14 SEPT 2026

Monday Morning Dispatch

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MONDAY MORNING DISPATCH
BY Chadwick Lawrence

YOUR WEEKLY EMPLOYMENT LAW NEWSLETTER FROM CHADWICK LAWRENCE LLP

Coming up this week...

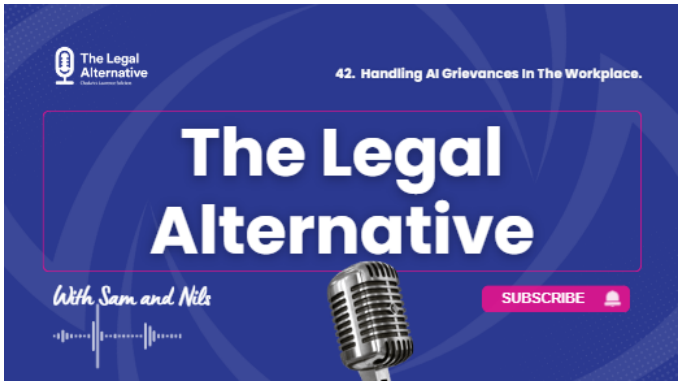
- This week on the Legal Alternative we touch on handling AI Grievances in the workplace.
- This weeks article focuses on a recent EAT decision made on 7th Sept regarding equal pay.
- Coming up this week we have our first seminar, welcoming back Hays as guest speakers to kick off the Autumn programme.

The Legal Alternative Podcast

After a warm summer hiatus Sam is back! This week the Legal Alternative is jumping straight back into action as Sam delivers guidance on how to manage and handle the new surge of AI grievances hitting the workplace...

We'll be introducing a monthly guest special episodes.

Inviting colleagues from across our different commercial service teams here at Chadwick Lawrence to give them the opportunity to showcase expertise from different service areas.

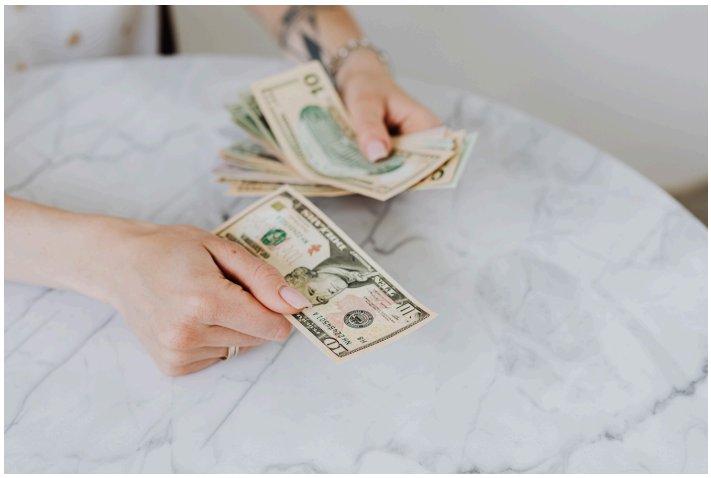


If you have a topic you would like to discuss or fancy a spot on the pod please reach out to emilyshepherd@chadlaw.co.uk

In the News

Equal Pay and a Recent Employment Appeal Tribunal Decision: What Can Employers Learn from *Next Retail Ltd v Thandi*?





In a significant development in equal pay case law, the Employment Appeal Tribunal (EAT) has overturned key aspects of the Employment Tribunal's August 2024 decision in *Next Retail Limited and another v Thandi and others*. In its judgement handed down on 7th September 2026, the EAT confirmed that recruitment and retention can, in principle, justify a pay differential, even where that difference disproportionately affects one sex more than the other.

This decision will be welcomed by many employer who have had to navigate difficult labour market conditions in recent years. It also provides important guidance on how Tribunals should approach equal pay claims where different rates of pay are claimed to arise from market forces.

The Tribunal's Decision:

This litigation against Next has been running for several years and is one of the largest equal pay claims before the Tribunal. This case was originally brought in 2018 by 3,540 predominantly female retail sales staff in respect of pay between 2012 and 2023. Since then, the number of claimants has grown to more than 6,000.

