



SUMMER 2026

DRAPER LANG QUARTERLY



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

Trade Unions - Back on the Board agenda

For many private sector employers, trade unions have played little or no role in workplace relations for years. Employee engagement strategies, direct communication channels and internal consultation forums have often replaced traditional collective representation.

That landscape is changing. The Employment Rights Act reforms represent one of the most significant shifts in UK industrial relations for a generation. Taken together, the changes to trade union recognition and workplace access are likely to increase trade union activity across many sectors, particularly among larger employers that have historically operated without a union presence.

For employers, the question is no longer whether they are unionised today. It is whether they could be tomorrow.

UNION RECOGNITION HAS BECOME EASIER

One of the most significant changes is the reform of the statutory trade union recognition regime, much of which took place last April.

Trade union recognition gives a union the right to collectively bargain with an employer on matters such as pay, working hours and holidays on behalf of a defined group of workers (a 'bargaining unit').

Recent reforms have reduced barriers to union recognition by lowering the bars to make an application and simplifying aspects of the process. Recognition remains far from automatic, but employers that previously considered it an unlikely prospect may need to revisit that assumption.

A NEW RIGHT OF WORKPLACE ACCESS

The next, and arguably biggest, major change comes into force this October. Trade unions will be able to **formally request access to workplaces** to meet workers, recruit members and organise activities.

Importantly, this right is not limited to employers that already recognise a union. In fact, **access may be sought where no union is recognised**, specifically to build support within a workforce which might, over time, signal a precursor to a trade union recognition bid. For many private sector employers, this represents a significant shift.





WHAT DOES "WORKPLACE ACCESS" ACTUALLY MEAN?

Under the new rules, a trade union will be able to ask for access to a workplace so it can speak directly with workers. The purpose is to allow unions to explain what they do, recruit members and organise within the workforce.

Access could include meeting employees on site, distributing information, or communicating with workers through digital channels such as company email, intranet platforms or other agreed methods. Employers will still be able to discuss practical arrangements, such as when, where and how access takes place, but they will not be able to refuse simply because they do not want union activity in the workplace.

WHY IT MATTERS

Taken together, the reforms to workplace access and union recognition are likely to increase union visibility and activity across many workplaces. Greater access creates more opportunities for unions to engage with employees and recruit members, potentially strengthening future recognition campaigns.

A BOARD-LEVEL ISSUE

This is not simply an HR issue. While employee relations is already firmly established as a leadership priority, these reforms have the potential to bring industrial relations back onto Board agendas in a way not seen for a generation.

Many senior leaders have built their careers in organisations with little or no trade union presence. As a result, recognition campaigns, collective bargaining and union access rights may be unfamiliar territory. The challenge, however, is not simply one of legal compliance. It is whether organisations are equipped for a workforce environment in which trade unions have greater opportunities to build influence and visibility.

The extent of that change remains to be seen. It will take time for unions to build capability, capacity and momentum. What is clear, however, is that industrial relations can no longer be viewed as an issue confined to traditionally unionised sectors. For some employers, it may become an increasingly important strategic consideration, with implications for workforce strategy, organisational change, employee engagement and operational resilience.

We are delivering training on these issues to HR teams and senior leaders [contact us](#) if you would like to know more.

Employment Tribunal Delays

As highlighted in our previous edition, the Employment Tribunal system is facing unprecedented pressure. Single claims have increased by around 60%, rising from an average of 7,800 per quarter in 2022/23 to 12,500 in 2025/26, while the open caseload stood at more than 531,000 cases at the end of Q4 2025/26.

In many regions, hearings are now being listed several years ahead. With claims continuing to outpace case resolutions, and further employment law reforms expected to generate additional litigation, pressure on an already overstretched system is likely to intensify. Delays within ACAS Early Conciliation are adding to the challenge.

For employers, these delays make early document preservation and witness management more important than ever. For claimants, they can mean prolonged financial, professional and emotional uncertainty. Tribunal delay is no longer simply an administrative issue; it has become a material litigation risk that both employers and employees must actively plan for and manage.





Strengthening Support for Carers and Parents

Employees have been entitled to up to five days' unpaid carer's leave each year since April 2024 to support dependants with care needs that are likely to last more than 3 months. The government is now consulting on whether these rights should be strengthened, including the potential introduction of additional support, such as paid leave.

The consultation is reviewing how the current regime is operating in practice and whether further guidance is needed to help carers understand and use their rights, particularly in more challenging circumstances. It also seeks views on possible reforms, including widening the purpose of leave (for example, to allow carers to recuperate), extending the length of leave, and introducing paid carer's leave.

Although no immediate legislative changes have been introduced, the consultation signals a likely expansion of statutory rights for unpaid carers. Employers should therefore begin to consider the potential impact of reform. This may include increased or more flexible leave entitlements, the possible introduction of paid carer's leave (with associated cost implications), and broader grounds on which leave can be taken. Employers are also likely to face enhanced administrative and compliance obligations, requiring consistent processes for handling requests.

The consultation closes on 1 September 2026. We will keep you updated as this develops.

Conditional Job Offers

Employers often assume that a conditional job offer can be withdrawn at any time before the employee starts work. However, the recent case of **Kankanalapalli v Loesche Energy Systems Ltd** is a useful reminder that this is not always the case.

