September 2026

At a glance: **EMPLOYMENT & INCENTIVES**



Welcome to our September 2026 publication.

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

- **Employment Rights Act 2025:** consultation on revised statutory Code of Practice on tipping.
- **Right to be accompanied:** EAT confirms statutory right depends on a worker request.
- **Part-time workers:** Supreme Court holds part-time status need only be an effective, not the sole, cause of less favourable treatment.
- **Non-financial misconduct:** FCA rules extended to all SM&CR firms from 1 September 2026.
- **Equal pay:** EAT clarifies scope of the material factor defence.
- **Directors' pay:** wide-ranging consultation on modernising corporate reporting, including significant proposed changes to remuneration reporting.
- **Market abuse:** FCA review of delayed disclosures of inside information.
- **Taxation:** Quillan -v- HMRC: Upper Tribunal holds that writing-off a director's loan is taxable.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



Employment Rights Act 2025

Government consultations

On 19 August 2026, the government launched a consultation on a revised statutory code of practice (the "**draft revised Code**") on the fair and transparent distribution of tips. The draft revised Code updates the existing 2024 Code to reflect the new duties expected to come into force at the end of 2026 under section 14 of the Employment Rights Act 2025 (the "**ERA 2025**"). It will require employers to consult recognised trade union or worker representatives (or, where none exist, affected workers directly) before adopting their first written tipping policy and on each subsequent review, which must be carried out at least every three years, and to make an anonymised summary of the views expressed available to workers.

The consultation closes on 29 September 2026.

For further updates on ERA 2025 please see our UK Employment Law Reforms Tracker and podcasts.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



Right to be accompanied

EAT confirms statutory right to be accompanied depends on a worker request, even where the meeting's purpose is unclear

In *Wolfe v Taka Mayfair Ltd [2026] EAT 106*, the Employment Appeal Tribunal (the "**EAT**") held that the right to be accompanied at a disciplinary or grievance hearing under section 10 of the Employment Relations Act 1999 is only engaged where the worker has made a reasonable request to be accompanied, even where the worker did not do so because the employer had not explained the purpose of the meeting.

The claimant, a head sommelier and manager of a restaurant, was called to a short meeting at the end of a shift with no advance warning and was dismissed at the end of it; he accepted that he had not asked to be accompanied. The EAT held that the wording of section 10(1) is unambiguous: both an invitation to a disciplinary or grievance hearing and a reasonable request by the worker are required, and there is no scope to read in a general duty on employers to act reasonably or to notify workers of the right. The EAT did, however, indicate that it was arguable that a worker could make a reasonable request during the meeting itself once its disciplinary nature became apparent.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



Part-time workers and causation

Supreme Court holds part-time status need only be an effective, not the sole, cause of less favourable treatment

In *Augustine v Data Cars Ltd [2026] UKSC 30*, the Supreme Court unanimously held that, under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, a part-time worker claiming less favourable treatment need only demonstrate that their part-time status was "an effective cause", and not "the sole cause", of the treatment.

The claimant was a part-time private hire driver who complained that a fixed-rate weekly "circuit fee" charged to all drivers to access the company's booking system, without any pro rata adjustment, amounted to less favourable treatment compared with full-time drivers.

In reaching this conclusion, the Supreme Court overruled in part the earlier Scottish authority that had required part-time status to be the sole reason for the treatment. Tribunals across the UK must now apply the same, broader effective-cause test, in line with the approach taken in other areas of discrimination law. Other, non-part-time reasons for the treatment may still be relevant to objective justification or to the amount of any compensation awarded, but will no longer defeat a claim at the causation stage.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



FCA non-financial misconduct rules

Non-financial misconduct rules extended to all SM&CR firms from 1 September 2026

From 1 September 2026, the Financial Conduct Authority (the "**FCA**") is extending the rules on non-financial misconduct in its Code of Conduct sourcebook (the "**COCON**") and Fit and Proper sourcebook (the "**FIT**") to all firms subject to the Senior Managers and Certification Regime (the "**SM&CR**"), aligning the position for non-banks with that already applicable to banks.

The new rule (COCON 1.1.7FR) captures bullying, harassment and similar inappropriate workplace behaviour, including sexual harassment, that violates an individual's dignity or creates an intimidating, hostile or degrading environment for that individual, and is not limited to conduct linked to the protected characteristics under the Equality Act 2010. Purely private conduct with no connection to the regulated business, and minor workplace disagreements, fall outside the rule, and the extension is not retrospective.

Affected firms will need to notify the FCA of formal disciplinary action taken against Conduct Rules staff for breaches of the rule and to reflect non-financial misconduct findings in regulatory references when an individual moves to another SM&CR firm. Senior managers who fail to take reasonable steps to prevent such conduct may breach Individual Conduct Rule 2 unless they could not reasonably have known about the conduct or lacked authority to address it.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



Equal pay and the material factor defence

EAT clarifies scope of the material factor defence in equal pay claims

In *Next Retail Ltd and Next Distribution Ltd v Thandi and others [2026] EAT 130*, the EAT partially allowed Next's appeal against an Employment Tribunal decision that it could not justify paying its (predominantly female) retail sales consultants less than its (predominantly male) warehouse operatives, whose work had been found to be of equal value. The claimants' cross-appeal, which sought a finding of direct sex discrimination, was dismissed.

