

Monday Morning Dispatch

YOUR WEEKLY EMPLOYMENT LAW NEWSLETTER FROM CHADWICK LAWRENCE LLP

Coming up this week...

- Sam & Nils discuss recent trade union changes and post termination for migrant workers.
- In our final video on fire and rehire, Daniel looks at the Government's consultation on whether significant changes to shift patterns should stay outside the new rules or be treated as a 'restricted variation'.
- In the news, we take a look at a case about balancing protected beliefs in the workplace.
- Register for our Employment Law seminars & events below!

The Legal Alternative Podcast



28. Changes to the Criminal Justice System & Disabled Sainsbury's Manager Wins Discrimination Claim

In this episode, Nils provides a criminal law update on the recently introduced Courts and Tribunals Bill, discussing its potential impact on Crown Court caseloads, jury trials and magistrates' sentencing powers. Sam then covers a disability discrimination and reasonable adjustments case against Sainsbury's, highlighting key lessons for employers managing workplace adjustments.



The Media Hub



Employment Rights Act - What next for probationary periods?

In this video, we discuss the impact of the reduction in qualifying service for unfair dismissal on probationary periods. We explore the typical length of such periods, the importance of documentation and diarising reviews, as well as the impact on service-related benefits.



In the News



When Insourcing Creates Inequality: TUPE Transfers and Pay Alignment



In the recent case of *Anne v Great Ormond Street Hospital for Children NHS Foundation Trust*, the Employment Appeal Tribunal (EAT) considered whether a group of hospital cleaners suffered indirect race discrimination after their roles were brought back in-house.

Background

The claimants (consisting of Mr Alpha Anne and 79 others) were described in the judgement as a predominantly black and minority ethnic (BAME) group. They had worked at Great Ormond Street Hospital for years but were employed by a private contractor. During that time, they were paid the London Living Wage, not the Agenda for Change (AfC) pay and benefits received by NHS-employed staff doing equivalent roles.

When the cleaning services were insourced on 1st August 2021, the cleaners transferred to the trust under TUPE. However, they were not moved onto the AfC terms immediately (or even shortly after).

The cleaners argued that this put them at a particular disadvantage because of race, noting that 78% of their group were from minority ethnic backgrounds, compared with the 51% of other employees on the equivalent AfC band.

For context, section 19 of the Equality Act 2010 states that:

A person (A) discriminates against another (B), if A applies to B a provision, criterion or practice (PCP) which is discriminatory in relation to a relevant protected characteristic of B's. A PCP is discriminatory if:

1. A applies, or would apply, it to persons with whom B does not share the characteristic,
2. it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it;
3. it puts, or would put, B at that disadvantage, and
4. A cannot show it to be a proportionate means of achieving a legitimate aim.

The Trust argued that it could not lawfully change pay after the transfer because TUPE generally prevents employers from making contractual changes for a reason connected to the transfer.

The Employment Tribunal accepted this argument and dismissed the claims, relying on the existing case law of *Royal Parks Ltd v Boohene*.

The claimants appealed, and the Trust submitted a cross-appeal.

Employment Appeal Tribunal decision

The EAT split its decision into 2 time periods:

1. Before the transfer
2. After the transfer

The appeal relating to the period before 1 August 2021 was dismissed. The EAT confirmed that:

- Claims about contractual pay set by the external contractor could not be brought against the Trust.
- Even if a client organisation influences or encourages a contractor's approach, it does not become responsible for the contractor's pay decisions.

As a result, no discrimination claim could succeed for the period before the cleaners became Trust employees.

However, once the cleaners transferred, they became Trust employees and could challenge how the Trust treated its own workforce (i.e. themselves).

Consequently, the EAT found that the Tribunal had wrongly applied its reasoning regarding the pre-transfer to the post-transfer period.

Why discrimination was found

- A significantly higher proportion of the transferred cleaners were from minority ethnic backgrounds.
- The Trust's delay in uplifting their pay to AfC terms put them at a particular disadvantage compared with other employees on the same band.
- The Trust failed to objectively justify this ongoing differential.

Why TUPE did not prevent a pay uplift

Crucially, the EAT found that the cleaners' contracts included a variation clause allowing the Trust to make "reasonable changes" unilaterally. Therefore, using this clause under TUPE is permitted even if the change is connected to the transfer.

This meant that the Trust did have the contractual flexibility to uplift the cleaners' pay from the date of the transfer, meaning its failure to do so was unjustified.

Key takeaways for employers

- Different rules apply before and after insourcing.
- Post-transfer decisions must withstand discrimination scrutiny.
- Employers should not assume TUPE blocks all contractual changes.
- Employers should act promptly when harmonising employees' terms and conditions of employment.

Upcoming Seminars & Events



We're pleased to announce the return of our Employment Law Seminars & Events Programme for 2026!
For more information and to register, please click below:

Managing Flexible Working Requests - Legal & Practical

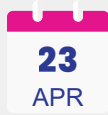


TIME
8:30 AM - 10:00 AM

LOCATION
Chadwick Lawrence Huddersfield Office, HD1 1JS



Employment Law & Salary Guide Update *with Hays*



TIME
8:30 AM - 10:00 AM

LOCATION
Hays Leeds Office, LS1 8EQ



Mental Health Awareness Sessions

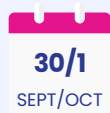
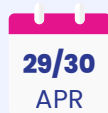


We're partnering with Tailored Learning Solutions to offer two day, in person, accredited Mental Health First Aid courses at our Wakefield office.

Accredited by MHFA England® and the Royal Society for Public Health, MHFAiders will improve knowledge and develop skills to support someone who may struggling and what to do with crisis support.



MHFA 2 day (all day events) - £300 +VAT pp.



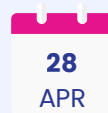
(Includes 3 year membership to the Associate for MFAiders, 3 years access to the MHFA Support App, Immediate wellbeing support via SHOUT charity, Quarterly Webinars and optional Level 3 OfQual Examination accredited with the Royal Society for Public Health)



MHFA Refresher - £125 +VAT pp.

9:30 AM - 13:30 PM (Includes same benefits as above)

Managing Neurodiversity in the Workplace - for Managers (CPD Certified 8hrs) - £250



1 Hour
(9:30 AM)



1 Day
Workshop

Both sessions need to be attended for the full CPD hours manager course, but the awareness can be attended as a stand alone event without the managers day (hope that makes sense). If you have learners just wanting the webinar this will be £50 pp. 1 hour CPD certificate but no access to benefits.

(Learners that attend both the webinar and managers course can access a free learning portal with additional resources for 3 years with new information being frequently, review slides, notes and videos at any time).

More info on MHFA and ND courses can be found here:
<https://www.tailoredlearningsolutions.co.uk/mental-health-first-aid>

Contact Us



For questions, feedback, article ideas, or story contributions, email boxhr@chadlaw.co.uk and we'll be in touch.

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