https://darrennewman.org/

Employment Law Update for Schools

June 2026

Darren Newman

Darren Newman
EMPLOYMENT LAW

Industrial Action – now in force

- Minimum Service Level provisions now repealed
- In a strike ballot:
  - must still achieve 50 per cent turnout (to be repealed later)
  - but industrial action can be supported if a majority of those voting agree
- Strike ballot now remains valid for 12 months (up from 6)
- Ten days notice of industrial action needed (down from 14)
- Less information needed on ballot paper about nature of dispute etc

Darren Newman
EMPLOYMENT LAW

Union Access (October 2026)

- Consultation outcome and draft Code of Practice: 8 April 2026
- Union will be able to require employers to enter into ‘access agreements’ allowing union onto premises or to have virtual access to employees
- Purpose will be representation, recruitment and organisation – but not industrial action
- This is more complicated than Government thinks
- If you are a likely target – think about what you can propose if approached

Darren Newman
EMPLOYMENT LAW

Pearce v Governing Body of Mayfield School (House of Lords, 2003)

- Teacher subjected to harassment from pupils related to her sexual orientation
- Held that employer could not be liable because harassment was not carried out by employees
- Disapproved the “Bernard Manning’ case – Burton v De Vere Hotels (EAT, 1996)

Darren Newman
EMPLOYMENT LAW

Third-party harassment (October 2026)

- Employer must not permit a third party to harass an employee
- Employer permits harassment if:
  - Employee is acting in the course of their employment
  - Employer has failed to take all reasonable steps to prevent the harassment from taking place
- Guidance to be published on what 'all reasonable steps' means (but not for a while)

Darren Newman
EMPLOYMENT LAW

Unfair Dismissal

- Qualifying period will go down to 6 months from January 2027
- New qualifying period will apply to dismissals from that date – so qualifying period is already effectively tapering

Darren Newman
EMPLOYMENT LAW

Unfair Dismissal, notice and probation

- New law will say nothing about probationary periods – what matters is length of service
- Length of service runs from first day of work to the effective date of termination
- Contractual notice is separate and does not extend length of service if not given (see Harper v Virgin Net, 2004)
- Dismissal for failed probation will be subject to test of reasonableness if EDT occurs from six months onwards

Darren Newman
EMPLOYMENT LAW

Compensation for unfair dismissal

- Currently, compensatory award is limited to lower of one year's pay or £123,543
- From January, cap is removed completely
- Removing cap altogether opens many more senior employees to meaningful unfair dismissal claims
- Losses will include lost commissions, bonus and pension benefits
- Will make the process of exiting senior employees more complex and costly
- Employees with career-long pension loss will also have expensive claims

Darren Newman
EMPLOYMENT LAW

Fire and Rehire – January 2027?

- It will be automatically unfair to
  - Dismiss someone for refusing to agree to a ‘restricted variation’ of contract
  - Dismiss someone in order to employ (or reengage) someone doing substantially the same work on a contract containing a ‘restricted variation’
  - Dismiss someone in order to replace them with someone who is not an employee of the employer to do substantially the same work

Darren Newman
EMPLOYMENT LAW

A ‘restricted variation’

- a reduction of, or removal of an entitlement to, any sum payable to an employee in connection with the employment (regulations may exclude expenses or benefits in kind)
- A variation of any measure of work done that will affect sums payable
- a variation of any term or condition relating to pensions or pension schemes;
- a variation of the number of hours which an employee is required to work;
- a variation of the timing or duration of a shift which meets such conditions as may be specified in regulations made by the Secretary of State;
- a reduction in the amount of time off which an employee is entitled to take;
- a variation of a description specified in regulations made by the Secretary of State;
- the inclusion in a contract of employment of a term enabling the employer to make what would be a restricted variation without the employee’s agreement.

