulty.
- Statement of right to join trade union

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

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

April 2027

- Bereavement Leave

Later in 2027

- 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

- 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.

| Any questions?

Case update (1)



Geeks Ltd v Watts [2026] EWCA Civ 889

- The Court of Appeal held that contractual provisions requiring an employee to repay in-house training costs on leaving employment engaged the restraint of trade doctrine and were unenforceable because they went further than reasonably necessary to protect the employer's legitimate interests.

Background

- Under the restraint of trade doctrine, any contractual term restricting an employee's activities after termination is void for being contrary to public policy, unless the employer can show that:
- The restriction protects a legitimate proprietary interest.
- The protection sought is no more than is reasonable having regard to the interests of the parties and the public interest.

Facts

- On 15 March 2019, Mr Watts entered into two agreements with Geeks, an IT services company.
- The first was an employment contract under which Mr Watts was hired as a QA Engineer (Trainee) from 18 March 2019 on a salary of £18K (increasing to £20K and £22K in the next two years).

Facts

- The second was a Contract of Training Investment that provided that Mr Watts' employment would start with a six-month training period for which he would meet the estimated financial cost of **£8,108**. The Training Contract provided that the Training Cost Debt could be paid by one (or a combination of) the following:
- By "work contribution". Once Mr Watts had worked for 12 months, in consideration of the benefits of his employment to Geeks, the Training Cost Debt would be written off by one-eighteenth per subsequent complete month of full-time employment until it reached zero.
- By "monetary payment". If Mr Watts' employment ended before the Training Costs Debt was fully repaid, he would pay the outstanding balance by monthly payments equating to one-eighteenth of the original Training Cost Debt until paid in full. Geeks would make a 5% reduction of the outstanding balance if it was paid in full within ten days of termination.

On 12 November 2019, Mr Watts resigned to take up new employment at a salary of £30,000 per annum.

Decision

- The county court decisions were that the clawback clause was a restraint of trade, but protected a legitimate interest and was reasonable.
- Mr Watts appealed. Geeks was allowed to argue that the clause was not a restraint of trade in the first place, and was enforceable as a debt.
- The Court of Appeal found that the clawback clause was a restraint a trade. There was a legitimate interest, but the clause went further than was reasonably necessary.

Employment law update

Points to takeaway

- Training costs clawbacks are a restraint of trade, rather than merely being a debt.
- The 2 limb test of a legitimate interest and reasonableness must therefore be met, for the clause to be enforceable.
- Take advice on drafting clause in the contract, as there are a number of factors to balance when seeking to ensure that this test can be met.



Case update (2)



Huws Gray Ltd v Gentleman [2026] EWHC 1309 (Comm)

- The High Court held that a six-month post-termination non-compete covenant for an area sales manager at a large builder's merchant was void as an unlawful restraint of trade.

Background

- Restrictive covenants/post termination restrictions in an employment contract are a restraint of trade. The most difficult type to enforce is normally a non-compete.
- The enforceability of post-termination non-compete covenants in employment contracts is assessed by applying a three-stage process: construing the covenant, determining whether the employer has legitimate business interests requiring protection, and assessing whether the covenant is no wider than reasonably necessary to protect those interests. The burden of establishing reasonableness is on the employer.

Facts

- Huws Gray Ltd (HGL), the claimant, is a nationwide builders' merchant with over 250 branches. Mr Gentleman, the defendant, was employed by HGL as an area sales manager for just over two years. He was responsible for customer relationships at HGL's Swindon, Newbury and Cirencester branches, servicing the higher-value accounts, numbering 103 customers by the end of his employment.
- On 23 November 2025, Mr Gentleman resigned giving one month's notice, and was subsequently placed on garden leave. He informed HGL he was leaving to join MKM Building Supplies Ltd (MKM), a direct competitor, as external sales representative at MKM's new Swindon branch, which was due to open in March 2026. Mr Gentleman started working for MKM on 6 January 2026.
- His contract with HGL contained a 6 month non compete clause.

Decision

- Interim injunction initially granted.
- The High Court eventually held that the covenant constituted an unlawful restraint of trade and was void and unenforceable.

Points to takeaway



- This case shows how cumulative drafting defects can be fatal to the enforceability of a post-termination restriction.
- Advice on drafting restrictive covenants is recommended, before the start of employment and as employment progresses.

| Any questions?

