

# Five employment law developments you should have on your radar

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**LAW**  
LAW AT WORK

Minding your **business**.

Employment Tribunal fees

What does Brexit mean for Employment Law?

Indirect discrimination

Discrimination arising from disability

Shared parental pay

# Employment Tribunal fees – the big news!

## Cases sent to employment tribunals

— Total cases



Source: Ministry of Justice

BBC

## What next?

Will there be a new fees regime?

Will we see an upswing in claims?

What about out-of-time claims?

Will employers get any money back?

# What does Brexit mean for Employment Law?



# Will the UK still be bound by European law and decisions of the ECJ?

“Hard  
Brexit”

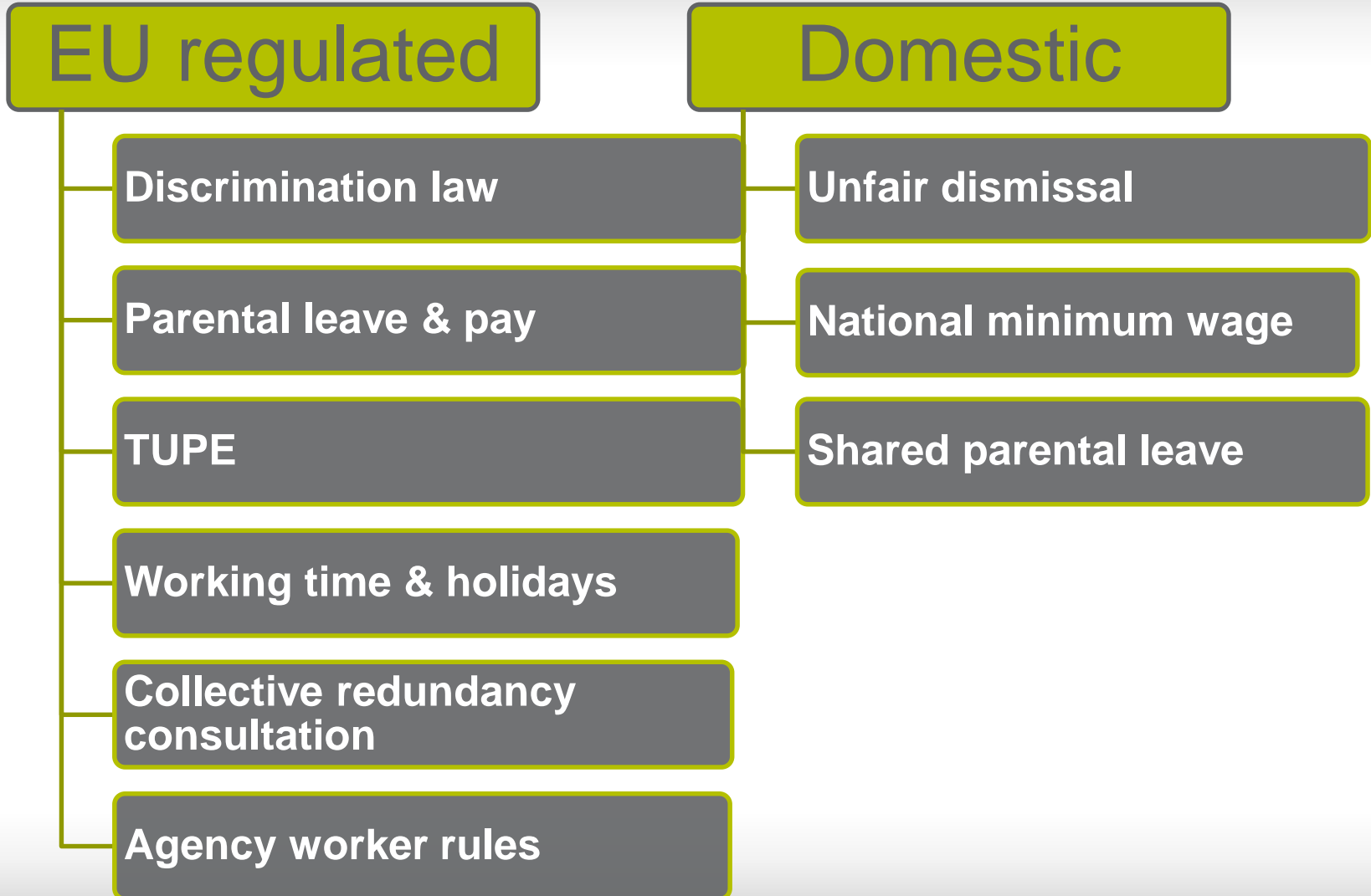
- No, although it is likely that decisions will still be persuasive

