



Employment Law Update
17th March 2026



Darren Newman's update on
same sex facilities



Recent and Coming
Employment Law Changes



National Developments

EMPLOYMENT LAW UPDATE – 17TH MARCH 2026

EMC's popular Employment Law Update, tailored for our sector and facilitated by Darren Newman will take place on 17th March 2026. This session will enable Councils to prepare for the provisions within the Employment Rights Act 2025 and hear about the latest developments in employment law.

Date and Timings: 17th March 2026, 10.00am-12.30pm. The event will be held virtually using MS Teams

Costs: Places will be available at a cost of £75 per delegate.

We are also offering a discount for multiple bookings – so you will be able to BUY ONE PLACE, GET ONE HALF PRICE. **Please note this offer is only available to member organisations.**

[READ MORE](#)

EQUALITY DIVERSITY AND INCLUSION (EDI) NETWORK – 10TH MARCH 2026

The regional EDI network is an effective way for officers who have EDI as part of their remit to meet and share information and resources and hear from key speakers on latest developments. The next meeting is on 10th March and if you would like to be included in the network distribution list and attend the meetings, then please contact Suzanne at suzanne.boulby@emcouncils.gov.uk

PROJECTS WITH LOCAL AUTHORITIES

During February EMC has supported authorities with:

- Restructuring
- Mediation
- Psychometric assessments
- In-house learning and development for senior teams

Contact Sam or Lisa if you would like any support in your organisation.

[CONTACT LISA](#)

[CONTACT SAM](#)



PROVIDING LEADERSHIP & MANAGEMENT DEVELOPMENT AT ALL LEVELS

Supporting leadership and management development needs in the lead up to LGR is a key priority and EMC are providing a range of ILM accredited courses for people to access working alongside other councils.

We have places available on a **Coaching & Mentoring option** on offer:

[ILM 7 Certificate in Executive Coaching and Mentoring \(9 days\) – 2nd June](#)

This programme provides knowledge and skills to improve understanding and confidence, as well as collaboration opportunities, when leading others and EMC have negotiated significant discounts.

[READ MORE](#)

SENSE-MAKING IN AN UNCERTAIN WORLD

Given the context of LGR and connected to our previous support on leading change, we have been working with several councils to support their senior leadership teams who are leading in an unfamiliar, complex space where they will be place shaping and transforming the way work is done, whilst still ensuring service delivery.

Tailored to each specific local authority we have been exploring the mindset shifts and approaches needed to make sense of this new, complex, uncertain environment, helping leaders to engage in collective sensemaking and to recognise and explore the human impact of transformation, including impact on themselves.

Themes focused on through this development support have included sense making and sense giving; relationship building, collaboration and resilience.

To discuss these opportunities further, please contact Lisa.

[CONTACT LISA](#)

LEARNING AND OD NETWORK – 21ST APRIL 2026 AT 10.00AM

Our next virtual Learning and OD network is a helpful and friendly way of learning and sharing together to make progress on key areas of learning and OD work. We use an MS Teams channel to support communication and collaboration in between the network meetings too and there is a positive appetite for smaller groups to work together independently on common opportunities. If you would like to suggest a topic for the network meeting and/or receive a calendar invite, please contact Lisa.

[CONTACT LISA](#)



IN DEEP WITH DARREN

HOW SHOULD AN EMPLOYER APPROACH THE USE OF TOILETS AND CHANGING FACILITIES BY TRANS EMPLOYEES?

This is one of the most emotive workplace issues I have ever had to deal with. But in legal terms at least, a clear answer is emerging.

We must start with the For Women Scotland case. The facts of that case were far removed from the provision of toilet facilities and concerned guidance from Scottish Ministers on appointments to public boards in Scotland. In striking down that guidance however the Supreme Court held that when the Equality Act refers to someone as being a man or a woman it is referring to their biological sex and that this is not changed when they undergo gender reassignment. This is so even if they have a gender recognition certificate under the Gender Recognition Act 2004. For the purposes of that Act therefore a trans woman is a man and a trans man is a woman.

