

Quarterly Board Briefing

Labour & Employment: UK

Looking to Q1 2025

Executive Summary

Key

- Red** – Take Action
- Amber** – To Be Considered
- Green** – To Be Aware Of

Hot Topics Radar

This Hot Topics Radar shows how the legal changes and actions to be taken relate to some of the issues which we know to be high on the board’s agenda:

- ESG – Social
- Diversity, Equity and Inclusion
- Harassment
- Whistleblowing & Investigations
- Workforce Reporting

[In the Spotlight](#) section of this Board Briefing we set out brief answers to some of the key questions the board and senior management may have in relation to workplace investigations.



Quarterly Board Briefing | Labour & Employment – UK | Looking Forward to Q1 2025 and Beyond

This briefing aims to provide boards with a guide to key legal changes and actions to be taken next quarter and includes additional notes for Legal and HR teams in the [Spotlight](#) section at the end. Please note, this document does not cover all legislative changes, just those we view to be of particular relevance to the board.

| Topic | Key Date(s) | Overview | Action Required | Risks/Opportunities |
|--|---|---|--|---|
| Take Action | | | | |
| The Worker Protection (Amendment of Equality Act 2010) Act 2023 | <ul style="list-style-type: none"> In force: 26 October 2024 | <p>This new legislation amends the Equality Act 2010 and places a new pre-emptive duty on employers to take “reasonable steps” to prevent sexual harassment of their employees in the course of their employment.</p> <p>The Equality and Human Rights Commission (EHRC) has updated its Technical Guidance on Sexual Harassment and Harassment in the Workplace to make provision for the new duty.</p> <p>For more information on our recommended steps for employers, see our Relatively Informal Guide on the New Duty on Employers to Take Reasonable Steps to Prevent Sexual Harassment at Work and/or listen into our recent webinar New Duty Regarding Sexual Harassment at Work in the UK – Are You Ready?</p> | <ul style="list-style-type: none"> Employers must review the steps they currently take to prevent sexual harassment in the workplace and consider whether they might need to do more to satisfy this new mandatory duty. There are no exemptions and no transition period. The updated EHRC Guidance makes clear that an employer will almost certainly not be able to comply with this new duty unless it has carried out a risk assessment | <ul style="list-style-type: none"> An employer that breaches this new duty could face proceedings by the Equality and Human Rights Commission, as it will have new powers to enforce stand-alone breaches. If an employee brings a successful complaint of sexual harassment, the employer risks an uplift in compensation of up to 25%, if the tribunal is satisfied that the employer had breached the new duty to take reasonable steps to prevent it. There is no requirement that the employer’s breach should have led to the harassment. Note: the government has also released the Employment Rights Bill which includes measures which will shake up the position on harassment still further. For more information on these, please see our alert Labour’s Employment Rights Bill – Key Changes. Any employers hoping that they can ignore the new duty in the hope it will go away would be well-advised to reconsider that decision. In short, the direction of travel at the moment is towards strengthening the obligations on employers in relation to harassment, rather than unwinding these. That being said, any more onerous obligations are not likely to come into force before 2026. |

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| To Be Considered | | | | |
| Employment Rights Bill | <ul style="list-style-type: none"> Published – 10 October Second Reading – 21 October | <p>The new Employment Rights Bill has been heralded by the government as “the biggest upgrade to rights at work for a generation.” It sets out almost 30 employment law reforms.</p> <p>For more information on the proposals, see our snapshot guide to Labour’s New Employment Rights Bill – Key Changes.</p> <p>The government’s Regulatory Policy Committee has recently determined that material parts of the Bill have been developed without appropriate supporting analysis, but this is unlikely by itself to make any difference to its provisions.</p> | <ul style="list-style-type: none"> Employers should review the proposed changes and consider if any might have a particular impact (adverse or otherwise) on their business. We recommend that employers engage loudly and comprehensively with any relevant consultation exercises. The government places weight on the number of responses from interested parties on any given point, so employers who consider any of this to be ill-founded would be well-advised to speak up now. It is possible that coupled with the findings of the Regulatory Policy Committee, voluminous and vociferous push-back by employers could lead to refinements to the Bill before its provisions are implemented. We can but try. | <p>Our key takeaways for employers are:</p> <ul style="list-style-type: none"> Individuals will have greater rights Trade unions will also have greater rights and protections There are likely to be increased costs and administrative burdens for businesses There will be more regulation and greater emphasis on enforcement of rights, including increased risk of claims, though no obvious improvements to the Employment Tribunals’ resources for hearing them. |
| Economic Crime and Corporate Transparency Act 2023 Note – Only applies to large corporates and partnerships. “Large” means organisations meeting two out of three of the following criteria – more than 250 employees, more than £36 million turnover and more than £18 million in total assets. | <ul style="list-style-type: none"> Royal assent – 26 October 2023 Statutory guidance regarding the failure to prevent fraud offence has now been published and it has been confirmed that the failure to prevent fraud offence will come into force on 1 September 2025. | <p>The Act creates various new corporate offences, including the offence of failure to take reasonable steps to prevent fraud.</p> | <ul style="list-style-type: none"> In-scope organisations should consider a review of their current fraud prevention procedures. | <ul style="list-style-type: none"> Fines for failure to take steps to prevent fraud will be unlimited, and so this needs to be on the board’s agenda. |

