Samantha Prosser speaking at “Discrimination: The Law and Strategy” ELA Webinar

On 24 April 2025, BDBF Partner Samantha Prosser will be speaking at “Discrimination: The Law and Strategy” a webinar with the Employment Lawyers Association (ELA).

The course will explore the practical issues of running discrimination claims, and what strategies can be used for different types of claims.

Samantha will be discussing the claimant perspective, with a focus on assessing the claim and other pre-litigation steps.

Register here

BDBF partnership grows with the promotion of Samantha Prosser

BDBF is delighted to announce that Samantha Prosser has joined the firm's partnership. Samantha will become the firm's sixth partner, effective 1 April 2025.

Described as "an absolute superstar" by the Legal 500 UK, Samantha joined the firm nine years ago. Since then, Samantha

has built her practice focusing on advising private and NHS executives and consultants from leading hospitals on whistleblowing and discrimination claims, raising grievances, bullying, harassment and contractual claims. Samantha also acts for clients across a broad range of sectors including financial services, particularly in relation to sex and disability discrimination and whistleblowing claims. She is also an experienced employment litigator.

BDBF has been top ranked by the leading independent directories for acting for senior executives for the last 12 years consecutively. BDBF also has a growing practice acting for partners and employers on their high stakes and high value employment work.

Gareth Brahams, Managing Partner of BDBF said, "We are delighted to announce Samantha's well-deserved promotion. It is especially pleasing to advance and reward internal talent – it is this talent which cements BDBF's position as a leader in its field and makes it an inspiring place to work. Samantha is popular with both clients and colleagues, and she will be a great asset to the partnership. She has the unusual combination of empathy with formidable grit. We are proud to have supported her journey to Partner.

Samantha Prosser said, "It has been a privilege to be part of this fantastic firm for the past 9 years, and I am thrilled to now be promoted to Partner. I am grateful for the trust and support of my colleagues, and I look forward to continuing our tradition of delivering outstanding service to our clients. I am excited to contribute further to the firm's growth and success alongside such a talented team."

Failure to take adequate steps to deal with a pregnant employee’s grievance emails was discrimination but did not warrant a £10,000 injury

to feelings award.

In the recent case of *Eddie Stobart Ltd v Graham*, the EAT overturned an Employment Tribunal's award of £10,000 for injury to feelings for an act of pregnancy and maternity discrimination. The EAT found the award to be "manifestly excessive" given that the act in question was failing to adequately deal with the claimant's grievance.

What happened in this case?

The claimant worked for Eddie Stobart as a Planner and announced her pregnancy in October 2021. Shortly before she was due to commence her maternity leave, her employer began a redundancy process. The claimant was aware that she had a preferential right to be offered a suitable alternative vacancy ahead of other employees. There was an open position for a Transport Shift Manager (**TSM**), however, her employer did not agree that this was a suitable alternative role for her. She, therefore, had to apply for the role and take part in a competitive interview process once on maternity leave. She was unsuccessful and a redundancy consultation began.

During the redundancy consultation period, the claimant sought to raise a grievance about the redundancy process. However, her email was blocked by the employer's firewall. She brought this up at her redundancy consultation meeting and was advised to resend the email, but it was again blocked by the firewall. After her dismissal, she raised the issue of the failure to acknowledge her grievance for a second time, but there was no response from the employer.

The claimant went on to bring claims of automatic unfair dismissal, unlawful detriment, pregnancy and maternity discrimination and victimisation.

What was decided?

The Employment Tribunal's decision

The Employment Tribunal agreed with the employer that the TSM role was not suitable and rejected most of the claimant's claims. However, it held that the failure to take adequate steps to deal with the grievance was materially influenced by the claimant's maternity leave absence and amounted to unlawful detriment and discrimination. By way of remedy, the Tribunal awarded £10,000 for injury to feelings.

An injury to feelings award is a type of compensation that can be awarded in successful discrimination claims. It is intended to be compensatory to the innocent party and not to punish the party in the wrong. The leading case of *Vento v Chief Constable of West Yorkshire Police (No 2)* set guidelines known as "Vento bands", used by tribunals to apply the severity of the discrimination suffered by claimants into one of three bands (which are now amended in line with inflation each year). An award in the top Vento band will be given in circumstances where there has been a sustained campaign of discrimination and cases in which there has been an isolated incident will fall into the bottom band. In this case, the claimant's award fell at the lower end of the middle Vento band.

The Employment Appeal Tribunal's decision

The employer appealed to the EAT on two grounds, namely, that the award was excessive, and that the Tribunal had not given sufficient reasons for awarding such an amount.

The EAT found that the only proper and reasonable conclusion was that the employer's failure to deal with the grievance was limited in its scope and impact. It upheld the appeal on both grounds and substituted an injury to feelings award of £2,000 plus interest. It noted that it would have awarded a lower amount, save for the fact that the claimant was forced to chase up her grievance when she was on maternity leave, and this would have caused her particular distress as an expectant mother.

What does this mean for employers?