In response to that case the Equality Commission published 'interim guidance' that sought to explain the implications of the Supreme Court's decision on the provision of single sex services. This was published prior to a wider consultation connected with the updating on its Code of Practice on services, public functions and associations – not to be confused with its separate code of practice on employment.

The interim guidance was controversial. Not everyone agreed with the Commission's view on the consequences of the Supreme Court decision. The Supreme Court had not been looking at the provision of toilet facilities and changing rooms, but the Commission's guidance was that it had important implications for these issues. In particular, the guidance stated that trans women should not be permitted to use women's facilities and trans men should not be permitted to use the men's facilities. It also stressed that where there were separate facilities for men and women then trans people should not be put in a position where there were no facilities that they could use and that where possible, mixed-sex facilities should be provided in addition to 'sufficient' facilities for each sex.

The idea that employers have to provide separate toilet and changing facilities for men and women is not found in the Equality Act itself. In its guidance however the Equality Commission was relying on Workplace (Health Safety and Welfare) Regulations 1992. Regulation 20 says that 'suitable and sufficient sanitary conveniences' must be provided by employers 'at readily accessible places'. It goes on to say that conveniences shall not be suitable unless: 'separate rooms containing conveniences are provided for men and women except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside' (Reg 20(2)(c))

Those arguing for a 'trans-inclusive' policy towards such facilities might want to argue that they can meet this requirement even if they do allow trans women to use the women's toilets. Making an exception for what would inevitably be a small number of individuals who identify as women even though they are not biologically female would still be consistent with the requirement to provide separate facilities for men and women.



In order to press that point, a number of individuals sought to challenge the Commission's guidance in the High Court (*R v Commission for Equality and Human Rights*) – even though, by that stage, the guidance itself had been withdrawn. The result however was that the Court endorsed what the Commission had said. Using the position on biological sex adopted by the Supreme Court in *For Women Scotland* the Court held that the inevitable consequence was that a toilet or changing facility could only be said to be a separate facility if it was reserved exclusively for members of the same biological sex. A trans-inclusive policy would mean that the employer was not providing separate facilities for men and women.

The Court went on to point out, however, that the 1992 Regulations only required 'suitable and sufficient' provision. Provided the same sex provision met those criteria it was open to a business to provide additional facilities that were trans inclusive.

The position then seems to be this. Health and Safety law requires employers to provide separate facilities for men and women in relation to toilet provision, changing rooms and washing (other than face and hands). According to the High Court, the *For Women Scotland* case requires these provisions to be interpreted as referring to separate facilities for biological men and women. If trans women are allowed to use the women's facilities, then this will be a breach of Health and Safety law.

I have seen suggestions that because High Court decisions may be subject to appeal this ruling should not lead employers to change their approach. That of course is a matter of choice for the employer. But High Court decisions do set binding precedents – they are not like employment tribunals whose decisions are not binding on other tribunals. As of the time of writing the High Court's ruling represents a clear statement of the law as it currently stands and employers who do not take it seriously put themselves at risk.

Health and Safety law is enforced by the Health and Safety Executive – it is not something that is dealt with by employment tribunals. But there are a number of ways in which the employer's approach to same sex facilities can give rise to discrimination claims.

For example, a trans-inclusive policy may lead to indirect sex discrimination. This was the finding of the Employment Tribunal in the case of *Hutchinson & ors v County Durham and Darlington NHS Foundation Trust*. A group of nurses objected to sharing their changing facilities with a trans woman. The Trust made little attempt to find a solution that accommodated their concerns but instead took the view that they needed to be 'educated'. The Tribunal found that women were more likely than men to be concerned over having to share changing facilities with someone of a different biological sex and that the employer's 'trans'-inclusive' policy therefore put women at a particular disadvantage. It was not a proportionate means of achieving a legitimate aim both because of the insensitive way in which the employer had approached the issue and because the employer's policy was contrary to the legal requirements in the 1992 Regulations.

