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Update - Employment Rights Bill

Collective Redundancy The Government has today published its response to its consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire. Key points to note from the response include:

- The cap on protective awards in collective redundancy situations will be increased from 90 days to 180 days to encourage employer compliance. This change will be included in the amendments to be tabled to the Employment Rights Bill later today.
- A proposal that interim relief should be available in claims for protective awards and/or claims for unfair dismissal on grounds of fire and re-hire (which are to be introduced in the Employment Rights Bill) will not be taken forward. The government acknowledged that this would place undue burdens on businesses and tribunals.
- In response to feedback that employers would welcome greater support in order to ensure compliance with collective consultation obligations, the government confirms that it will issue further guidance for employers on consultation processes for collective redundancies in due course.

Government Response to the consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire

Zero Hours Contracts The Government has published its response to its consultation on the application of zero hours contracts measures to agency workers. The Employment Rights Bill already includes complex proposals for low and zero-hours workers covering three key areas:

1. A right for low and zero hours workers who satisfy certain conditions to be offered guaranteed hours at the end of a relevant reference period that reflects the hours worked during that reference period.

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2. A right for zero hours and other specified workers to be given reasonable notice of shifts and changes in shifts.

3. A right for zero hours and other specified workers to payment each time a work shift is cancelled, moved or curtailed at short notice.

The Government has confirmed that it will table amendments to the Employment Rights Bill to include a framework for the extension of the application of each of these measures to agency workers. How the measures will work in practice must await secondary legislation.

However, the consultation response provides some information:

- Responsibility for providing the agency worker with reasonable notice of shifts will be on both the employment agency and the end hirer – with the tribunal able to apportion liability based on the responsibility of each party in a given case.

- Responsibility to pay any short notice cancellation or curtailment payments will be on the employment agency but they will be allowed to re-coup this from the hirer where they have arrangements with the hirer covering this.

- The Secretary of State will have the right to publish regulations stipulating the form and manner in which an agency worker should receive notifications of shifts, cancellations or curtailments.

- Responsibility to offer guaranteed hours to qualifying agency workers will fall on the end hirer.

- There will be an exception to the requirement to offer guaranteed hours where there is a genuine temporary work need (such as seasonal demand).

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- The current system of extended hire periods and transfer fees under *The Conduct of Employment Agencies and Employment Businesses Regulations 2003* will continue to apply.

Government response to the consultation on the application of zero hours contracts measures to agency workers

SSP for low earners The Government has published its response to its consultation on strengthening statutory sick pay (SSP) under the Employment Rights Bill.

Those earning below the Lower Earnings Limit (LEL) per week (currently £123 but due to increase to £125 in April) are not currently eligible to receive SSP. The Employment Rights Bill proposes to remove the requirement that an employee must earn above the LEL in order to be eligible for SSP.

Acknowledging that the rate of SSP would need to be adjusted for those earning less than the LEL, the recent consultation focused on establishing what percentage of earnings should be used to calculate SSP for these workers. In its response, the Government has concluded that the appropriate percentage rate for SSP is 80% of the SSP flat rate, where 80% of an employee's normal weekly earnings is less than the flat rate.

This will be set in law by an amendment to the Employment Rights Bill which reaches Report stage in the House of Commons next week.

CP 1275 – Making Work Pay: Strengthening Statutory Sick Pay

Trade Unions - The Government has published its response to its recent consultation on creating a modern framework for industrial relations. As a result, it is proposing to make several changes to the current provisions in the Employment Rights Bill dealing with trade unions. Headline changes include:

- There will be a requirement for a 10-day notice period for industrial action (increased from seven days in the initial draft of the ERB).

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- The Government will use secondary legislation to provide the CAC with a framework for fines to be issued for non-compliance with the right of access.
- The current ERB proposal to repeal the 50% industrial action ballot turnout threshold will not be enacted immediately but will require separate regulations, the aim being to dovetail this change with the introduction of e-balloting.
- The current mandate for industrial action is valid for six months before it expires. The ERB will be amended to include a provision extending the mandate to 12 months.
- To address the issue of mass recruitment into the bargaining unit to thwart trade union recognition, the maximum number in the bargaining unit will be set at the date when the CAC receives the application for recognition from the trade union. It can go down but it cannot go up for the purposes of the recognition process.
- The ERB will be amended to allow access arrangements to include virtual access (either solely or alongside physical access).
- Unions will no longer need to ballot members every ten years regarding whether they wish to maintain a political fund. This will be replaced with a requirement that unions give members notice of their right to opt out of the political fund every ten years.

The Government's consultation response also makes clear commitments to industrial relations once the Employment Rights Bill has received Royal Assent. These include:

- Delivering e-balloting and workplace balloting for trade union ballots
- Lowering the admissibility requirements for the statutory trade union recognition ballot process.
- Using secondary legislation to deliver greater rights and protections for trade union representatives and members

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Government response to the consultation on creating a modern framework for industrial relations

OTHER ITEMS

Compensation

In *Gourlay v West Dunbartonshire Council*, the Claimant was dismissed for gross misconduct. He claimed to have developed a serious depressive illness as a result of his treatment by the Respondent. He brought claims of unfair dismissal, disability discrimination and victimisation. His claims were successful. The employment tribunal accepted that the Respondent's discriminatory conduct had left the Claimant permanently unfit for work.

