

EMPLOYMENT NEWSLETTER



Welcome to our first employment newsletter for 2026.

In this edition we look at the recent and well publicised decision of Peggie v Fife Health Board and another, the introduction of bereaved partner's paternity leave, an update on what is now the Employment Rights Act 2025, as well as highlight some current trends when it comes to tribunal claims, particularly the delays being encountered, and how this could adversely impact your business.



PEGGIE V FIFE HEALTH BOARD AND DR UPTON

This case relates to two protected characteristics under the Equality Act 2010 (the Equality Act). One of gender critical beliefs for the Claimant (Mrs Peggie), namely her belief that a biological male is a male and a biological female is female. The other being one of gender reassignment for the Second Respondent (Dr Upton). Both Mrs Peggie and Dr Upton worked for the First Respondent (Fife Health Board) with Mrs Peggie being a nurse and Dr Upton a Junior Doctor, now known as resident doctors.

The nature of Mrs Peggie's claim

Mrs Peggie filed a tribunal claim against the Respondents alleging breaches of the Equality Act in relation to direct discrimination, indirect discrimination, harassment and victimisation connected to the use of female changing rooms by Dr Upton, who Mrs Peggie believed to be male and therefore should not have use of female-only changing facilities.

The tribunal's focus was on whether it was lawful for Dr Upton to have use of the facilities, an incident between Mrs Peggie and Dr Upton on Christmas Eve 2023 when Mrs Peggie spoke directly to Dr Upton about her beliefs, and how the Health Board dealt with a subsequent complaint by Dr Upton against Mrs Peggie, culminating in her suspension from work between January and April 2024.

The tribunal's decision

Whilst it considered that Mrs Peggie had raised her beliefs with Dr Upton in an inappropriate way on Christmas Eve, the tribunal upheld her claim of harassment against Fife Health Board because it:

- 1) failed to revoke Dr Upton's permission to use the facilities on an interim basis after Mrs Peggie complained, whilst they worked on different work rotas for Mrs Peggie and Dr Upton. This resulted in Dr Upton being in the facilities at the same time as Mrs Peggie on several occasions.
- 2) took an unreasonable length of time to investigate the allegations made against Mrs Peggie.
- 3) the way it raised patient care allegations with Mrs Peggie late into the investigation process only and, even then, in entirely vague terms.
- 4) gave an instruction to Mrs Peggie not to discuss the "the case", taking two weeks to confirm this only applied to the investigation and not the tribunal claim she had already made.

All other claims pursued by Mrs Peggie were dismissed, including those against Dr Upton.





The tribunal considered the recent decision in *For Women Scotland v Scottish Ministers* [2025] ICR 899, in which the Supreme Court ruled that for the purposes of the Equality Act reference to "sex" means a person's biological sex. The tribunal confirmed that whilst the decision in *For Women Scotland* did not result in it being inherently unlawful for a trans-female to use female changing facilities, permitting the same was also not necessarily lawful.

As such, where there are two conflicting protected characteristics involved an employer will need to provide objective justification for their decisions. These may include the extent in which there are complaints by other staff members, how the person appears to others, the extent that the trans person's physical attributes of sex have been changed and options available. The tribunal found it was lawful for Fife Health Board to permit Dr Upton to use the female changing rooms until a complaint was raised, at which point the permission should have been revoked and only restored when they found a workable solution.

As well as taking an unreasonable length of time to investigate the allegations against Mrs Peggie it should also be noted that the tribunal found there had a number of procedural errors in the investigation undertaken, such as failing to take notes of every meeting and asking Mrs Peggie to come to a meeting by phone call in which they failed to make her aware her right to be accompanied by a trade union representative or colleague.

The investigation was also initially going to be conducted by the same person Mrs Peggie had first reported her initial complaint to regarding Dr Upton's use of the facilities, which was inappropriate.

The tribunal stressed that it was not Fife Health Board's initial agreement allowing Dr Upton's use of facilities rather the way in which they handled the aftermath, including communication failures, delays, and mismanagement of internal procedures that constituted unlawful harassment. Mrs Peggie will now receive compensation for this, the value to be decided at a later hearing.



Key takeaways

The tribunal acknowledged that for employers faced with conflicting protected characteristics, such as in this case, it is an exceptionally difficult matter to address. It will therefore be important to seek early legal advice, handling the situation sensitively, with a view to finding a respectful and workable solution for all concerned. This will help limit a risk of claim from one or both employees.

This case is also a good reminder of the importance of conducting investigations in a timely and fair manner to avoid risks of complaints.

INTRODUCTION OF BEREAVED PARTNER'S PATERNITY LEAVE

On the 29 December 2025 the Paternity Leave (Bereavement Act) 2024 came into force. This brings with it some immediate changes employers should note, with others to follow at a currently unknown date.

Immediate changes

Currently fathers / partners are only eligible to take paternity leave if they have 26 weeks service on a particular date.

They are also only entitled to take this leave before any shared parental leave. This is due to change in April 2026, when paternity leave will become a day one right and there will be greater flexibility as to when it can be taken i.e. there will be an ability to take paternity leave before and after shared parental leave.

For those fathers / partners unfortunate enough to suffer the loss of the mother or adopter of their child during childbirth, or within a year of birth / adoption, April's changes have immediate effect now. Surrogacy arrangements are also covered.

