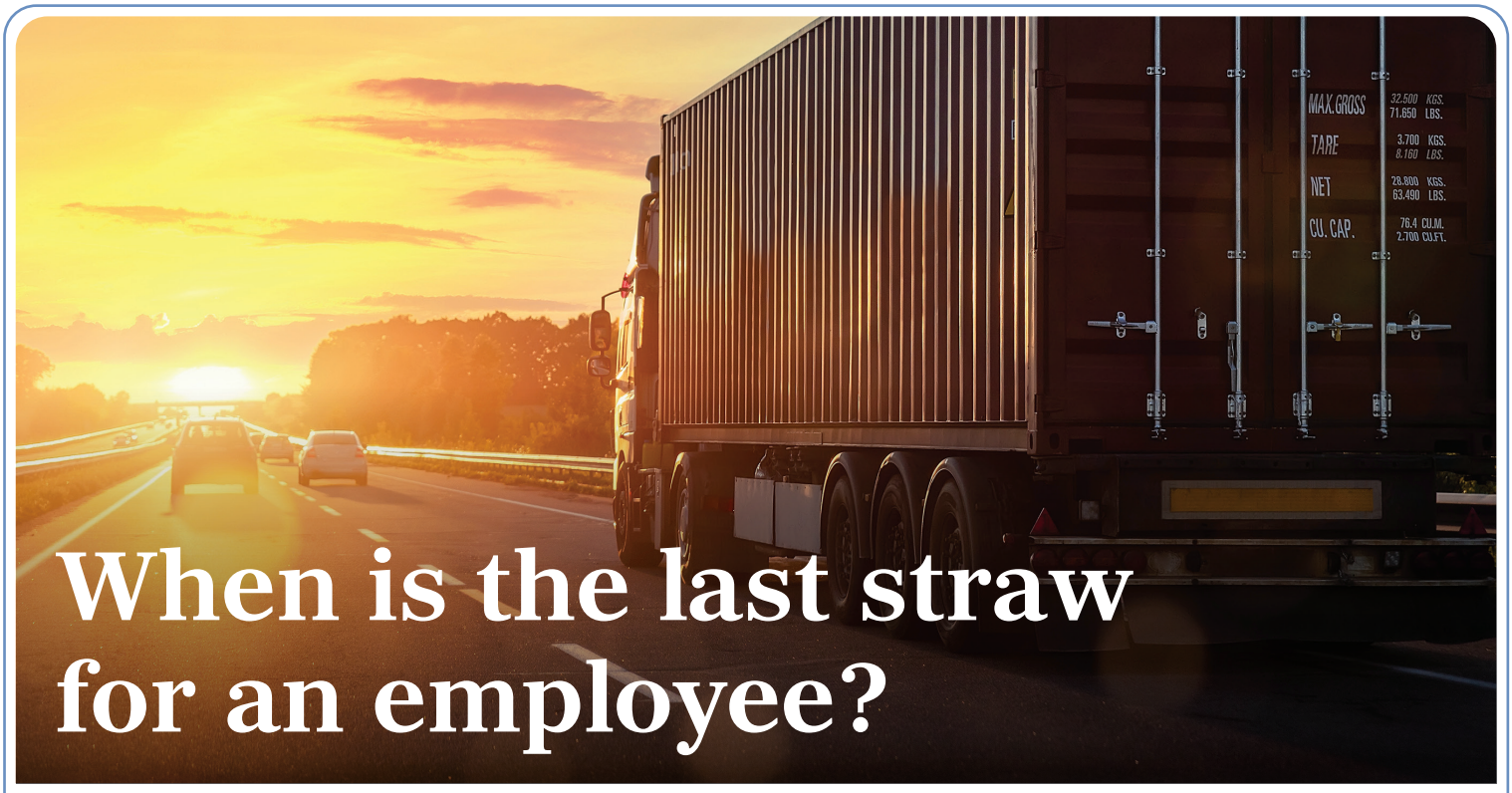
Employment &BusinessBrief

January 2026



When is the last straw for an employee?

When 'the last straw' due to multiple events can lead to a constructive dismissal case against an employer.