It is also worth noting in that case that the employer's approach towards the women raising concerns about the changing room facilities was so inflexible and insensitive as to amount to harassment.



That case contrasts with a rather more nuanced finding in the case of *Peggie v Fife Health Board* where one particular nurse objected to sharing a changing room with a trans colleague and had confronted the colleague in question directly. There, the employer eventually made arrangements for the rotas of the two employees to be adjusted so that they would not have to share the changing facilities. The Tribunal upheld some parts of the nurse's claim – relating to the period prior to the change in rotas – but dismissed most of the wider allegations. It is expected that this decision will be subject to appeal.

Darren's Advice for Employers

Whatever the outcome, the lesson of these two cases would seem to be that an employer should seek to engage with employees who are concerned and try to find a practical solution that results in everyone feeling comfortable. It should also be remembered that employees have the right not to be discriminated against because of gender reassignment and should not be put in a position where there are no suitable facilities that they are allowed to use. Requiring a trans woman to use the men's facilities would clearly be inappropriate and would be likely to amount to discrimination or harassment in itself.

It is difficult to escape the conclusion that proper gender-neutral facilities will need to be provided either in addition to separate facilities for men and women, or on the basis that there are no shared facilities at all and every employee has access to an individual lockable room.



NATIONAL DEVELOPMENTS

NATIONAL PAY DEVELOPMENTS

2026 Pay Negotiations

The National Employers Side of the Joint Negotiating Committees met on 24th February for initial consideration of the feedback from the regional pay briefings and the responses to the pay survey. The Employers will consider all the information and will be meeting again on 24th March.

Craftworkers

The 2025 pay negotiations remain unresolved for Craftworkers. The Employers' offer was made on 22 April 2025. Since then, the employers have reaffirmed to Unite six times that the offer is full and final. Since last summer, GMB has said it is ready to accept the offer, but it does not have enough seats on the JNC unions' national committee to reach an agreement with the national employers on its own. EMC recently notified councils that Unite would be balloting its members for industrial action. It has now been confirmed that the ballots will be held in 7 local authorities – none of which are in the East Midlands region. A claim for Craftworkers for 2026 has not yet been received.

NATIONAL RECRUITMENT CAMPAIGN EVALUATION

In January's bulletin, we shared the impact of the first weeks of the national media campaign for this year's recruitment campaign, which showed a high level of interest and response. The national media campaign ended on 15th February, but councils can continue using the campaign toolkit materials locally.

The external evaluation of the media campaign has now begun. Each council will have received an email asking them to complete a council survey, and a recruitment data gathering form. The survey has now closed, but the deadline for completing and returning the recruitment data form is Friday 6th March at 5pm.

We encourage you to participate in the evaluation exercise. Evaluation is a key part of the initiative, to understand the impact of the programme, areas of success and for improvement, and to support a case for future government funding. Having the data provides the quantitative information to show the impact on recruitment for local authorities.

All councils are invited to attend a national online event on Tuesday 31st March, 11:00 – 12:00, when the evaluation results will be shared. [Register here.](#)



RECRUITING SURVEYORS THROUGH THE PATHWAYS TO PLANNING PROGRAMME

In last month's HR Bulletin, we featured the opportunity to recruit planners through the national Pathways to Planning programme. This month, we wanted to highlight that the programme has been extended this year to include a strand for the recruitment of Surveyors. This enables councils to access to high quality graduates accompanied by accredited training.

The Surveying stream will deliver graduates to work as surveyors in local authorities, including construction project management roles. Graduates will train on an RICS accredited course selected by the local authority. The programme provides a practical route to developing future skills and support workforce needs. If your council would like to participate in the programme. More information about this scheme is available through the link below.

[READ MORE](#)

EMPLOYMENT LAW CHANGES DURING FEBRUARY

UNIONS, INDUSTRIAL ACTION DISMISSAL PROTECTIONS, CHECK-OFF AND FACILITY TIME REPORTING

Some changes arising from the Employment Rights Act 2025 came into effect on 18th February 2026. These include changes affecting industrial action ballots and protections against being dismissed for taking part in protected industrial action. Dismissal for taking part in protected industrial action is now "automatically unfair", removing the previous 12-week limit for claiming unfair dismissal and extending it through the whole period of industrial action.

