At a glance: **EMPLOYMENT & INCENTIVES**

What to expect in 2025

Welcome to our look at key developments and issues to watch out for in worker rights and reforms, DEI and culture, pay and incentives and governance during 2025.

Click on each of the circles on the left to see more details on:

- Executive pay: trends and expected changes;
- Relaxation of financial sector remuneration rules;
- Share offers and trading shares in private companies;
- Employment Rights Bill;
- Draft Equality Bill and parental leave review;
- Reforms to employment status and TUPE;
- Workplace conduct and whistleblowing;
- Expression of beliefs in the workplace; and
- Working practices and the right to switch off.

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Executive pay

Where next for board pay?

After years of upheaval, executive pay rules and market expectations have remained broadly steady this year. The only notable shift is that the 5% in 10 years dilution limit is effectively gone.

But there is a more general vibe shift among shareholders: they're more open to companies breaking the mould, so long as there's a good reason and clear communication. This shift aligns with efforts to boost UK companies' competitiveness more broadly and is to be welcomed.

Many companies will not be renewing remuneration policies in 2025 so can use 2025 to reflect on their remuneration arrangements. Are they still competitive? Are they aligned with strategy and the shareholder experience? Is now the time for the company to take advantage of the vibe-shift to really innovate in this area? If so, 2025 is the time to plan for this and start engaging with shareholders.

If the answer to these questions is "no", recent developments should not require any immediate action. But, as and when remuneration committees assess whether their remuneration structures and levels are fit for purpose, this new openness to departing from the 'norm' in executive pay will be helpful.

See this briefing for a more detailed discussion.

Changes to directors' pay rules

The government is to remove a set of requirements from the directors' policy and remuneration report regime. Although there are no specific details yet, previous government announcements described these as "low-value", "obsolete", and "duplicative" and the most recent one as "overlapping EU-origin requirements". The latter gives a clue as to what we can expect when the legislation is published in early 2025: When the EU "say on pay" regime was introduced, the pre-existing UK rules were amended (with effect from June 2019) to transpose this into UK law.

Many of those changes were minor and technical, and reversing them will be welcome. Removing the following would be particularly helpful:

- The implementation report must compare the annual change of each director's pay to the annual change in average employee pay, over a rolling five year period; and
- A company can only make a payment to a director that is inconsistent with the policy if it amends the policy to permit the payment and obtains shareholder approval for the amended policy.

For more details and analysis of the main EU-derived provisions, see this briefing.

Timing: The legislation is likely to apply to remuneration reports for financial years starting from 6 April 2025. So for calendar year-end companies, this means reports on the 2026 financial year, and potentially, any policies presented for shareholder approval after 6 April 2025. This will be clarified once the legislation is published.

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Financial sector pay

Relaxations in remuneration rules

The PRA and FCA are consulting on a number of changes to the remuneration rules for material risk takers (MRTs) at banks, building societies, and some designated investment firms. Along with the removal of the bonus cap and relaxations for smaller firms, these are intended to reduce compliance costs for firms and improve the ability of the UK to attract and retain talent.

The proposals present some real opportunities to place commercial and competitive considerations – rather than regulation - at the centre of remuneration design. Firms will no doubt start to consider how to take best advantage and whether the proposals will impose any competitive pressures.

The changes which will have the greatest impact on remuneration design for MRTs relate to deferral and retention:

- reducing the maximum deferral periods (from seven to five years);
- allowing vesting of deferred awards from 'Day 1' instead of after three years;
- increasing thresholds for the higher 60% deferral rate and the 'de minimis' exception from the payout process rules;
- allowing dividends or interest on deferred instruments (currently prohibited); and
- giving firms flexibility to decide whether bonus paid in instruments should be subject to retention and, if so, for how long (with no retention period expected for deferred instruments).

For most firms, the changes, assuming they go ahead on the proposed timing, will take effect from the 2026 performance year. 2025 is the time to work out what changes to make and to ensure documentation, administrative systems and communications programmes are ready for the start of the 2026 performance year.

There are also some simplifications and relaxations of the rules on clawback and quantitative identification of MRTs. But the role of governance and of specific individuals (e.g. chief risk officer) in the MRT identification process will be enhanced. Firms will want to ensure that documentation and systems are ready for these changes.

It is not yet clear, for example, what will happen to current reporting requirements, or how firms may calculate and pay dividends and interest. Except where the UK rules are expressly different, firms will be expected to comply with the EBA Guidelines on Sound Remuneration Policies.

Firms may also wish to respond to the consultation, which closes on 13 March 2025.

See this briefing for details on the proposals and implementation timings.