The judgment laid out considerations that will be taken into account when a Tribunal decides to include an injury to feelings award. In every case of discrimination, it is likely there will be some injury to feelings, but the key takeaway is that tribunals will focus on the effect of discrimination on the particular individual.

The Vento bands will be used as a guide to place cases of discrimination into the relevant level of severity. If the discrimination is overt, it will be more likely to cause distress and humiliation. Similarly, if the discrimination was enacted in front of colleagues, then the degree of harm will be higher due to the humiliation caused. Tribunals may also look to acts such as threats of disciplinary action or exclusion in the workplace, which can show an imbalance of power and influence and increase the harm caused. The EAT also highlighted that in cases of pregnancy and maternity

discrimination involving an unborn child, there will be additional stress placed on the expectant mother and thus the upset is increased.

Tribunals will scrutinise each situation on a case-by-case basis and may find that employees who appear relatively stoic about the situation may indeed be struggling to fully describe the effect that the discrimination has had on them. Conversely, some employees may be more vulnerable to upset and so be impacted more greatly by lesser discriminatory acts.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Adele Getty (AdeleGetty@bdbf.co.uk) , Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Embracing neurodiversity in the workplace: insights from the new Acas guidance

New Acas guidance on neurodiversity highlights the importance of fostering inclusive workplaces that support workers with conditions like ADHD, autism, dyslexia, and dyspraxia. By understanding the unique strengths and challenges of neurodivergent workers, businesses can create environments where all workers thrive, at the same time as avoiding costly discrimination claims. We explore below the topics set out in

the guidance, including understanding neurodivergence, key strategies for promoting neuroinclusion and what to consider when dealing with performance or capability procedures.

Understanding neurodiversity in the workplace

Neurodiversity describes that individuals think, learn, and behave differently, highlighting the natural variations in how people's brains work and process information. Neurodivergent individuals may have unique strengths and challenges, and understanding these differences can create more inclusive workplaces.

Some common neurodivergent conditions include (further details are available by following the links):

- Attention Deficit Hyperactivity Disorder (ADHD)
- Autism
- Dyslexia
- Dyspraxia

Each of these conditions have a range of strengths and challenges and not all individuals will experience each condition in the same way.

It is quite common for neurodivergent people to suffer from mental health problems. Some of these are caused by them trying fit in and behave in a neurotypical way. This is known as “masking” and can lead to exhaustion and isolation, as well as mental health problems such as depression and anxiety. Creating a neuroinclusive work environment where workers feel supported and accepted can reduce the need for masking and improve mental well-being.

Disability rights

While some neurodivergent individuals do not see themselves as disabled, neurodivergence may qualify as a disability under the Equality Act 2010, which, in turn, triggers the duty to make reasonable adjustments and protects workers from disability discrimination. Disabled workers may also be able to get support from Access to Work, a Government scheme aimed at supporting people to get or remain in work.

Talking about neurodiversity in a sensitive way can help prevent workplace problems and create an inclusive environment where all workers feel supported. Workers are not required to disclose their neurodivergence but if they choose to do so, it should be on their terms. They may hesitate to do so for fear of negative reactions or stereotyping. Employers should offer support, regardless of when the disclosure happens or whether there is a formal diagnosis.

If an employer suspects a worker is neurodivergent, they should approach the situation sensitively and focus on discussing potential support and adjustments. Using appropriate language around neurodiversity is essential to avoid distress. Employers should avoid terms like *“suffering*

from” or *“symptoms”*, which suggest an illness. Language preferences can vary, so it is helpful to ask the worker what terms they prefer and listen to them. For example, some people may prefer to say, *“I have autism”* rather than *“I am autistic”.*

Performance, conduct and capability

Employers must not discriminate against neurodivergent workers when addressing performance issues. Before initiating formal procedures, employers must ensure they have done everything reasonably possible to support the worker. Failing to offer support first can lead to unnecessary time and effort spent on internal processes and legal claims, while also negatively impacting an worker’s wellbeing.

The Acas guidance gives the example of Sam, who struggles with distractions and meeting deadlines, and is suspected of having ADHD. Sam and his manager discuss possible support and agree on reasonable adjustments, including a quiet space and regular check-ins, which improve Sam’s performance. A formal procedure could have caused stress and would have failed to address the underlying issue.

However, there are situations where formal procedures may be necessary, such as persistent performance issues despite support or reasons not related to their neurodivergence. During these procedures, employers must ensure they make reasonable adjustments to the process for neurodivergent workers, such as providing clear meeting records for someone with autism or talking through written correspondence with a worker with dyslexia. It is usually most helpful to discuss with the worker what support would help them, rather than

making an assumption based upon their condition.

Making your organisation neuroinclusive

Neuroinclusion involves actively including neurodivergent workers and many helpful changes can be made which are not necessarily costly or complicated. Some possible steps include:

- **Adjusting recruitment processes:** employers should review their recruitment processes and consider taking steps such as offering different ways to complete application forms, providing interview questions in advance and ensuring interviews are conducted in quiet spaces.

- **Providing training:** training and supporting managers to handle neurodiverse teams, including providing guidance on reasonable adjustments and discrimination, is also essential.

