

Spring 2025

# DRAPER LANG QUARTERLY



Welcome to our new Draper Lang Quarterly Update. Here we share some employment news highlights and look at what's coming up to help your business planning.

## UNDERSTANDING DEI - TRUMPED UP ACCUSATIONS?

DEI has become a highly debated and contentious subject, particularly following Donald Trump's campaign, election and subsequent linking of DEI to the tragic mid-air crash in Washington DC. Trump's disapproval of DEI policies has highlighted debate in the UK about DEI and its effectiveness.

### SO, JUST WHAT IS DEI?

DEI refers to Diversity, Equity and Inclusion. **Diversity** means having a mix of different people, encompassing factors including race, ethnicity, gender, sexual orientation and disability. **Equity** focuses on understanding and addressing barriers to give everyone the same opportunity; aiming for fairness rather than equality (which assumes everyone starts from the same place). **Inclusion** means making sure everyone feels welcomed, valued and part of the group.

### WHY IS DEI IMPORTANT FOR BUSINESSES?

Statistics consistently show that:

- Diverse teams bring a range of perspectives, driving innovation and business growth.
- DEI policies foster a sense of belonging and inclusion, leading to higher employee satisfaction and better retention.
- Businesses committed to DEI are seen as ethical and forward-thinking, which helps attract talent and improve customer loyalty.
- Diversity leads to better decision-making and improved strategic choices, ultimately boosting overall business performance.

### WHAT IS THE DOWNSIDE?

Done well, DEI should benefit everyone, but misunderstanding and poor, tick-box implementation by many organisations has, on occasion, left people feeling excluded and undervalued. Many reports in the UK incorrectly suggest that the positive discrimination criticised in the US also applies here, therefore some people feel that DEI initiatives are in themselves not fair.

### WHAT IS THE DIFFERENCE BETWEEN POSITIVE DISCRIMINATION AND POSITIVE ACTION?

**Positive discrimination** which is practiced in the US means favouring individuals from underrepresented groups regardless of their qualifications. Positive discrimination is unlawful in the UK.



**Positive action**, which is legal in the UK, involves taking proactive steps to encourage applications from underrepresented groups to address imbalances in the workforce, but still selecting the most qualified candidate based on merit.

An example of positive action is to advertise jobs in a wider variety of places to ensure opportunities are seen by a more diverse range of candidates. Positive action still means that the most qualified candidate gets the job.

A case of positive race discrimination was heard in 2024 in the Employment Tribunal. Three white police officers were passed over for promotion in favour of an ethnic minority candidate who was less qualified for the role. The Superintendent tried to justify the appointment by saying it was part of the BAME progression programme. The Tribunal found that this went beyond positive action and constituted unlawful positive discrimination.

## **CONCLUSION**

Whilst there is a lot of noise at the moment, the evidence overwhelmingly shows that embracing DEI can lead to better business; more engaged employees, better decision-making, and stronger overall performance. Understanding and implementing DEI well is vital in creating environments where everyone, regardless of their background, has the chance to succeed and contribute.

Although reform is underway in the US, it should be noted that the Government's planned employment law reforms do not suggest any rolling back of legal protections in the UK, but do propose further protections from discrimination, as well as mandatory ethnicity and disability pay reporting – more of which to follow!

## **NEONATAL CARE LEAVE (SNCL) AND PAY (SNCP)**

On 6 April 2025, a new day 1 parental right is being introduced for parents who have a baby undergoing neonatal medical care. This provides up to 12 weeks of additional leave in order to spend time with and look after their baby who is receiving care during this period.

To qualify for this leave, which a day one right for employees, the baby must be born on or after 6 April 2025 and the medical care must have started within 28 days of the birth and continued for at least 7 days continuously.

Eligible employees with 26 weeks' continuous service at the relevant date will also be entitled to statutory neonatal care pay, which is the same rate as statutory paternity pay. The maximum number of weeks in respect of which a person is entitled to payments of SNCP is 12 weeks.

The detail of the new SNCL and SNCP regime has long been expected by employers. Although framework largely mirrors other forms of statutory leave, there are some notable new concepts, details of which we will share in a dedicated guide, with which it will be important for employers to familiarise themselves. Employers should also consider **introducing a new policy** before the introduction of the new entitlements.

Please contact a member of the team for more information.



IN CASE YOU  
MISSED IT:

## TRADE UNION FIRE AND REHIRE CODE OF PRACTICE 20TH JANUARY 2025

In case you missed it, the [Code of Practice on Dismissal and Re-Engagement](#) (also known as Fire and Rehire) came into force in July 2024. This sets out guidance and best practice in fire and rehire situations and is similar to the original draft Code published in January 2023, however there are some amendments. Significantly, there is now a **financial penalty** for failure to follow the Code.