With regard to ballots for industrial action, the time needed to give notice of industrial action has reduced from 14 days to 10, while the mandate period for action following a successful ballot has doubled from 6 to 12 months. Notices to employers of ballots have been simplified, and there is no longer a requirement for a picketing supervisor to be appointed.

Of specific relevance to councils, is the lifting of the requirement for public sector employers to publish trade union facility time information. [Guidance, published at the beginning of January](#), confirms that for this year, the relevant period has not ended before 18 February 2026 when the law changes, so employers do not need to publish information related to the 2025 to 2026 relevant period.

Also of direct relevance to councils is the lifting of restrictions relating to "check-off" (the facility to pay union membership subscriptions via payroll). Trade unions will no longer be statutorily required to pay for the administration of check-off.



PATERNITY LEAVE NOTICE – TEMPORARY CHANGE

On 18 February 2026, a temporary reduced notice period for taking paternity leave was introduced, with fathers and birth partners giving 28 days' notice, instead of 15 weeks'. The temporary 28-day notice period applies if the employee will become eligible for paternity leave on 6 April 2026 because of the change in the law when the entitlement becomes a day-one right, and the expected due date is between 5 April and 25 July 2026.

If the due date is 26 July 2026 or later, the usual 15-week notice period will apply. Parents who were already eligible for paternity leave before 6 April 2026 must give the usual 15 weeks' notice.

USING AUTOMATED DECISION-MAKING IN RECRUITMENT SELECTION

Restrictions on using automated decision-making as part of selection processes were removed from 5th February through the Data (Use and Access) Act 2025. Employers must still have safeguards in place, as set out in UKGDPR, if using automated decision-making where the outcome would have a significant effect on individuals, such as whether to shortlist someone for employment. The safeguards are:-

- inform the candidate that automated decision-making is being used as part of the recruitment process;
- allow the candidate to make representations about the decision;
- allow the candidate to require human involvement in the decision; and
- allow the candidate to challenge the decision.

The employer must ensure that there is a procedure in place to allow staff to review the decision and make a new assessment of whether to shortlist an individual, if the candidate objects.

EMPLOYMENT LAW CHANGES TAKING PLACE IN APRIL

Further changes will be introduced from the Employment Rights Act. In summary, these are:-

- **Statutory Sick Pay (SSP)** The three-day waiting period will be removed. SSP will be payable from day one of sickness instead of day four, and the lower earnings limit will be removed.
- **Family rights** Paternity leave and unpaid parental leave become 'day one' rights (no more qualifying periods, currently 26 weeks or one year respectively). The restriction on taking paternity leave after shared parental leave will be removed.
- **Fair work agency** will be launched to enforce and oversee compliance relating to holiday pay, National Minimum Wage, and SSP.
- **The collective redundancy protective award** will be revised so that the maximum 'protective award' for failure to consult in a collective redundancy situation will double from 90 days' pay to 180 days' pay.



- **Whistleblowing protections for sexual harassment** so that a complaint of sexual harassment will become a 'qualifying disclosure' under whistleblowing law, meaning protection from detriment and unfair dismissal for whistleblowers making a sexual harassment disclosure.
- **Gender pay gap action plans** (including menopause) whilst voluntary will be encouraged, prior to becoming mandatory during 2027.
- **Trade union recognition** will be simplified.
- **Electronic voting** in industrial action and other ballots will be allowed.

NEW & UPDATED ACAS ADVICE

ACAS has published new advice in relation to employee inductions, and has updated its advice on dismissals, neonatal care leave and pay and the Employment Rights Act 2025.

Links to the advice are provided below:-

New Acas advice: [Inductions](#)

Updated Acas advice: [Dismissals](#)

Updated Acas advice: [Neonatal care leave and pay](#)

Updated Acas advice: [Employment Rights Act 2025](#)