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Share plans

Ensuring equality of information on share plan offers

A rewrite of the rules on offering shares to the public in the UK is likely to take effect in 2025, with a new prospectus rules regime. The changes are far-reaching but will not fundamentally affect offers of share plans: It will still be possible to offer almost all share plans in the UK without publishing a prospectus.

But there is one detail which could present some challenges: A new equality of information rule will require any "material information" on an offer given to one eligible employee to be given to all. This includes information given in writing or orally, so where the rule applies, companies will need to be careful:

- to ensure that plan communications are available to all; and
- about what they say in employee presentations (which might not include some eligible employees) or private conversations about the plan.

Penalties can be imposed on the company or any director for breach of the equality of information rule.

The rule applies where:

- (as is usually the case) no prospectus is required for the offer because of an exemption; and
- the total UK consideration for the offer (and any other exempt offers) could be more than £1,000,000 in any 12-month period.

The consideration for many share plan offers will not reach £1,000,000 (indeed, often there is no consideration). But a share plan offer could still be caught if the company has offered shares or other securities (not necessarily through an employee share plan) and relied on an exemption in the 12-month period.

There is no guidance on what kind of information would be regarded as "material information". It may be possible to argue that once the key terms of the offer (price, number of shares and so on) have been communicated to everyone, any other information is not "material" so the equality of information rule no longer applies.

But this is by no means certain, so companies should ensure that all those who could be involved in plan communications, whether formal or informal, are made aware of the risks. This would include HR and reward teams but also senior individuals who might conduct employee presentations or have private conversations about plans. Companies should also review processes and systems used for any share plan offers.

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Share plans

Trading shares in private companies

Unlisted companies have generally had to create an internal market for their shares to enable employee shareholders and share plan participants crystalise gains and thus benefit from the company's success. Often this involves operating employee benefit trusts (EBT). Despite their flexibility, ultimately it is the company which funds the EBT to buy shares and there could be complex tax rules to navigate (in particular disguised remuneration and inheritance tax).

For private companies, 2025 will bring a new and additional option: After a delay (to which the change in government no doubt contributed), the new type of trading platform for private company shares (the "Private Intermittent Securities and Capital Exchange System", or Pisces), is to be established by May 2025. Pisces will allow existing unlisted shares to be traded in a controlled environment during "trading windows". Pisces' stated aims include helping private companies to access capital and scale-up, and enabling investors to take advantage of the growth in private markets.

Employees of companies whose shares are to be traded and trustees of tax qualified share incentive plans will be able to buy and sell shares. It is also likely that trustees of EBTs will be able to participate too.

Pisces could thus provide liquidity for employees and share plan participants, otherwise only available through internal markets including EBTs.

The initial Pisces structure will operate for a trial period of five years. This will enable the FCA and the government to assess and if necessary amend the Pisces regulatory requirements.

See this briefing for details on Pisces generally.

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Employment Rights Bill

The Employment Rights Bill introduced in October 2024 will continue its passage through Parliament during 2025. The Bill introduces sweeping change into over 28 different areas of employment law via complex and highly technical provisions. From individual termination rights to industrial action through to harassment and whistleblowing, there are very few areas of employment law which remain untouched by the Bill. Enforcement of employment laws is also subject to change under the Bill with the creation of the Fair Work Agency, a single enforcement body which brings together the existing functions of HMRC, the Employment Agency Standards Inspectorate and other bodies.

Click here for more details of the measures introduced by the Bill.

While the measures are not expected to be brought into force until 2026, it has been suggested that the Bill will swamp business by virtue of both the volume and complexity of the provisions. A number of measures would, if enacted in their current form, have a significant impact on existing HR practices. These include day one unfair dismissal rights and the introduction of a statutory probation period, restrictions on variations to contracts (introduced via the fire and rehire provisions) and change to the collective redundancy consultation regime. In 2025, employers will need to consider how these changes impact on current practices and put in place preparatory measures.

The Bill is expected to undergo change in early 2025. Amendments have been made during Committee stage, including extending time limits from three to six months, and further changes are expected in response to the feedback received in the consultations on fire and rehire, collective redundancy consultation, industrial action and zero hours contracts.

The Bill is likely to receive Royal Assent in summer 2025. Repeal of the Strikes (Minimum Service Levels) Act 2023 will take place on the day the Bill is passed and certain industrial action provisions, including changes to the turnout and support thresholds in industrial action ballots, will come into effect two months later. Following Royal Assent, the government is expected to commence consultation on aspects of the Bill which will be dealt with in secondary legislation. This includes the length of statutory probation periods and the applicable dismissal procedure, details of the right to a guaranteed hours offer including the number of hours below which the provisions will apply, the eligibility criteria for bereavement leave and further details of the new reasonableness requirement for flexible working requests.

We will continue to update our UK Employment Law Reforms Tracker as further developments take place.