Protective Awards of up to 90 days gross pay can already be made by the Tribunal where employers have failed to comply with their collective consultation obligations in these circumstances.

Now, Tribunals can also impose a compensation **uplift of up to 25%** for breaches of the Code of Practice on Dismissal and Re-engagement. This is a significant incentive for employers to get these important consultations right.

## DRAPER LANG NEWS!

We are thrilled to announce that our team has grown again! We have been joined by employment law Associate [Rabika Basran](#). Rabika is described by the Legal 500 as, someone who “takes a pragmatic approach to situations and aims to provide clear and practical advice whilst appreciating the need to minimise risks for her clients”. Welcome Rabika! We look forward to introducing Rabika to you all in due course.

## EMPLOYMENT TRIBUNAL FINDS THAT THE TWO YEAR BACKSTOP ON UNLAWFUL DEDUCTION CLAIMS IS UNLAWFUL

Employers should take note of the potential impact of an Employment Tribunal case, which has held that the two-year backstop on unlawful deductions claims introduced by the Deductions from Wages (Limitation) Regulations 2014 (the Regulations) is unlawful. At the time it was introduced, the two year backstop was a great relief for employers who feared claims for holiday pay in particular might stretch back across an employee’s entire employment.

In the case of *Afshar and others v Addison Lee Limited*, having determined that the drivers were workers and therefore entitled to receive paid annual leave, the Tribunal Judge considered arguments advanced on behalf of the drivers that the 2-year limit on claims for unlawful deductions from wages was introduced outside the legal power conferred by section 2(2) of the European Communities Act 1972 (ECA) (i.e. ultra vires).

While admitting that he could be wrong and may be subject to appeal on the point, the Judge decided that the time limit was ultra vires because in this instance, the Regulations had restricted existing UK rights of employees to claim for unlawful deduction from wages. The Judge considered that it could not have been envisaged by Parliament that section 2(2) ECA, which requires that EU law should not be any more difficult to enforce than comparable UK laws, would be used to limit the application of existing UK laws to achieve that goal.

Watch this space to see if this is successfully challenged, but in the meantime, it is important to be aware of the potential greater liability in this area where individuals now may have claims going back well beyond the previous 2 year cap.

IMPORTANT:



# Other news

## 'BALDNESS' COMMENT IS SEX DISCRIMINATION

The Claimant in *Finn v British Bung Manufacturing Company* was found to have suffered sex discrimination by being called a "bald c\*\*\*". The Tribunal found the comment constituted unlawful harassment related to sex because the comment targeted a characteristic predominantly associated with men, namely baldness. The case confirms that offensive comments that exploit characteristics more common to one sex can be deemed to be harassment under the Equality Act.

## DISMISSAL FOR GENDER CRITICAL SOCIAL MEDIA POST IS RELIGIOUS DISCRIMINATION

In *Higgs v Farmor's School*, the Court of Appeal has found that Christian employee who expressed gender critical beliefs on Facebook suffered direct discrimination on the ground of religion or belief. Although the employer, a school, was entitled to object to the posts because of the offensive language used, its decision to dismiss in the particular context was disproportionate, having been based on concerns about potential future reputational damage. The Court held that, even where the risk of reputational damage is shown, an employer's interference with an employee's right to express their beliefs must still be proportionate, and dismissal was not found to be proportionate in this case. A stark reminder to employers to tread very carefully in this area.

## CHANGES TO APPRENTICESHIPS

[The Government has announced reforms](#) to the apprenticeship system aiming to increase the number of apprentices by up to 10,000 per year. The changes (1) allow employers to decide whether adult learners need to complete a level two English and Maths qualification to pass their apprenticeship and (2) shorten the minimum duration of apprenticeships from twelve to eight months. The changes for English and Maths requirements come into force immediately. The change in respect of minimum duration comes into force in August 2025.

## COMING UP IN 2025

New minimum wage increases come into effect on 1 April 2025. The new rates represent the largest increase on record for the 18-20 year old rate. This is in expectation that all adults will be paid the same NLW in the future. The new rates can be found [here](#).

New Neonatal Care Leave and Pay Rights come into effect on 6 April 2025 for parents with new born babies requiring hospital care.

As of August 2025, the minimum duration for apprenticeships is being reduced from twelve to eight months. Please click [here](#) for further information on [GOV.UK](#)

From 6 April 2025, Employer National Insurance Contributions will rise by 1.2% while the employer's Secondary Threshold will reduce to £5000 per annum. This will further increase NI contributions for employers.

We love to hear from you, so please [get in touch](#) if you would like to know more about anything featured in this update, or to give us any feedback.