Recent developments and upcoming changes

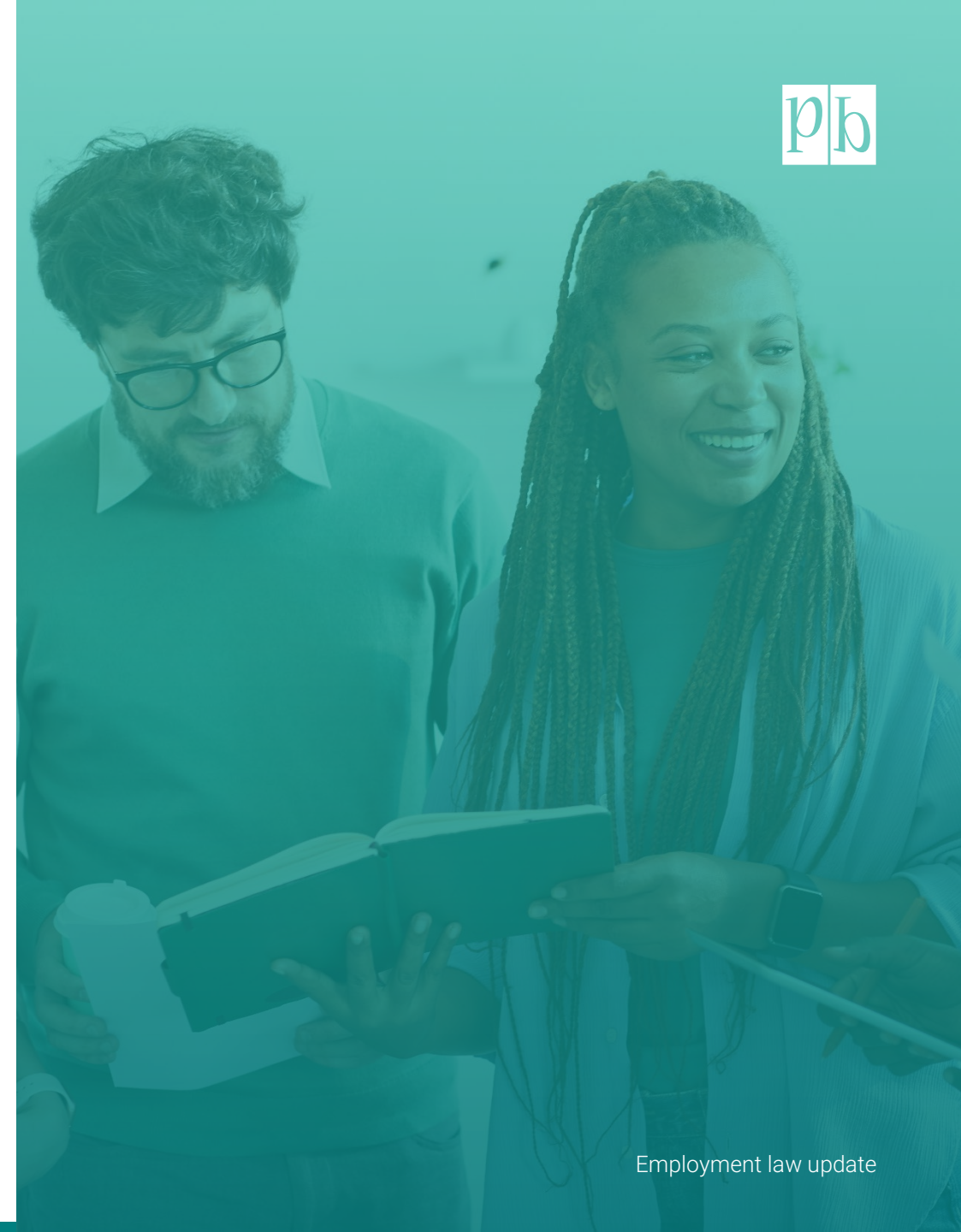


Revised EHRC Services Code and impact on single sex facilities in the workplace

- » Prior For Women Scotland Ltd v Scottish Ministers – trans person should be free to use the facilities appropriate to the gender in which they identify.
- » For Women Scotland Ltd v Scottish Ministers: for the purposes of the Equality Act, all trans people should be treated as members of their biological sex.
- » EHRC Services Code updated 5 August 2026- still awaiting the updated code for employers.
- » Guidance: where possible both single sex and mixed sex facilities should be provided.
- » How you approach it involve the balancing of risk.

