


# EMPLOYMENT LAW AUTUMN 2020 REPORT

---

**Daniel Barnett, Outer Temple Chambers  
Tuesday, 20 October 2020**

A man in a dark pinstripe suit and glasses is speaking at a wooden podium. He is holding a small black object in his right hand. The podium has two microphones and a tablet on it. In the background, there are two bottles and a red cloth on a table.

Sample extract from Workboook  
Book your place at  
**[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)**

Access details will be sent to attendees by email. A video of the broadcast will be sent to all participants 24 hours after the live broadcast.

If you haven't yet booked your place, please visit  
**[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)**

# About Daniel Barnett

Daniel Barnett is a leading employment law barrister practising from Outer Temple Chambers. With 25 years' experience defending public and private sector employers against employment claims, he has represented a Royal Family, several international airlines, and FTSE-100 companies. Employee clients include a former Chancellor of the Exchequer and many senior executives.

Daniel is a member of the BAILII advisory board, and a past chair of the Employment Lawyers' Association's publishing committee and electronic services working party. He is the author or co-author of eight books, including the Law Society Handbook on Employment Law (currently in its 7th edition). He is the creator of the Employment Law (UK) mailing list, an email alerter bulletin service sending details of breaking news in employment law three times a week to 30,000 recipients.

Legal directories describe him as "extremely knowledgeable and [he] can absorb pages of instructions at lightning speed", "involved in a number of highly contentious matters", "singled out for his work for large blue-chip companies", "combination of in-depth legal knowledge, pragmatism, quick response times and approachability", "inexhaustible", "tenacious", "knowledgeable" and "an excellent advocate".

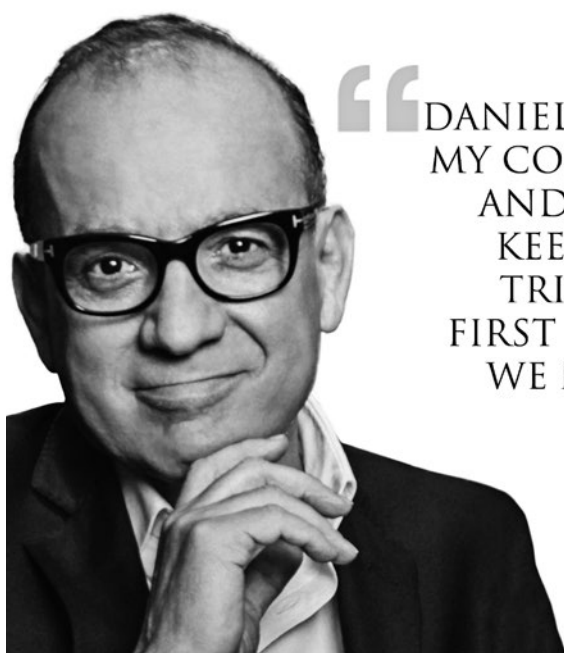
He is one of the leading speakers and trainers on the employment law and HR circuit. He has presented seminars for the House of Commons, the BBC, Oxford University, HSBC, Barclays Bank, Ocado, and dozens of other organisations in-house, and keynoted at national and international conferences. In 2013, 2014, 2016 and 2019 he wrote and presented the Employment Law MasterClass national tour, speaking to thousands of employment lawyers and HR Professionals around the UK. He produces the Employment Law Matters podcast, ranked #1 on the Apple Podcast Store for management podcasts in the UK.

As well as full-time practice as a barrister and speaker, Daniel is an experienced entrepreneur. He is the founder and owner of Employment Law Services Ltd (a legal publishing company), which provides marketing and educational services to employment lawyers and HR professionals. In 2007, he co-founded CPD Webinars Ltd, then the UK's leading webinar training company for lawyers, and sold it to Thomson Reuters in 2011. In 2015 he founded the HR Inner Circle ([www.hrinnercircle.co.uk](http://www.hrinnercircle.co.uk)), a membership club for smart, ambitious HR Professionals.

Daniel has presented the legal hour, a weekly phone-in radio show, on LBC Radio since 2010. He is widely sought after as a commentator in both broadcast and print media on all legal issues.

**[www.danielbarnett.co.uk](http://www.danielbarnett.co.uk)**

Telephone  
**020 7353 6381**



“DANIEL BARNETT HAS SAVED MY COMPANY TIME, MONEY AND AGGRAVATION BY KEEPING US OUT THE TRIBUNAL. HE'S OUR FIRST CHOICE WHENEVER WE NEED A BARRISTER”

- **TOUKER SULEYMAN**  
BBC'S DRAGON'S DEN

# EMPLOYMENT LAW MATTERS



Subscribe to  
Daniel Barnett's podcast  
**EMPLOYMENT LAW MATTERS**  
via iTunes, Spotify, or your  
favourite podcast player

[WWW.DANIELBARNETT.CO.UK/PODCAST](http://WWW.DANIELBARNETT.CO.UK/PODCAST)



---

# Part 1:

# The Job Support Scheme

---

# Introduction

Scheme 1: \_\_\_\_\_

---

---

---

Scheme 2: \_\_\_\_\_

---

---

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)  
What employers qualify?

## What employers qualify?

[illegible]

What employees qualify?

Employees under notice do not qualify

---

---

---

---

---

---

---

---

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

Work required

The normal scheme - 33% of normal hours

The lockdown scheme - no work

---

---

---

---

---

---

---

---

---

---

## The payment: the normal scheme

For every hour that is not worked the payment is:

- The employer pays a third of the usual hourly wage
- The government pays a third of the usual hourly wage
- The employee loses a third of their pay

The government payment is capped at £697.92 per month.

