



WINTER 2025

DRAPER LANG QUARTERLY



Unfair Dismissal: What Employers Need to Know for 2026-2027

The UK is set for one of the most significant employment law reforms in decades, and unfair dismissal is at the centre of the changes. Employers need to understand what is coming and take steps now to minimise risk.

KEY LEGAL CHANGES

From 1 January 2027, the qualifying period for unfair dismissal will fall sharply from two years' service to just six months. This means that employees employed from July 2026 will already be protected by the time the reforms take effect.

Significantly, the Government also propose to remove the unfair dismissal compensation cap, which is currently the lower of the Claimant's annual salary or £118,223. The Lords have pushed back on this, so it is not yet confirmed.

These changes will expose employers to greater litigation risk, including potentially high value claims from employees with relatively short service. On the plus side, we might see a return to some more straightforward litigation with less attempts to shoehorn claims into the categories that already have no compensatory cap, such as whistleblowing and discrimination.

HOW WILL TRIBUNALS COPE?

Employment Tribunals, originally designed to provide quick and accessible dispute resolution, are under immense strain. To us as regular users, they feel at breaking point – we have many hearings now listed as far ahead as 2028.

These reforms are likely to increase the number of claims, exacerbating delays and making it even more critical for employers to ensure dismissals are legally compliant and well-documented. Memories will have long faded by the time these cases come to trial.

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.

WHAT SHOULD EMPLOYERS DO NOW?

- **Review probation periods and performance management processes:** Check probation periods – and make them shorter than 6 months to give yourself time to act before unfair dismissal eligibility applies; review performance management systems and policies and ensure that disciplinary procedures are clear, fair, and consistently applied. Diarise service dates and don't let review dates slip!
- **Update training and managerial guidance:** Managers should be trained about lawful dismissal practices and how to effectively review staff, including recognising protected characteristics and conducting fair investigations. Inconsistent treatment can lead to costly tribunal claims.
- **Prepare HR systems and records:** Accurate record-keeping is critical. All HR, payroll, and disciplinary records should be complete and accessible in case of a tribunal claim. Well-documented records of performance issues and disciplinary steps are essential.

ACTING PROACTIVELY REDUCES RISK

This change will happen before we know it. Employers who act now to strengthen policies, processes, and documentation will protect their organisations and ensure compliance with the most substantial employment law reforms in decades. Contact us to discuss in more detail.

AS ALWAYS [TALK TO OUR TEAM](#) IF YOU WOULD LIKE TO KNOW MORE ABOUT ANYTHING FEATURED IN THIS UPDATE.

Proposed Reform of Non-Competes

Non-compete clauses in employment contracts are frequently used by employers to restrict departing employees from going to work for competitors or setting up in competition for a period of time after they leave. Non-competes are however controversial as they can prevent the employee from working in their chosen industry, limiting their ability to earn.

[The Government has launched a consultation](#) considering major reforms to non-compete clauses, signalling a potential shift in how employers protect business interests. Options include a maximum time limit for restrictions (such as three months), an outright ban, limiting non-competes for lower-paid employees, or a hybrid approach. Any of these could narrow employers' ability to restrict employees from joining competitors or starting rival ventures.

If non-competes are scaled back, employers will need to strengthen other post termination restrictions. Non-dealing, non-poaching, confidentiality and garden leave clauses are likely to become the primary tools for protecting client relationships, sensitive information and key staff.

No decision has been made but non-competes may soon be very different to now. HR and legal teams should review their current contracts now and consider alternative protections. The consultation runs until 18 February 2026, with further updates expected next year.



The Hidden Criminal Traps Every Employer Should Know About

Criminal liability probably isn't the first thing that comes to mind when you think about HR compliance. However a surprising number of everyday employment tasks come with criminal penalties for organisations and/or individual managers. Here are five areas where things can quietly drift from "administrative issue" to "potential criminal offence".

Redundancy Slip-Ups

When making redundancies, employers must give employees a clear breakdown of how their statutory redundancy pay was calculated. When planning 20 or more redundancies, an employer must also send a form HR1 to the government, now online. Missing either step can lead to prosecution and HR1 failures can mean unlimited fines.

Minimum wage muddles

Failing to keep proper pay records or keeping inaccurate ones, can move an employer into criminal territory, not just a wage audit headache.

Working time blind spots

Ignoring rest breaks, maximum weekly hours or record-keeping duties isn't just a technical breach. Serious or persistent failures can be prosecuted.

Right-to-work risks

Knowingly employing someone without the right to work remains one of the most serious offences, with heavy fines and even the possibility of imprisonment.

A quick internal audit of these hotspots can save a lot of trouble later.

(Don't) Stick to the Script

Scripts for managers can be incredibly useful in disciplinary hearings, often prepared by HR. They are great for structure but they become risky the moment they sound like the outcome is pre-determined.

In *Alom v FCA*, the employee argued exactly that: a script from HR for a line manager to follow showed the decision had been made before the hearing took place. The Tribunal disagreed, finding the process fair because the decision-maker genuinely assessed the evidence and gave Alom a real opportunity to respond. The script guided the meeting; it didn't pre-determine the result.

The takeaway for employers? Scripts should prompt, not predetermine. Use them to support fairness and transparency, and you'll protect both the process and your organisation. Managers should be told to use the script as a guide but need to be open-minded and approach their decision fairly.



Other News

In *Davidson v National Express*, Mr Davidson successfully claimed **unfair dismissal** after being dismissed from his role. The Employment Tribunal awarded him compensation for the financial loss caused by the dismissal which went beyond the traditional retirement age of 65. Employers should not therefore assume retirement at 65 when determining compensation.

O'Brien v Cheshire and Wirral Partnership NHS Foundation Trust highlights the importance of adapting disciplinary processes for disabled employees. Although concerns about Ms O'Brien's alleged failure to work contracted hours first arose in 2018, the Trust did not raise them with her until a year later, by which time her PTSD had significantly affected her ability to recall events, prejudicing the fairness of the dismissal. For employers, the message is clear; address concerns promptly or risk an unfair dismissal finding.

In Case You Missed It

ACAS Early Conciliation periods have recently doubled to 12 weeks, giving more time to resolve disputes before reaching a tribunal. This extended timeframe is designed to reduce pressure on the tribunal system and promote earlier, more constructive dialogue. However, the reality is that ACAS is overstretched and this change means that it will take even longer for cases to come to a tribunal hearing.

HRI goes online: From 1 December 2025, employers must use the [new digital HRI form](#) when notifying the government of proposed collective redundancies.

The digital version removes the need to categorise affected employees, adds a new "supply-chain / loss of contract" reason for redundancies, and has to be done on day 1 of consultation.

COMING UP

- From 1 April 2026, the statutory minimum wage in the UK will rise — the National Living Wage for people 21+ will increase to £12.71 per hour, while the rate for 18–20-year-olds will become £10.85 per hour.

Statutory rate changes from 6 April 2026:

- Statutory Sick Pay (SSP) will increase to £123.25 per week.
- Statutory Maternity, Paternity, Adoption, Shared Parental and Parental Bereavement Pay will rise to £194.32 per week.

Employment Rights Bill - consultations:

- The government has [published four consultations](#) so far under the Employment Rights Bill (launched 23 October 2025).
- They have signalled that many more consultations will follow — including potentially 26 additional consultations on various parts of the Bill.
- These are expected to be released "over winter 2025 into 2026" and perhaps beyond, depending on how the legislative process unfolds.

We wish you all a wonderful Christmas and a happy and healthy 2026!

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.