In a recent Employment Tribunal appeal case, the employee M had raised various complaints to his employer which included issues such as not being able to take breaks. His complaints were not dealt with quickly or correctly.

The employer was a haulage company working with local distilleries. M was one of their HGV drivers who worked as an overnight driver. In 2023, a new system was introduced to work procedures which M felt put him under pressure and resulted in him manipulating the tachograph in his lorry to make it seem as if he had taken his scheduled breaks. He informed his line manager of these difficulties and not being able to take breaks but was told he could and to crack on. The complaints were not recorded by his line manager at the time.

After being informed by his employer the issue would be managed, they then sent someone to accompany M on one of his shifts without any notice which he found upsetting. At the end of his shift, he contacted his employer to arrange a meeting to discuss these matters and followed up with an email saying he felt unable to return to work unless the issues were addressed. At the meeting he raised other incidents. He was assigned to a local driving role, but he declined as he felt his complaints were being ignored.

The business was changing and was more pressured. The line managers who he had complained to had left and hadn't recorded any of the incidents he had raised. M eventually resigned and made a constructive dismissal claim.

Whilst the Employment Tribunal initially dismissed his claim for constructive appeal, on appeal it was found it had failed to consider whether all incidents cumulatively constituted a repudiatory breach of the implied term of trust and confidence. It affirmed the final act does not need to be repudiatory in nature for it to still form part of a cumulative breach provided it contributes to the breakdown of trust and confidence.

Employers need to consider that an Employment Tribunal will take into account the full context of the case and the pattern of behaviour as well as a single, serious act which may be enough to justify a constructive dismissal claim.

Employers should make sure they respond proactively to employee's concerns about their workload pressure, taking rest breaks and health and safety issues.

As many constructive dismissal claims arise from multiple acts, employers must follow procedures to reduce the risk of claims. Importantly they should follow grievance procedures, document all evident and complaints and ensure everything is followed up. If necessary they should ensure all managers receive training so they are aware of these issues and what could constitute a repudiatory breach of contract.

If you would like to discuss any of the issues raised by this case and how your business might be impacted, get in touch with our team.

Impact of Digital ID checks on hiring new staff

Whilst the government has backtracked on plans for a mandatory digital ID card, by 2029 all right to work checks will need to be done digitally with the proposed digital ID programme being optional. Employers will need to consider how they respond to the changes when they are announced and ensure they are compliant with current rules.

One of the government's key aims is to reduce illegal immigration into the UK for people looking to work illegally.

What are employers current responsibilities and how will the new scheme affect them?

Employers already need to check and confirm the right to work status of employees otherwise they face tough financial penalties for hiring illegal workers. They should make sure they keep detailed records of the checks and records of any documents in case they are challenged in the future. They can also use the Home Office's checking service to verify an employee's work status.

Currently, business owners who fail to carry out checks and knowingly employ an illegal worker could be jailed for up to five years, be fined £60,000 per illegal worker, lose their sponsorship licence and have their business closed. The adverse publicity and loss of workers could impact the business' ability to continue operating, so employers should consider these consequences carefully.

In a recent 'crackdown' on illegal immigration, the government announced that more than 8,000 people were arrested on suspicion of working illegally after 11,000 raids carried out between October 2024 and September 2025.

This is a 64% year on year increase for arrests and 51% for visits. Over 1,050 foreign nationals have already been removed from the country after these operations.

