

Employment Law and HR Update

Education Law Conference 2026

Winckworth
Sherwood



WS

Our Speakers



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Employment Rights Act 2025

Scan the QR code to download our Employment Rights Act 2025 (“ERA 2025) handout, featuring a comprehensive summary of ERA 2025 changes

SUMMARY OF CHANGES FOR SCHOOLS AND MATS

This table sets out the main changes introduced by the ERA 2025 in chronological order. It highlights the key impacts and risks for schools and MATs and suggests practical steps to support compliance and effective implementation.

This handout has been prepared in April 2026 and is correct as at the date of publication. Please be aware that many of the changes summarised below are subject to ongoing Government consultation and secondary legislation and so there may be further changes made prior to final implementation.

For advice on any of the issues discussed in this update, or any other employment or HR related matter for schools, please contact Winckworth Sherwood's dedicated Schools HR helpdesk on SchoolsHR@wslaw.co.uk or 0345 026 8690.

This briefing is not intended to be a definitive statement of the law and is correct at the time of publication. It should not be taken as a substitute for professional legal advice.

STATUTORY CHANGE	TIMELINE	IMPACT	ACTION POINTS
TIME LIMITS FOR EMPLOYMENT TRIBUNAL CLAIMS			
<p>Standard length of Acas Early Conciliation period increase from 6 weeks to 12 weeks.</p> <p>Standard time limit for most employment tribunal claims will increase from three months to six months.</p>	<p>Requests made on or after 1 December 2025 (in force) (the Government has confirmed it will review the change in October 2026 to determine whether the 12 week period should remain in place.</p> <p>October 2026</p>	<p>Increased number of early conciliation requests and employment tribunal claims.</p> <p>Increased delay until hearings which may make it more challenging to defend claims if, for example, key witnesses have left.</p>	<ul style="list-style-type: none"> • Ensure good contemporaneous notes are taken of key events and kept on file. • Take statements from key witnesses at an early stage when you receive a claim, instead of waiting for a hearing date. • Promptly act on HR issues and ensure your policies are robust and up to date to allow you to do so. • Ensure you have adequate insurance/RPA cover in place to cover any claims.
TRADE UNIONS AND INDUSTRIAL ACTION			
<p>DISMISSAL</p> <p>Dismissal for taking part in industrial action became 'automatically unfair'. This removed the previous 12-week limit on the period during which protection from unfair dismissal applies.</p>	<p>18 February 2026 (in force)</p>	<p>There may be an increase in union activity on site and increased union membership, although it is recognized that union engagement tends to be high in the education sector.</p> <p>There is also a risk of more strike action.</p>	<ul style="list-style-type: none"> • Implement a Trade Union Facilities Time Agreement if you do not already have one. • Keep abreast of developments and be ready to respond to requests for access within relevant timescales. • Review Acas Code of Practice on time off for union representatives. • Review policies in relation to time off for trade union representatives to carry out their duties. • Build positive relationships with unions and union colleagues now.

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Employment Rights Act 2025 ("ERA 2025") overview

- ERA 2025 received Royal Assent on 18 December 2025 to become law.
- A phased implementation during 2026 and 2027 is anticipated.
- It is important that schools and MATs start to prepare for the changes introduced by ERA 2025 some of which are already in force.
- We will be covering some of the key changes affecting the education sector and how to mitigate some of those risks.

