MAKE uk
The Manufacturers' Organisation

Employment law update spring 2026

MAKE uk
The Manufacturers' Organisation

ERA roadmap – what's happening when

(and what this means for your organisation)

Quiz question

AN EMPLOYEE with six MONTHS' service can BRING AN unfair dismissal CLAIM

True or false?

Quiz question

the FAIR WORK AGENCY CAN BRING EMPLOYMENT TRIBUNAL CLAIMS ON BEHALF OF WORKERS even if the worker decided not to

True or false?

Quiz question

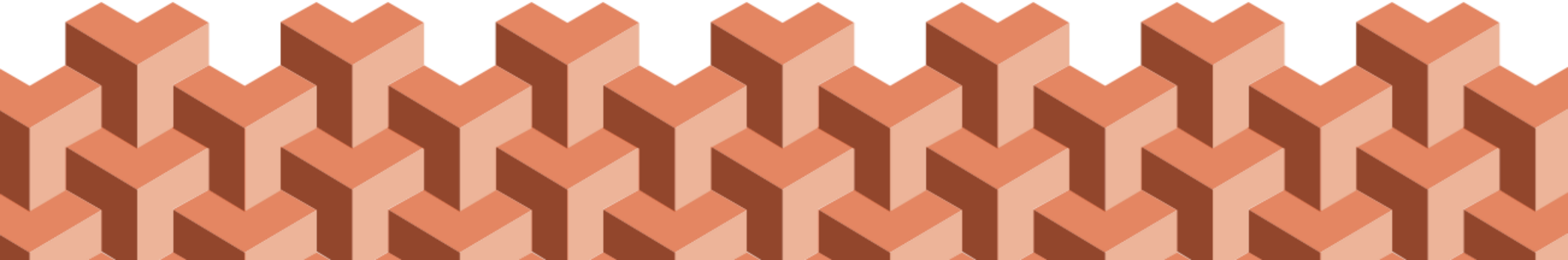
A UNION HAS THE RIGHT TO REQUEST ACCESS TO THE WORKPLACE
Whether or not YOU RECOGNISE it

True or false?

Quiz question

employers must send all employees reminders about their right to join a trade union

True or false?



Quiz question

There is no cap on Unfair dismissal compensation

True or false?

Quiz question

A SUCCESSFUL INDUSTRIAL ACTION BALLOT WILL REMAIN VALID FOR 12 MONTHS

True or false?