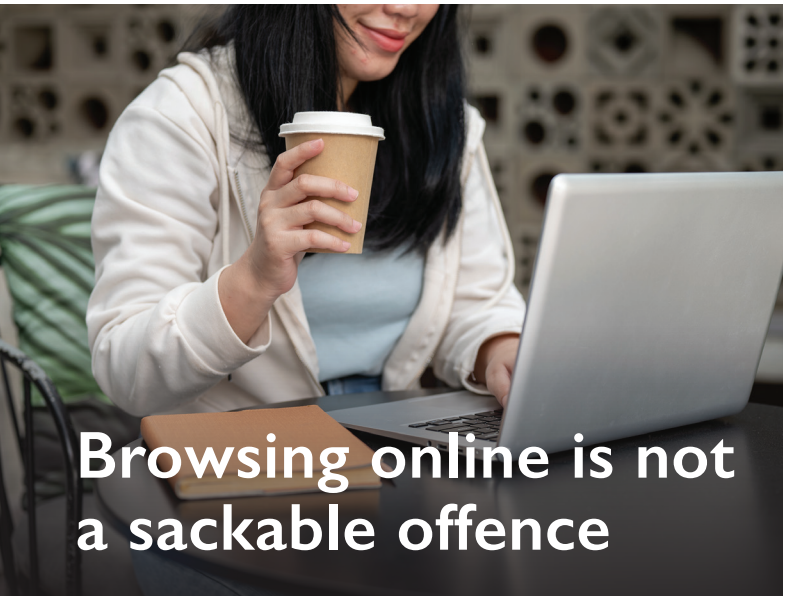
The government has been targeting sectors such as the gig, casual, subcontracted and temporary worker economy and businesses such as beauty salons, barbers, car washes and delivery drivers.

The new system when announced is hoped to provide a similar, but more consistent way for employers to check someone's right to work and make it harder for forged documents to be used.

Following the recent crackdown, the government is also working with industry partners in some of these sectors such as the deliver food platforms, who have already strengthened their ID checks in response. There will also be a data sharing agreement with these employers to share locations of asylum accommodation to stop those housed there seeking work illegally.

If you are an employer, you should review your current procedures for checking staff and ensure you have carried out all of the necessary checks and have copies of the paperwork on file. In the event you find you have employed an illegal worker this should be reported to the Home Office and the employment terminated. Business owners should also check the employment status of self-employed workers as they can still face penalties if not directly employed.

If you have any questions about employing staff or would like a review of your existing procedures, get in touch with our team.



Browsing online is not a sackable offence

In a recent employment tribunal ruling, an accountancy administrator has received more than £14,000 after it was found that the time she spent on websites such as Rightmove and Amazon was not 'excessive'.

L was sacked from her role at an accountancy firm, in July 2023 after her employer used spyware to track her computer and they subsequently found out she had been using it for personal matters. During the tribunal, the judge concluded the owner of the firm which employed L wanted to dismiss her before she had two years' service when she could claim for unfair dismissal. They had failed to calculate her length of service correctly.

The spyware had been placed on L's computer in July 2023 and over two days recorded she spent one hour, 24 minutes on personal matters. The Judge said that a large proportion of the time had actually been used for professional development including excel training and there was no rule to prevent L from using her computer for personal use. No policies had been shown to her to indicate she couldn't do so, and she was free to use her computer personally when work commitments permitted and during breaks. She had no history of conduct problems and had not received any warnings.

The tribunal concluded there were not reasonable grounds to support a conclusion that L was guilty of misconduct nor was there a reasonable investigation carried out. Dismissal was outside of the band of reasonable responses available to a reasonable employer in the circumstances. Given the fact that there was no prohibition on personal computer use and the amount of time L devoted to personal matters during the two days had not been shown to be excessive, there was no deduction for contributory fault. There was no evidence to support the conclusion that L would have been dismissed in the event a fair process had been followed.

As no procedure was followed and L was dismissed without an opportunity to explain herself, an uplift of 20% was made in the award to her for failing to follow the ACAS Code.

This is once again a reminder to employers that they must have clear workplace procedures in place which are communicated to all staff and if they have any concerns regarding an employee's behaviour, they should follow their disciplinary procedures to investigate fully.

If you need support updating work place procedures or carrying out a disciplinary process, get in touch with our team today.

Can you swear at your boss?

You might think that swearing at your boss is a sackable offence however a recent employment tribunal has ruled it isn't always so. Whilst we certainly wouldn't encourage anyone tempted to swear at their boss to do so, this recent case serves as a reminder to employers to have specific policies in place and to follow disciplinary procedures.

In this particular case an office manager at a scaffolding and brickwork company – H was sacked on the spot during a row after she called her manager and another director 'dickheads'.