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Equality Bill and parental leave review

Draft Equality (Race and Disability) Bill

The government announced a draft Equality (Race and Disability) Bill in the King's Speech in July 2024. The Equality Bill will:

- Introduce mandatory ethnicity and disability pay gap reporting for employers with 250 or more employees;
- Extend the right to bring an equal pay claim on grounds of race and disability;
- Allow outsourced workers to bring equal pay claims comparing their terms with directly hired employees.

A draft of the Equality Bill will be published before the end of the current Parliamentary term with consultation taking place next year. Given that disability pay gap reporting is a new initiative, it is expected that the government will prioritise consultation in 2025. Any consultation is likely to consider metrics and methodology, as well as the challenge posed by the existing lack of data held by many employers.

The extension of equal pay laws is cited as an immediate priority by the newly-created Office for Equality and Opportunity. Draft legislation in this area is likely to be issued for consultation in 2025.

Equal pay will remain in the spotlight in 2025 as Next has lodged an appeal against last year's ET decision, where its pay practices were successfully challenged by thousands of female retail consultants. With high-profile retail equal pay claims continuing and the upcoming implementation of the EU Pay Transparency Directive, employees' expectations on pay equity and transparency are likely to continue to grow in 2025.

Review of parental leave

The government has committed to a full review of the existing parental leave system. The review is due to be delivered by July 2025 to fulfil the commitment to conduct it within the first 12 months of taking office. In advance of the review, the Women and Equalities Committee has initiated an inquiry into paternity and shared parental leave and is conducting a call for evidence which closes on 31 January 2025. A review will also be conducted into carer's leave and whether it should become a paid entitlement.

In the meantime, the following legislative changes will take effect:

- **Neonatal Care (Leave and Pay) Act 2023**
  New neonatal care leave and pay entitlements for employees are expected to come into force in April 2025. While further details will be confirmed in regulations, the statutory leave entitlement is expected to be up to 12 weeks and the rate of pay is likely to be the same as statutory maternity pay (currently £184.03 a week).
- **Paternity Leave (Bereavement) Act 2024**
  The Paternity Leave (Bereavement) Act 2024 creates a day one right for bereaved partners to take paternity leave where the child's mother dies in childbirth. It is expected to come into force in April 2025, subject to commencement regulations being made.

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Wider reforms

Employment status

The government has identified employment status as a key area for reform. In Labour's Plan to Make Work Pay, the government indicated that it considers the current three-tier system of employee, worker and self-employed status to be highly complex. It believes this complexity has had a negative impact, contributing to the rise of bogus self-employment.

The government intends to consult in detail on moving towards a single status of worker: a two-tier system of workers and the genuinely self-employed. As part of this process, it will also look at strengthening protections for the self-employed, including the right to a written contract, and health and safety protections. Consultation on this policy may begin in 2025, although legislative reform in this area, which is also likely to require a review of employment status for tax purposes, is likely to be a long-term project.

Claims challenging status will continue to feature in 2025. In *Ryanair DAC v Lutz*, the Employment Appeal Tribunal (EAT) upheld an employment tribunal's finding that a pilot engaged as an independent consultant was in fact an agency worker entitled to paid annual leave and the protections of the Agency Workers Regulations 2010. Mr Lutz was engaged via a service company that contracted with a recruitment company, which in turn provided services to Ryanair. The EAT upheld the tribunal's findings that this arrangement was a fiction and that personal performance was required. The decision has been appealed and will be heard by the Court of Appeal in March 2025.

TUPE

The government plans to launch a Call for Evidence on TUPE, after indicating they will strengthen rights and protections for workers subject to TUPE. This may involve considering how TUPE applies to workers and where a business is transferred to multiple transferees. Further details are awaited.

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Workplace conduct

Whistleblowing

The Court of Appeal is set to hear a number of whistleblowing cases this year:

1. *Sullivan v Isle of Wight Council*. The Court will consider whether an external job applicant should be entitled to bring a whistleblowing claim.
2. *SPI Spirits (UK) Ltd v Zabelin*. The case concerns the appropriate remedy following a successful whistleblowing claim, including whether contractual clauses could cap the tribunal's awards and the application of the Acas Code on Disciplinary and Grievance Procedures to a whistleblowing dismissal.
3. *Wicked Vision Ltd v Rice*. The Court will consider the act of dismissal as a detriment following a protected disclosure.

The government has proposed a narrow update to the UK's whistleblowing framework regarding disclosures about sexual harassment (see Employment Rights Bill and our blog here). There are currently no plans to extend whistleblowing protection more generally. However, firms regulated by the FCA can expect the regulator to strengthen their whistleblowing campaign in 2025 and further promote their reporting channels (see here).

For more resources, see our dedicated Listen up! webpage.