- **Raising awareness:** raising awareness of neurodiversity throughout the wider organisation through training, awareness days and campaigns can also help normalise conversations about it. Setting up a staff network may be a measure which supports workers to share their

experiences.

- **Policy guidance:** creating a dedicated Neurodiversity Policy can be very helpful, outlining the organisation's commitment to inclusion, available support and legal responsibilities.

- **Making workplace adjustments:** employers can also make support available for all workers, such as offering noise-cancelling headphones or quiet spaces, which can assist neurodivergent workers without requiring them to disclose their condition.

Neurodiversity at work – Acas Guidance

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Esmat Faiz (EsmatFaiz@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Workplace sexual harassment on the big screen: what can we learn from the Bridget Jones movies?

Bridget Jones: Mad About the Boy **has reignited love for the** ***Bridget Jones*** **films, but rewatching the series, you cannot help but notice that the behaviour in Bridget's workplaces has not aged as well as her fondness for Chardonnay. In this article, we consider the examples of workplace sexual harassment in the movies and the learning points for today's employer.**

What conduct are we talking about?

In the *Bridget Jones* films, there are many instances of Bridget's boss, Daniel Cleaver – played by Hugh Grant – engaging in sexually inappropriate behaviour. In the first film in the series (released in 2001), *Bridget Jones's Diary*, Daniel makes a comment on the length of Bridget's skirt when he sends an email to her which says, "*You appear to have forgotten your skirt. Is skirt off sick?*". He also grabs her bottom in an office lift.

In the sequel (released in 2004), *The Edge of Reason*, despite their relationship having ended, Daniel seeks Bridget out and makes a sexually inappropriate comment to her. Alive to the inappropriate nature of the behaviour, Bridget threatens to report him for sexual harassment. However, Daniel dismisses her rebuff with yet another inappropriate comment, asking, "*Is*

that your most serious skirt, Jones?".

By the time we get to the third instalment in the series (released in 2016 in the post #MeToo era), *Bridget Jones's Baby*, the rampant sexual harassment is less prevalent. Nevertheless, in one scene Jack Qwant – played by Patrick Dempsey – chases Bridget through the lobby of her workplace after they spent the night together, demanding to know why she left and did not contact him afterwards.

Finally, in *Bridget Jones: Mad About the Boy* (released in 2025), Bridget's new boss remarks that she "*looks hot*". Bridget points out that *"…that sort of language is a little outmoded in the workplace",* only to find that her boss really meant that she looked like she was having a menopausal hot flush.

What is the law?

Under the **Equality Act 2010,** sexual harassment is defined as any unwanted conduct of a sexual nature that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating, or offensive environment.

Employers may be vicariously liable for the actions of employees, meaning that sexual harassment committed by employees in the course of their employment can lead to claims against the employer as well as in the individual perpetrator.

Since October 2024, employers have also been subject to a duty

to take reasonable steps to prevent sexual harassment in the workplace.

The new Employment Rights Bill, expected to come into force in 2026, proposes to make the duty more onerous and require employers to take all reasonable steps to prevent sexual harassment in the workplace. The bill also proposes to extend protection for employees to harassment committed by a third-party (e.g. clients, contractors, conference or event attendees, and building maintenance workers).

Is this conduct sexual harassment?

Sexual harassment, under the Equality Act 2010, requires that the conduct be unwanted. In the first film, while Daniel's comments and actions are of a sexual nature, Bridget seems receptive to them, which means they are unlikely to meet the definition of harassment. However, it is not always possible to know whether a particular comment will be wanted or unwanted before it is made and this is why such comments in a work context can give rise to grievances and claims.

By the time we get to *The Edge of Reason*, the dynamic between the pair has changed. Daniel's repeated inappropriate comments are not welcomed by Bridget. However, the assessment of whether the behaviour would qualify as harassment is also context-dependent. While the comments certainly have the potential to create an unacceptable environment, Bridget may not feel that her dignity is violated or that the environment is intimidating, hostile, degrading, humiliating or offensive. Yet her threat to report Daniel for sexual harassment is a good indicator that she does feel that her dignity has been violating. And it would probably also count

as a “protected act”, meaning that any subsequent mistreatment might amount to victimisation.

In *Bridget Jones’s Baby*, Jack’s actions in pursuing Bridget could be considered unwanted conduct that creates an intimidating or degrading environment. However, Jack is a guest on the TV show not an employee of the TV company. Although employers currently have a duty to take reasonable steps to prevent sexual harassment by third parties, they are not vicariously liable for harassment by third parties, meaning Bridget would struggle to bring a claim. However, under the Employment Rights Bill, as currently drafted, employers will become responsible for harassment by third parties, such as Jack. If they have also failed in their duty to take reasonable steps to prevent such harassment then the compensation in such claims could be uplifted by up to 25%.

The comment from Bridget’s boss in *Mad About the Boy* that she “*looks hot*” is quickly clarified to be a non-sexual comment and, therefore, unlikely to amount to sexual harassment. However, humiliating comments about menopause could amount to harassment related to sex, age and/or disability.

