

Newsletter - Employment Law Update September 2025

- 1. Company Loses Disability Discrimination Case for not Providing Neurodiversity Training to Managers**
- 2. Proposed Time Table for the Implementation of the Employment Rights Bill**

1. Company Loses Disability Discrimination Case for not Providing Neurodiversity Training to Managers

The case of *Khorram v Capgemini* was brought by an IT software engineer who had been diagnosed with ADHD, and struggled to complete tasks during her Probation Period. As a result she suffered Anxiety and Depression.

The number of people in work who have been diagnosed with neurodiversity issues such as ADHD and Autism has increased by 35% since 2020. Typically Employees with these conditions struggle to manage their time and prioritise activities, may have poor attendance and have difficulty in assimilating information.

In the *Khorram* case the Employer was made aware of the Employee's diagnosis and arranged for her to have an Occupational Health assessment. The subsequent Doctor's report advised the Company to provide ADHD awareness training and coaching for colleagues and managers, to enable them to understand and accommodate the Employee.

However, the Company dismissed her during her Probation Period for poor performance. In particular for missing deadlines, and failing to adhere to the tasks she was asked to do.

The Tribunal heard that during her employment the Employee was required to multi task and ensure that she met the Company's strict deadlines. This placed her at a significant disadvantage due to her disability. Her Managers and colleagues were not provided with any awareness training, as had been recommended by the Occupational Health report, and consequently thought of her as a poor performer.

The failure to provide the recommended training for managers and colleagues breached the Company's legal obligation under the Equality Act 2010 to make reasonable adjustments.

In this case the Judge decided that training was critical, and had it been provided it may have led to a different Probation Period outcome. Adjustments like coaching and structured support, as well as workload realignment can prevent "unfavourable" treatment of an Employee and avoid discrimination claims.

What has concerned Employers and Managers about this decision is that the training, which was pivotal to the Judge's decision, would not have addressed the failings in the Employee's performance. There was a risk that deadlines would have continued to have been missed, and tasks would not have been adhered to.

What appears to have been missed in the Employer's submission, or dismissed by the Judge when making their decision, is that such an adjustment may not have been reasonable for the Company, as they would have continued to employ a poor performer.

2. Proposed Time Table for the Implementation of the Employment Rights Bill (this could be subject to change)

April 2026

- Employees will be able to claim Maternity, Paternity and Parental Leave from day one of their employment. The current six-month continuous employment qualifying requirement will be removed.
- Statutory sick pay will be available to all staff, including those who earn below the National Insurance Lower Earnings Limit. Low paid staff would be paid at 80% of their normal weekly wage, rather than the current SSP rate.

Establishment of the Fair Work Agency body (assuming its statutory creation)

Fair Work Agency who will have a number of statutory powers, including;

- The ability to bring Employment Tribunal claims on behalf of workers – even they don't want to claim themselves.
- The power to offer legal assistance for employment cases, with the Fair Work Agency's costs potentially recoverable from Employers if the claim succeeds.
- The authority to pursue Employers for unpaid holiday pay and sick pay, and impose financial penalties on top which go straight to the government.

Employers who previously relied on Employee reluctance to claim may now find the Fair Work Agency stepping in instead.

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Proposed powers for the Fair Work Agency:

- Entry to Employers premises: FWA Officers are authorised to enter business premises to examine documents, require individuals to produce records, and inspect equipment used for processing or storing information. They also have the authority to seize relevant documents during their investigation.
- Entry to Private Dwellings: In certain circumstances, FWA Officers may enter private residences of Employers Officers if Employers work activity is conducted at the premises. To do so, they must obtain a court warrant, demonstrating reasonable grounds for entry. This measure acknowledges the increasing prevalence of home-working and aims to ensure compliance with employment laws in such settings.
- Arrest Powers: Enforcement Officers will possess powers comparable to those of the police, including the ability to make arrests during investigations into Employment Law breaches.

October 2026

- Employers won't be able to amend terms and conditions of employment without Employee agreement.

Currently if an Employer has a sound business case to propose changing a contract, and conducts meaningful consultation with Employees before doing so, it can amend an Employee's contract. Following the new legislation this will only be possible if the business is close to collapse or insolvency.

If an Employee refuses to agree to a change, but the Employer implements it, a claim could be made to the Employment Tribunal for Unfair/Constructive Dismissal and Breach of Contract.

- Time limits to bring Employment Tribunal claims to be extended from three months to six.

2027

The Right to Claim Unfair Dismissal from Day One of Employment

- For over a decade Employees have needed to accrue two years continuous service to be able to claim Unfair Dismissal at an Employment Tribunal. This will end and there will be no qualifying period.
- Dismissal for poor performance or misconduct will still be possible during the probation period, which can be up to 9 months following appointment

Protection for New Mothers and Pregnant Employees

Currently Employees returning from Maternity Leave have protection from being selected for redundancy, as part of a selective process, for up to 18 months after the birth of their child. From 2027 new legislation will include dismissal for any reason, not just redundancy. Employees who are dismissed during the Protected Period may be able to claim Sex Discrimination.

More details are awaited in terms of how Employers respond to allegations of Gross Misconduct or indiscipline that has reached the final stage of a disciplinary process, which concern Employees who are still within the 18 months.

Bereavement Leave

Currently parents of children up to the age of 18 are entitled to two weeks leave, paid at statutory rates, following the death of a child. From 2027 new legislation will widen the net of this entitlement to provide one weeks leave following the death of a dependent or member of the Employees immediate family, including spouse, partner, parent.

This leave entitlement will also be extended to miscarriages that occur at any point during a pregnancy.

Protection for Zero Hours Contract workers

Staff working on a zero hours contract would still receive payment if their work assignment is cancelled.

PROFILE

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