Future changes

We may yet see regulations bringing into effect the following:

- The ability to still take paternity leave where both the child and mother die, despite the current requirement for paternity leave to be taken for the purposes of caring for the child or supporting the mother. This would also apply in adoption cases, including if the child is returned.
- Increases in the leave entitlement for bereaved partners from two to fifty-two weeks.
- The introduction of keeping-in-touch (KIT) days during bereaved partner's paternity leave.
- Enhanced redundancy protections after taking bereaved partner's paternity leave.

UPDATE ON THE EMPLOYMENT RIGHTS BILL

On the 18 December 2025, more than a year after it was first published the Employment Rights Bill finally became the Employment Rights Act 2025 and will bring in some of the most significant employment rights changes in recent times.

Labour's plans have been subject to a lot of scrutiny and change over the last year. Starting out as a 158-page document, the final Act is now a whooping 333 pages! Even then it still does not give us a full picture on how some changes will work when they take effect. Expect to see plenty of additional regulations introduced following consultation.

The first changes due in April and which employers, in particular, should be alive to are:

- Statutory Sick Pay will be payable from the first day of sickness (how it is calculated will also change)
- Paternity leave will become a day one right (but not paternity pay)
- Unpaid parental leave will become a day one right
- Increased financial awards for employer's failing to collectively consult when making twenty or more dismissals



Employers should also expect to see other changes come in during October 2026 and over the course of 2027 including, importantly, yet further increased obligations to protect your staff from harassment and discrimination (including from third parties), restrictions on when employers can change staff terms and conditions, and changes to unfair dismissal rights (which will become claimable from six months service).

If you wish to learn more about the changes expected, contact us today for a copy of our handy client guide. We are also more than happy to discuss how these changes impact your business in particular and what you can be doing to prepare now.

EMPLOYMENT TRIBUNAL DELAYS – WHAT EMPLOYERS NEED TO KNOW

Whilst our primary focus for clients will always be how best to prevent employment tribunal claims these cannot always be avoided. With increasing claim numbers and an already stretched tribunal system, turnaround times are getting longer.

Individuals are waiting weeks for their claims to be processed, which means employers are not being notified there even is a claim until some months after employment has ended. This is giving employers a false sense of security, especially if (which can happen) there is no contact from the ACAS Early Conciliation service. Employers are only notified if the employee wants ACAS to approach them to explore settlement, with no obligation to do so.

Delays are also only going to increase when the changes under the Employment Rights Act 2025 come in, especially the new six-month unfair dismissal rights alongside uncapped unfair dismissal awards and extended time limits to start claims.

The longer it takes for you to become aware of a claim the greater the risk that important documents could be lost, or key staff witnesses leave. Without these you may find yourself struggling to see off a claim increasing your risk of having to pay potentially significant compensation, incur considerable legal costs and possibly even face adverse publicity.



WHAT CAN YOU, AS A BUSINESS, DO TO PROTECT YOURSELF?

(1) Seek early expert advice! Whether you are looking to dismiss someone, have received a staff complaint, or are otherwise wanting to make changes that will impact your staff the importance of seeking appropriate expert HR and, where appropriate, legal support should never be overlooked. It will be far more economical to incur this cost early on, than take advice after the event once the harm has been done. The costs of damage limitation will always be greater!

(2) If you receive a staff complaint, don't ignore it! An early and proper investigation will ensure key witnesses are spoken to whilst memories are fresh, and any important communications are located and retained. The statements taken and findings made could be key later on and something that can be easily used to help jog witness memories. A tribunal is also always going to give more weight to contemporaneous records, over aged memories that can unfortunately be fallible.

(3) Keep records for longer. Review your current GDPR and data retention policies and ensure any key documents you may need to defend a tribunal claim are retained for a minimum of twelve months.

(4) If key witnesses leave ensure you have personal contact information for them. Anyone leaving via a settlement agreement and who you may need to call on in the future, ensure there are appropriate provisions in the agreement requiring their co-operation.

(5) Do also consider the benefits of employment disputes insurance. You may have this as part of your existing insurance cover. If not stand-alone policies are available and we can support clients to put this in place. It will be important to remember, however, that insurance cover will only kick in if you have at least a 51% chance of seeing off the claim. Taking early and appropriate advice will therefore still remain key.



HOW CAN WE HELP?

Our HR Support Service and Employment Team are on hand to provide expert tailored support as and when you need it. We can also help put into place insurance, helping protect your business in the event of a claim.

Between our HR Support Service and Employment Team we can help with a variety of employment concerns, including any issues or needs relating to the content of this newsletter. Our HR and employment teams have a proven track record when it comes to helping employers:

- Ensure their contracts and policies are legally compliant
- Successfully navigate employee grievances and disciplinary proceedings, including harassment and discrimination complaints
- Robustly defend their position in the event of tribunal proceedings

Our HR Support Service clients also benefit from regular legal updates, access to experienced HR professionals as and when needed, along with preferential hourly rates when support is required from our experienced employment lawyers, as well as employment disputes insurance cover.

You should seek legal advice before relying on the content of this newsletter as every situation is different and the law in employment is ever changing.



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