The employment tribunal ruled H had been unfairly dismissed and awarded her almost £30,000 in compensation and legal costs. The judge said that the company had not acted reasonably in all the circumstances in treating her conduct as a sufficient reason to sack her. The one-off comment had been made during a heated meeting.

H had found documents in her boss's desk about the costs of employing her and she became upset as she believed they were going to let her go. Her employer then raised issues about her performance.

H told the tribunal she said in the meeting "If it was anyone else in this position they would have walked years ago due to the goings-on in the office, but it is only because of you two dickheads that I stayed".

She was told to pack her things and go immediately and later sued the firm for unfair dismissal.

Under the terms of her employment contract, H could be sacked for using "the provocative use of insulting or abusive language". The company however was found to have failed to follow proper disciplinary procedures.

Whilst many things might be said in the heat of the moment, this case serves as an important reminder that managers must take a step back from what might be said or done in the heat of the moment and take advice on the best way to deal with the situation which ensures they follow their own disciplinary procedure.

The company was ordered to pay H £15,042.81 in compensation and £14,087 towards her legal costs. A salutary reminder that costs can often equal if not exceed any award.

If you need support with a disciplinary issue, get in touch with our team.

What lies beneath… preparing your business for sale

When selling a business, you naturally want to achieve the highest price possible but there are a number of factors especially around contractual liabilities which could affect the final value. Understanding what they are and dealing with them before the sale can help you to achieve the best price possible, rewarding you for your years of hard work.

The type of sale may also impact on contractual liabilities. A share sale means the company remains the contracting party to all existing agreements. The buyer will be buying the shares in the company. The company remains the owner of the business and all its assets and liabilities. Accordingly, the buyer will indirectly acquire all those historic liabilities unless there are specific provisions in the sale documentation effectively imposing those liabilities on the seller.

If the business is being sold as an asset sale, then the buyer may choose only specific assets and contracts as part of the purchase. The liabilities associated with the business will remain with the seller unless there are contrary provisions in the agreement.

Before the sale is negotiated, the seller should carry out detailed due diligence to pre-empt any issues which the future buyer's own due diligence process will discover. There can be a variety of issues which may come up around contractual liabilities. It is important to check all commercial contracts for provisions which would impact the sale. On a business sale, a prohibition of assignment would prevent a sale of the contract. On a share sale, a change of control provision would allow the contracting party as a result of the sale. These issues would affect the purchase price.

Other contractual issues of interest to a buyer include auto-renewal, minimum purchase commitments, exclusivity clauses affecting future activities, price increases, indemnities, guarantees, warranties, limitation of liability and termination provisions.

Be aware of any personal guarantees which may have been given by directors for bank loans, lease and hire purchase agreements or commercial property tenancies. The seller should insist on these being released by the buyer.

Where there is an asset rather than share sale, there may be obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 affecting both the seller and buyer. Due diligence should look to identify commission and bonus payments or profit-share arrangements, redundancy or pension obligations as well as restrictive covenants on key members of staff who may have left or want to leave the business.

Before any sale it is vital to protect the intellectual property of the business such as trademarks, domain names, licences including those created by third parties and where ownership has yet to be assigned correctly.

Checklist

1. List all contracts and correspondence around them and review for any variations required.
2. Understand which need the consent of the other party the business is contracting with and consider seeking the necessary consent ahead of the transaction.
3. Identify any hidden liabilities within each and if they could trigger any future claims after the sale.
4. Review whether you would be willing to offer an indemnity or warranty (and the likely cost) to cover any of the risks identified.

To find out more about preparing your business for sale, get in touch with our team today.

CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.

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Quick reference section

Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 years' service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

	From April 25
Apprentices	£7.55
16-17	£7.55
18-20	£10.00
National living wage 21+	£12.21

Statutory Sick Pay

Per week £118.75 (From April 2025)

Statutory Shared Parental/Maternity/ Paternity/Adoption Pay (basic rate)

£187.18 (From April 2025)

Statutory Holiday

5.6 weeks for a full time employee. This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme for dismissals after 6th April 2025 at £719.00