



ActifHR

Where people matter..

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## May 2026 Update

Welcome to this month's update - where we discuss the latest guidance and legislation.

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In this Edition we report on:

- Withdrawal of job offers
  - Protected conversations
  - AI led interviews
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## Withdrawal of job offers

In the case of *Kankanalapalli v Loesche Energy Systems*, the Claimant was offered a project manager role subject to references and a right to work check. He accepted the offer by email and began preparatory steps. However, the employer withdrew the offer before he was due to start for an unrelated reason. The question was, was this a breach of contract?

The employment tribunal found that no binding contract had arisen because the conditions had not been satisfied and the employer was entitled to withdraw the offer without notice.

The Employment Appeal Tribunal found the opposite on the basis that:

- the tribunal did not properly consider whether the job offer conditions were ones which applied after the contract began (conditions subsequent) or conditions to be satisfied before the contract could come into existence (conditions precedent);

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- that a binding contract had been formed and the conditions operated to potentially terminate it (i.e. they were conditions subsequent) rather than prevent its creation.

The EAT held that a term requiring reasonable notice should be implied and due to the seniority of the role, three months' notice was appropriate. Withdrawing the offer without notice was in breach of contract.

**Employers:** be clear offer letters the conditions needed prior to the start of employment.

**Contact us:** we can assist with job offers, induction and probation reviews.

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## Protected conversations

Employers use 'protected conversations' under S.111A of the Employment Rights Act to discuss possible exit with an employee. This was brought in to allow employers an opportunity to talk about possible termination of employment with an employee, in an off the record way, so that the employee cannot put details of this discussion before an Employment Tribunal.

The main problem with these discussions is that they do not 'protect' any discussion which may fall outside of normal unfair dismissal type claims, ie it does not protect and keep off the record possible discriminatory concerns. As is seen in the case of *Tarbuc v Martello Piling Ltd.*

Prior to his dismissal for redundancy, the MD held a meeting with the Claimant to discuss the redundancy proposal. The Claimant alleged that the MD threatened him with redundancy if he refused a settlement offer and that the meeting had been sprung on him without notice. He was not given an opportunity to have a companion and was only given five days to consider the offer.

This case is a timely reminder of the rules around 'protected conversations' under S.111A ERA and its limited scope. It will only apply to claims of unfair dismissal and employers must be careful to consider whether any other claims could arise and if so these discussions may be admissible and not protected.

The judgment is also an important reminder that tribunals consider all relevant circumstances when deciding if there has been any 'improper behaviour'.

**Employers:** make sure you act reasonably when conducting such discussions.

**Contact us:** we can assist with exit negotiations.

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## Ai led interviews

Research shows that nearly 40% of candidates actively abandon recruitment processes that involve AI-led video interviews or pre-recorded bot screenings.

It seems that a high proportion of job seekers drop out due to a lack of transparency, the impersonal nature of speaking to a camera without a human present and the fear of being unfairly filtered out.

This rapid shift toward automation in recruitment has created significant friction between what companies and job seekers want.

**Employers:** many employers use AI to screen candidates make sure you get the balance right at the first stage to not miss out on good candidates.

**Contact us:** we can assist with recruitment strategies.



Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

**Caroline Robertson, Director**

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