What are the takeaways for employers?

Employers should consider the following points:

- **Risk assessment**: conduct a risk assessment to ascertain what the risks are for your specific business and how they might be mitigated. Don’t forget to assess the risks posed by third parties.

- **Training**: ensure that staff receive training on how to recognise and report sexual harassment (and other types of harassment) and victimisation. Managers should be trained separately on their responsibilities to help prevent it.

- **Policies**: have a specific policy on sexual harassment (and other types of harassment) which makes it clear what behaviours are unacceptable and when disciplinary action will be taken. Make sure third parties are aware of your approach to sexual harassment.

- **Reporting**: encourage staff to report incidents of sexual harassment as well as situations where they felt at risk, even if nothing happened.

- **Review**: keep your training and policies under review and refresh them as needed.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Emma

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Employment Rights Bill latest: Government puts forward significant amendments to the Bill

Earlier this month, the Government published responses to various consultations on proposals in the Employment Rights Bill. At the same time, it published a paper setting out numerous amendments to the Employment Rights Bill. In this briefing, we round up the latest developments and what they mean for employers.

Collective redundancy consultation

You can read our detailed briefing on the latest amendments affecting collective redundancies here.

Fire and rehire

The Bill proposed that it would become automatically unfair to dismiss an employee for failing to agree to a change to their terms and conditions of employment, or in order to re-engage

them (or someone else) under varied terms and conditions of employment where the role was the same or substantially the same. You can read more about the initial proposals in our briefing here.

Shortly after the Bill was published, the Government consulted on extending the remedy of interim relief to employees who had fire and rehire dismissal claims. You can read more about the consultation in our briefing here. In its response, the Government has declined to extend interim relief to such dismissals. However, the Government has said that it will revise the Statutory Code of Practice on Dismissal and Re-engagement to reflect the new rights in the Bill. Importantly, where the Code is breached, a Tribunal may uplift compensation by up to 25%.

Zero and low hours workers

The Bill proposed two key changes, which would restrict the use of such zero and low hours contracts and penalise employers who abuse them. First, zero and low hours workers who have worked a certain number of hours regularly over a "reference period" would have a new statutory right to have those hours guaranteed in their contract. At the end of each reference period, the employer must make a guaranteed hours offer to any worker within scope. Second, employers would be required to give zero and low workers (and any other worker who does not have a set working pattern), reasonable notice of shifts, and changes or cancellations of shifts, with a right to compensation where late notice was given. You can read more about the initial proposals in our briefing here.

In light of a concern that the proposals might drive employers

to use agency workers to avoid the new rules, the Government opened a consultation considering whether the measures should be applied to agency workers engaged on zero or low hours contracts. In its response, the Government has confirmed that the proposed measures will be extended to agency workers on zero or low hours contracts, although there are some nuances around how it will work in practice. The Bill has been amended to capture the following changes:

- the obligation to offer a guaranteed hours contract must be made by the end user not the agency (save in certain scenarios to be spelt out in secondary legislation);
- the duty to provide reasonable notice of shifts, shift changes and cancellations falls on both the end user and agency; and
- where a guaranteed payment entitlement for short notice cancellation or changes to shifts is triggered, the payment is to be made by the agency (but it is envisaged that the agency and end user will be able to agree terms allowing the agency to recover a proportion of the payment from the end user to reflect its responsibility for the cancellation or change).

Separately, further amendments to the Bill introduce anti-avoidance measures designed to avoid the duty to make a guaranteed hours offer to a worker. Further, provision is made to allow employers to contract out of the zero and low hours measures in their entirety (for all workers, not just agency workers) by way of a collective agreement with a trade

union.

Statutory sick pay (SSP)

The Bill proposed some small tweaks to the SSP regime. First, the "waiting days" were to be removed, meaning that SSP will be payable from the first day of sickness, rather than from the fourth day as is currently the case. Second, the lower earnings limit for SSP – which currently sits at £123 per week – would be removed meaning that employees would become entitled to SSP regardless of income levels. You can read more about the initial proposals in our briefing here.

A consultation was launched to consider what rate of SSP should be paid to employees earning below the lower earnings limit. In its response, the Government has confirmed that the percentage rate will be 80% of normal weekly earnings. This means that employees will be paid SSP at the lower of either the standard SSP rate (currently £116.75 per week) or 80% of their normal weekly earnings. The Bill has been amended accordingly.

Trade unions

The Bill contained a number of provisions aimed at strengthening trade unions including:

- requiring employers to notify workers of their right to join a trade union in writing when they start employment and at other times;

- enhancing the rights of trade unions to access workplaces for the purpose of meeting, recruiting and organising workers and facilitating collective bargaining;

- simplifying the process for trade union recognition;

- repealing rules which impeded the financing of trade unions; and

- repealing or amending existing laws governing industrial action (for example, in relation to balloting, voting and the giving of notice of industrial action) with the aim of making it easier for trade unions to call such action.