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| To Be Aware Of | | | | |
| Statutory Code of Practice on Dismissal and Re-engagement | In force – July 2024 | <p>Following a consultation period, the final version of the Code of Practice on Dismissal and Re-engagement is now in force. The final version of the Code contains no substantive changes from the version which was subject to consultation.</p> <p>As such, the detailed analysis of the consultation version in this Employment Law Worldview blog remains relevant.</p> | <ul style="list-style-type: none"> • Review final Code. • Note, this is unlikely to be the final position on this issue. Labour’s New Employment Rights Bill includes provision for a change to the law on unfair dismissal so that such dismissals will be treated as automatically unfair unless the employer can demonstrate financial difficulties such that the need to make the change in contractual terms was therefore unavoidable. No qualifying period of service will be required to bring such a claim. | <ul style="list-style-type: none"> • The Code does not prevent fire and re-hire practices, but imposes significant practical burdens on employers to show them to be a genuine last resort. • If the changes proposed in the Employment Rights Bill go forward, these would place very strict limitations on the ability of employers to change terms and conditions of employment in this manner. It is also fundamentally inconsistent with the government’s claimed growth agenda, since it requires employers to be in significant financial difficulties before they can take the steps necessary to avoid their getting into those dire straits in the first place. |



Key Developments in the EU

Although the UK is no longer part of the EU, we know that many of our global clients have operations in continental Europe, and so it may be helpful to highlight two key pieces of legislation.

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| Take Action | | | | |
| EU Corporate Sustainability Reporting Directive (CSRD) | <ul style="list-style-type: none"> In force – 5 January 2023 Member states were required to bring into force local implementing legislation by 6 July 2024 The reporting requirements apply on a staggered basis depending (amongst other things) upon the size/turnover of the company – with the largest being required to report in 2024 | <p>The CSRD aims to modernise the requirements of its precursor, the Non-Financial Reporting Directive, and strengthen the rules regarding the Environmental, Social and Governance (ESG) information that in-scope companies are obliged to report. Although not an employment-related Directive per se, the reporting required includes social and workforce matters which will necessitate the collation of employment data.</p> <p>It is important to note that the CSRD will not only apply to companies in the EU that meet the requisite thresholds, but may also apply to non-EU companies with substantial activities in the EU.</p> <p>Member states were required to bring into force local implementing legislation by 6 July 2024, which must reference the European Sustainability Reporting Standards (ESRS).</p> | <ul style="list-style-type: none"> The ESRS are very detailed, and gathering the requisite data is likely to be an extremely time-consuming exercise. In-scope companies will need to review their internal processes carefully to ensure compliance with data privacy laws, as personal data is likely to be collected or even forwarded during the reporting processes (such as, for example, data on disabilities). Given that the reporting requirements will be codified in national law, there is likely to be a valid legal basis for the processing of such data. Nevertheless, companies must ensure that respective data processing does not go beyond what is strictly necessary to fulfil the statutory reporting obligations. <p>For more information, please refer to our Global Guide on Collecting and Monitoring DEI Data.</p> | <ul style="list-style-type: none"> Remember that collecting and reporting on this type of data can be time-consuming, and may require recruitment of specialist staff/purchasing of specialist software. Even for those companies where the reporting deadline will not bite until 2025 or beyond, we recommend that you work backwards from that deadline, building in conservative time estimates for budget approvals, recruitment and procurement. Companies falling within the scope of the new law should prepare as soon as possible to ensure compliance. |