Unfair dismissal (including constructive unfair dismissal)

CURRENT QUALIFYING CRITERIA

Must:

- Be an employee
- Have **at least 2 years' continuous service** on the effective date of termination (EDT)

NEW ELIGIBILITY CRITERIA

Must:

- Be an employee
- Have **at least 6 months continuous service** on the EDT

- Original plan was for this to be a Day 1 right, but the House of Lords rejected this proposal, and the Government settled on 6 months so as not to derail their plans and the timescales for implementation.
- Change is expected to happen from 1 January 2027 and have retrospective effect
- Compensation cap for unfair dismissal claims, which is capped at the lower of 52 weeks' gross pay or £123,543 to be removed from 2027 and compensation to become uncapped.
- What should you do now?
- **NB** *There are circumstances where unfair dismissal rights will apply from day one, for example where someone is dismissed for making a protected disclosure (whistleblowing), asserting certain statutory rights or where the dismissal is for discriminatory reasons. This is the current law and will not change.*



Extension to ET time Limits and Acas Early Conciliation period

CURRENT ET TIME LIMIT

For most claims:

3 months less one day from EDT / the act complained about (subject to rules on extension of time pursuant to Acas EC)

NEW ET TIME LIMIT

For most claims:

6 months less one day from EDT / the act complained about (subject to rules on extension of time pursuant to Acas EC)

- Change is expected to take effect no earlier than October 2026.
- **NB** *In December 2025 the Acas Early Conciliation period was extended from 6 weeks to 12 weeks for all early conciliation requests made on or after 1 December 2025, which has in effect resulted in an extension to the current ET time limits already. Government propose to review the 12 week period in October 2026.*



Duty to Prevent Sexual Harassment

- Duty on an employers to take **ALL** reasonable steps to prevent sexual harassment in the workplace (October 2026) – further extending the current duty to take *reasonable steps* to prevent sexual harassment.
- Introduction of liability for third party harassment on employers e.g. think visitors, parents and even pupils. Applies to **all types of harassment** not just sexual harassment.
- A disclosure that sexual harassment has occurred, is occurring or is likely to occur will also be considered a qualifying disclosure for the purpose of whistleblowing legislation/protection.



Steps to take to prevent sexual harassment

- The need for a sexual harassment risk assessment.
- Implement preventative measures for risks identified.
- A policy that specifically covers sexual harassment (this can also be included in your Anti-Bullying/Harassment Policy).
- Make reporting mechanisms clear.
- Training and education.
- Ensure a zero-tolerance approach to sexual harassment in the workplace.



Family Friendly Leave and Other Important Changes

Change	When expected?
The right to request flexible working from Day 1 and an employer can only refuse a flexible working request for a permitted reason.	In force since April 2024
Employees will have the right to statutory sick pay from the first day of illness, rather than from the fourth.	April 2026
Paternity leave and unpaid parental leave to become a Day 1 right.	April 2026
Mothers returning from maternity leave will have enhanced protection from dismissal within the first 6 months, extending protection beyond just redundancy to all forms of dismissal.	2027
Extension of bereavement leave to cover the loss of a loved one, rather than the loss of a child.	2027



Changes to Fire and Re-hire

- Blanket ban on all fire and rehire dismissals except where the school would otherwise face closure (high threshold to meet). Less common in the education sector though may be relevant in schools where there are low pupil numbers and falling rolls.
- Fire and re-hire would mainly occur in the context of trying to change the terms and conditions of an employee's contract.
- Dismissal for failing to agree a change in a contract will be automatically unfair.

Collective Consultation

- While the requirement to consult for 20+ redundancies at "one establishment" remains, a new threshold will be introduced to trigger consultation for aggregated redundancies across an entire organisation. Expected implementation in 2027.
- From 6 April 2026 – increased financial penalties (Protective Award) for failure to consult properly during collective redundancy (increase from maximum of 90 to maximum of 180 days' *gross* pay per affected employee) for dismissals taking effect on or after 6 April 2026.

Trade Unions and Industrial Action

- Dismissal for taking part in industrial action became automatically unfair on 18 February 2026.
- The time needed to give notice of industrial action has reduced to 10 days from 14 days.
- The support threshold rule has been removed from 18 February 2026 when it comes to voting and ballots– this rule required at least 40% of the total eligible votes to support action but they only need more votes in favour of industrial action than against.
- Trade union members will also be able to vote electronically or in-person in ballots for industrial action, union elections and other statutory ballots.
- 50% turnout threshold to remain until at least August 2026.
- Further changes anticipated such as a new duty for employers to inform workers of their right to join a trade union and a new right to time off for union equality representatives to carry out their duties.
- Protection from detriment for taking part in industrial action – October 2026.
- How to prepare: Trade Union Recognition Agreements, ensuring open communication with unions and staff, reviewing Code of Practice.