The EAT held that, while the Employment Tribunal had been entitled to find particular disadvantage on the statistical and other evidence, it had erred in its approach to the material factor defence under section 69 of the Equality Act 2010. The aim of paying higher rates in the warehouse, taken as a whole, included recruitment and retention needs which did not apply to the retail group, and the employer was not required to justify not increasing the claimants' pay to the same level. The Tribunal had also misdirected itself on proportionality, in particular by focusing on the reasons for the claimants' lower pay and the affordability of increasing it rather than on the reasons for the comparators' higher pay, and by treating market forces as incapable of justifying the differential.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



Directors' pay

Proposed changes to directors' remuneration reporting

The government's wide-ranging consultation on modernising corporate reporting includes significant proposals to change the directors' remuneration reporting regime. The government reiterates that it is up to quoted companies and shareholders to set and agree directors' pay. But, existing rules lead to remuneration reports which are too long and complex and thus are not fulfilling their purpose.

The government is now proposing to remove entirely some requirements (including the annual advisory vote on the remuneration report), keep those which provide key investor-critical information (such as the single figure pay and performance condition disclosures, remuneration committee chair statement and the CEO pay/TSR performance graph), and refine or simplify other requirements.

For full details of the proposal and how to respond to the consultation, see our blog.

The consultation closes on 30 November. The government aims to publish its response by 31 May 2027, so it will some time before we have final proposals and timing.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



Market abuse

Review of delayed disclosure of inside information

Under the UK market abuse rules, an issuer may delay disclosure of inside information where: (i) immediate disclosure is likely to prejudice its legitimate interests; (ii) delay is not likely to mislead the public; and (iii) the issuer can ensure the confidentiality of the information. When the issuer does issue the relevant RNS, it must also inform the FCA that there has been a delayed disclosure of inside information (DDII).

The FCA periodically reviews these DDII notifications to ensure the system is functioning properly. Its latest review (in Primary Market Bulletin 65) includes the following observations:

- **No systemic failures:** The FCA did not find widespread failures with the DDII mechanism, but there are some inconsistent practices in identifying and handling inside information.
- **Some large issuers had not used DDII:** Likely reasons for this were: (i) fewer situations met the inside information threshold due to their size; and (ii) using disclosure committees or similar for inside information judgement. The FCA considers this "mature disclosure governance".
- **Financial reporting information:** Some issuers wrongly treated periodic financial reporting as inside information by default. Under TN 506.3 guidance, this must be assessed on a case by case basis; a blanket approach is not appropriate.
- **Ongoing assessment during a delay:** Issuers should keep assessing whether information remains inside information (e.g. as market expectations become clearer or price sensitivity diminishes).
- **Reliance on advisers:** Using advisers or outsourcing secretarial services does not remove the issuer's own responsibility to understand its market abuse obligations and exercise informed judgement on inside information.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



Taxation

Income tax on a director's loan write-off

In Quillan -v- HMRC, the Upper Tribunal (UT) held that, where a loan from a close company to its director and sole shareholder was written off on the company's liquidation, there was an income tax charge on the outstanding balance.

The director had an outstanding loan of around £440,000 when the company went into voluntary liquidation. He repaid around £57,000. The liquidator's final report stated that no further amounts were expected but did not formally write off the balance. The liquidator later contemplated the possibility of future recovery if the director's circumstances improved. The First-tier Tribunal held that there had been no write-off, and therefore no tax charge.

The UT held that there was a tax charge. As "write off" is not defined in the legislation, it had to be construed purposively in the anti-avoidance context of preventing a participator from receiving tax-free value from company assets. A write-off is a matter of substance, not form; no formal process is required, and it is typically an informal, unilateral act. Here, the liquidator's conclusion that there was no or only limited recoverable value amounted to a write-off, and the theoretical possibility of future recovery did not displace that conclusion. This differs from a "release", which is final and conclusive.

September 2026

At a glance: EMPLOYMENT & INCENTIVES



Click on each circle for more information on the topic.

Contacts



Alex Beidas
Partner, London
Tel: +44 20 7456 5903
alexandra.beidas@linklaters.com



Nicola Rabson
Partner, London
Tel: +44 20 7456 5284
nicola.rabson@linklaters.com



Sinead Casey
Partner, London
Tel: +44 20 7456 2723
sinead.casey@linklaters.com



Cara Hegarty
Partner, London
Tel: +44 20 7456 5580
cara.hegarty@linklaters.com



Bradley Richardson
Partner, London
Tel: +44 20 7456 2910
bradley.richardson@linklaters.com



Nick Marshall
Partner, London
Tel: +44 20 7456 2670
nicholas.marshall@linklaters.com



Mirit Ehrenstein
Counsel, London
Tel: +44 20 7456 3858
mirit.ehrenstein@linklaters.com



Leanne Raven
Senior Associate, London
Tel: +44 20 7456 3422
leanne.raven@linklaters.com



Kloe Halls
Managing Associate, London
Tel: +44 20 7456 3341
kloe.halls@linklaters.com

linklaters.com

This content is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here, please get in touch. © 2026 Linklaters.

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLPis used to refer to a member of the LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, 20 Ropemaker Street, London, EC2Y 9AR, England or on www.linklaters.com and such persons are either solicitors or registered foreign lawyers.
Please refer to www.linklaters.com/regulatory for important information on our regulatory position.

CD720_F/09.26