MAKE uk
The Manufacturers' Organisation

ALL TRUE

ERA 2025 Roadmap overview

Phased implementation timeline

18 February 2026: initial changes

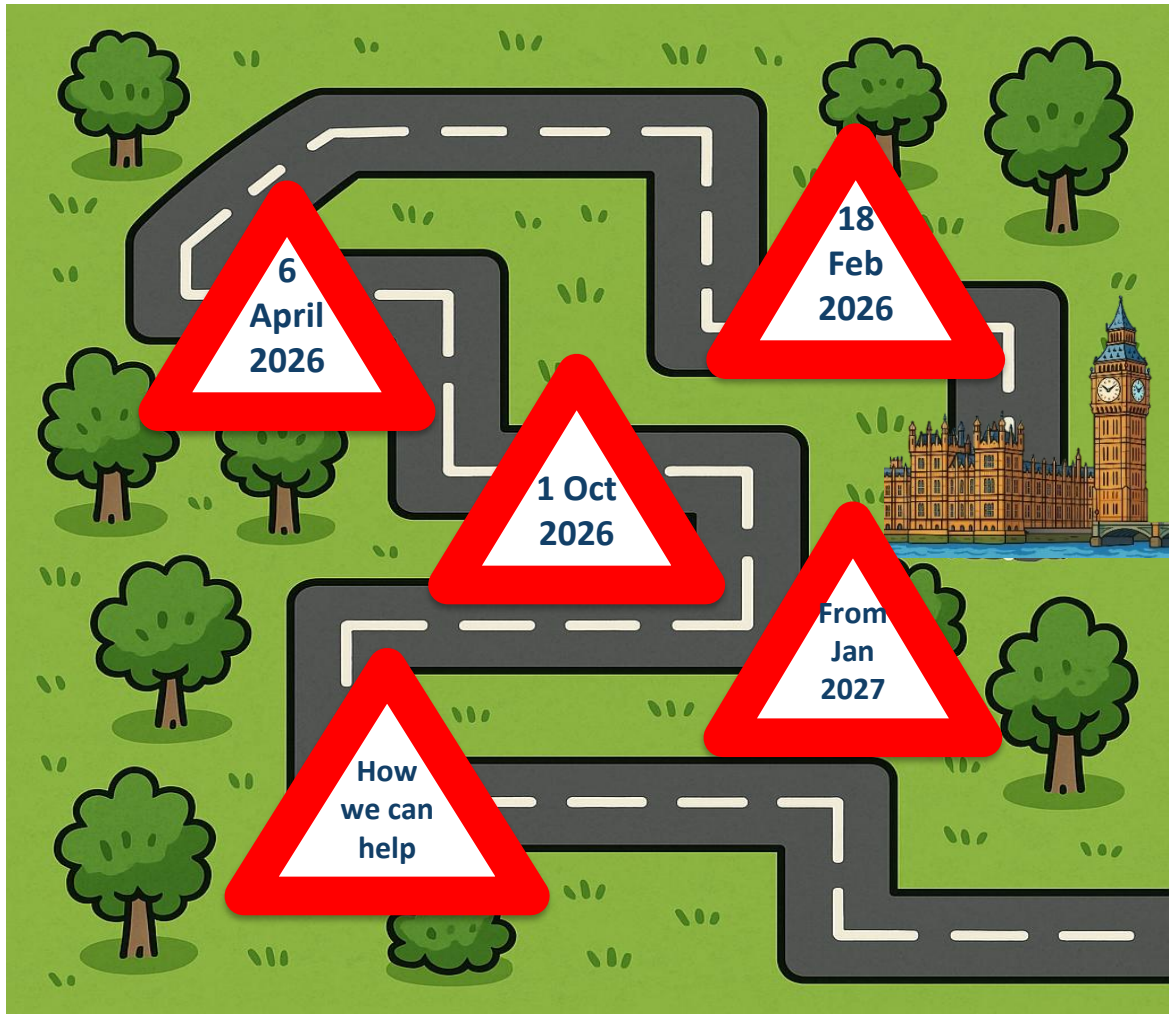
6 April 2026: first major reforms

(August 2026: slippage from April!)

