

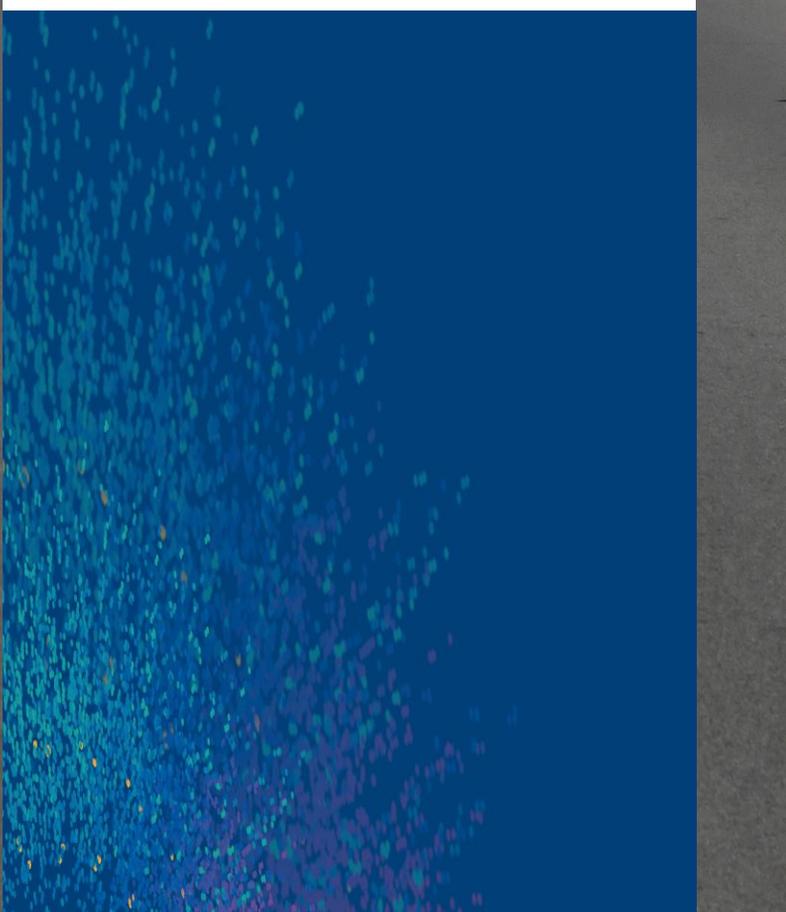


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Employment Law Case Tracker

FORTHCOMING
HEARINGS AND DECISIONS

OCTOBER 2019



EUROPEAN COURT OF HUMAN RIGHTS (ECtHR)

Awaiting judgement

Case	Status	Comment
López Ribalda and others v Spain	The hearing took place at the Grand Chamber on 28 November 2018	Employee data and monitoring. In Lopez, the ECtHR (Third Section) held that a Spanish employer's decision to install hidden video cameras to monitor suspected thefts by a number of supermarket cashiers violated the cashiers' privacy rights under Article 8(1) of the ECHR.

Awaiting hearing date

Case	Status	Comment
IWGB v United Kingdom	Application lodged Admissibility to be decided	Trade unions. Does the bar on a trade union making an application for statutory recognition under Schedule A1 of TULRCA where there is already a recognised union (albeit one with only minority support within the workforce) contravene Article 11?
Mattu v United Kingdom	Application lodged Admissibility to be decided	Discipline and performance management. Does the right to a fair hearing in Article 6 ECHR apply to internal disciplinary proceedings? The Court of Appeal in Mattu held that Article 6 was not engaged during disciplinary proceedings that ultimately led to the dismissal of an NHS hospital consultant for gross misconduct.
Jeff v United Kingdom	Application lodged Admissibility to be decided	Recruitment. The ECtHR will consider if the barring scheme under the Safeguarding Vulnerable Groups Act 2006 (since amended) was incompatible with Articles 6 and 8 of the European Convention on Human Rights. Seven applicants seek a remedy in relation to their placement on barred lists before the scheme was amended.
Lee v Ashers Baking Co Ltd and others	Application lodged Admissibility to be decided	Discrimination. The ECtHR will consider whether it was directly discriminatory on the grounds of sexual orientation, religious belief or political opinion for a bakery and its Christian owners to refuse to provide a cake bearing the words "Support Gay Marriage" to a gay customer.

EUROPEAN COURT OF JUSTICE (ECJ)

Awaiting hearing date

Case	Status	Comment
Grafe and Pohle v Südbrandenburger Nahverkehrs GmbH and OSL Bus GmbH	Advocate General Opinion given on 11 July 2019 Hearing date is awaited	Transfer of undertakings. The Advocate General gave an opinion that, in the transfer of a function that is asset-focused, the fact that significant tangible assets are not transferred due to legal, technical or environmental constraints is relevant but not necessarily determinative
Her Majesty's Revenue and Customs v HD (CHB)	Hearing date is awaited	Employment status and self-employed. The Upper Tribunal in HMRC v HD (CHB) decided to make a reference to the ECJ. The question is whether Article 49 of the TFEU must be interpreted as meaning that a woman, who ceases self-employed activity in circumstances where there are physical constraints in the late stages of pregnancy and the aftermath of childbirth, retains the status of being self-employed, within the meaning of that Article, provided she returns to economic activity or seeking work within a reasonable period after the birth of her child.
TSN v Hyvinvointialan liitto ry	Hearing date is awaited	Working time and time off. The Advocate General gave an opinion that the EU Charter of Fundamental Rights, read together with the Working Time Directive, did not preclude a national law which limited carry over of holiday in the event of sickness to the four weeks' leave under the Directive.

SUPREME COURT

Awaiting judgement

Case	Status	Comment
Gilham v Ministry of Justice	Permission to appeal was granted on 15 May 2018 Case heard on 5 and 6 June 2019	Whistleblowing. In Gilham, the Court of Appeal held that a District Judge was not a worker and was therefore not entitled to whistleblower protection under the ERA 1996. The Court of Appeal noted that a District Judge has other statutory protection against whistleblowing detriment and can also bring a claim under section 7 of the Human Rights Act 1998 for breach of their human rights committed by a public authority.
Royal Mail Group Ltd v Jhuti	Permission to appeal granted on 19 March 2018 Heard on 12 and 13 June 2019	Whistleblowing. In Jhuti, the Court of Appeal held that an employee was not automatically unfairly dismissed for making protected disclosures to her line manager because the person who took the decision to dismiss her was unaware of those disclosures.

Awaiting hearing date

Case	Status	Comment
Asda v Brierley	Permission to appeal has been granted A hearing date is awaited	Equal pay. The Court of Appeal dismissed Asda's appeal and held that workers in retail stores were employed under comparable terms and conditions to those working in separate distribution depots for the purposes of equal pay claims under the Equality Act 2010 and the Equal Pay Act 1970.
Ali v Capita Customer Management Ltd; Hextall v Chief Constable of Leicestershire Police	Permission to appeal has been granted A hearing date is awaited	Discrimination. The Court of Appeal considered whether it was direct or indirect sex discrimination, or a breach of the equal pay sex equality clause, for two employers to fail to pay two male employees enhanced shared parental pay. The Court dismissed Mr Ali and Mr Hextall's appeals.
Uber BV and others v Aslam and others	Permission to appeal has been granted A hearing date is awaited	Employment status. The Court of Appeal upheld an EAT ruling that Uber drivers are workers for the purposes of the Employment Rights Act 1996, the National Minimum Wage Act 1998 and the Working Time Regulations 1998. It held that there was no contract between the driver and passenger and that, in reality, the drivers worked for Uber. Underhill LJ dissented, opining that the Autoclenz principle has been taken too far.

Due to be heard: November 2019

Case	Status	Comment
Barclays Bank plc v Various Claimants	To be heard 28 November 2019	Vicarious liability. To decide whether Barclays Bank plc is vicariously liable for the sexual assault of 153 claimants who were assaulted when attending a medical examination required by the bank to establish whether they were physically qualified for employment and life assurance cover.
Various claimants v Wm Morrisons Supermarket	Permission to appeal has been granted. To be heard 6-7 November 2019.	Employee data and monitoring. The Court of Appeal upheld the High Court's ruling that Morrisons are vicariously liable for a data leak by their employee Andrew Skelton. The breach resulted in around 5000 staff members having their personal data stolen and shared with the public.

Due to be heard: February 2020

Case	Status	Comment
<i>Royal Mencap Society v Tomlinson-Blake</i>	<p>Permission to appeal was granted on 13 February 2019</p> <p>To be heard on 12 and 13 February 2020.</p>	<p>Pay and benefits. The Court of Appeal considered the correct approach to determine whether employees, who sleep-in in order to carry out duties if required, engage in "time work" for the full duration of the night shift. It held that, in this case, care workers were merely available for work during their sleep-in shift rather than actually working. They were therefore only entitled to the national minimum wage when awake for the purposes of working.</p> <p>In <i>previous cases</i>, the EAT had held that a multifactorial approach was necessary to evaluate whether a worker is subject to the special rules in regulation 32 of the National Minimum Wage Regulations 2015 (<i>SI/2015/621</i>).</p>

COURT OF APPEAL

Awaiting decision

Case	Status	Comment
<i>Coletta v Bath Hill Court (Bournemouth) Property Management Ltd</i>	The hearing took place on 25 July 2019.	Pay and benefits. The EAT held that, for unlawful deduction from wages claims issued before 1 July 2015, there was no six-year "backstop" period limiting the amount that could be claimed in respect of a series of deductions.
<i>Jet2.com Ltd v Denby</i>	<p>This case was due to be heard by 15 February 2019</p> <p>Awaiting a judicial decision on the papers</p>	Trade unions. In <i>Denby</i> , the EAT held that the protection from being refused employment due to trade union membership in section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 extends to trade union activities that are incidental to membership.
<i>NT1 and NT2 v Google LLC</i>	Heard on 20 December 2018	Employee data and monitoring. In <i>NT1</i> and <i>NT2</i> , the High Court considered whether, under the Data Protection Act 1998, Google could be required to "de-list" links to articles about the spent convictions of two businessmen. The court held that, although there is a right to be forgotten with less serious crimes, a more serious offence did not attract the same rights.

Due to be heard: December 2019

Case	Status	Comment
Awan v ICTS UK Ltd	Due to be heard on 4 and 5 December 2019	Sickness and incapacity. The EAT has held that an employer breached an implied contractual term when it dismissed an employee on the ground of capability while he was contractually entitled to long-term disability benefits. It held that there was an inherent contradiction between the employer's contractual right to terminate on notice and the employee's contractual right to disability benefits. The EAT went on to say that through either the officious bystander or business efficacy tests, a term must be implied into the contract whereby the employer was prevented from terminating for reasons of incapacity while the employee had the right to disability benefits.

Due to be heard: October 2019

Case	Status	Comment
X v Y	Due to be heard on 2 October 2019	Privilege. In X v Y, the EAT held that an email from a lawyer was not covered by legal advice privilege because there was a strong prima facie case of an iniquity, in that the email gave advice that a genuine redundancy exercise could be used as a cloak to dismiss an employee in order to avoid his continuing complaints about disability discrimination.

Awaiting hearing date

Case	Status	Comment
Ravisy v Simmons & Simmons LLP & Another	A hearing date is awaited	Discrimination. In Ravisy v Simmons & Simmons LLP & Another the EAT decided that an employment tribunal had not erred in finding that various discrimination claims brought by a French lawyer against a UK based international law firm and one of its partners should be decided in France not England.

EMPLOYMENT APPEAL TRIBUNAL

Awaiting hearing date

Case	Status	Comment
Varnish v British Cycling	A hearing date is awaited	Employment status. A former Great Britain cyclist will appeal an employment tribunal decision that she had been neither an employee nor a worker of British Cycling and UK Sport. The tribunal therefore did not have jurisdiction to hear her claims for wrongful dismissal and sex discrimination