“EEA  
Brexit”

- Essentially, yes

“EFTA  
Brexit”

- In theory, no, however, some adherence to EU law may be required in order to achieve trade agreements



**What is the  
government  
saying?**

**What do  
employers  
think?**



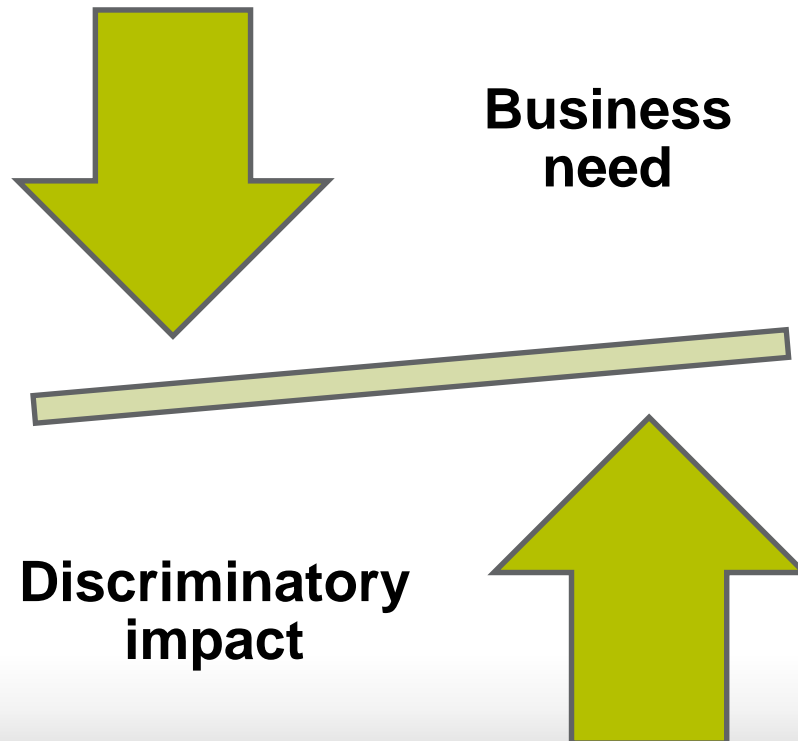
## Indirect discrimination - recap

Employer applies a **provision, criteria or practice across the board** but it has the effect of putting those who share a particular **protected characteristic** at a **disadvantage**



