Employment Law Newsletter

September 2026

Summary

Welcome to the Autumn Employment Law Newsletter from 4-5 Gray's Inn Square.
As we enter the final quarter of 2026, the employment landscape is facing significant shifts driven by major decisions/ judgments and rapid technological developments . In this edition, members of our Employment Group break down some of the most pressing developments currently impacting tribunals, businesses, and practitioners across the UK: a landmark Supreme Court ruling on part-time worker protections, the practical realities of AI in the workplace, and critical updates to ongoing equal pay litigation.

We open this issue with an analysis by Vida Simpeh on the Supreme Court's judgment in Augustine v Data Cars Limited [2026] UKSC 30. For years, establishing the precise legal threshold for the less favourable treatment of part-time staff has been a complex issue for practitioners. Vida examines how the Supreme Court has cleared this hurdle by ruling that a claimant's part-time status needs only to be an "effective cause" of their treatment, rather than the sole or dominant reason. This decision marks a major shift for workplace flexibility, and the article explores its immediate practical implications for employers navigating the Part-Time Workers Regulations.

Turning from the courtroom to tech, Arran Dowling-Hussey delivers a straightforward, practical commentary on Artificial Intelligence's impact on Employment Law. Algorithmic management is no longer a futuristic concept; it is actively reshaping modern workplaces. Arran cuts through the tech jargon to map out how AI is influencing everything from automated recruitment filtering to redundancy selection. The piece highlights the legal risks of built-in software bias and examines the growing friction between automated efficiency and statutory worker rights.

Finally, Rosalee Dorfman Mohajer provides our Equal Pay Update. Pay equality remains one of the highest-stakes arenas in modern employment litigation. Rosalee focuses her note on recent milestone decisions, most notably the high-profile Next retail dispute. By looking at how tribunals assess the value of predominantly female store roles versus predominantly male warehouse positions, this update highlights changing judicial attitudes toward "work of equal value"—an essential read for anyone tracking high-value group claims.

Whether you are preparing for a complex tribunal, updating internal HR policies, or advising corporate boards on risk, we hope these insights provide clear, practical guidance for the months ahead. As always, the Employment Group at 4-5 Gray's Inn is here to provide expert advocacy and advice through these changing legal waters.

For further information or instruction enquiries, please contact Senior Practice Manager Gary Carney at gcarney@4-5.co.uk or call +44 (0)20 7404 5252. Further updates and insights can be tracked via the 4-5 Gray's Inn Square News Hub.

Augustine v Data Cars Limited [2026] UKSC 30 Considered The Part-Time Workers Regulations 2000

By Vida Simpeh

Under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("the 2000 Regulations"), employers are strictly prohibited from treating part-time staff less favourably than comparable full-time workers. The regulations define "part-time workers" as those who are paid wholly or in part by reference to the time they work and having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is not identifiable as a full-time worker. There is no set number of hours that have to be worked to make someone part-time. This protection applies to hourly pay, benefits, holiday entitlements, and career progression, *unless* the employer can provide an objective justification.

In *Augustine v Data Cars Limited* [2026] UKSC 30, the Supreme Court considered the scope of the protection from unlawful discrimination afforded to part-time workers under the 2000 Regulations. The question raised by the appeal was whether the right only applies where the part-time worker establishes that part-time status was the sole ground or reason for the less favourable treatment in question, rather than simply an effective cause of it.

Facts

Mr Augustine ("the Appellant") was a private hire driver who worked for Data Cars Limited ("the Respondent") as an employee in 2016. He worked fewer hours per week than typical full time drivers. All drivers, whether full or part-time were charged a weekly fee to access the respondent's booking system. The fee was set at a fixed rate for all drivers regardless of how many hours they worked. The Appellant claimed that the application of the fixed circuit fee was less favourable treatment of him as a part-time driver contrary to regulation 5 of the 2000 Regulations because it had the effect that he paid a higher fee per hour to drive than a comparable full-time driver.

What did the Court decide

The Court clarified that an individual's part-time status does not need to be the 'sole cause' or the 'dominant reason' for their less favourable treatment. The worker only needs to demonstrate that their part-time status was an 'effective cause', meaning a contributing factor, to the disadvantage they say that they experienced. If a part-time worker is excluded from a benefit, or a training opportunity, due to a combination of scheduling issues and management policy, the fact that scheduling played a part no longer automatically defeats the discrimination claim.