The claimants argued that they were paid less than warehouse operatives, a group consisting predominantly of male employees, with the Employment Tribunal finding that the two roles were of equal value, thus arguing it is discriminatory.

In response, Next attempted to use the "material factor" defence under section 69 of the Equality Act 2010. Specifically, the company argued that higher rates of pay in its warehouses were necessary to maintain adequate staffing levels, with a higher rate of pay needed to achieve this due to pressures in the labour market rather than because of sex.

The Employment Tribunal accepted that market conditions had led Next to pay warehouse staff more. It also concluded that the practice placed women at particular disadvantage because the lower-paid retail staff were predominantly female. As a result, Next was required to demonstrate that the pay difference was pursued through a legitimate aim and that it was a proportionate means of achieving that aim.

The Tribunal ultimately rejected Next's defence. It reasoned that the company could have afforded to increase the pay of the retail staff and, therefore, considered the continued disparity in pay to be driven by cost considerations alone. Since cost alone cannot ordinarily amount to a legitimate justification in indirect discrimination cases, the Tribunal found against Next.

The Employment Appeal Tribunal's (EAT's) Decision:

Next's appeal centred on two key issues:

1. Whether the pay structure placed women at a particular disadvantage; and

2. Whether Next's reasons for maintaining different rates of pay were capable of providing a legal justification.

On the first issue, the EAT agreed with the Tribunal. It found that the evidence demonstrated a clear disadvantage to women when comparing the mostly female retail workforce with the mostly male

warehouse workforce. Accordingly, the claimants had successfully established the necessary "particular disadvantage" requirement under the Equality Act 2010.

The more significant development came in relation to the second issue.

Although the EAT upheld the Tribunal's findings in relation to certain differential payments (e.g. Sunday working enhancements), it concluded that the Tribunal had made an error when assessing the justification for the difference in basic pay.

According to the EAT, the Tribunal had focused on the wrong question. Rather than asking why retail employees had not received an equivalent pay increase, the correct question was why warehouse employees were paid more in the first place.

When finding the answer to this correct question, the EAT emphasised that the pay difference occurred due to the pressure within the warehouse workforce. Noting the Tribunal's original observations, higher warehouse rates had been introduced because Next needed to compete effectively in the labour market and ensure its warehouses were adequately staffed.

Mr Justice Bourne observed: *"The aim, taken as a whole, of paying higher rates to warehouse staff included recruitment and retention factors which did not apply to the claimant group. It was not necessary for the employer to justify not increasing the claimants' pay to the same level."*

In other words, once the reason for paying warehouse workers more was properly identified, the focus shifted to whether that reason was legitimate and proportionate. The EAT concluded that it was.

What does this mean going forward?

This decision does not provide employers with a blanket defence whenever pay differences arise as equal pay claims remain highly face-sensitive and employers will still need to justify any disparities that disproportionately affect one sex.

However, this judgement does provide some helpful clarify. In particular, it confirms that genuine recruitment and retention pressures *are* capable of constituting a legitimate aim and that Tribunals should focus on why a pay differential arose, rather than simply asking whether an employer could afford to increase pay elsewhere.

Therefore, going forward, employers should continue to regularly review pay structures to identify any disparities between groups carrying out work of equal value and ensure that any disparities can be linked, with contemporaneous evidence, to a genuine material factors unrelated to sex.

Upcoming Seminars & Events

New

Employment Law Update
With **Hays**

16 Sept

Time
8:30 AM - 10:30
Location
Chadwick Lawrence Wakefield Office, WF1 2DF



New

Settlement Discussions, Negotiations and Agreements - Part 1

30 Sept

Time
8:30 AM - 10:00
Location
Chadwick Lawrence Darlington Office, DL1 1GL



New

Managing AI in the Workplace -
Legal & Practical

8 Oct

Time
8:30 AM - 10:30
Location
Chadwick Lawrence Wakefield Office, WF1 2DF



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.

29/30 APR | **1/2** JUL | **30/1** SEPT/OCT

(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)

🔗 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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