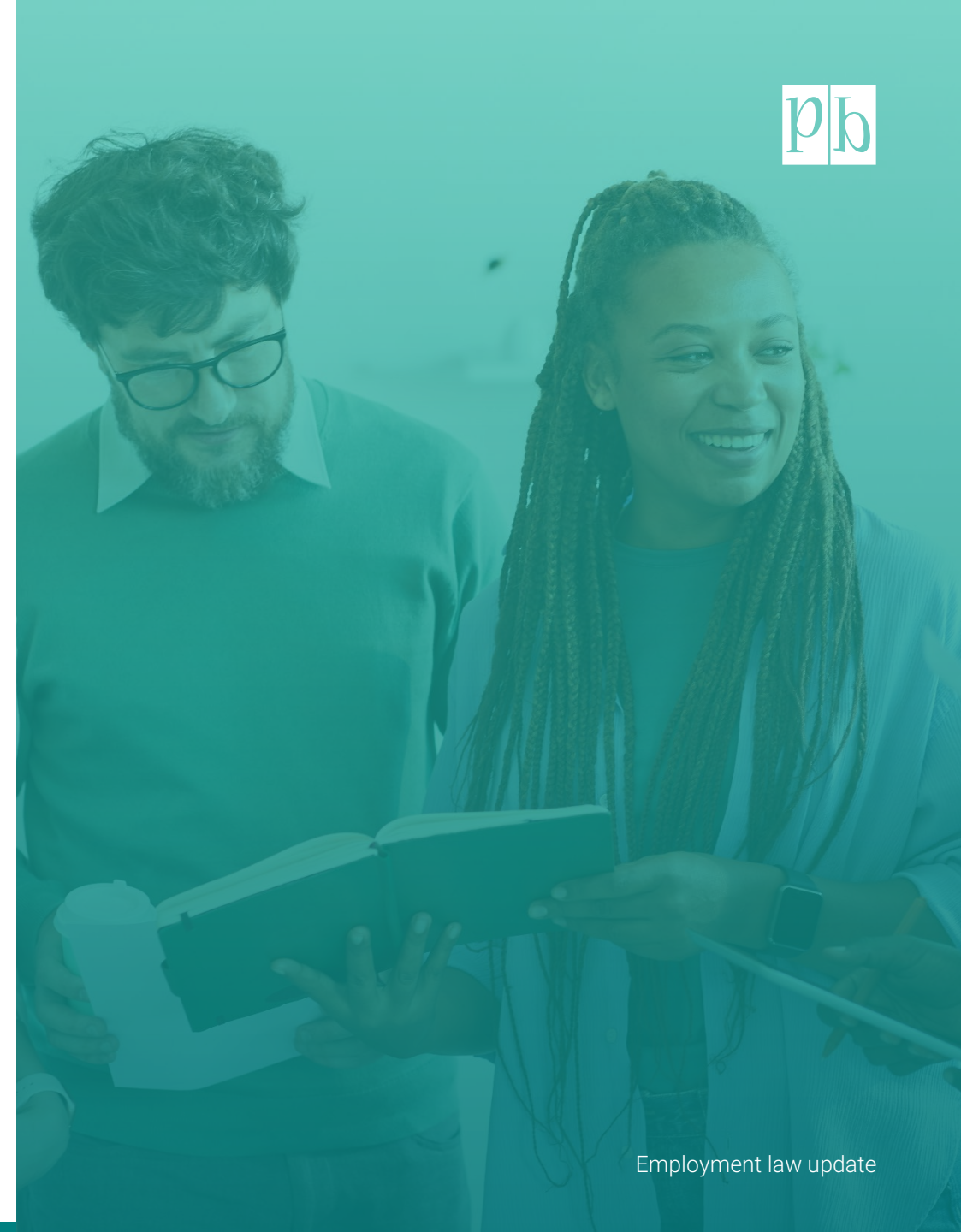
New data protection legislation

- » New statutory right for employees and other individuals to raise data protection complaints directly with their employee.
- » Under a positive obligation to facilitate and manage complaints:
 - » Provide individuals with a way of making complaints.
 - » Acknowledge complaints within 30 days.
 - » Take appropriate steps to respond without undue delay
 - » Provide an outcome without undue delay.
- » ICO guidance: <https://ico.org.uk/for-organisations/how-to-deal-with-data-protection-complaints>



Recent developments and upcoming changes

- » ACAS Code on Disciplinary and Grievance procedures revised-consultation on the draft code ended on 23 September.
- » The revised draft code focusses on informal resolution.
- » Responses from the consultation are now being reviewed.
- » In the meantime, the current code still applies.



| Any questions?

Thanks for attending



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