Key Takeaways for Employers

· **Neutral Policies Under Scrutiny:** Workplace rules that seem completely neutral on the surface can still trigger discrimination claims if in practice they inadvertently cause a disadvantage to part-time workers.

· **Higher Threshold:** Because the 'sole cause' defence is no longer viable, employers must rely heavily on proving objective justification. This requires showing both that the treatment corresponds to a real business need and that it is a proportionate way of achieving that aim.

Understanding 'Objective Justification'

To successfully defend a claim, following Augustine, an employer can no longer argue that the part-time status was secondary to business logic. Instead, they must establish that the less favourable treatment was a proportionate means of achieving a legitimate aim.

· Legitimate Aim: The goal must represent a genuine, serious business need (e.g., maintaining operational continuity, meeting health and safety requirements, or working within genuine budgetary constraints). Simply wanting to save money or preferring full-time workers would not constitute a legitimate aim.

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A· Proportionate Means: The employer must prove that the policy was necessary to achieve that aim and that there was no less discriminatory way to do it. If a part-time worker is excluded from a training course because it only runs on a full-time schedule, the employer must show they actively looked into alternative arrangements (such as recording the sessions or offering modular training) before blocking access to the training.

Practical Steps for Part-Time Contracts and Workplace Policies

To mitigate the increased risks introduced by Augustine, human resources and as necessary internal/ external legal teams should conduct an internal audit using a checklist:

· **Identify Comparable Workers:** Map out part-time roles against full-time counterparts to ensure there is parity in hourly pay rates, overtime thresholds, and core benefits.

· **Review Bonus Structures:** Ensure discretionary and performance based bonuses are calculated on a transparent, pro-rata basis rather than using flat eligibility thresholds that exclude those working fewer days.

· **Assess Training and Promotion Access:** Review the scheduling of mandatory training, corporate events, and promotion processes. If these are exclusively held on days a part-time worker is absent, document the operational necessity or establish alternative routes.

• **Audit Core Employee Benefits:** Check that health insurance, gym memberships, and car allowances etc. are distributed fairly. Where benefits cannot be divided pro-rata, employers should look at offering a cash equivalent alternative or full access unless objectively justified.

The Commercial Impact of Augustine?

The commercial reality of Augustine is that businesses can no longer build shift patterns and otherwise operate solely around the convenience of a full-time schedule.

· **Increased Operational Overhead:** Managers must spend more time on what may well be complex, flexible shift rotas to ensure part-time employees are not excluded from critical team briefings, handovers, or skill development.

· **Rethinking Project Allocation:** High value projects/ prestigious client accounts cannot be automatically allocated to full-time staff under the assumption that part-time workers “will not have the hours to manage them”. It is suggested that such an approach would now open the door to discrimination claims.

· **Workplace Culture:** While this creates an initial administrative burden, businesses that successfully adapt tend to see higher retention rates among part-time demographics, which heavily feature working parents, carers, and older employees.

Overlap With Employment Rights Act Reforms

The Augustine judgment does not exist in a vacuum; it has to be seen in the wider context of the employment law landscape in the autumn of 2026 at a time when statutory worker protection is being changed. The lowering of the causal threshold for part-time discrimination must be viewed alongside the rolling provisions of the Employment Rights Act.

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With the unfair dismissal qualifying window dropping to six months and tribunal claim time limits extending from three to six months, part-time employees possess significantly greater leverage.

A part-time worker who feels sidelined or disproportionately impacted by shifting operational schedules could bring a claim of unfair dismissal and statutory discrimination. Furthermore, as the government looks to continue to formalize restrictions around zero hours and low hours arrangements, the legal scrutiny on any non-standard working contract will be absolute. Employers can no longer treat part-time arrangements as secondary without risking immediate statutory penalties.