Darren Newman
EMPLOYMENT LAW

Consultation on ’restricted variations’

- Act gives power to limit the scope of restricted variations (which widens the scope of variations that can be made)
- Government consulting on:
  - Expenses – proposes to exclude them
  - Benefits in kind – proposes to exclude them
  - Shift patterns – proposes to limit them to requiring weekend or night-time working
- Would represent some softening of the provisions – but not very helpful in schools context

Darren Newman
EMPLOYMENT LAW

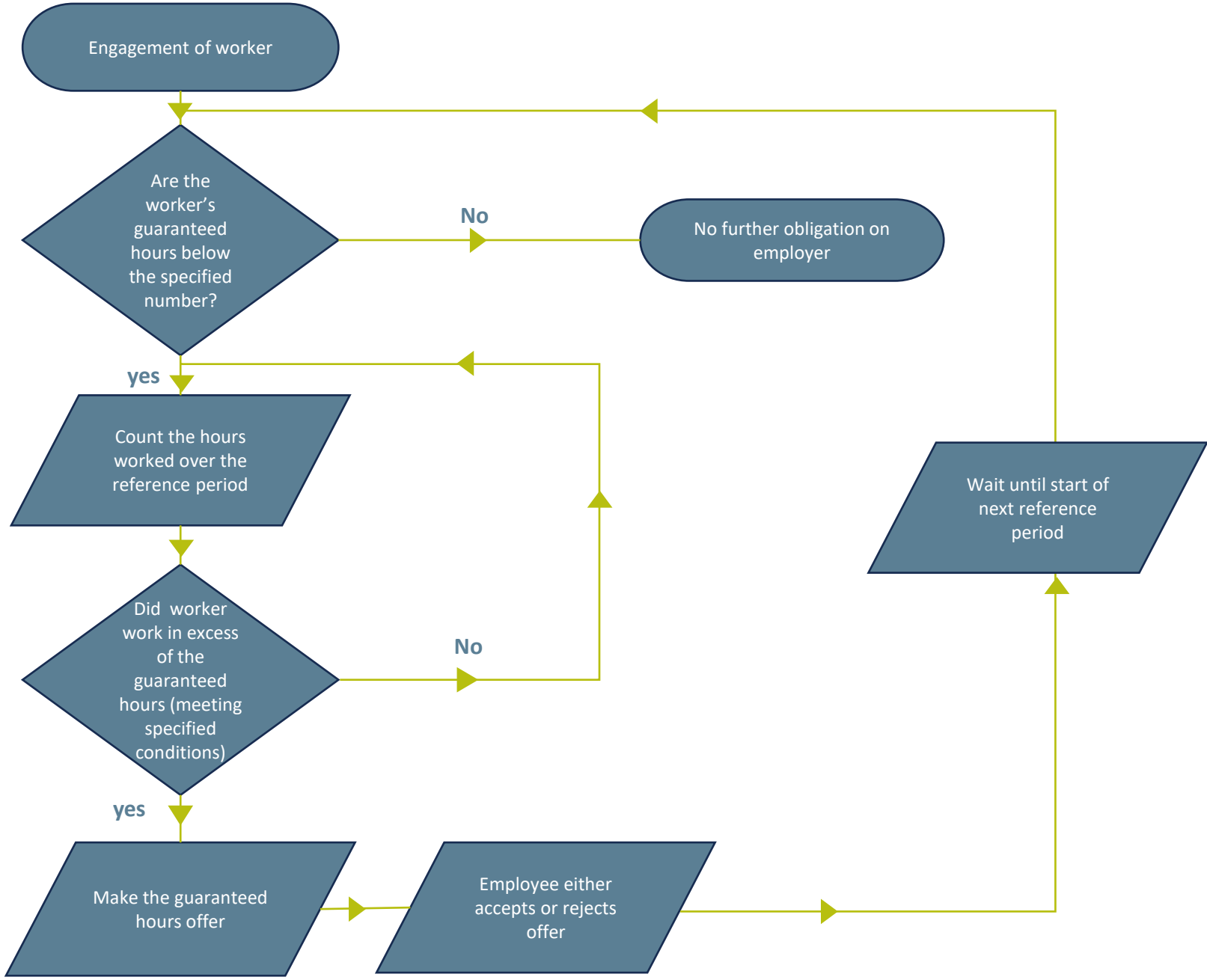
Financial Difficulties Exception

- Local authority – exception only if SoS has made a ‘relevant intervention direction’ under S.15 of Local Government Act 1999
- Other public sector – exception if financial difficulties affect the financial sustainability of carrying out the employer’s statutory functions
- Other employment – exception if financial difficulties would, in the immediate future, affect employer’s ability to continue business as a going concern, and

Darren Newman
EMPLOYMENT LAW

The Right to Guaranteed Hours

- Consultation on details will run until August
- Areas of detail still to be decided?
- Will this come into force or will ‘events’ take over?