On 21 October 2024, the Government published a consultation on ways to further strengthen the legislative framework underpinning trade unions. In its response, the Government has promised significant further changes in this area and the Bill has been amended accordingly. The areas of change include:

- improving the process and transparency around trade union recognition;

- extending access provisions to cover digital access;

- introducing a fast-track route for achieving an access agreement where certain conditions are met, with

penalties in place for non-compliance;

- simplifying the current information requirements on industrial action ballots;
- notice for industrial action to be reduced from 14 to 10 days;
- consultation on delivering e-balloting; and
- extending the expiry of a mandate for industrial action from 6 to 12 months.

Fair Work Agency

The Bill provided that the Secretary of State would assume responsibility for enforcing certain aspects of labour market legislation, by way of a "Fair Work Agency". In terms of addressing non-compliance with the labour market laws within its remit, the Fair Work Agency would have the power to:

- obtain documents or information;
- enter business premises in order to obtain documents or information;
- remove and retain documents or information;

- request that “labour market enforcement undertakings” be provided; and

- apply to Court for a “labour market enforcement order” which prohibits or restricts certain actions or requires certain actions to be taken (and which may last for up to two years).

You can read more about the initial proposals in our briefing here. Now, the Government has proposed several amendments to the Bill which will strengthen the powers of the Fair Work Agency even further. These include:

- a power to enforce a new requirement for employers to maintain adequate records of holiday entitlement and pay for 6 years;

- a power to give notice to an employer to remedy an underpayment of a statutory payment (such as SSP or holiday pay) within 28 days and to pay a penalty of up to 200% of such underpayment (up to a maximum of £20,000 for each individual payment);

- a power to bring a claim in the Employment Tribunal in lieu of a worker (and the Tribunal may still make a financial award in favour of the worker);

- a power to provide or arrange for assistance to someone bringing an employment claim (this may include legal advice and representation); and

- a power to recover any enforcement costs from an employer in breach.

Umbrella companies

The Government has published a response to a consultation commenced back in 2023 concerning the regulation of umbrella companies. In its response, the Government confirms that umbrella companies will be defined as an entity which is in the business of:

- employing a person with a view to them being supplied to a hirer; or
- paying for, receiving or forwarding payment for the services of a person with a view to them being supplied to a hirer.

This change will bring umbrella companies within the scope of the Employment Agencies Act 1973, meaning that workers employed by umbrella companies will gain comparable employment law rights and protections to workers employed directly by an agency.

Further, from April 2026, PAYE/NICs compliance will move from

the umbrella company to the agency (or to the end user if there is no agency).

Other key changes to note

- It has been reported that the Government has dropped plans to introduce a right to disconnect. However, as this proposal was not covered in the original draft of the Bill, no changes have been made to the Bill itself.

- There have been reports that the Government will back a proposed non-Government amendment to the Bill which would introduce a right to two weeks' paid parental bereavement leave for those who suffer an early pregnancy loss (i.e. before 24 weeks).

- The amendment paper contains numerous other non-Government amendments which would introduce new rights and protections across a number of areas including family leave, equality law, flexible working, discipline and grievance, health and safety and whistleblowing. At this stage, it is unclear whether any of these will be taken forward.

Next steps

The Bill will continue on its passage through Parliament and will shortly move to be debated in the House of Lords, which will likely lead to further changes to the text of the Bill.

The expectation is that the Bill will pass later this year, although the implementation of many of the changes will be deferred and/or will depend on the introduction of separate regulations.

Although there is still some time before the Bill's reforms will take effect, the sheer volume of changes means employers would be wise to keep track of the Bill and take advice on implementation in good time.

Employment Rights Bill: Amendment Paper, 4 March 2025

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Employment Rights Bill latest: important changes made to the proposals on collective consultation

Earlier this month, the Government published its response to the consultation on strengthening remedies for breaches of the collective redundancy consultation rules. Alongside that, it published various amendments to the Employment Rights Bill, including some important amendments to the collective consultation proposals. In this briefing, we bring you up to speed on the latest developments and what they mean for employers.

What's the background?

Currently, collective redundancy consultation is triggered where there is a proposal to dismiss as redundant 20 or more employees assigned to one "establishment" within a 90-day period. In this context, "establishment" has been held by the courts to mean the local unit where the employee works, not the business as a whole. A failure by an employer to comply with these obligations may lead to a protective award of a sum not exceeding 90 days' gross pay per employee. This award is intended to penalise the employer for breaching the statutory requirements and deter others from doing so. The amount of the award is determined by the Employment Tribunal according to what is just and equitable but, usually, the more serious the breach, the higher the protective award.

Initially, the Bill proposed to change the law to trigger collective consultation where there are 20 or more proposed redundancies within 90 days across an entire business rather than in just one establishment. This would mean that collective consultation would be triggered more frequently. This raised the question of whether the consultation would need to be conducted with all the employee representatives at the same time even where the redundancies were in different locations and unrelated. You can read more about the initial proposals in our briefing here.