Conclusion

Following *Augustine*, employers should consider whether it is necessary to adjust policies to avoid the risk of legal liability to their part-time employees. Failing to adjust policies in light of *Augustine* risks expose to compounding legal and financial liabilities. Unlike standard unfair dismissal claims, which have historically been subject to a statutory financial cap, discrimination claims under the Part-time Workers Regulations carry uncapped financial compensation potential. Tribunals calculating awards for less favourable treatment look not only at direct loss of earnings and missing bonus margins, but also at ‘injury to feelings’ awards under the Vento guidelines. For structural, long running disparities where an employer systematically passed over a part-time employee for promotions, or essential training, any payouts may reach tens of thousands of pounds per employee. When multiplied across a large workforce where identical, non-compliant shift patterns or blanket restrictions on benefits may have been applied to an entire class of part-time workers, the threat of multi-claimant litigation becomes a daunting challenge.

Artificial Intelligence's impact on Employment law

by Arran Dowling-Hussey

Artificial Intelligence ('AI') is no longer the remote buzzword it may have been 5-10 years ago; it is actively rewriting the relationship between employers and employees across the U.K. Most people have a heightened awareness of AI since 2023 and have began to think about/ experience the practical impact it can have on the workplace. From CV-screening algorithms to software tracking worker keystrokes in real time, automation is completely changing how people are hired, managed, and fired.

But these technological developments are met by an employment law landscape where the core statutes—like the Employment Rights Act 1996 and the Equality Act 2010—were drawn up long before AI existed in the scope and scale seen today. This mismatch is a challenge for courts and tribunals which determine employment disputes. Employers who assume technological efficiency trumps statutory compliance are finding out that the law still favours human accountability, irrespective of how sophisticated a software platform may claim to be.

Take recruitment bias, which increasingly runs the risk of becoming a battleground for employers across the country. For what are obvious reasons, companies welcome using AI platforms and tools to filter large number of job applications that usually exceed the number of available positions in seconds. Other such technological usage can see the employer score automated video interviews based on inter alia facial expressions, body language, and tone of voice. In theory this appears to be an objective, fair exercise which is free from human prejudice. However, the real and present danger is as AI learns entirely by looking through the rear-view mirror at historical trends.

If such an automated process is predicated on historical data from a profession/ industry or service sector that has traditionally been male dominated it may well not treat women's applications as would be expected in 2026. It might run a scoring system that sees points deducted for a gap in a CV arising from maternity leave or penalise a candidate who uses less common phrasing as English is their second language.

It is suggested that under the Equality Act 2010 Tribunals do not view it as a defence if an external software vendor built the bias into the program or if the employer did not intend to discriminate. The employer bears full liability for both direct and indirect discrimination, and because discrimination claims in Great Britain carry no compensation cap, a faulty algorithmic recruitment tool can lead to rather an expensive lesson about the cost of measures intended to bring savings.

Another developing area is the issue of daily workplace surveillance, micromanagement, and productivity tracking. More managers are leaning on invasive programmes/ applications to monitor worker outputs, track worker movements during remote calls, log keystrokes, or flag when an employee leaves their desk for a break. Under the UK GDPR and the Data (Use and Access) Act 2025, this level of oversight is potentially legally very complex indeed.

Workers have an explicit statutory right to reject decisions made solely by automated systems—especially significant decisions such as those bearing on disciplinary actions, performance reviews, or sudden sackings. You cannot just let an algorithm automatically lock a remote employee out of their system because their typing speed dropped or their webcam failed to spot them for ten minutes. There must be a meaningful, fully documented human intervention process. Pushing surveillance too far also risks destroying the "implied term of mutual trust and confidence" that underpins every English employment contract. If an intrusive monitoring tool makes the workplace feel like an oppressive environment an employee may simply walk out, resign, and look to bring a claim for constructive unfair dismissal.

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Generative AI is also having a great impact in the workplace as it changes the way everyday workplace disputes can play out on the ground. It is now the case that anyone can access free online tools which assist employees. Many employees are regularly using such tools to draft incredibly complex, multi-page formal grievances, subject access requests (SARs), and prolix tribunal claims. Human Resources departments find themselves at risk of being buried with highly legalistic, professional-sounding paperwork generated at speed by disgruntled staff who have only turned to generative platforms for a short period. This scenario can create tremendous administrative pressure, slowing down internal procedures and driving up internal and external legal costs for businesses. Those staff, using generative AI are perhaps unaware that they are cutting and pasting confidential client data, financial projections and/ or trade secrets into public AI models to help them write grievances etc. This potentially raises severe data issues with the framework applied by the Information Commissioner's Office (ICO) Companies have been scrambling to write internal AI usage policies to clarify exactly what tools are allowed and what will constitute gross misconduct.