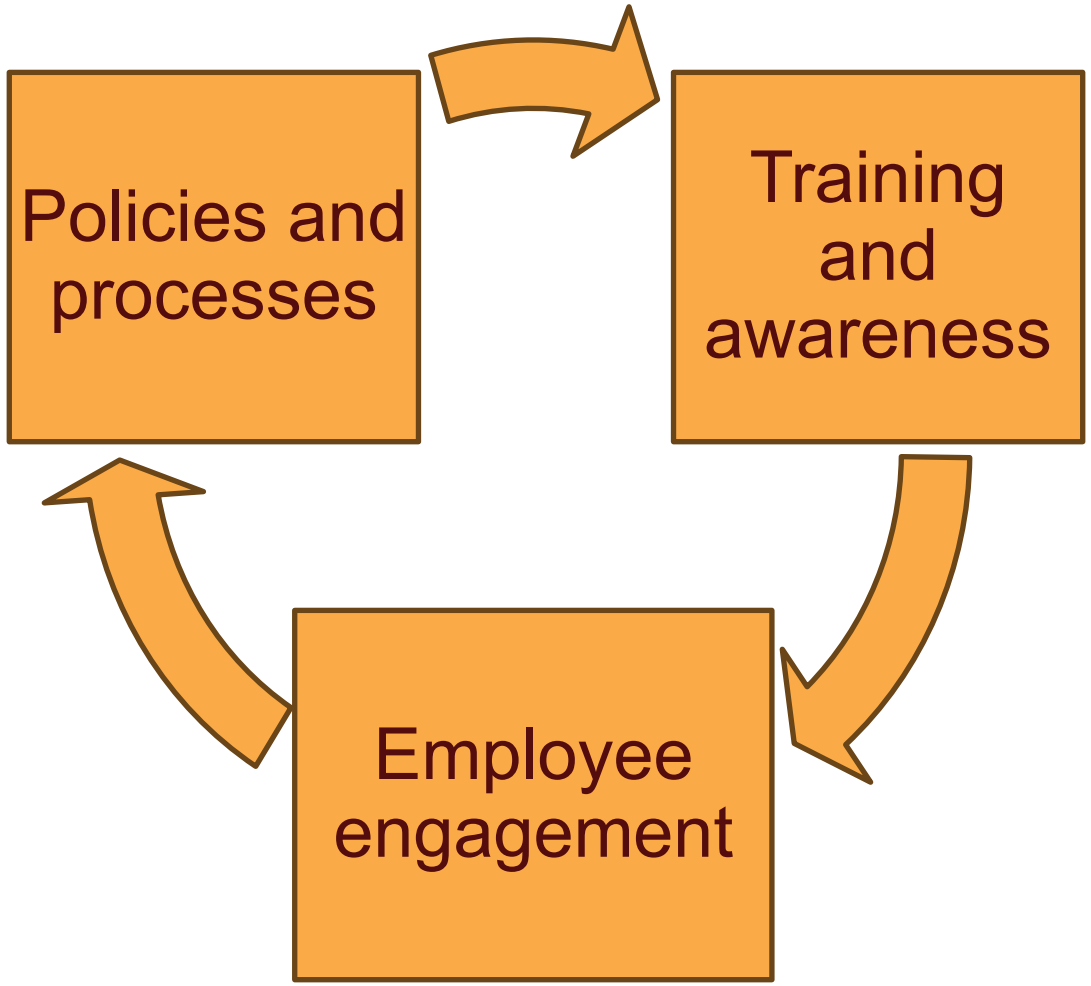
1 October 2026: second wave of reforms

1 January 2027: third wave of reforms

Remainder of 2027 and beyond: further reforms



ERA essential strategy



18 Feb
2026

18 February 2026: initial reforms

Key reforms

Simplified requirements re strike action, notices and ballots.

Reduced notice for industrial action.

Longer mandates for strike action – increased from 6 to 12 months.

Strengthened protection from unfair dismissal for taking part in strikes.

HR considerations

Industrial action is possibly 'easier' and can be taken at shorter notice.

Less information about who will be involved is potentially more disruptive.

Be more proactive/foster open dialogue with unions to prevent issues or disputes from escalating.

6
April
2026

Legal developments: 6 April 2026

Key reforms

Statutory sick pay.

Day 1 paternity and unpaid parental leave rights.

Collective redundancy protective award to increase.

Increased sexual harassment/whistleblowing protections.

Simplified trade union recognition.

Fair Work Agency.

6 April 2026: Statutory sick pay reform

Current situation

SSP currently paid from the 4th day of sickness absence at a flat rate.

Employees need to earn more than the Lower Earnings Limit.

What's changing?

SSP paid from 1st day of sickness.

LEL removed – all eligible employees will be paid the lower of SSP or 80% of their weekly earnings.

HR considerations

Model extra cost to business.

Review your policies to reflect employees' entitlement to SSP from day one of their absence.

Strengthen attendance management procedures?

Train managers (e.g. on conducting return-to-work interviews).

Consider pay arrangements during phased returns to work.

6 April 2026: Day 1 paternity and unpaid parental leave

Current situation

Paternity leave - 26 weeks' service.

Shared parental leave to be taken after any paternity leave.

Parental leave -12 months' service.

What's changing?

Statutory paternity leave and unpaid parental leave become day one rights.

Shared parental leave can be taken before or after paternity leave.

From 6 April 2026, statutory family rates of pay increase to £194.32 p/w.

HR considerations

Update policies and handbooks.

Consider whether you will align any contractual schemes.

6 April 2026: Collective redundancy protective award

Current situation

Protective awards of up to 90 days' pay per employee.

What's changing?

Protective awards of up to 180 days' pay per employee.

Government guidance expected "in due course".

HR considerations

Raises the stakes on compliance with current rules.

New protective award may need to be taken into account well before the implementation date.

The increase will apply to dismissals which happen on or after 6 April.

6 April 2026: Other changes

What's changing?

Whistleblowing protections to include sexual harassment.

Electronic/workplace balloting (now delayed until August 2026).

Simplified TU recognition.

Menopause guidance.

Bereaved partners' leave.