Shortly after the Bill was published, the Government published a consultation looking at options for strengthening the remedies available for a breach of the collective consultation rules. The options under consideration were:

- Raising the protective award to 180 days' gross pay or removing the cap altogether. In either case, the Tribunal would retain discretion as to the amount of the protective award, based on what it determines to be just and equitable in light of the severity of the employer's breach.

- Extending the remedy of interim relief to affected workers. Where interim relief is granted by a Tribunal it will order the employer to reinstate the claimant to their previous role or re-engage them in a different role pending the determination of the unfair dismissal claim at the final hearing. Where the employer is not willing to do this, the Tribunal will make a

"continuation order", meaning the employer is ordered to pay the claimant as if their employment contract was still continuing, until the final hearing. Sums paid under a continuation order are irrecoverable regardless of the outcome of the final hearing. This makes interim relief a potentially very valuable remedy for claimants, and a burdensome one for employers.

You can read more about the consultation in our briefing here.

What's the latest?

The Government has put forward a number of key amendments to the Bill in this area.

1. Collective consultation will be triggered where there is a proposal to dismiss as redundant within a 90-day period either 20 or more employees assigned to one establishment (i.e. the current position), or a "threshold number of employees" across the wider workforce. This threshold number will be defined in regulations but may be *either* a specified number of redundancies *or* an overall percentage of the workforce. For example, if the threshold were to be set at 10% of the workforce, and the employer employed 500 employees across different sites, then a proposal of 50 or more redundancies across the whole business within a 90-day period would trigger collective consultation even where

fewer than 20 redundancies were proposed at any one site.

2. Employers will be required to notify employee representatives in writing of the total number of proposed redundancies across the business and at which establishments. However, employers will not be required to consult all such representatives together, nor undertake consultation with a view to reaching the same agreement with all of them. These changes mean that all employee representatives will be entitled to information about the proposed redundancies across the entire business, but employers will have flexibility about how the consultation process is conducted.

3. The trigger for providing the Secretary of State with advance notice of proposed collective redundancies via the HR1 form will be aligned with the new collective consultation thresholds in the Bill.

4. In terms of remedies, the maximum protective award will rise from 90 to 180 days' gross pay per employee. However, interim relief will not be extended to protective award claims.

In due course, the Government will also publish new guidance for employers on collective consultation which will reflect these changes. It also plans to consult on additional ways to strengthen employee rights in collective redundancy situations.

What does this mean for employers?

These changes represent good and bad news for employers. The retention of the words "at one establishment" is a concession to business and means collective consultation will not be triggered where a multi-site employer proposes small pockets of redundancies at different sites *provided that* the total numbers do not exceed the new threshold. Clearly, the level at which the new threshold is set will be important – the lower it is, the more likely that collective consultation will be required.

Further, the fact that consultation will not have to be conducted with all the employee representatives at the same time, nor with a view to reaching the same agreement, means that even where collective consultation is triggered by multiple pockets of smaller redundancies across different sites, there is flexibility in how that process operates. The new guidance will be an important reference document for employers in this situation.

The doubling of the maximum protective award to 180 days' pay significantly increases the risk to employers of failing to comply with the statutory requirements for collective consultation. However, the Employment Tribunal will retain discretion to set the award at a figure which reflects the severity of the breach, which means minor breaches should not incur an award at the upper end of the scale. "Buying out" protective award claims will now be more costly and therefore less attractive for employers, meaning they may choose to comply with the statutory requirements and conduct a collective consultation process.

Government Response to Consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire, 4 March 2025

Employment Rights Bill: Amendment Paper, 4 March 2025

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LUNCHTIME WEBINAR – Beliefs, Backlash, and the Workplace: Navigating the New Culture Wars

LUNCHTIME WEBINAR – 29 April 2025

From the war in Gaza to trans issues, from the environment to Brexit, we are "going there". In today's polarised world, expressing beliefs at work (or indeed outside of work when colleagues find out about it) can lead to conflict and legal challenges.

Join us for an insightful lunchtime webinar with Managing Partner Gareth Brahams and Associate Emma Burroughs, as they delve into navigating the culture wars in the workplace. From

religious and political views to personal values, we'll explore the legal rights and responsibilities surrounding belief expression in today's complex work environment.

Key topics include:

- The DEI backlash in the US: what does it mean for corporate DEI values and initiatives in the UK?
- When are employees' beliefs legally protected, and which beliefs are out of scope?
- When can expressing a protected belief create problems for an employer?
- How should employers respond when belief expression causes upset, reputational damage, or conflicts with company values?
- What legal claims might arise if these issues are mishandled?

Don't miss this opportunity to gain practical insights on managing belief expression at work.

Date: Tuesday, 29 April 2025

Time: 12.00pm-1.00pm

Click here to register

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Beliefs, Backlash, and the Workplace: Navigating the New Culture Wars

BDBF Lunchtime webinar: 29 April 2025

From the war in Gaza to trans issues, from the environment to Brexit, we are "going there". In today's polarised world, expressing beliefs at work (or indeed outside of work when colleagues find out about it) can lead to conflict and legal challenges.