Many commentators have in the last year been concerned about a potentially massive wave of job losses triggered by this automation. When a company installs an AI program that replaces human tasks, it is legally a redundancy scenario under the Employment Rights Act 1996. The work has diminished, which is a fair reason to let people go. However, you cannot just swap out a human team for software overnight. Employers still have to pool workers fairly, use objective criteria, and consult meaningfully. If a manager uses an opaque algorithm to score who gets made redundant, and that algorithm cannot explain its underlying maths, the selection is legally unfair. Furthermore, if a company plans to automate away 20 or more roles within a 90-day window, they face strict collective consultation laws. This means properly consulting with trade unions before making such changes. Missing these steps means tribunals may well issue payouts for protective awards, on top of automatic unfair dismissal claims.

The gig economy highlights another major pressure point regarding status and control. Delivery platforms and courier services have long used algorithmic management to assign shifts, calculate fluctuating pay rates, and fire drivers who perform poorly. However, the courts have repeatedly cracked down on this practice, ruling that intense algorithmic control often turns independent contractors into "workers" or full "employees." If AI dictates your route, sets your exact pay, and penalises you for logging off, how are you your own boss? Any such shift in classification will then forces companies to provide back-dated holiday pay, national minimum wage compliance, and pension contributions, completely upending the low-cost model that companies in many sectors have begun to rely on.

Regulators like the Information Commissioner's Office (ICO) and the Equality and Human Rights Commission (EHRC) are looking to extend their regulatory reach into the area of workplace technology, issuing strict guidelines which state code cannot override human rights. Ultimately, the message to businesses is clear: deploy AI if you must to stay competitive but never let the machines have the final word. If you automate your management, you must still be prepared to defend that algorithm in a human court or tribunal.


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Equal Pay Update

By Rosalee Dorfman Mohajer

The legal framework on equal pay is shifting. Over the past decade, the retail sector has been the primary battleground for large-scale group actions. These claims generally involve shop-floor workers, who are predominantly female, comparing their roles and pay to those of predominantly male distribution centre workers. While claimants have succeeded at the initial ET stage, recent decisions of the EAT demonstrate that employers can win in arguments on whether there was a commercial justification for pay disparities.

A significant decision in this trajectory is the Employment Appeal Tribunal's (EAT) decision in *Next Retail Ltd. & Next Distribution Ltd. v Miss Thandi and others* [2026] EAT 130. This and other recent cases set out the present boundaries of the 'material factor' defence provided for under section 69(1)(b) of the Equality Act 2010.

The Next *Retail* Appeal

The EAT delivered its judgment in Next Retail Ltd. & Next Distribution Ltd. v Miss Thandi and others [2026] EAT 130 on 7 September. This appeal followed a summer of 2024 decision of the Leeds ET that over 3,500 retail sales consultants (the claimants) should receive the same basic hourly pay as warehouse operatives (the comparators) under the equal pay provisions of the Equality Act 2010. By an earlier decision in 2023 the same ET had ruled that the work of the three lead claimants was of equal value to the four named comparators. The ET in 2024 decided that Next's "material factor" defence failed in respect of basic pay and six other contractual terms or categories, but succeeded in respect of other terms or categories.

Next appealed against the Leeds ET's finding that it had not made out the material factor defence with regards to the difference between the claimants' and comparators' basic pay and some other benefits. The EAT held that the ET did not err in finding that the claimants had shown a particular disadvantage because of the differences between the claimant and comparator groups. However, it erred in deciding that the employer did not pursue a legitimate aim when setting different rates of pay.

Taken as a whole, the aim of paying higher rates to warehouse staff included recruitment and retention factors which did not apply to the claimant group. Therefore, it was not necessary for the employer to justify not increasing the claimants' pay to the same level.

The ET made an alternative finding that the employer's reliance on a material factor was not a proportionate means of achieving a legitimate aim. Given the EAT's decision, this also could not stand. The EAT commented that in any event the ET had erred in its assessment of proportionality when analysing the market forces factor, as it had focused on the reasons for the claimants' lower pay and the affordability of increasing it rather than on the reasons for the comparator's higher pay (see [143]-[144]; [182]).