Non-disclosure agreements

The Victims and Prisoners Act 2024, which received Royal Assent in May 2024, contains provisions that would render NDAs that prevent disclosures by victims of criminal conduct unenforceable. It contains an exception for NDAs used to preclude disclosures made for the primary purpose of releasing the information into the public domain. It remains to be seen whether and when commencement regulations will be made to bring the provisions into force.

The FCA has confirmed that they will publish clearer guidance for whistleblowers impacted by NDAs who wish to report to them (see here).

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Workplace conduct

Non-financial misconduct and D&I in the financial sector

In September 2023, the FCA and PRA published consultation papers with proposals to tackle non-financial misconduct and improve D&I (see our blog here).

Having confirmed in May 2024 that they would be prioritising their work on non-financial misconduct (see our blog here), the FCA intends to publish a final policy statement on this "early in 2025" (see their November 2024 letter here).

Next steps on the regulators' far-reaching D&I proposals, including greater data reporting and target setting, are expected to follow in the second quarter of this year. After the House of Commons Treasury Committee recommended that the regulators abandon the proposals, they are now exploring how D&I reporting could be "simplified and more joined up", particularly in light of the government's proposals on equality action plans and mandatory ethnicity and disability pay gap reporting.

Failure to prevent fraud

The new offence of failure to prevent fraud under the Economic Crime and Corporate Transparency Act 2023 comes into effect on 1 September 2025. All in-scope organisations will need to have in place reasonable procedures to prevent fraud being committed by associated persons including employees. Our investigations team provide further information here.

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Discrimination

Expression of beliefs in the workplace

Higgs v Farmor's School, heard by the Court of Appeal in October 2024, is among a number of recent cases highlighting the difficulties employers face when managing employees' expressions of beliefs. Ms Higgs, a Christian pastoral administrator at Farmor's School, expressed gender critical views in Facebook posts, before being dismissed for gross misconduct. See our client alert here for further details of the EAT's judgment.

It is hoped that the judgment of the Court of Appeal, expected later this year, will provide further guidance on dealing with the manifestation of religious or philosophical beliefs at work lawfully.

A number of other cases on this topic will be considered by the Employment Appeal Tribunal (EAT) in 2025:

1. *In Randall v Trent College*, the EAT will hand down judgment as to whether a tribunal was right to reject a school chaplain's claim for religion or belief discrimination following a sermon in which he stated that pupils did not have to accept the opinions of LGBT activists where they conflicted with Christian values.
2. *In Corby v Acas*, the EAT will hear an appeal as to whether the Claimant's opposition to critical race theory was a protected belief. Among other things, the Claimant believed that a "woke" approach to racism was misconceived in that belief in structural racism is divisive because it sees white people as a problem.
3. *In Miller v University of Bristol*, the EAT will hear an appeal as to whether an academic's anti-Zionist beliefs qualified for protection and that his summary dismissal was discriminatory.
4. *In Ngole v Touchstone Leeds*, the EAT will consider whether retraction of a job offer, after the Claimant's Facebook posts expressing negative opinions about homosexuality came to light, was an act of discrimination on grounds of belief.

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Working practices

Right to switch off

The government plans to introduce a statutory Code of Practice for the right to switch off, similar to models in Belgium and Ireland.

This means that it is unlikely that an absolute legal right to disconnect will be implemented. However, one potential outcome is that employees could receive an uplift in certain compensation if the Code is breached and be able to use it in evidence in legal proceedings. The government is likely to consult on the Code in 2025 before proceeding.

See our blog here for a European perspective on the right.

Artificial intelligence

The UK had previously adopted a pro-innovation stance to AI. However, the Labour government has signalled a shift in approach with plans to introduce legislation for developers of AI models. In September 2024, the UK became one of the first signatories to the International Convention on AI, which requires the introduction of accessible and effective remedies for AI-related human rights violations. More details on the government's legislative plans are likely to be revealed in the coming months.

The government has also promised a consultation on the implementation of workplace surveillance technologies.

In Europe, the EU AI Act, the first general, comprehensive AI legislation, came into force on 1 August 2024. The provisions will be phased in over a three-year period, with the provisions on high-risk uses (such as employment) coming into effect on 2 August 2026. The territorial scope of the EU AI Act is very wide and has potential to capture non-EU organisations if the AI system affects individuals in the EU.

Find out more about how to navigate AI in the workplace here.

Fire and rehire

The Statutory Code of Practice on dismissal and re-engagement, setting out the process employers should follow when terminating employees and seeking to re-engage them on less favourable terms, came into effect on 18 July 2024 (see our guide here).

From 20 January 2025, legislation will come into force that will give tribunals the power to increase or decrease a protective award by up to 25% to reflect an unreasonable failure by employers to comply with the Code.

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