# Objective justification

**Proportionate means** of achieving a **legitimate aim**



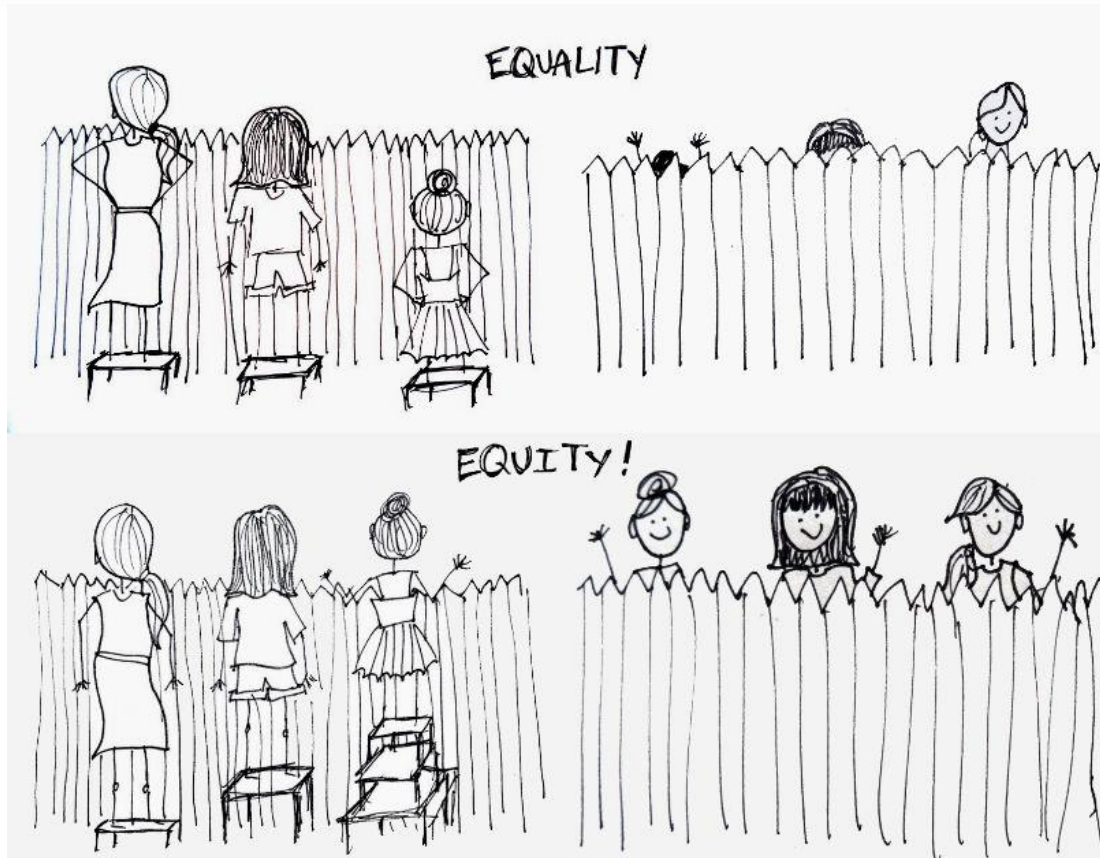
# Objective justification examples

1. Employer requires candidates for management jobs to achieve 80% in numeracy and literacy tests
2. Employer has policy of not employing drivers who have less than 5 years' driving experience
3. Employer has a “no headwear” policy



In each scenario:

- Are there any groups could be **disadvantaged by the policy?**
- What is the **legitimate aim** of the policy?
- Is the policy **proportionate?**



**Direct**  
**discrimination**  
regulates equality  
of treatment

**Indirect**  
**discrimination**  
regulates equality  
of outcome

## Recent case law

- **Essop & Others v Home Office (UK Border Agency); Naeem v Secretary of State for Justice**
  - No need to establish the reason why the PCP put the affected group at a particular disadvantage
  - The disadvantage suffered by the individual Claimant(s) must correspond to the disadvantage suffered by the affected group
  - Employer still has option of establishing objective justification

# Avoiding indirect discrimination

- ✓ Do an **equality impact assessment** before introducing new policies and practices
- ✓ If a potential disadvantage is identified **consider less discriminatory alternatives**
- ✓ Be clear on your **legitimate aim** - purpose & benefits
- ✓ **Retain paperwork** to demonstrate your **thought process**
- ✓ Do not **automatically discount** individual **requests to depart** from the policy or practice
- ✓ **Effective communication** surrounding new policy or practice

# Discrimination arising from disability - recap

Discriminatory to treat a person unfavourably because of something **arising in consequence of his disability**

UNLESS the treatment is a **proportionate means** of achieving a **legitimate aim**



## Recent cases

- *Land Registry v Houghton and others*
- *Burdett v Aviva Employment Services Ltd*
- *Jamieson v Chorlton High School*





## Messages from the cases

- ✓ **Threshold** for establishing **link** between unfavourable treatment and disability is **low** – can be **remote**
- ✓ Objective justification balancing act **tricky** and very **fact specific**
- ✓ Take particular care in cases involving **mental illness** of employee
- ✓ Employer's **thought process** is of fundamental importance




## Shared parental leave and pay - recap

- Mother can **convert** up to **50 weeks' maternity leave** and **37 weeks' SMP** into **shared parental leave/pay** to be **shared** between her and baby's father/her partner
- Scheme entirely **optional** – **default position** is that mother will take 52 weeks' maternity leave and 39 weeks' SMP
- Purpose is to allow **greater flexibility** in terms of how parents care for a child in **first year**



# The big issue in relation to shared parental pay



Hextall v Chief  
Constable of  
Leicestershire  
Police



Ali v Capita  
Customer  
Management  
Limited

# Questions and discussion



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