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| EU Pay Transparency Directive | <ul style="list-style-type: none"> Local implementing legislation must be introduced by EU member states by 7 June 2026, with the new gender pay gap reporting obligations applying from 7 June 2027, at the earliest. | <p>A lack of pay transparency has been identified as one of the main obstacles to closing the gender pay gap in the EU. This currently stands at around 13%, with significant variations across individual member states.</p> <p>The EU has therefore adopted the Pay Transparency Directive, which obliges member states to introduce legislation that will:</p> <ul style="list-style-type: none"> Require employers to provide job applicants and workers with greater information about starting salaries and pay bands Require large employers to report regularly on their gender pay gap and conduct a joint pay assessment with workers' representatives where the gender pay gap is 5% or more Ensure there are appropriate measures in place to empower individuals to bring claims for equal pay for equal work or work of equal value. For more information, please refer to our snapshot guide on the Implementation of the EU Pay Transparency Directive – Where Are We Currently? | <ul style="list-style-type: none"> Global businesses with operations in continental Europe should start planning now for how they will meet these new and potentially onerous obligations. While several member states already have some pay transparency rules in place, these are unlikely to be wholly compliant with the Directive and further local changes are expected across the EU. | <ul style="list-style-type: none"> The Directive does not fall into the common trap of assuming that a material gender pay gap is evidence of unlawful sex discrimination. It remains possible to justify such a differential at both individual and collective levels, and the Directive does not alter any national laws in that respect. What it does do is force the pay gap to the surface and oblige employers to confront the question of whether it can indeed be justified. We expect a great deal of internal debate in companies and countries new to pay gap reporting, and the revisiting of old practices and assumptions around who gets paid what and why. If we are right on that, then the Directive will have gone a long way towards achieving its aims |





Spotlight on – Workplace Investigations

In the Spotlight section of our Q2 2023 Board Briefing, we wrote about workplace culture. There was (and remains) a lot to be said on that topic, but the short point at the time was that on an almost daily basis, it seemed that the press was reporting a new fall from grace for a figure in a position of power or responsibility, from crimes committed by serving police officers, to accusations of bullying by those within the government to name but a few.

Fast forward almost two years and the unsavoury revelations are still coming. We can now add to the roster numerous sexual harassment allegations (and worse) against TV presenters, company chairmen and other senior staff.

The common thread in many of these situations has been a suggestion of a workplace culture that encouraged, or at least permitted, bullying and/or discrimination to run rife. In others, there have been claims of a culture of silence which meant that while many people knew about the alleged misdeeds, they chose not to speak up or were too afraid to do so. In almost all, there has been an accusation that senior management did not act quickly enough (or at all) to carry out a full and thorough investigation, leaving the Court of Public Opinion to make its own swift and unforgiving judgments, based on what its “jurors” pick up from social media and pub gossip.

For those businesses which rely on investment, and particularly those where ESG factors are a concern, being publicly hauled over the coals in this way is nothing short of a disaster. And even for those not reliant on investment, increasingly employees and consumers are also voting with their feet when businesses are felt to get these things wrong, even if as a matter of fact or law they don't.

Of course, there are various steps that employers can (and ought) to take to address any issues within their culture with the aim of pre-empting/avoiding any such issues, but the reality is that sooner or later, most businesses will face an allegation of wrongdoing – and will therefore be required to conduct an investigation.

In this Spotlight, we set out brief answers to some of the key questions the board and senior management may have in relation to this issue and our top five issues to consider when conducting an investigation.

1. What Is an Investigation?

For something so important, there is a notable lack of definition to it – it has no technical description in employment law, takes no fixed form, is of no set length and requires no formal qualification. There are likewise no hard-and-fast rules of evidence.

An investigation is at its root just the process by which an employer develops an adequate understanding of the facts relevant to any decision it needs to make in relation to one or more of its employees.

2. In What Circumstances Might It Be Necessary To Conduct a Workplace Investigation?

A workplace investigation might be necessary in any situation where the employer needs to establish the facts.

Typical examples include:

- Where an employee lodges a grievance containing allegations of bullying, harassment, discrimination, etc
- Where the employer needs to determine whether disciplinary action is warranted, e.g. if there are performance or disciplinary issues
- Where an employee raises a whistleblowing complaint, e.g. allegations of a legal, regulatory or health and safety breach

3. What Is the Role of the Investigator?

This is usually to establish what has happened, to collate evidence and to report the findings so that a decision can be made about next steps. Typically, an investigation deals only with establishing the facts and not with determining what should be done about them, or what they mean as a matter of law. However, some investigators are also asked to provide non-binding recommendations to the employer. It is rare that they are instructed also to make any final and binding decisions.

Five Key Issues to Consider When Conducting a Workplace Investigation

- 1. Scope and objectives** – It is important that the employer obtains a clear understanding of the specific factual issues it needs to determine and appoints the right investigator. A misstep, even at this early stage, could derail or undermine the whole process. In some circumstances, it may be appropriate to appoint an external investigator to maintain the integrity of the investigation. Clear terms of reference are essential.
- 2. Evidence** – What evidence needs to be collected? Which individuals need to be interviewed? When identifying witnesses, it is important an investigator does not just speak to those individuals who will support or deny a particular version of events. It is important to look at both sides.
- 3. Reporting the investigator's findings** – Are the allegations proven, disproved or are the findings inconclusive? The investigator's report should set out the findings based on the facts. Consider what action should be taken in response to the findings. The action (or perceived lack of action) taken in response to the findings from an investigation is important and will face scrutiny from the company's stakeholders, from employees and customers to regulators and shareholders.
- 4. Confidentiality** – The details of an investigation should be kept confidential wherever possible. However, employers should avoid promising confidentiality to individual complainants/witnesses, particularly as any evidence collated as part of the investigation may need to be disclosed at a later stage, whether as part of court proceedings, in response to a data subject access request, to a regulator, etc. Consideration should be given to data privacy issues, as well as whether the investigation can be conducted under legal professional privilege.
- 5. Consequences** – The stakes have never been higher when it comes to workplace investigations – not only doing the right thing but being seen to do the right thing. A failure to carry out a reasonable investigation can make any subsequent decisions or actions unfair, leaving the company vulnerable to legal action and/or negative publicity. A word of caution, however: acting swiftly and robustly is all very well but keep an eye on the legitimate expectations of those accused to a fair hearing before key decisions are made in connection with suspension or dismissal, to the maintenance of confidentiality as far as practicable and to be treated as "innocent until proven guilty". Knee-jerk decisions made in haste may cause more legal harm than the original allegation.

How We Can Help

Workplace investigations can be complicated, time-consuming and a significant distraction for any business. Furthermore, the manner in which a business handles an investigation can attract as much scrutiny from internal and external stakeholders, as the alleged wrongdoing that led to the investigation in the first place – it will be important that the business acts (and is seen to act) quickly and properly.

We have a cross-practice team of experienced lawyers who conduct a wide range of investigations daily for clients across a number of sectors and jurisdictions.

Earlier this quarter, we were thrilled to be named as Winner of the Investigations Team of the Year at the International Employment Lawyer Awards 2024.

The full-service nature of our practice, coupled with our global footprint, means that we are able to call upon subject matter experts across a number of areas, providing a wrap-around approach to these sometimes multi-faceted issues.

We provide our clients with the credibility and objectivity to allow them to make considered decisions and reduce the risk to their organisations. Our experience and expertise are demonstrated by the number of high-profile and sensitive investigations we have worked on. From complex financial matters, through highly sensitive public interest cases, to serious allegations of harassment, bullying and discrimination in the workplace, our expert team has a proven track record of supporting clients when they need it the most.

For more information, please get in touch with your usual contact or any of the Partners named at the end of this Briefing.

New Global Snapshot on Workplace Investigations

We know that the increased demand for fair and transparent workplace investigations applies around the world. With this in mind, we have produced an updated version of our popular global guide, in which lawyers from our global Labour & Employment team provide outline answers on a jurisdiction-by-jurisdiction basis to the key questions that employers are likely to have in relation to workplace investigations.

Click [here](#) to access the guide.



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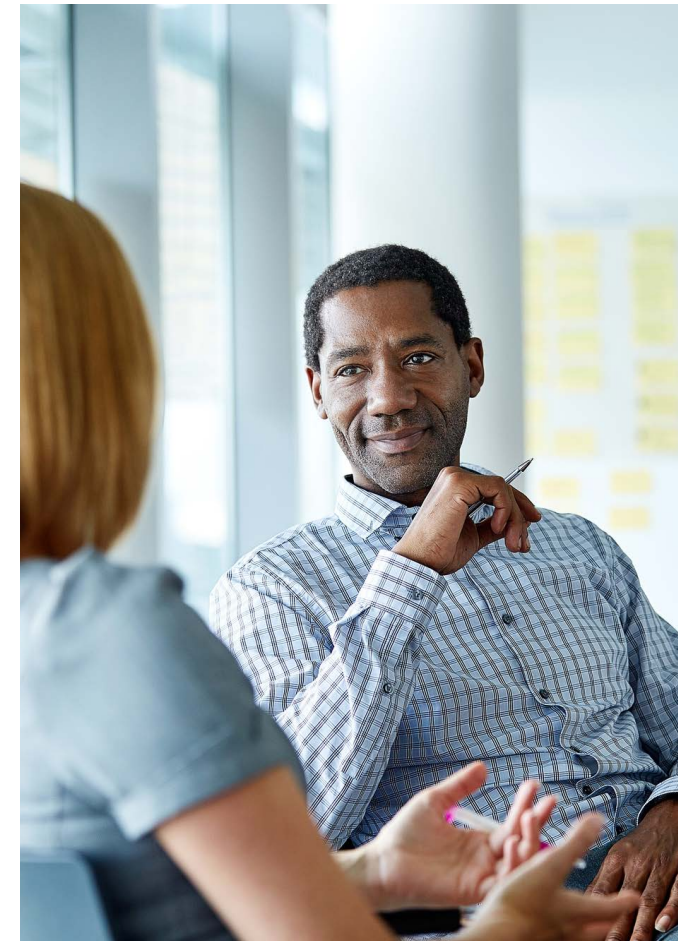
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This Board Briefing sets out the position in England. The position may vary slightly in Scotland, Wales and Northern Ireland. The opinions expressed in this update are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

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