HR considerations

Assess whether you will face an increased likelihood of a TU application.

Consider setting up a works council to improve engagement with your workforce more generally.

7 April 2026: Fair work agency

What's changing?

FWA aim: strengthen enforcement of certain workplace rights.

FWA powers will include being able to:

- inspect workplaces.
- require employers to produce evidence to demonstrate compliance.
- issue Notices of Underpayment and penalties (e.g. NMW).
- bring ET claims on workers' behalf.

HR considerations

Review your policies and practices on minimum wage, sick pay and holidays.

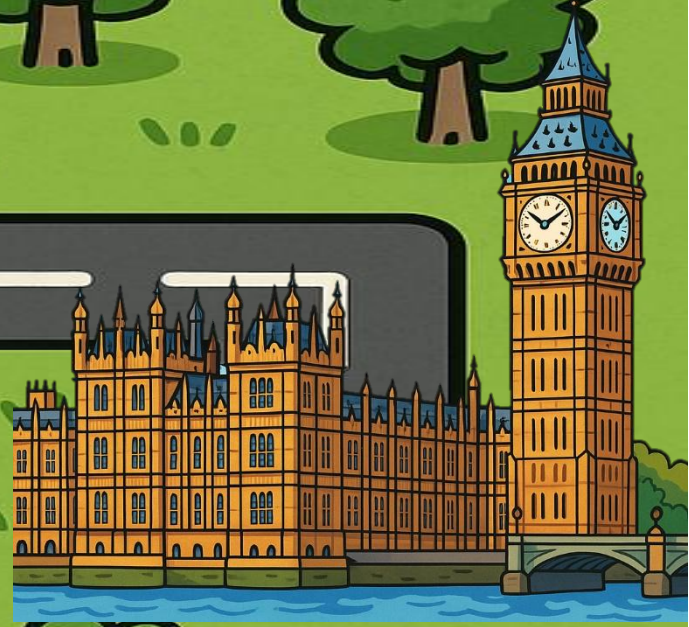
Ensure good record-keeping in relation to NMW, sick pay and holidays.

Resolve grievances internally and encourage staff feedback.

April

18 Feb
2026

1 Oct
2026



Legal developments : 1 October 2026

Key Reforms

Employment tribunal time limits.

Requiring employers to take “all reasonable steps” to prevent sexual harassment .

Employer to be liable for harassment of employees by third parties, unless they took all reasonable steps to prevent it.

Duty to inform workers of their right to join a TU.

Strengthened TU's right of access.

New rights and protections for TU reps.

Extending protections against detriments for taking industrial action.

1 October 2026: Harassment reforms

Current situation

Employer's anticipatory duty – to take "reasonable steps" to prevent sexual harassment.

Separate "all reasonable steps" defence – all types of harassment.

What's changing

Anticipatory duty – to become "all reasonable steps".

New liability for third party harassment – for all types of harassment.

("All reasonable steps" defence same)

HR considerations

Workforce and manager training.

Review risk assessments:

- Include risk of TP harassment.
- Consider any changes to action plans.
- Bear in mind new whistleblowing protections.

1 October 2026: Trade union reforms

What's changing?

Duty to inform workers of their right to join a TU.

Strengthened TU right of access to workplace.

New rights/protection for TU reps.

Greater protection against detriment for strike action.

HR considerations

Put a process in place to inform workers of their right to join a TU.

Invest in training.

Review current employee relations and engagement.

Look out for early warning signs.

No earlier than October 2026: Employment Tribunal time limits

Current situation

Most employment tribunal claims have a three-month time limit within which to bring the claim.

What's changing?

The time limit will change to six months for most claims.

HR considerations

More claims? More surprises?

Longer delays:

- Note taking.
- Data retention and management.
- Witnesses leaving.

April 2026

Feb 2026

From Jan 2027

Legal developments : 2027

Unfair Dismissal – qualifying period of service reduced to six months.

Fire and rehire restrictions.

Zero-Hours and Low Hours Contracts: Right to request predictable hours.

Shift notice requirements.

Equality action plans.

Collective redundancy consultation.

Flexible working.

Bereavement leave and miscarriage leave.

Protections for pregnant workers and family leave returners.

NDAs.

1 January 2027: Unfair dismissal

Current situation

Two years' service required to claim 'ordinary' unfair dismissal.