Join us for an insightful lunchtime webinar with Managing Partner Gareth Brahams and Associate Emma Burroughs, as they delve into navigating the culture wars in the workplace. From religious and political views to personal values, we'll explore the legal rights and responsibilities surrounding belief expression in today's complex work environment.

Key topics include:

- The DEI backlash in the US: what does it mean for corporate DEI values and initiatives in the UK?
- When are employees' beliefs legally protected, and which beliefs are out of scope?
- When can expressing a protected belief create problems for an employer?
- How should employers respond when belief expression causes upset, reputational damage, or conflicts with company values?
- What legal claims might arise if these issues are mishandled?

Don't miss this opportunity to gain practical insights on managing belief expression at work.

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Please click here to register for the webinar

International Women's Day 2025 – The Lifecycle of a Working Woman

International Women's Day falls on Saturday 8 March, and this year's theme is #AccelerateAction.

Despite being recognised for over a century, many women still encounter bias in the workplace. While many may perceive gender inequality as a relic of the past, our experiences as employment advisors to numerous women tell a different story.

To break the cycle of bias, whether it is conscious or unconscious, it is crucial to identify the stages in a woman's career where she may encounter challenges. In this mini-webinar series, BDBF Principal Knowledge Lawyer Amanda Steadman examines the professional lifecycle of women, the various obstacles they may face and the actions employers can take to foster an environment where women can thrive.

Menstrual health

Menstrual health is a critical aspect of women's overall wellbeing, yet it often remains an overlooked or stigmatised issue in the workplace. Every month, millions of working women experience menstruation, which can bring a range of symptoms from mild discomfort to severe pain and distress. This natural biological process can significantly impact productivity, concentration and attendance at work. Inadequate access to sanitary products, unsupportive workplace policies and cultural taboos surrounding menstruation can exacerbate these challenges, leading to missed opportunities and income loss.

Fertility issues and pregnancy loss

Fertility issues and pregnancy loss are profound challenges that many working women face in their quest to start or expand their families. These distressing experiences often occur in the shadows of their professional lives, where they are expected to maintain productivity and composure. The emotional toll of such losses can significantly impact their mental and physical health, affecting their job performance and overall career trajectory. By fostering a supportive work environment, employers can help mitigate the stigma associated with fertility struggles and ensure that these employees feel valued and empowered to navigate the complexities of their personal and professional lives.

Pregnancy

Pregnant working women often face a unique set of challenges as they navigate the physical, emotional and professional changes that accompany their condition. These challenges can range from adjusting work routines to accommodate growing physical needs, managing the fatigue and discomfort associated with pregnancy, to balancing the anticipation and planning of parenthood with job responsibilities. Employers play a critical role in supporting expectant mothers by offering flexible work arrangements, such as modified work hours and ensuring a comfortable and safe work environment. Through open communication, understanding and the provision of appropriate resources, both employers and co-workers can help ensure a positive pregnancy experience for working females, leading to increased job satisfaction and productivity.

Maternity

Maternity is a transformative period in a woman’s life, significantly impacting her professional journey. Working women face a multitude of challenges when they decide to start

a family. From navigating the complexities of maternity leave policies to balancing the demands of a career and new motherhood, these experiences can reshape their aspirations and opportunities. Despite societal progress, the intersection of work and family remains fraught with issues like gender bias, workplace flexibility and the persistent wage gap. As women continue to break barriers and redefine work-life balance, the conversation around maternity in the workplace evolves, aiming to ensure equality and foster environments that empower them to thrive both personally and professionally.

Menopause

Menopause is a natural biological process that signals the end of a woman's reproductive years, and often brings about a multitude of physical and emotional changes that can impact her professional life. Working women may face a range of symptoms, including hot flashes, mood swings, sleep disturbances and decreased concentration, which can affect their job performance, productivity and overall workplace satisfaction. This transition can also coincide with career-defining moments, leading to a potential clash of personal and professional challenges. Employers who understand and support their menopausal employees by offering flexible work arrangements, education and open dialogue can create a more inclusive and supportive environment.

https://youtu.be/B00ITemV4AQ

View webinar PDF

Conclusion

While the experiences of women may vary based on their chosen paths, it is a common reality that each woman is likely to face at least one of the situations discussed in our above mini-webinars throughout her career. As solicitors

specialising in employment and discrimination, we recognise the significant effects that unjust and antiquated practices can have on a woman's professional journey. Although many organisations are actively addressing these challenges, some continue to ignore them. A shift in perceptions is essential to create a more equitable environment.

On this International Women's Day, we honour those who have championed equality over the years and acknowledge the progress made in empowering and supporting women in the business sector. Nevertheless, there remains much work to be done. We aspire to raise awareness about the experiences of working women, encouraging employers to evaluate their practices and take meaningful strides to #AccelerateAction.

Further information about the movement and related events can be found on the IWD website.

This mini-webinar series was originally recorded on 26 February 2025 and reflects our understanding as of that date. Do get in contact with Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact if you would like to discuss any of the issues raised.