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Alpha Anne and others v Great Ormond Street Hospital for Children NHS Foundation Trust [2026] EAT 15

Facts:

- Claimants originally employed by contractor, OCS, to provide cleaning services to the hospital.
- Cleaners directly employed by the hospital were paid Agenda for Change (“AfC”) rates (£11.50/hour). The Claimants were paid the London Living Wage (£10.75/hour) by OCS.
- The hospital brought the cleaning services in house and the OCS cleaners transferred by operation of TUPE.
- Significant proportion of the OCS cleaners who transferred were of BAME background
- Brought claims for indirect race discrimination both for the pre-transfer and post-transfer difference in pay.

The issues for the EAT:

- **Pre-transfer claim:** the claimants argued that the trust, as a “principal”, had discriminated against them as “contract workers” under s.41 of the Equality Act 2010 by subjecting them to the detriment of lower pay compared with directly employed cleaners.
- **Post-transfer:** the claimants argued that the trust had indirectly discriminated against them by applying a PCP under which access to AfC pay depended on not having transferred from an outsourced contractor.

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Alpha Anne and others v Great Ormond Street Hospital for Children NHS Foundation Trust [2026] EAT 15

Decision: The EAT held that –

- **the pre-transfer claim failed.** s.41 of the Equality Act 2010 does not provide a route for workers to challenge contractual terms set by their own employer or to seek parity with the principal's employees - unless the principal explicitly dictated the terms under which they were engaged.
- **the post-transfer indirect discrimination claim succeeded.** The PCP put the claimants and BAME workers at a particular disadvantage: 78% of contractor cleaners were from a BAME background, compared with 51% of trust cleaners on AfC terms. The trust failed to objectively justify the PCP. Its argument that TUPE required it to maintain existing terms was rejected, as the transferred contracts allowed for variation to AfC terms.
- As such terms should have been harmonised from the transfer date.



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Alpha Anne and others v Great Ormond Street Hospital for Children NHS Foundation Trust [2026] EAT 15

Implications

- Insourcing may give rise to discrimination claims for disparity in pay post transfer
- Harmonisation onto more favourable terms permitted where variation clause exists in contract allowing changes to terms and conditions of employment
- TUPE is not a shield against discrimination claims when transferring a "two-tier" workforce where the lower-paid group is disproportionately from a minority ethnic background.
- ERA 2025 – Re-introducing the two-tier code on workforce matters ensuring that employees from the private sector working on outsourced contracts will be offered terms and conditions broadly comparable to those transferred from the public sector. Expected October 2026.

Darlington v London Borough of Islington & Anor [2026] EAT 11

Facts:

- Mrs Darlington was employed at a maintained school. Employer was the local authority, LB Islington.
- Mrs Darlington made safeguarding disclosures which she said were protected disclosures (whistleblowing)
- She was offered a job at an Early Years Centre (also run by LB Islington) subject to satisfactory references
- The school gave an unsatisfactory reference and the job offer was withdrawn
- Mrs Darlington alleged this was a detriment caused by her protected disclosures
- The matter was resolved through settlement and COT3 terms were entered into which included an agreed reference
- The COT3 provided that it was in full and final settlement of any claim that Mrs Darlington *“has or may have in the future against the School (Hargrave Park), the Employer (LB Islington) or any of its governors, officers or employees whether arising from the employment with the Employer, its termination or from events occurring after this agreement has been entered [into] including, but not limited to, claims under...the Employment Rights Act 1996”*.
- Mrs Darlington applied for the Early Years Centre job again, the agreed (satisfactory) reference was provided but she did not get the job
- She argued that the decision not to hire her was a further detriment caused by her previous disclosures

The issues for the EAT:

- Did the tribunal have jurisdiction to hear a detriment claim arising from a disclosure settled by a COT3?
- Did the COT3's express waiver of future claims also settle the new detriment claim that had not arisen at the point of the COT3?