The claimants cross-appealed on the grounds that the ET erred when finding that there was no direct discrimination contrary to section 69(1)(a). The EAT dismissed the cross-appeal and decided that it was not the case that direct discrimination must always be found where an employer relies on a material factor of market forces (see [256]). In addition, the employer does not have to adduce evidence to prove that those market forces do not disadvantage those of either sex.

Contractual Benefits

Whilst Next succeeded on basic hourly pay, the EAT upheld the ET's findings regarding several secondary contractual terms. The tribunal observed that while market pressures explained basic pay variations, discrepancies in other benefits -- such as paid rest breaks and night premiums -- were driven solely by internal cost management and therefore was not legitimate or proportionate (see eg [215]; [223]; [230]).

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The EAT did find that certain other terms, including long-service awards and Sunday premiums, were justified because they stemmed from collective bargaining agreements in which Next had sought a successful outcome to the negotiations with the trade union representing the warehouse staff (see eg [203]-[204]; [235]).

Equal Pay Group Action against Supermarkets
The principles confirmed in the Next appeal are highly relevant to the multi-billion-pound group equal pay claims progressing against Tesco, Asda, Sainsbury's, Morrisons and the Co-op. The claimants are store workers who believe they are being paid less than warehouse workers.

During an ongoing ET hearing, Tesco appealed to the EAT and Court of Appeal, [2026] EWCA Civ 580, on the tribunal should assess equal value. In the judgement handed down on 12 May 2026, the Court of Appeal inter alia upheld the ET’s approach in relying on Tesco’s own training manuals, operational documents and job descriptions to determine the core requirements of customer assistants and warehouse workers. Tesco had argued that the ET should focus exclusively on day-to-day practices, but this was dismissed. This judgment is significant, as it means equal pay claimants will not individually have to prove every aspect of their jobs, where the employer has standardised how the work should be done.

Shifts in the Regulatory Landscape

These developments occur alongside important statutory changes to the broader workplace compliance framework. The Government’s Equal Pay and Pay Discrimination Consultation, launched in late summer 2026 alongside proposed expansions to the Equality Act 2010, proposes changing standards designed to enforce wage equality:

1. **Mandatory Salary Transparency:** Under proposed recruitment transparency mandates, employers will be legally required to explicitly state salary ranges and financial benefits directly within job advertisements or provide them in writing to candidates prior to an interview if a role is unadvertised.

2. R**eintroduction of Statutory Questionnaires:** The Government plans to reinstate an optional, formal statutory questionnaire procedure exclusively for pay discrimination disputes. This would allow employees to request internal corporate compensation data prior to launching a formal claim, empowering tribunals to draw adverse inferences if an employer gives evasive or non-compliant responses.

3. **The Equal Pay Regulatory and Enforcement Unit:** The Unit would act as a watchdog on equal pay. The aim is to reduce the current model in which employees carry the burden of enforcing the law through a reactive and complaint-led process, leading to high levels of litigation. Under the proposed framework, the Unit would have extensive pre-investigation disclosure powers, allowing it to compel disclosure of, for example, verbal evidence or pay data. In addition, the investigation powers would extend to requiring an employer to undertake a job evaluation scheme or an equal pay audit to establish whether pay discrimination has occurred.

From 1 October 2026 the standard time limit for the majority of statutory employment claims to the Employment Tribunal will be extended from three months to six months less one day, pursuant to section 152 and Schedule 12 of the Employment Rights Act 2025. While statutory equal pay claims already carried the extended limitation period, this expansion across connected claims (such as unlawful deductions from wages, unfair dismissal and discrimination) significantly expands the active window for making claims.

Equal Pay Update

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Conclusion

The EAT's judgment in *Next Retail Ltd. & Next Distribution Ltd. v Thandi [*2026] EAT 130 underscores that employers may take external market realities into account when setting pay rates, provided the differences can objectively be seen as legitimate and proportionate. Employers should be careful to maintain accurate market benchmarking records and ensure that secondary benefits are not altered based purely on internal cost management. Prospective claimant employees will likely be assisted by the extended time limit to file claims as well as the stronger transparency requirements and enforcement unit proposed in the Equal Pay and Pay Discrimination Consultation.


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