SPRING 2026

DRAPER LANG QUARTERLY

Draper Lang LLP
The Employment Law Partnership

Welcome to our quarterly update. Here we share some employment law news highlights and look at what's coming up to help with your business planning.

Employment Tribunal backlog: a system under strain

TRIBUNALS DELAYS ARE THE WORST THEY HAVE EVER BEEN, WITH MANY CENTRES NOW LISTING CLAIMS INTO 2030. WE LOOK AT HOW THIS HAS HAPPENED AND THE IMPACT ON BOTH SIDES.

The recent National Tribunal User Group confirms our experience: Employment Tribunals are now routinely listing claims into **2030**, with **initial preliminary hearings in some regions not expected until 2029.** In practical terms, this means that it can take **more than three years from the point a claim is issued** for the parties to have a first substantive discussion with a judge and longer still to reach final hearing.

HOW DID WE GET HERE?

A decade ago, complex employment tribunal claims were commonly listed within **9 to 12 months**. Fifteen years ago, hearings were often listed in **under six months**, and preliminary hearings were dealt with swiftly and pragmatically.

What has changed is not simply the volume of claims, but their **complexity**. Modern litigation is longer, more technical, and more resource-intensive. Discrimination and whistleblowing claims routinely span years, involve extensive electronic disclosure, multiple witnesses, and layered legal issues that demand sustained judicial input.

At the same time, the tribunal system has struggled to recruit and retain sufficient salaried judges, particularly in London and the South East. The result is a structural imbalance: cases now routinely outstrip the system's capacity to hear them.

IS THERE AN END IN SIGHT?

Sadly not. Claims continue to outpace disposals, and the forthcoming expansions of employment rights are likely to increase demand further. In fact, minutes of the recent Tribunal National User Group meeting show that single claims are at their highest level since the pandemic and the average number of single claims received each quarter has increased from 7,800 in 2022-23 to 12,500 in 2025-26, a 60% increase.

CAN ACAS HELP?

ACAS Early Conciliation was designed to resolve disputes before they reached tribunal. **In practice, it too is under strain.** Delays in allocating conciliators consume large portions of the statutory conciliation period (which was recently extended to 12 weeks due to lack of capacity), limiting the opportunity for meaningful engagement and increasing the likelihood that claims proceed by default.

WHAT DOES THIS MEAN IN PRACTICE?

For employers, there are often no quick fixes; documents must be identified and preserved far earlier; retention policies should be reviewed as they may no longer align with litigation risk. Key witnesses may move on, retire, or struggle to recall events years later. A practical way forward is to gather documents, draft witness statements and prepare cases far earlier than would previously have been proportionate, with many employers accepting the cost of early preparation to avoid the far greater risk of being unable to meaningfully defend a claim later.

For claimants, prolonged delay brings extended financial and emotional uncertainty, evidential drift, and years of frustration and unresolved allegations. The system tests resilience on all sides.

A SYSTEM UNDER STRAIN

The employment tribunal system is not broken beyond repair. In our experience, when cases do come before a judge, the hearings themselves are efficient and fair, but it is taking far too long to get to that stage. Put simply, the system **is operating under pressures it was never designed to withstand**. Delay has become a strategic risk that must be actively managed.

.

Important changes to collective redundancy triggers

Collective Redundancy remains a topic of conversation for employers with rules being tightened and widened in a various places. Here we detail two recent developments which will affect how you conduct collective reundancies in the future.

Two recent developments have put collective redundancy obligations firmly back on the HR agenda: the Employment Appeal Tribunal's decision in ***Micro Focus Ltd v Mildenhall***, and a new government consultation on widening when collective consultation is required.

MICRO FOCUS: CLARITY ON HOW THE NUMBERS ARE COUNTED

Employers must collectively consult where they are **proposing 20 or more redundancies at one establishment within 90 days**. Case law required employers to adopt a "rolling" approach, looking both backwards and forwards across a 90 day period from each dismissal to determine whether the threshold was met. This could lead to situations where employees who had already been dismissed had to be counted alongside those newly at risk in order to determine whether the collective consultation trigger was met.