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

## The payment: the lockdown scheme

Payment is capped at £2,100 per month

# FAQs

How do employers claim the payment?

---

---

---

---

---

---

---

What happens if there is not enough work for the employee?

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

---

---

---

Is redundancy a better option?

---

---

---

---

---

---

---

What if an employee cannot work?

---

---

---

---

---

---

Can the employer force the employee to work in this way?

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

---

What about an employee on a fixed term contract, or part-time employees?

---

---

---

---

---

---

---

---

---

---

What about employees who transfer into a business?

---

---

---

---

Can an employee take annual leave at the same time as being under the Job Support Scheme?

---

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

---

---

Would it be better to agree a permanent new working pattern with the employee?

---

---

---

---

---

---

## Summary of the Job Support Scheme

[illegible]

**Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)**

[illegible]

---

# Part 2: More Coronavirus Stuff

---



# Whistleblowing and Interim Relief

Taplin v C Shippam Ltd [1978] IRLR 450

McConnell and anor v Bombardier Aerospace/Short Brothers plc (No.2)[2009] IRLR 201, NICA

---

---

---

---

---

Book your place at  
① [bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

---

---

---

---

---

②

---

---

---

---

---

③

---

---

---

---

---

# Employment Rights Act 1996

## **43B Disclosures qualifying for protection.**

- (1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –
- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
  - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
  - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
  - (d) that the health or safety of any individual has been, is being or is likely to be endangered,
  - (e) that the environment has been, is being or is likely to be damaged, or
  - (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

## **43C Disclosure to employer or other responsible person.**

- (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –
- (a) to his employer, or
  - (b) where the worker reasonably believes that the relevant failure relates solely or mainly to –
    - (i) the conduct of a person other than his employer, or
    - (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

# Whistleblowing and interim relief in Covid times

①

②

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

# **Part 3:**

# **Health & Safety**

# **Detriments (and**

# **Dismissals)**

# **in the Time of**

# **Coronavirus**

---

# Employment Rights Act 1996

## **44 Health and safety cases.**

- (1) *An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that –*
- (d) *in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or*
  - (e) *in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.*
- (2) *For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.*

## **100 Health and safety cases.**

- (1) *An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that –*
- (d) *in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or*
  - (e) *in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.*
- (2) *For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.*

## Serious and Imminent Danger

Oudahar v Esporta Group Ltd (2011) IRLR 730

*"The mere fact that an employer disagreed with an employee as to whether there were (for example) circumstances of danger, or whether the steps were appropriate, is irrelevant. The intention of Parliament was that an employee should be protected from dismissal if he took or proposed to take steps falling within section 100(1)(e)"*

---

---

---

---

---

---

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)  
Hamilton v Solomon and Wu Limited (UKEAT/0126/18/RN)

*"The claimant could not in the circumstances reasonably believe that there was a risk to the health and safety of any employee, including him, arising from the circumstances which actually existed at the respondent's workshop .... In addition, I concluded that there were not ... "circumstances of danger which [the claimant] reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert" in the part of the workshop to which Mr Solomon had required him to go and work. That was because I concluded that it was not reasonable for the claimant to believe that his workplace was not safe because its dust extraction arrangements were to any extent inadequate."*

---

---

---

---

---

---

---

---

## Harvest Press Ltd v McCaffrey (1999) IRLR 778

*"As to the submission that the circumstances of danger referred to in section 100(1)(d) means the circumstances of danger generated by the workplace itself, it seems to us that that is too narrow a view of works which are quite general. It seems to us clear that premises or the place of work may become dangerous as a result of the presence or absence of an employee. For example, premises might become unsafe as a result of the presence of an unskilled and untrained employee working on dangerous processes in the workplace where the danger of a mistake is not just to that employee, but to the colleagues who are working with him. It seems to us that the circumstances of danger contemplated by section 100(1)(d) would be apt to cover such a situation and it seems to us that had a fellow employee walked out because of the presence of an unskilled and untrained operative in those circumstances, he would be entitled to the protection of the legislation"*

---

---

---

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

---

---

---

## Dent v Greater Reading Omnibus (ET Case 2700330/97)

---

---

---

---

---

---

---

---

---

---

---

What about travel?

Edwards & ors v The Secretary of State for Justice (2014) UKEAT/0123/14

---

---

---

---

---

---

---

---

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

Is the employee entitled to pay when staying at home under s44?

Bournemouth University Higher Education Corporation v Buckland (2010) ICR 908

---

---

---

---

---

---

---

---

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---



**OPTION 3:** Let the employee stay at home unpaid

---

---

---

---

---

---

---

---

---

---

Book your place at  
[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)

---

---

---

---

---

---

---

---

---

---

---

# Part 4:

# Three Significant Recent Cases

---

# Register at **[bit.ly/employmentreport2020](https://bit.ly/employmentreport2020)** to receive

- access to the 'live' webinar on Zoom
- the full bespoke pdf workbook for the event, to help you take notes
- access to the recording afterwards, in case you miss it or want to rewatch

## **PLUS:**

- five delegates, chosen at random during the webinar, will win a complete set of Daniel Barnett's six small books (value: £120)
- all delegates will be offered an optional 21-day trial membership of the HR Inner Circle, the UK's leading club for smart, ambitious, standalone HR Professionals for £1 (optional after registering; additional fees apply)