What's changing?

Two-year qualifying period will reduce to six months.

If requested, employers will need to give written reasons for dismissal to employees after six months of employment.

Removal of cap on compensatory award.

HR considerations

Potential increase in ET claims.

Fair handling of dismissals from six months (including effective management of probationary periods).

Broad review of policies and procedures (including recruitment processes and management of probationary periods).

1 JANUARY 2027: Fire and rehire

Current situation

Employers can dismiss and re-engage employees to implement contractual changes but must follow Code.

What's changing?

Automatically unfair to use fire and rehire to make "restricted variations

Likely to restrict changes to pay, certain shift changes, pension, number of working hours and holiday.

Restrictions on flexibility clauses.

HR considerations

If you are planning to make significant contractual changes, consider bringing forward?

Review flexibility clauses and implement any new ones before January 2027.

Less reliance on dismissal and re-engagement.

- Greater focus on getting agreement to changes?
- More use of unilateral variation?

2027: Zero and low hours contracts and shift notice requirements

Current situation

No requirement to offer regular work, certain hours or pay compensation for late notice of or changes to shifts.

What's changing?

Guaranteed hours offer after 12 weeks.

Reasonable notice for shifts.

Contracting out is possible with a recognised TU.

Note - extends to agency workers.

HR considerations

Review current use of flexible labour.

Review working patterns against contracts.

Record keeping.

2027: Equality Action Plans

Current situation

Where 250+ employees must publish annual gender pay gap report.

No legal requirement to produce action plans, although some employers do.

What's changing?

Employers with 250+ employees must publish EAP showing steps they are taking re gender equality matters.

Name providers of outsourced workers in gender pay gap reports.

Menopause guidance April 2026.

HR considerations

Review gender pay gap data.

Consider any current action plan.

Introduce/review menopause policy/action plan.

2027: Collective redundancy consultation

Current situation

Trigger thresholds = 20+ 'redundancies' at one establishment within 90 days.

Minimum consultation periods:

- 20+ redundancies – 30 days
- 100+ redundancies – 45 days

What's changing?

Trigger threshold extended to consider not only numbers at a particular establishment but also numbers (or %) across whole organisation.

HR considerations

Create centralised systems to track 'redundancies' across the organisation.

Prepare for more and longer collective consultations.

- Employee engagement.
- Set up standing body of representatives?

2027: Family friendly reforms

Current situation

FW – refusal 1 of 8 business reasons.

Pregnant employees and returners from certain family leave have priority protection in redundancy situations.

Only parental bereavement leave.

What's changing?

FW – refusal must be reasonable.

Pregnant employees and returners from certain family leave to gain further protections from dismissal.

New right to bereavement leave

New right to leave for pregnancy loss.

HR considerations

Policy reviews and updates.

Culture – is your organisation's approach to FW open minded enough?

Do you have an evidence-based approach when considering FW requests?

2027: Non-disclosure agreements

Current situation

Few prohibitions/restrictions on NDAs.

What's changing?

Agreement preventing worker from making harassment or discrimination allegations will be void.

Employer can't stop a worker talking about its response to the harassment or discrimination, or how it responded when allegation was made.

Possible exceptions.

HR considerations

Impact on settlements of harassment and discrimination allegations.

Implications for confidentiality wording in contracts and policies.

April 2026

18 Feb 2026

Oct 2026

How we can help

Discover our Employment Rights ACT 2025 Knowledge Base

Our dedicated Knowledge Base provides expert guidance and explains how we can support you, including:

- 13 Spotlight Guides on the key reforms: including dismissal, redundancy, zero-hours, family rights, sick pay, harassment, flexible working, trade unions/industrial action, equality action plans, fire and rehire, Fair Work Agency, NDAs and employment tribunal time limits.
- Employment Rights Act Planner.
- A phased roadmap showing what's changing and when.
- Opportunities to feed into Government consultations and influence policy.
- Use our ERA enquiry line: eraenquiries@makeuk.org

Visit https://www.makeuk.org/employment-rights **to explore the Knowledge Base and start preparing now**

ERA AUDIT AND IMPACT ASSESSMENT

Assess your risk and priorities: Ask about our Audit and Impact Assessment, a structured review that identifies risk against each legal change and sets out recommended actions and timings.