New Consultation on Collective Redundancies

- Employment Rights Act allows for Regulations setting 'organisation wide' threshold for collective redundancy consultation
- This replaces original provision which would have set trigger at 20 employees across employer as a whole
  - Instead, 20 at one establishment or:
  - At least a certain number across whole employer (suggests 250)
  - At least a certain percentage of workforce
  - Some combination
- Implementation due 2027?

Darren Newman
EMPLOYMENT LAW

Micro Focus Ltd v Mildenhall (EAT, 19 December 2025)

- Employee dismissed from large employer as part of a reorganization – claimed protective award?
- Was employer proposing to dismiss 20 or more employees over a 90-day period?
- Tribunal said it must have been – thinks that more than 40 people were actually dismissed over that period
- But EAT says not enough – was the employer 'proposing' to dismiss more than 20 at any time? (NB – there may be more than one proposal)
- Also Tribunal had wrongly assumed that 'de facto' employer was responsible even if some employees were actually employed by other entities

Darren Newman
EMPLOYMENT LAW

Alom v Financial Conduct Authority (EAT, September 2025)

- Employee dismissed over two abusive emails sent to a colleague
- He was not given the transcripts of two investigation interviews conducted with the complainant
  - But the misconduct he was accused of was specific and he had enough information to be able to answer that charge in full
- The manager conducting the disciplinary read from a script written by HR which framed questions in a way showing a pre-determined conclusion
  - Tribunal entitled to find that in fact the manager made up his own mind (close one though)
- Dismissal found to be fair

Darren Newman
EMPLOYMENT LAW

Omooba v Michael Garrett Associates Ltd (Court of Appeal, 13 March 2026)

- Application to reconsider refusal of permission to appeal
- Claimant had role withdrawn following social media backlash prompted by old Facebook post about same sex relationships
- EAT held that the reason role was withdrawn was threat to the production – not expression of her belief
- Court of Appeal reaffirm refusal to give leave to appeal
- The ‘reason why’ was a question of fact for the Tribunal

Darren Newman
EMPLOYMENT LAW

Ngole v Touchstone Leeds (EAT, February 2026)

- Qualified social worker is offered post of mental health support worker
- Employer is a charity with strong commitment to LGBTQI+ equality
- Claimant is a Christian who previously won claim against University for excluding him from course following Facebook posts expressing views about sexual orientation
- Employer withdraws job offer after seeking reassurances about how he would approach work and being dissatisfied with answers
- Tirbunal finds that justified but EAT say they should have considered separate ‘manifestations’ of his religious belief and applied proportionality test to each

Darren Newman
EMPLOYMENT LAW

For Women Scotland v The Scottish Ministers (Supreme Court, April 2025)

- Scottish Ministers guidance on female representation on public boards was wrong to say Equality Act 2010 definition of women included trans women with a gender recognition certificate
- Despite Gender Recognition Act, the Equality Act definition of sex was based solely on biological sex
- So a gender recognition certificate does not change the status of trans men and trans women for the purposes of the Equality Act

Darren Newman
EMPLOYMENT LAW

R v Equality and Human Rights Commission (High Court February 2026)

- Judicial review challenge to EHRC Interim guidance on same sex facilities
- Court rules guidance was legally correct
- Workplace (Health and Safety and Welfare) Regulations 1992 require: ‘suitable and sufficient’ facilities for men and women
- Court rules For Women Scotland means that sex must mean biological sex
- So a trans-inclusive policy on toilets is unlawful under the 1992 Regs

Darren Newman
EMPLOYMENT LAW

https://darrennewman.org/

Employment Law Update for Schools

June 2026

Darren Newman

Darren Newman
EMPLOYMENT LAW