



EMPLOYMENT TRIBUNALS

Claimant: Mr G Callan

Respondent: Walker Bros (Elland) Ltd

Heard at: Leeds **On:** 30 June 2026

Before: Employment Judge Bright

Representation:

Claimant: In person
Respondent: Mr G Jaques (solicitor)

JUDGMENT with summary reasons was given at the preliminary hearing on 30 June 2026 and written summary reasons were requested at the hearing in accordance with Rule 60 of the Employment Tribunal Procedure Rules. Full reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

FULL REASONS

Claims

1. The claimant claimed:
 - 1.1. direct associative sex discrimination on the basis of his wife's pregnancy (section 13 Equality Act 2010 ("EQA"));
 - 1.2. direct associative disability discrimination (section 13 EQA);
 - 1.3. automatically unfair dismissal (section 99 Employment Rights Act 1996 ("ERA") – time off for dependants);
 - 1.4. failure to pay holiday pay; and
 - 1.5. wrongful dismissal/damages in respect of notice.
2. At the preliminary hearing on 30 June 2025 the complaints of direct associative pregnancy discrimination, automatically unfair dismissal, failure to pay holiday pay and the claim for wrongful dismissal/damages in respect of notice were struck out under Employment Tribunal Rule 38(1)(a) because they have no reasonable prospect of success.

3. The complaint of direct associative disability discrimination was struck out because the claimant's wife was not a disabled person as defined by section 6 of the Equality Act 2010 because of kidney stones at the relevant time.

Issues

4. The issues to be determined at the preliminary hearing were:
 - 4.1. whether any amendment points arose in relation to the list of issues identified at the previous preliminary hearing, and if so whether the claimant should be allowed to amend his claim;
 - 4.2. whether any of the allegations should be struck out because they have no reasonable prospect of success;
 - 4.3. alternatively, whether any allegation should be made the subject of deposit orders, because they have little reasonable prospect of success;
 - 4.4. did the claimant's wife have a disability as defined in section 6 EQA at the time of the events the claim is about? In particular:
 - 4.4.1. Did the claimant's wife have a physical impairment of kidney stones?
 - 4.4.2. Did the impairment have a substantial adverse effect on her ability to carry out day-to-day activities?
 - 4.4.3. If not, did she have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 4.4.4. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - 4.4.5. Were the substantial adverse effects of the impairment long-term? In particular:
 - 4.4.5.1. did they last at least 12 months, or were they likely to last at least 12 months?
 - 4.4.5.2. if not, were they likely to recur?
 - 4.5. In light of any decisions on the above, to revisit the final hearing listing, and make related case management orders.

Evidence

5. I heard oral evidence from the claimant's wife in respect of her kidney stone condition and had sight of a file of containing both parties' documents which had been uploaded to the Tribunal's portal. I read those documents to which I was directed by the parties in the course of the preliminary hearing, in particular the disability impact statement of the claimant's wife at pages 44 to 45, the supporting medical evidence at pages 46 to 62, the correspondence at pages 70 to 74 and 76 to 82, the claimant's fit note at page 75, the claimant's payslip at page 83, amended payslip at page 129 and notification of payment at page 128 and the correspondence relating to the respondent's application to strike out/order a deposit at pages 89 to 116.

The facts

6. The claimant complains of direct associative disability discrimination (section 13 Equality Act 2010 ("EQA")), based on his wife's disability. I am therefore required to find facts relating to the alleged disability.
7. Having heard evidence from the claimant's wife and seen the evidence

contained in the file of documents for this hearing, I accepted the evidence of the claimant's wife that she suffered from extreme pain caused by kidney stones, which was so bad it caused her to have suicidal ideation. She gave evidence that the pain continued from April 2025 when it was first diagnosed to around 3 weeks after the surgery she underwent in November 2025 to remove the kidney stones. I also accepted the evidence of the claimant's wife that she was given advice on how to prevent a recurrence and continued to be a patient of the urology department, with follow up CT scans. However, there was no direct evidence that there was a likelihood of recurrence of the kidney stones for the claimant's wife.