Darlington v London Borough of Islington & Anor [2026] EAT 11

Decision

- EAT found that the use of the words “*whether arising from her employment with the Employer, its termination or from events occurring after this agreement*” was expressly and clearly intended to exclude claims for future alleged detriments, including detriments alleged to be causally connected to protected disclosures made prior to the COT3.

Implications

- Possible to waive future claims in a COT3
- Drafting must be precise and unambiguous, and ideally professionally drafted by competent advisers
- However no such clause can prevent someone from whistleblowing in the future and any such provision would be void

The Children's Wellbeing and Schools Bill – HR considerations

Teacher Pay and Conditions

- Allow the Secretary of State to require academy schools and alternative provision academies to pay teachers at least a minimum level of remuneration set out in secondary legislation. This will be set at the same level as applies to maintained schools, through the School Teachers' Pay and Conditions Document (STPCD) each time it is updated, creating a consistent floor on pay for all state schools.
- Require academy schools and alternative provision academies to have regard to the whole of the STPCD in determining the pay and conditions of their teachers. This means they must follow it unless they have a good reason not to.
- Remove the maximum of the pay bands for maintained schools and provide additional flexibilities to enable healthy competition and innovation.
- Academy schools and alternative provision academies will only be required to pay their teachers in line with or greater than the minimum levels of remuneration set out in the pay order, once it has been made. This will be no earlier than September 2026.

The Children's Wellbeing and Schools Bill – HR considerations

Teacher Qualification and Induction

- New teachers entering the classroom have, or are working towards, Qualified Teacher Status (QTS).
- The measure will also extend the requirement of statutory induction to newly qualified teachers in academies for them to work as a teacher there.
- To ensure that children have access to well-trained, qualified teachers, the government is amending Section 133 of the Education Act 2002 to extend to academies the requirement to employ teachers with QTS for 'specified work'.
- The specified primary and secondary academy settings will be subject to the same legal requirement to employ teachers with QTS as currently applies to primary and secondary local authority-maintained schools and special schools.
- The requirement for teachers in academies to have QTS will only apply to teachers employed after the implementation date (anticipated Autumn 2026)
- Legislation will similarly extend the statutory induction requirement for Early Career Teachers (ECTs) working in specified primary and secondary academy settings (will not apply retrospectively)

The Children's Wellbeing and Schools Bill – HR considerations

Teacher Misconduct

- Broaden scope of teacher misconduct regime to capture those individuals who have committed serious misconduct even when they were not employed or engaged in teaching work (e.g. teacher on a career break, supply teachers or those who teach infrequently) and who are likely to try and return to the classroom.
- Extend TRA's powers to investigate and prohibit anyone employed or engaged in teaching work in a wider range of settings, not just schools



Schools' White Paper / 'Every Child Achieving and Thriving' – HR considerations

Government intends to work in partnership with school staff, building on work already underway, such as the new School Support Staff Negotiating Body that recognises the invaluable role of support staff, by:

- delivering 6,500 more expert teachers across schools and colleges, with a clear delivery plan to achieve that
- funding schools to improve maternity pay for school teachers and leaders, doubling the period of full pay to 8 weeks, and seeking similar improvements for support staff and college staff
- giving teachers the training they need through a new and improved Teacher Training Entitlement, to ensure that every teacher and leader can access high-quality professional development, alongside more than £200 million over 3 years for our SEND continuing professional development (CPD) programme
- supporting excellence in leadership, including through a new mentoring and coaching offer for headteachers, and piloting a new place-based Headteacher Retention Incentive
- working in partnership with the profession, including through the Improving Education Together agreement with unions and employers, so that policy works in practice

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Any Questions?



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