International Women's Day 2025: Pro Bono

To mark International Women's Day, lawyers at BDBF are each offering one hour's free legal advice to an employee facing discrimination and/or harassment at work. To make use of this opportunity, book your appointment by contacting us on

+44(0)20 3828 0350 or at info@bdbf.co.uk.

The small print:

1. Appointments are limited and will be offered on a first come first served basis. Appointments must be booked by Monday 10 March 2025. We will update this post when they have all been filled.

2. Advice will be provided over Zoom or Teams.

3. We will need to undertake a conflict check and can only provide advice where we do not have a conflict of interest.

4. Clients for free legal advice will need to sign our usual retainer letter and complete our onboarding process (including ID checks).

5. We won't be undertaking any means testing but would like this opportunity to be used by those who might otherwise not be able to access legal advice.

International Women's Day

2025: Accelerate Action

Introduction

Saturday, 8 March 2025 will mark the 114th International Women's Day (**IWD**). What started in the aftermath of 1,500 women marching through New York City demanding shorter working hours, better pay and the right to vote, is now an internationally recognised day to mark the progress made on women's rights and gender parity.

The theme of IWD 2025 is to "Accelerate Action", calling for increased momentum and urgency in addressing the barriers women face both personally and professionally. In this blog, BDBF associate, Julia Gargan considers the focus on the need to Accelerate Action in the professional world to ensure gender equality in the workplace to inspire others because, ultimately, we need to '*see it to believe it*'.

The current landscape of women in leadership positions

A recent Financial Times' article reported that two of the world's largest professional services firms, EY and PwC, are on track to miss their 2025 targets for female partner representation in the UK, and that all the Big Four are struggling to boost the proportion of women in their upper ranks. The article noted that '*raising the gender balance of partnerships towards parity has proved to be a* ***slow process'*** and, as is often said, this is because building the pipeline '*takes time*'. Given that the drive for gender equality in the workplace is not a new phenomenon and the importance of gender

equality and the benefits of a diverse workforce are well known, this begs the question of *how long* building the pipeline is really going to take? How can we accelerate action on this to avoid the pipeline becoming a convenient excuse for the lack of progress?

A reason to #AccelerateAction – the importance of female role models

A 2022 LinkedIn Study found that 57% of women believe that having a relatable role model is crucial to achieving career success and 70% agreed that it is easier to be "*like someone you can see*." Female leaders in the workplace don't just improve a company's bottom line, but they normalise career paths for more junior colleagues, empowering them to take risks by showing them that their career goals are attainable. Female leaders encourage a shift in mindset about what is possible and how to achieve this. They can alleviate the impact of unconscious bias on the role women play in society and the workforce.

How can companies Accelerate Action?

A key way to Accelerate Action, therefore, is to ensure that women are present and visible in corporate leadership. This may be done by setting gender targets, creating clear pathways for women to executive positions and by establishing mentorship schemes and equitable recruitment practices. These policies need to be backed by accountability where targets are not met and a drive to tackle the structural inequalities that hold women back, for example, unequal pay and family leave policies. In this vein, the Government plans to require larger employers to publish annual "equality action plans" explaining

the steps being taken to address the organisation's gender pay gap and to support workers going through the menopause.

How can the law #AccelerateAction?

At BDBF we hope to play our part in accelerating action by advising on the legal protections in place for employees and partners in the workplace and the enforcement of these. Be that through advising our employer clients on compliance with discrimination laws, and diversity or family leave policies or by advising employees and partners on their rights when returning from family leave, or where they have experienced gender-based discrimination or harassment.

Conclusion

You can read more about the women's movement and the various International Women's Day events on the IWD website.

BDBF is a leading law firm based at Bank in the City of London specialising in employment law. If you would like to discuss this blog or an employment related issue, please get in touch with Julia Gargan at juliagargan@bdbf.co.uk, your usual BDBF contact or email info@bdbf.co.uk.

New associate hire reflects BDBF's dedication to enhancing their client services and adapting to the dynamic legal landscape

BDBF, a trailblazer in employment law, is delighted to introduce Esmat Faiz as their newest associate. Esmat worked at the European Court of Human Rights in Strasbourg before qualifying as a solicitor in 2019.

With a strong background in advising employees and employers on complex issues, particularly in relation to preventing discrimination and harassment in the workplace, Esmat looks forward to joining BDBF and contributing to their approach of bringing fresh ideas and innovative solutions to clients' needs.

Her appointment brings the firm's headcount to five partners and 18 associates, in addition to its eight-strong practice team.

BDBF's ability to attract high calibre talent is testament to the quality of its client base, its stellar track record in litigation, the complex and interesting work the team does, and the collaborative approach it fosters.

BDBF has been top ranked by the leading independent directories for acting for senior executives for the last 12 years consecutively. BDBF also has a growing practice acting for employers on their high stakes and high value employment work.

Gareth Brahams, Managing Partner of BDBF said, "Esmat brings

an impressive track record of experience in acting on discrimination and harassment matters in the workplace, further strengthening our capabilities in these key areas. I am delighted to welcome her on board."

Esmat Faiz said, "I am delighted to be joining this outstanding firm and look forward to the next stage in my career working with experts in the field of employment law."