The tribunal, when assessing compensation, made an assessment of past and future wage loss and pension loss to the date of retirement. However, it reduced the award by 80%, considering the likelihood that the Claimant's employment would have ended within a few years due to a relationship breakdown or a mutual agreement to leave. Alternatively, the tribunal found it likely that he would have taken ill-health retirement due to his other health conditions of MS and type 2 diabetes, regardless of his depressive episode.

The Claimant appealed the compensation decision. The Employment Appeal Tribunal upheld the appeal, finding errors in the tribunal's approach:

- Compensation for discrimination should restore the claimant to the position they would have been in if not for the employer's unlawful actions.
- The tribunal wrongly reduced compensation based on the likelihood that the Claimant would have been fairly dismissed within a few years. Since the discriminatory dismissal left him unable to work, a reduction was only justified if a lawful dismissal would have had the same effect. There was no evidence to suggest that a later, lawful dismissal, would also have left him unable to work again.

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- The tribunal also reduced compensation based on the possibility that the Claimant's other health conditions might have led to ill health retirement in any event. However, this was based entirely upon speculation rather than upon evidence so was found to be perverse.

The issue of remedy was remitted to a differently constituted tribunal.

Mr_Brian_Gourlay_v_West_Dunbartonshire_Council__2025__EAT_29.pdf

Working Time Regulations

Some employees may be entitled to an extra day off in 2024-25 due to fewer bank holidays.

In most years, England and Wales have eight bank holidays but due to Easter falling later in 2025, there are only seven between 1st April 2024 and 31st March 2025. This could impact employers whose holiday year runs from April to March if workers are only entitled to the statutory minimum under the Working Time Regulations: 28 days including bank holidays.

Employees with April to March holiday years need to check their contracts and holiday policies now if they haven't already done so, to see if they are impacted:

- If the employment contract states **28 days, including bank holidays**, there's no issue - employees still get their full entitlement. They will get the seven bank holidays off and will have 21 days to take at another time.
- If the employment contract states **20 days plus all bank holidays**, there is a problem - affected workers would only receive 27 days, falling short of the statutory minimum.

Unfair dismissal

In *Hewston v Ofsted*, the Claimant, an experienced Ofsted inspector with a clean disciplinary record, was summarily dismissed after touching a pupil's forehead and shoulder to remove rainwater.

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Upholding the Employment Appeal Tribunal's finding of unfair dismissal, the Court of Appeal gave a useful restatement of the principles applying to conduct dismissals:

- Examples of gross misconduct are generally listed in disciplinary policies. If something is not included in the list, this does not automatically mean that an employer cannot summarily dismiss for it.
- However, if the act is unlisted, it will be critical to the fairness of any dismissal to consider whether the employee could reasonably expect the employer to regard the act as serious misconduct having regard to the nature of the act and the surrounding circumstances.
- An employer should not be able to bump up the seriousness of conduct which is not capable of justifying dismissal just because the employee failed to show contrition.
- Loss of trust and confidence and the risk of reputational harm can be a relevant factor in reaching a disciplinary sanction but "*it cannot be a stand-alone basis for such a decision; there must at least be some misconduct*".
- Employees should be provided with copies of all documents relevant to anything in dispute in the disciplinary process prior to any decision being reached.

In this case, touching a pupil was not listed as an example of gross misconduct and the Claimant could not reasonably have expected the Respondent to regard it as serious misconduct given the context. Given that conclusion, a lack of contrition could not 'bump up' the seriousness of the conduct.

Court of Appeal Judgment Template

Pay gap reporting

In July 2024, the Government used the King's Speech to announce its intention to bring forward the *Equality (Race and Disability) Bill*, introducing a requirement for

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large employers (those with 250 or more employees) to report on ethnicity and disability pay gaps. It has now launched a consultation seeking views on how it should be implemented.

The Government proposes to use the same set of pay gap measures for ethnicity and disability as are currently in place for gender pay gap reporting, with the addition of data relating to:

- the overall breakdown of their workforce by ethnicity and disability
- the percentage of employees who did not disclose their personal data on their ethnicity and disability

For **ethnicity pay gap reporting**, the Government proposes that there should be a minimum of 10 employees in any ethnic group that is being analysed, and acknowledges that this may involve grouping ethnic groups together to meet the threshold. It also proposes an option for 'binary classification' where an employer has smaller numbers of employees in different ethnic groups, allowing them to report their figures for two groups – for example, comparing White British employees with ethnic minority employees.

For **disability pay gap reporting**, the Government proposes taking a wholly binary approach, measuring the disability pay gap by comparing the pay of disabled employees with non-disabled employees. Again being compared.

The consultation runs until 10 June 2025. It is proposed that there should be a minimum of 10 employees in each group.

https://www.gov.uk/government/consultations/equality-race-and-disability-bill-mandatory-ethnicity-and-disability-pay-gap-reporting/consultation-document-html#ministerial-foreword

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2025/26 Vento guidelines published

The latest annual update for awards for injury to feelings in discrimination and detriment cases has been published.

In respect of claims presented to the employment tribunal on or after 6 April 2025, the *Vento* bands (as they are known) are as follows:

- a lower band of £1,200 to £12,100 (less serious cases);
- a middle band of £12,100 to £36,400 (cases that do not merit an award in the upper band); and,
- an upper band of £36,400 to £60,700 (the most serious cases) with the most exceptional cases capable of exceeding £60,700.

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