Employment Rights Act 2025 - Manager Training

A practical session for line managers and supervisors on handling everyday people decisions under the Employment Rights Act 2025. Focused on real scenarios and risk points, not legal theory, this training gives managers clarity on what has changed, where the highest risks sit, and when to escalate to HR. By the end, attendees will understand how the phased changes affect performance management, dismissals, flexible working, redundancy, harassment, and contractual changes, and what that means for them now.

How we can help

Employment tribunals

Trade union-related matters

Managing business change programmes

Leadership development and coaching

Updating policies and procedures

Employee engagement

Performance management

EDI

Preventing sexual harassment in the workplace

Training for HR and line managers

Restructuring and redundancy

Family friendly and flexible working rights

April 2026

18 Feb 2026

Oct 2026

From jan 2027

MAKE uk
The Manufacturers' Organisation

Case LAW update

Micro Focus Ltd v Mildenhall

In ***Micro Focus Ltd v Mildenhall***, the EAT found that - when determining if collective redundancy consultation is required - an employer need only look forwards, based on their redundancy proposals at the relevant time (disregarding previous redundancies and redundancy proposals).

Background

Section 188 TULRCA requires collective redundancy consultation where employer is proposing to dismiss 20+ employees as ‘redundant’ at one establishment within a 90-day period.

UQ v Marclean Technologies (2020) ECJ

90-day reference period = 90 consecutive days during which dismissal occurred and in which employer dismissed greatest number of employees.

Employers must look backwards and forwards from proposed dismissal date to see whether 20+ redundancies occurred/were proposed within any 90-day rolling period?

Facts and ET decision

M was dismissed for redundancy and brought an ET claim for a protective award – arguing that MF should have collectively consulted because it proposed to dismiss 45 employees within a 90-day period.

MF had proposed redundancies at different times, and M relied on spreadsheet evidence showing 45 employees were to be made redundant in one business area within a 90-day period.

ET found MF should, in line with *Marclean,* have looked both backwards and forwards from proposed dismissal date to calculate the number of dismissals/proposals in a rolling 90-day period.

EAT decision

Marclean does not change the proper interpretation of whether employer is "proposing" 20+ redundancies.

Consultation duty arises based on future proposals. Employers do not need to count past dismissals/proposals when assessing if the 20+ threshold is met.

But note:

Concept of ‘proposing’ is elastic; not necessarily tied to one moment in time.

ETs should carefully scrutinise cases where 20+ redundancies occur, or the proposed dismissal dates of 20+ redundancies fall, within 90 days.

Some criticism of the reasoning in *Micro Focus* (watch this space!).

Deciding Which proposals/ dismissals to include

Previous redundancies – not included

Previous proposals where statutory collective consultation is underway – not included

Previous proposals where there has been no collective consultation – probably not included

Potential future redundancies – included (if they currently amount to ‘proposals’)

Lessons

When considering redundancies, identify how many dismissals are currently proposed and maintain robust records to demonstrate timing/scope of decision making.

Be aware that ETs may:

- particularly question and scrutinise the timing of proposals where there are batches of redundancies, with dismissals/proposed dismissal dates falling within 90 days
- treat separate redundancy proposals occurring within a short time period as a single proposal

Bear in mind ERA 2025 changes ‘raising the stakes’ on collective consultation

Always safer to assume that collective consultation is triggered!

MAKE uk
The Manufacturers' Organisation

Unfair dismissal round up

Lamb v Teva UK Ltd

The EAT considered whether an employee's dismissal for misconduct which caused a serious health and safety issue was fair, despite minor procedural failings in the employer's investigation.

Lamb v Teva UK Ltd

L (electrician) worked as Engineering Supervisor.

21 June: L was made aware of an electric fault.

12 July: L signed permit confirming area was safe (but fault had not been fixed).

17 July: worker suffered potentially fatal electric shock.

17 July and 18 July 2022: L told C he was not aware of the electrical fault.

Investigation carried out during which L's account changed.

Disciplinary hearing (with CCTV footage).

L dismissed for gross misconduct.

Lamb v Teva UK Ltd

ET decided the dismissal for misconduct was fair.

- Flaws in procedure were minor.

EAT dismissed the appeal.