8. The claimant asked me to, in effect, take judicial notice of the likelihood of recurrence of kidney stones because a Google search would show it was 'common knowledge' that there is a 50% chance of recurrence. Judicial notice is the name given to common knowledge that is accepted by the Tribunal without the need for formal proof. It generally applies to certain facts, which are so notorious or so well established that they may be accepted without further enquiry. The Tribunal has a discretion whether or not to take judicial notice of a relevant matter and can require it to be proved in evidence. The burden of convincing the judge that a matter is one capable of being accepted without further inquiry rests on the party seeking judicial notice of that fact. In this case, I consider that I cannot take judicial notice of the likelihood of recurrence of kidney stones, because it is not a fact which is sufficiently notorious. For me to find that there is a likelihood of recurrence would therefore require evidence that the kidney stones are likely to recur in the claimant's wife's case. In my judgment, there was insufficient evidence for me to make a finding that claimant's wife's kidney stones were likely to recur.

The law

9. The definition of a disabled person is set out at section 6 EQA:
 - (1) person (P) has a disability if—
 - (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
10. Schedule 6(2) provides that:
 - (1) The effect of an impairment is long-term if—
 - (a) it has lasted for at least 12 months,
 - (b) it is likely to last for at least 12 months, or
 - (c) it is likely to last for the rest of the life of the person affected.
 - (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

11. A tribunal has the power to strike out all or any part of a claim at any stage in the proceedings, provided that the party in question has been given a reasonable opportunity to make representations (Rule 37). The power must be exercised in accordance with reason, relevance, principle and justice. In particular, a tribunal can strike out a claim on the basis that it has no reasonable prospect of success (Rule 37(1)(a)). 'No reasonable prospect of success' imposes a lower standard than showing that the case is frivolous, has no substance whatsoever, is utterly hopeless and bound to fail (**Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting** [2002] IRLR 288).
12. It is unusual to strike out claims of discrimination and the power to strike out should only be exercised rarely in this respect (**Anyanwu and anor v South Bank Students' Union and South Bank University** [2001] IRLR 305). In particular, it is not appropriate to strike out where a case is fact sensitive.
13. In determining whether parts of the claims have no reasonable prospects of success, the Judge will not conduct a mini-trial, hear evidence or resolve any disputes of fact. The question for the Judge will be whether, taking the claimant's case at its highest, as it is set out in the claim and clarified in the list of issues, these parts of the claim have no reasonable prospects of success.
14. Section 13 EQA (direct discrimination) provides that:
 - (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
15. Section 99 ERA (leave for family reasons) provides that:
 - (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—
 - (a) the reason or principal reason for the dismissal is of a prescribed kind, or
 - (b) the dismissal takes place in prescribed circumstances.
 - ...
 - (3) A reason or set of circumstances prescribed under this section must relate to—
 - (a) pregnancy, childbirth or maternity,
 - ...
 - (d) time off under section 57A.
16. Section 57A ERA (time off for dependants) provides that:
 - (1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary—
 - (a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,
 - (b) to make arrangements for the provision of care for a dependant who is ill or injured,
 - (c) in consequence of the death of a dependant,
 - (d) because of the unexpected disruption or termination of arrangements for the care of a dependant, or
 - (e) to deal with an incident which involves a child of the employee and which

occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

(2) Subsection (1) does not apply unless the employee—

(a) tells his employer the reason for his absence as soon as reasonably practicable, and

(b) except where paragraph (a) cannot be complied with until after the employee has returned to work, tells his employer for how long he expects to be absent.

Determination

Disability

17. I find that the claimant's wife was not disabled under the definition in section 6 of the EQA at the relevant time. Although I found that the claimant's wife had a physical impairment (kidney stones) which had a substantial adverse effect on her ability to carry out day to day activities, I found that that effect did not last at least 12 months, nor was it likely to last 12 months nor was it likely to recur ("might well recur"). In the absence of sufficient evidence that the claimant's wife's kidney stones were likely to recur, I find that the impairment relied on does not meet the definition in section 6 EQA.