In Micro Focus, the EAT confirmed that this approach was incorrect under domestic law. **The correct test is forward-looking**: the key question is what redundancies the employer is proposing at the relevant time. Earlier dismissals do not automatically count towards the threshold.

That said, the EAT was clear that employers cannot avoid consultation obligations by artificially staggering redundancies. Where apparently separate exercises form part of a single wider restructuring, tribunals may still conclude that the threshold was met.

For HR teams, the decision brings welcome clarity, but also a reminder that careful planning is essential. Where numbers are close to the threshold, advice should be taken early, particularly given that from **April 2026 the maximum protective award doubled to 180 days' gross pay per affected employee (see below).**

GOVERNMENT CONSULTATION: A NEW ORGANISATIONAL THRESHOLD

Alongside **Micro Focus**, the government has launched a consultation on expanding collective consultation duties. The proposal is to **introduce an additional trigger for collective consultation** based on **the total number of redundancies across the organisation**.

Options under consideration include:

- a single national threshold (between 250 and 1,000 redundancies); or
- tiered thresholds linked to employer size.

The proposals have raised eyebrows for some. The numbers are so big that only the largest multi-site redundancies will be caught.

The consultation runs until **21 May 2026** with any changes expected to take effect from **2027**.

WHAT THIS MEANS IN PRACTICE

For now, the collective consultation trigger is easier to calculate. Employers need only look at what is being proposed, not what has gone before. To avoid any suggestion that redundancies are being deliberately 'batched' to avoid the trigger, it will become vital to clearly document which redundancies are actually being proposed, and when. This must, of course, be done without prejudicing the fairness of any consultations.

Once a collective threshold is also in place, larger employers will also need to carefully track redundancies to ensure that the organisation doesn't fall foul of the new trigger.

As the rules evolve and penalties increase, early planning and advice remain critical to managing risk. As always, do **contact us** if you would like support.

Employment Rights Act 2025 – April 2026 updates

Want to find out more? You can access a free recording of our Employment Rights Act 2025 webinar here: Watch Recording.

The first wave of Employment Rights Act reforms is now in force.
Employers should ensure they are aware of and have addressed the following:

Statutory Sick Pay

SSP is now payable from **day 1**, with the waiting period abolished and the lower earnings limit removed. More workers will now qualify and SSP costs are likely to increase. For some employers this might have a material impact on absence. It has always been sensible to monitor short term one-off absences and manage them accordingly but, for some, this might now become more important.

Collective consultation

The maximum protective award for failing to collectively consult in cases of redundancy has more than doubled to **180 days' pay per affected employee**, significantly increasing financial exposure in redundancy exercises. This being half of your annual payroll for affected employees, there is now no place for shortcuts to the collective consultation process.

Paternity and parental leave

Both paternity leave and parental leave are now **Day 1 rights**, with qualifying service requirements removed. Note, however, that statutory paternity pay still only applies after 26 weeks' continuous service. In addition, there is a **new right for bereaved partners**, who may take a single period of **leave of up to 52 weeks** following the birth or adoption of a child where the mother or primary adopter dies during that year. Policies and guidance should all be updated.

Sexual harassment and whistleblowing

Sexual harassment is now **defined as a protected disclosure** (whistleblowing). This strengthens protection for those who raise concerns and increases the importance of robust reporting and investigation procedures. Update your policies and ensure your training is robust.

Trade union recognition

The removal of key statutory thresholds has made union recognition **easier to achieve** in some workplaces. The impact of this will be felt more keenly following the next wave of ERA changes coming in October regarding trade union rights of access to workplaces.

Holiday pay and record-keeping

Employers must now keep accurate records of annual leave taken and holiday pay for **six years**. This obligation is to be enforced by the Fair Work Agency. Failure to keep adequate records may constitute a **criminal offence**, exposing employers to enforcement action and financial penalties.

Fair Work Agency established

The Fair Work Agency has been formally established as a single enforcement body, bringing together existing labour market enforcement functions. While its remit is now set in legislation, the practical scope of its activity and enforcement approach is still developing. Further guidance and operational detail is expected during 2026.

Please do contact us if you would like us to update your policies.

“Volunteer” Coastguard had worker status

In ***Maritime and Coastguard Agency v Groom,*** the Court of Appeal held that individuals labelled as “volunteers” may still qualify as “workers” under the Employment Rights Act 1996. A volunteer Coastguard Rescue Officer claimed worker status after being denied the right to be accompanied at a disciplinary appeal. The Court found that a contract arose whenever the officer attended activities for which he was entitled to claim remuneration. The absence of an obligation to accept work did not prevent worker status during those engagements. The case highlights that tribunals will look beyond labels and focus on the reality of the relationship, especially if a work-for-remuneration arrangement exists.

ICYMI: Rates and limits increase

From April 2026, key employment law rates have increased. The statutory cap on **a week’s pay (used for basic award and redundancy pay calculations) is now £751,** with the unfair dismissal compensatory cap set at £123,543. The **Vento bands** have risen to £1,300–£12,600 (lower), £12,600–£37,700 (middle) and £37,700–£62,900 (upper). **National Minimum Wage** rates are now £12.71 (for those over 21) and Statutory Sick Pay has increased to £123.25 per week.

Tales from the Tribunal

- **Sacked for complaining about the cold:** In *Ayad v WL Retail Ltd (t/a Whipped London)* a café worker in Covent Garden was awarded £21,600 after her hours were reduced and she was dismissed shortly after complaining that the café was too cold. The tribunal found her complaint about temperatures below the recommended 16˚C was a protected disclosure under whistleblowing law. This case highlights that health and safety complaints can be legally protected, and employers must not treat employees unfavourably for raising them.

- A tribunal has **banned a serial claimant** from bringing any further employment claims without permission after finding she applied for roles with no intention of accepting them, purely to pursue litigation. In the case of *Attorney General v Messi [2026] EAT 34*, in which it was revealed that she **had made 50 previous employment tribunal claims,** the Claimant’s conduct was found to be vexatious and an abuse of tribunal process. There is now a Restrictions of Proceedings Order in place.

- A tribunal has found that repeatedly calling an Irish employee “potato” in a mock Irish accent amounted to racial harassment having created a hostile and humiliating working environment. In the case of *Hayes v West Leeds Civils Ltd*, the tribunal awarded the employee more than £23,000 in compensation and reiterated that harassment is judged by the effect the behaviour has on the individual rather than the intention behind the comments.

Draper Lang News

Members of the Draper Lang team recently took part in two fantastic charity events.

The weather for our annual golf day was beautiful. The event, organised by Steve Cates, raised money for African Village Support, a charity of which he is a trustee. Again, Steve's team took the victory! Fellow Draper Lang golfers David Blomfield and Amelia Matthews have just about forgiven him.... A great day was had by all. Thank you very much to everyone who was involved.

Some of the team also attended a charity quiz in Henley, organised and hosted by local firm Mercers Solicitors in aid of Thames Hospice. With 21 teams taking part, it was a brilliant evening of friendly competition, and we were delighted to win! Thanks to Mercers for a great night.

Both events supported brilliant causes, and we are proud to have been involved.

If you would like to support either charity, you can donate here:

African Village Support

Thames Hospice

COMING UP

Summer 2026: Employers should expect new statutory guidance and draft Codes of Practice, particularly on union access, flexible working processes and redundancy consultation rules.

July 2026: Likely publication of Government responses to spring consultations (flexible working, redundancy thresholds, industrial action).

By August 2026: Changes to trade union balloting rules (including electronic balloting) are expected to be finalised ahead of implementation. We will provide more detail in our summer edition

In October 2026, further ERA changes are expected to come into effect in relation to:

- trade unions - rights of access; facilities; statement of union rights
- sexual harassment (prevent duty expanded to require employers to take 'all' reasonable steps)
- third party harassment
- NDAs
- Tribunal time limits
- Tips and gratuities

January 2027 will bring major changes to unfair dismissal. The qualifying period for ordinary unfair dismissal claims will reduce to 6 months; compensation will become uncapped. January will also bring significant restrictions on dismissal and re-engagement ('fire and rehire').

We love hearing 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.