- ET entitled to find that the dismissal was fair, despite minor procedural failings in investigation.
- Investigation need not be equivalent to police/court process.
- Employee should know nature of the accusation, be given an opportunity to state their case, and decision-maker should act in good faith.
- Late CCTV evidence did not materially change the allegations.

Lessons

Slight procedural flaws in investigation will not necessarily undermine the fairness of a misconduct dismissal.

But, ET decisions are very fact sensitive

- For example, if the manager leading an investigation into alleged misconduct is also a key witness, that might affect the fairness of the procedure.

Remember to follow:

- Acas Code of Practice on Disciplinary and Grievance Procedures.
- Acas Guide on Conducting Investigations in the Workplace.

Sabourin v BT Group plc

The EAT considered whether the employer’s failure to consider an employee's performance in the two weeks after he was given a final written warning had impacted the fairness of the dismissal.

Sabourin v BT Group plc

S employed since 2009, project manager since 2021.

Informal coaching to address performance concerns, but no improvement.

Aug 2022: face-to-face meeting at which clear expectations were set out.

Oct 2022: informal PIP agreed. Weekly reviews but no improvement.

Nov 2022: formal PIP and 1st written warning.

5 Jan 2023: 2nd formal performance meeting and final written warning.

20 Jan 2023: final performance meeting and dismissal notice.

S's appeal was unsuccessful.

S claimed unfair dismissal.

Sabourin v BT Group plc

ET decided:

S had been fairly dismissed by reason of capability.

BT had honest belief that S lacked the capability to do the job, and reasonable grounds for that belief.

Adequate evidence of S's lack of capability.

EAT upheld appeal and remitted case to the ET.

ET failed to consider whether S's performance in the two-week period after the final written warning was issued impacted the fairness of his dismissal.

Reliance on the same record of performance which had already resulted in the final written warning was at least potentially unfair.

Lessons

When deciding whether to dismiss for capability, consider the *full* period of an employee's performance.

Assess any evidence of improvement after a final warning—even if the window is small.

Milrine v DHL

The EAT considered the extent to which a defective appeal process can render unfair an initial decision to dismiss, that would otherwise have been fair.

Milrine v DHL

M (HGV driver) dismissed for medical incapability.

M appealed dismissal but hearing not arranged.

M commenced Acas EC (believing it prevented him from pursuing his internal appeal) and DHL did not clarify matters or check his intentions.

No internal appeal took place.

M claimed unfair dismissal.

Milrine v DHL

ET dismissed claim.

It criticised the procedural failings at the appeal stage but held that the dismissal was fair, as M had been offered an appeal but did not pursue it.

EAT allowed the appeal, substituting a finding of unfair dismissal.

A defective appeal process can render a dismissal unfair.

The more striking the defects at internal appeal, the more it is incumbent on an ET to demonstrate why it has decided that a dismissal was, overall, fair.

The defects in this case were severe and there was not evidence to suggest that an appeal was futile.

LEssons

An appeal is an important and normal component of fairness, as underlined by the Acas Code of Practice.

A failure to offer an appeal, or an appeal that is procedurally defective, does not automatically result in unfair dismissal but is a factor.

An appeal is capable of curing an earlier defect but can also render a dismissal unfair overall or impact remedy.

Tell the employee in writing of the right of appeal, and deadline, when you communicate your decision.

Cases to watch

Miller v University of Bristol

ET held M's 'anti-Zionist' beliefs were protected and he was unfairly dismissed for articulating them. University appealed. This is an important case on the difficult line employers need to tread between protecting workers' freedom of speech and permitting perhaps offensive views to be expressed.

Peggie v Fife Health Board

P brought claims that she was harassed when the health board permitted Dr U (a trans doctor) to use the female changing rooms. P also claimed she was victimised when she complained. This case is going to the EAT and will hopefully provide further guidance on the implications of the Supreme Court's decision in *For Women Scotland* that the definition of "sex" in the Equality Act is based on biology.

Good Law Project Ltd v Commission for Equality and Human Rights

Challenge to the EHRC guidance on For Women Scotland. On appeal.

MAKE uk
The Manufacturers' Organisation

QUESTIONs?

Your feedback would be appreciated – please scan the QR code

You will receive the slide deck by email in the next few days