The claimant accepted a job offer for a senior project manager role. Before he started work, the employer withdrew the offer due to project delays. The Employment Appeal Tribunal found that a **binding contract had already been formed, despite the offer being described as conditional**. This meant that the claimant was entitled to damages equal to three months' notice pay.

The key learning point is that a "conditional" offer may still create a binding employment contract once it has been accepted, depending on the wording used and the wider circumstances. If the offer sets out the main terms of employment, such as the role, salary, start date and benefits, and the candidate accepts it, the employer may already have contractual obligations, even if checks or references are still outstanding.

That means an employer should not assume it can simply withdraw an offer for general business reasons without consequence. If the conditions are not clearly drafted as pre-conditions to the contract coming into existence, the employer may need to terminate the contract properly and give reasonable notice, or risk a breach of contract claim.

For employers, the practical message is simple: take care when drafting offer letters. Be clear about whether the offer is genuinely conditional on certain checks being completed before any contract is formed and avoid withdrawing offers casually once accepted. A short, clear and well-drafted offer letter can help prevent an expensive breach of contract claim later.



New data protection rule for employers

A new data protection complaints regime came into force on 16 June 2026 under the Data (Use and Access) Act 2025. **Employees and other individuals can now make formal complaints directly to organisations about alleged UK GDPR breaches**, requiring employers to follow a statutory complaints process and respond within prescribed timescales.

This increases compliance obligations and the risk of employee grievances, disputes and regulatory scrutiny where data protection concerns are not handled effectively.

What has changed?

Employers must now acknowledge data protection complaints and take appropriate steps to investigate without undue delay, keeping complainants informed throughout.

The ICO expects complaints to be clearly identifiable, consistently handled, and supported by appropriate internal procedures, training and updated privacy documentation.

Key requirements:

- Provide at least one accessible way for your team to submit data protection complaints (e.g. online form/email)
- Update your policies to inform your team how they can complain
- Acknowledge complaints within 30 days
- Investigate complaints without undue delay
- Keep complainants informed of progress and outcomes
- Maintain records of complaints and resolutions

What next?

Employers should review their privacy governance frameworks to ensure compliance. Failure to do so may result in ICO enforcement action, including compliance orders and potential fines under existing data protection laws.

If you would like to discuss this further, please [contact our team](#).

Draper Lang News

As we have an office in Henley-on-Thames, one of the highlights of our summer calendar is spending an afternoon at **Henley Royal Regatta**.

Each year, the team enjoys taking some time away from the office to watch the rowing, enjoy the riverside atmosphere and make the most of one of Henley's most iconic annual events. It is always a great opportunity to come together outside of the usual working day, catch up as a team and celebrate the start of summer, especially when combined with a 5pm successful England World Cup game.

Welcome back Rabika! Earlier in the summer we also welcomed our colleague [Rabika Basran](#) (Associate) back from Maternity Leave. It is wonderful to have Rabika back and I'm sure our clients look forward to reconnecting with her.





Other news

- Changes to the ACAS code? The ACAS Code on Disciplinary and Grievance Procedures has not changed since 2009. There is now a live consultation to review and update it. Changes being considered include building in requirements for informal resolution in both disciplinary and grievance situations, and a necessity test before an employee is suspended. Consultation closes on 23 September 2026.
- The Home Office has published new guidance expanding employers' right to work check obligations in relation to contractors and self-employed individuals. The changes are due to take effect from October 2026. Businesses that engage off-payroll workers should review their onboarding and compliance processes now to ensure they are prepared for the enhanced requirements and reduce the risk of civil penalties.
- In the case of *Cunningham v BBC* the Employment Appeal Tribunal ruled that employers cannot avoid disability discrimination by claiming that they lacked a formal occupational health diagnosis. In this case, the BBC knew about the employee's debilitating symptoms and workplace struggles, but had not yet received an OH report. The learning point? Employers cannot wait for a formal medical label to approve reasonable adjustments, the Equality Act protection applies if an employer knew or ought to have known that the claimant was disabled.
- *XX v YY* looked at factors to consider when deciding whether conduct constitutes gross misconduct. Here the EAT held that the tribunal wrongly treated the employee's actions in isolation and failed to take account of the extreme pressure she faced in an abusive relationship. The EAT found that the tribunal should have considered whether the coercion and severe pressure faced by the employee were relevant to assessing whether trust and confidence were broken by her actions.

COMING UP

October 2026 - Employment Rights Act Updates:

- Harassment changes:
 - employer duty to prevent sexual harassment increases - must take "all reasonable steps" to prevent sexual harassment
 - New requirement for employers to take reasonable steps to prevent all forms of third-party harassment (e.g., by customers, clients, contractors, or visitors).
- Union changes:
 - Employers must provide workers with information about trade unions.
 - Enhanced trade union access and representative rights come into effect.

- Employment Tribunal claim time limits increase from 3 months to 6 months (except breach of contract in Scotland which changes on 9 November)

January 2027 - Employment Rights Act Updates:

- Unfair Dismissal: Qualifying period to bring claims reduces from 2 years to 6 months
- Compensation Cap: The cap on unfair dismissal compensation is removed for dismissals on or after 1 January 2027
- Fire and Rehire: New restrictions make dismissal and re-engagement a genuine last resort. Watch this space for more!