18. The complaint of direct associative disability discrimination is therefore dismissed.

Automatically unfair dismissal

19. The claimant pursues a complaint of automatically unfair dismissal (section 99 – leave for family reasons). The claimant's complaint appears to be formulated under two heads: section 99(3)(a) (pregnancy) and section 99(3)(d) (time off for dependants), although only the latter is identified in the List of Issues in the case management orders dated 18 December 2025. In both cases the burden of proof will be on the claimant to show that the reason or principal reason for his dismissal was of a prescribed kind (pregnancy or time off for dependants), as he does not have sufficient continuity of service to pursue a complaint of unfair dismissal with reference to section 98 ERA.

20. The claimant says in his claim form that he was signed off sick due to health issues and caring responsibilities for his pregnant wife. He states that his absence was the reason for his dismissal. He has not stated that he believes he was dismissed because his wife was pregnant. Taking the claimant's case at its highest, I therefore find that there is no reasonable prospect of him being able to show that his wife's pregnancy, in and of itself, was the reason or principal reason for his dismissal.

21. The claimant accepted that, at the time of his dismissal, he was signed off sick with stress. Further and separately, even if he was absent to care for his wife, on the claimant's own account of what he told the respondent at the time, he does not appear to have complied with section 57A, in that he did not tell his employer the reason for his absence as soon as reasonably practicable, or tell the employer how long he expected to be absent.

22. I find that there is no reasonable prospect of the claimant showing that he took time off work for a dependant, in circumstances where she needed assistance because she had fallen ill, or to make arrangements for the provision of care for her because she was ill, or because of the unexpected disruption or termination of arrangements for her care (section 57A(1)). Further, and separately, I find that there is no reasonable prospect of the claimant showing that he told the employer the reason for his absence as soon as reasonably practicable, or told his employer for how long he expected to be absent in accordance with the requirements set out in section 57A(2). Further, and separately, I find that there is no reasonable prospect of the claimant showing that the reason or principal reason for his dismissal was that he had taken time off under section 57A ERA, because he was signed off sick with stress.
23. The complaint of automatically unfair dismissal is therefore struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024.

Direct associative sex discrimination

24. The claimant has a complaint of direct associative sex discrimination (section 13 EQA). To succeed with a direct associative sex discrimination complaint the claimant will need to show facts from which the Tribunal can conclude that his dismissal was because of his wife's pregnancy. That will require something more than just a difference in treatment and the fact that his wife was pregnant. The claimant says his dismissal was because he was absent from work (signed off sick with stress), something which arose because of the need to care for his pregnant wife. He does not say the reason for his dismissal was his wife's pregnancy. Taking the claimant's case at its highest, in my judgment there is no reasonable prospect of a Tribunal finding facts from which they can conclude that his wife's pregnancy was the reason why he was dismissed.
25. The complaint of direct associative sex discrimination is therefore struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024.

Wrongful dismissal/Notice pay

26. The claimant accepted that he was paid in lieu of his statutory notice, and the bank payment detail report at page 128 and the payslip at page 129 of the file of documents show that payment. The claimant's issue is with the failure to provide him with an explanation or detail of the calculation. I therefore find that there is no reasonable prospect of the claim for wrongful dismissal/damages for breach of contract in respect of notice succeeding. That complaint is struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024.

Holiday pay (Working Time Regulations 1998 / unauthorised deductions from wages)

27. The claimant accepted that he had received payment for any holiday which remained accrued but untaken on termination of his employment. He objected to the method and timing of payment. The bank payment detail report at page 128 and payslip at page 129 show the payment. On that basis I find that there is no reasonable prospect of the claimant showing that the

respondent failed to pay the claimant for the annual leave he had accrued but not taken and/or that the respondent made unauthorised deductions from the claimant's wages in respect of holiday pay.

28. Those complaints are therefore struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024

Hearing

29. The hearing listed on 2, 3 and 4 November 2026 is cancelled.

Approved by:

Employment Judge Bright

15 July 2026

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE