A Guide to the Employment Rights Act 2025

The Employment Rights Act 2025 (the **ERA**) became law on 18 December 2025 and will make sweeping and significant reforms to our employment law landscape over the next two years. Our guide explains the detail of all the key reforms, what they mean for employers in practice and the next steps. You may also find the practical tips set out in our **Timetable of Action Points for Employers and Implementation Dates** useful.

Unfair dismissal

Reduction of the qualifying period from two years to six months

Currently, an employee must have two years' continuous service with their employer in order to bring a claim of ordinary unfair dismissal in an Employment Tribunal. There is a limited exception, where it is shown that the dismissal was for an "automatically unfair" reason, such as for having made a protected disclosure. In such cases, the employee is able to claim automatic unfair dismissal from Day 1 of their employment. However, where there are no such aggravating factors, an employer is able to dismiss an employee with under two years' service relatively easily. There is no need to identify a fair reason for the dismissal and nor does the employer need to show it acted reasonably.

Initially, the Employment Rights Bill had proposed to remove the two-year qualifying period for ordinary unfair dismissal claims, converting it to a Day 1 employment right. However, faced with resistance to this measure from the House of Lords, the Government undertook discussions with relevant stakeholders, including major business representatives such as the Confederation of British Industry and the Federation of

Small Businesses. The outcome of those discussions was a surprise U-turn on Day 1 unfair dismissal rights. Instead, a compromise solution of a six-month qualifying period was settled upon. In addition, the ERA makes it harder for future governments to undo this change, by stipulating that primary legislation will be needed to vary the qualifying period.

Removal of the cap on compensation

Currently, the "compensatory award" for unfair dismissal is limited to the lower of either 52 weeks' gross pay or a statutory cap. The statutory cap rises each year but is currently set at £118,223.

Initially, the Employment Rights Bill contained no proposals relating to the compensatory award. However, a surprise decision to abolish the cap was made by the Government shortly before the Bill passed into law, seemingly as a *quid pro quo* for the U-turn on Day 1 unfair dismissal rights.

This means that awards for unfair dismissal will be broadly comparable with those made in discrimination and whistleblowing dismissal claims.

What will these changes mean for employers in practice?

- These changes are certain to generate more grievances and Employment Tribunal claims. The Government's recently published **impact assessment** estimates that the reduction of the qualifying period will lead to 9,000 additional Acas "early conciliation" notifications and 3,000 additional Employment Tribunal claims. However, this estimate does not build in additional notifications and claims flowing from the removal of the compensation cap because the Government says the response of employers and employees to this change is too uncertain.
- A rise in disputes will take time and money to deal with, with small businesses lacking a formal HR function disproportionately affected. And a rise in claims will

increase pressure on an already stretched Tribunal system which could mean even longer delays before reaching a hearing.

- In particular, the removal of the cap on compensation is likely to lead to a rise in claims from higher earners and those with valuable benefits, who will now be able to seek their full losses flowing from the dismissal. We also expect to see more claimants arguing for multi-year and even career-long loss. At the same time, settlements may be harder to achieve in these types of cases as claimants may feel they hold the upper hand. You can read our detailed article about the wider impact of the removal of the compensation cap **here**.
- All of these risks mean that employers will wish to be more cautious when it comes to recruitment so as to limit the prospect of a bad hire. Employers may wish to consider extending probationary periods to six months to mirror the qualifying period. And after recruitment, line managers will need to manage probationary periods actively to ensure that any performance or conduct issues are identified and dealt with within the first six months of employment. Once an employee has accrued six months' service, any subsequent dismissal process will need to be executed meticulously, with careful adherence to procedure and the Acas Code.
- Is there any upside for employers? Conceivably, it could lead to some reduction in whistleblowing dismissal and discriminatory dismissal claims, which are currently the only statutory claims that employees with under two years' service can bring about their dismissal and recover uncapped compensation. A decline in those types of claims could be a good thing for employers, not least from a reputational perspective and because the cost and complexity of defending those types of claims is higher. However, where a claimant believes there was a discriminatory reason at play, or they have been dismissed for whistleblowing, they are still likely to

pursue that claim.

What are the next steps?

The Government announced in Parliament that it intends to reduce the qualifying period with effect from 1 January 2027. Although it has not yet confirmed when the cap on compensation will be abolished, it is widely expected that this will come into force on the same date. If this happens, it will mean that employees engaged by 2 July 2026 would qualify for the right to bring an uncapped unfair claim on 1 January 2027.

Separately, the Government's impact assessment says that a series of meetings will be held early in 2026, to enable stakeholders to feed in their view on the unfair dismissal changes and a summary of those responses will also be published in 2026. The Government has said it will also consider what additional dedicated support or guidance might be needed.

Dismissal during pregnancy and following a period of statutory family leave

Currently, there is extensive protection from dismissal for pregnant women, new mothers and other parents. It is unlawful to:

- treat an employee unfavourably because of her pregnancy or maternity leave during the "protected period" (which begins when a woman becomes pregnant and ends when she returns from maternity leave);
- treat an employee less favourably than a male comparator for reasons to do with her pregnancy or maternity leave outside the protected period;
- dismiss an employee for a reason connected to her pregnancy or maternity leave (or connected to certain types of other family leave including adoption, shared parental and neonatal care leave);
- make an employee redundant during pregnancy or maternity

leave (or adoption leave, shared parental leave or neonatal care leave) where there is a suitable alternative vacancy available; or
- make an employee redundant who has recently returned to work from a period of maternity leave (or adoption leave, shared parental leave or neonatal care leave) where there is a suitable alternative vacancy available.

Despite this wide protection, the ERA provides that regulations may be introduced which will provide enhanced protection from dismissal during pregnancy and following return from maternity leave, adoption leave, shared parental leave, neonatal care leave and bereaved partners' paternity leave (the latter of which is due to come into force on 6 April 2026).

This would mean that such employees could not be fairly dismissed, save where the regulations allowed for an exception. The ERA also provides that the regulations will specify the notices that must be given to employees, the evidence to be produced and any additional procedures to be followed, as well as the consequences of failing to do these things.

On 23 October 2025, the Government published a consultation paper seeking views on how the enhanced dismissal protection should operate in practice. The consultation proposed two broad options:

- **Introduce a stricter fairness test:** one option is to introduce a stricter test to assess the fairness of such dismissals for any of the existing five fair reasons for dismissal (i.e. conduct, capability, redundancy, illegality or some other substantial reason).
- **Narrow the five fair reasons for dismissal:** an alternative option is to narrow the existing five fair reasons for dismissal (and/or potentially remove some of them entirely) when applied to pregnant women or new

mothers (and other returners). You can read what is proposed in respect of each reason in our detailed briefing **here**.

The consultation paper also asked whether the new protection should apply from Day 1 of employment or only after a qualifying period of somewhere between three to nine months. In terms of when the protection should end, the consultation paper proposed either 18 months from the birth of the child or six months after the return to work from maternity leave, whenever that is.

Further, the consultation paper asked whether the same protections should be extended to employees taking adoption leave, shared parental leave, neonatal care leave and bereaved partners' paternity leave and, if so, when the protection should start and end.

What will these changes mean for employers in practice?

- The impact for employers can only be fully assessed once the Government decides the scope of the protections to be introduced. That said, whichever option is pursued, it is clear that employers will have their hands tied to a significant extent when it comes to dismissing employees who are pregnant, absent on certain types of family leave and following return from the same.
- It also appears that where an employer needs to dismiss an employee in a protected group there will be an increased administrative burden in terms of notices, evidence and procedures to be followed, with penalties for getting it wrong. Smaller businesses are likely to be disproportionately affected by these requirements.
- Employers will also need to take care not to make hiring decisions based on the likelihood of a candidate falling into one of these protected groups. For example, a refusal to hire a woman of child-bearing age (out of fear of being subsequently being restricted from

dismissal) would itself be discriminatory.

What are the next steps?

The consultation closed on 15 January 2026. The Government's response and final position will be published in due course.

The final measures are due to be implemented some time in 2027.

Dismissal for failing to agree a variation of contract (aka "fire and rehire") or to be replaced by a non-employee

"Fire and rehire" is a shorthand used to describe the practice of dismissing an employee then offering to re-engage them on inferior terms and conditions. Currently, if an employer wishes to deploy this practice, it must comply with the **statutory Code of Practice on dismissal and re-engagement**, which came into force in July 2024. A failure to do so may lead to an uplift of up to 25% to compensation awarded to an employee by an Employment Tribunal.

Initially, the Employment Rights Bill had proposed that it would be automatically unfair to dismiss an employee for failing to agree to any change to their terms and conditions of employment, or in order to re-engage them (or someone else) under varied terms and conditions of employment, where the role is otherwise substantially the same. A limited exception was to be made where the reason for the variation was to eliminate, prevent or significantly reduce or mitigate the effect of any financial difficulties which were affecting the employer's ability to carry on its business.

However, in July 2025, the Government announced plans to soften the fire and rehire provisions. These revised provisions are now reflected in the ERA, which provides that a dismissal will be automatically unfair where the employee is dismissed:

- for failing to agree to "restricted variations" to their terms and conditions of employment; or
- in order to re-employ them (or to employ someone else) under varied terms and conditions, where one of more of the differences between the two sets of terms is a restricted variation, but where the role is otherwise substantially the same.

A "restricted variation" means a variation relating to pay, pensions or pension schemes, working hours, the timing or duration of shifts or a reduction in the amount of time off. It also covers the inclusion of a unilateral flexibility term allowing the employer to make a restricted variation in future without the employee's agreement. The list of restricted variations may be expanded in future and, may also provide that "pay" *excludes* expenses and benefits in kind. The ERA continues to allow for a limited exception for variations made in response to serious financial difficulties affecting the employer's ability to carry on business as a going concern and where there is no reasonable alternative.

Where either:

- the financial difficulties exception applies; or
- an employee is dismissed (i) for refusing to agree to other types of **non-restricted** variations **or** (ii) to re-employ them (or to employ someone else) on varied terms,

then the dismissal will **not** be automatically unfair. However, the ERA provides that certain matters *must* then be considered by the Employment Tribunal to determine whether the dismissal is ordinarily unfair including: the reason for the variation, any consultation carried out about the proposed variation (including with a trade union), anything offered to the employee in return for agreeing to the variation and any other matters specified in regulations.

Separately, the ERA contains a provision (which was only added

to the Bill in the Summer) designed to prevent employers from simply replacing an employee with a non-employee. This provision is **not** linked to contractual variations. The ERA says it will be automatically unfair to dismiss an employee in order to replace them with a non-employee (e.g. a self-employed contractor, agency worker or outsourced worker) where the non-employee would carry out the same or substantially the same role (either alone or taken together with others). This will even capture the scenario where the employee is dismissed and offered re-engagement but stripped of their employment status. However, the financial difficulties exception will apply.

What will these changes mean for employers in practice?

- These provisions are complex and contain many pitfalls. Employers considering changing terms and conditions or restructuring their workforce will certainly need to spend time familiarising themselves with the new rules and will likely require specialist legal advice before proceeding.
- In future, employers wishing to change terms and conditions will have a higher exposure to automatic unfair dismissal claims. The terms which constitute "restricted variations" if varied are the very terms that would usually lead an employer to consider the extreme solution of fire and rehire in the first place – namely, pay, benefits, hours and leave entitlements. This increased risk will reduce flexibility for employers in managing workforce changes. Instead, employers will need to seek agreement to vary terms through negotiation.
- Further, the prohibition on replacing employees with non-employees could potentially have a dramatic impact in outsourcing situations. In outsourcings, the TUPE legislation will often apply to protect the employee's employment, with the result that the employee either

transfers to the contractor or, if they are dismissed, their dismissal is automatically unfair. Yet TUPE does not apply in every outsourcing situation, for example, where the activities are split up (or "fragmented") between multiple different service providers. In this situation, an employer could usually dismiss the employee fairly by reason of redundancy or some other substantial reason. However, under the ERA, an employee may still be regarded as unlawfully "replaced" in this scenario because the protection extends to situations where the employee's work is performed by a mix of different non-employees (i.e. where the activities are outsourced to several different providers) or by a mix of employees and non-employees (i.e. where some of the activities are kept in-house and some are outsourced). Employees in this position may now acquire automatic unfair dismissal protection despite not being covered by TUPE.

- The Government's **impact assessment** suggests that these measures may protect up to 125,000 employees from fire and rehire practices each year and will also lead to unquantified benefits, including greater wellbeing, productivity, and fairness.

What are the next steps?

The Government intends to bring these changes into force in January 2027.

However, the Government had planned to consult on related regulations and on updating the statutory Code of Practice in Autumn 2025. Those consultations have not yet started, which may mean that the planned implementation date will be postponed.

Collective redundancies

Currently, collective redundancy consultation is triggered where there is a proposal to dismiss as redundant 20 or more employees assigned to one "establishment" within a 90-day period. The question of what an "establishment" has been ventilated in litigation – with employees arguing it should mean the business as a whole rather than the local place of work. This would mean that collective consultation would be triggered more frequently as redundancy numbers would have to be counted across the whole business. However, the senior courts concluded that "establishment" means the local unit where the employee works, *not* the business as a whole.

Initially, the Employment Rights Bill had proposed to reverse this, so that collective consultation would be triggered where there were 20 proposed redundancies within 90 days *across the business* rather than in just one workplace.

The Government also consulted on (i) increasing the maximum protective award from 90 to 180 days (or having no upper limit at all) where an employer was found to not have properly followed a collective redundancy process, and (ii) what role interim relief could play in protecting employees who have protective award claims. In March 2025, the Government responded to that consultation and put forward amendments to the key trigger proposal, aimed at softening the impact for employers.

The ERA provides that collective consultation will be triggered where there is a proposal to dismiss as redundant within a 90-day period **either** 20 or more employees assigned to one establishment (i.e. the current position), **or** a "threshold number of employees" across the whole workforce. This new threshold number will be defined in regulations but may be *either* a specified number of redundancies *or* an overall percentage of the workforce *or* determined in another way (but in any case the threshold will not be below 20 redundancies). For example, if the threshold were to be set at 10% of the workforce, and the employer employed 500 employees across

different sites, then a proposal of 50 or more redundancies across the *whole* business within a 90-day period would trigger collective consultation even where fewer than 20 redundancies were proposed at any single establishment. The trigger for providing the Secretary of State with advance notice of proposed collective redundancies via the HR1 form will also be aligned with the new threshold test.

Employers will be required to notify employee representatives in writing of the total number of proposed redundancies across the workforce and at which establishments. However, employers will not be required to consult all such representatives together, nor undertake consultation with a view to reaching the same agreement with all of them.

In terms of remedies, the maximum protective award will rise from 90 to 180 days' gross pay per employee. However, interim relief will not be extended to protective award claims.

What will this change mean for employers in practice?

- The retention of the words "at one establishment" is a concession to business and means that collective consultation will not be triggered where a multi-site employer proposes small pockets of redundancies at different sites **unless** the total numbers exceed the new threshold – whatever that is. Clearly, the level at which the new threshold is set will be important: the lower it is, the more frequently collective consultation will be required.
- The administrative burden will increase for multi-site employers, who will need to have a system in place to ensure that they keep track of proposed redundancies across the whole workforce. Where "across the workforce" consultation is triggered, they will need to have appropriate representatives in place for all affected employees no matter where they are based. This will be more time-consuming to achieve where elections are

needed.

- The consultation process itself could become more cumbersome and disjointed as employers may be consulting about several small pockets of unrelated redundancies at the same time, with different groups of representatives (albeit you are not required to consult all such representatives together, nor undertake consultation with a view to reaching the same agreement with all of them). More time and resources will need to be devoted to organising and managing multiple consultation meetings.
- Getting it wrong will also be more costly: employees will be entitled to a protective award of up to 180 days' gross pay. The Government's **impact assessment** accepts there will be an increased cost to business where collective redundancy obligations are not met. However, it envisages that the increased penalty will drive greater compliance which, in turn may have the positive effect of identifying ways to reduce the number of redundancies needed.

What are the next steps?

The protective award is due to increase in April 2026 (the precise date is to be confirmed).

The Government has promised to consult about the level at which the "across the workforce" threshold should be set. That consultation is expected to launch in early 2026. After the Government has settled on its final position, regulations will be needed to introduce the new test. The Government has said this change will come into force some time in 2027.

Separately, the Government has indicated that when consulting about the trigger, it will also seek views on doubling the 45-day consultation period needed where 100+ redundancies are proposed. Although this proposal is outside the ERA, it is possible that this change could be taken forward at the same

time as the change to the trigger.

Sexual harassment

Duty to prevent

Since 26 October 2024, all employers have been required to take reasonable steps to prevent sexual harassment of their workers (including by third parties). If this duty is breached, an uplift of 25% may be applied to compensation in relevant claims, and the Equality and Human Rights Commission (the **EHRC**) may investigate and take enforcement action.

Under the ERA, this duty will become more onerous and require employers to take **all** reasonable steps to prevent sexual harassment or risk these consequences.

The ERA provides that regulations may be introduced to specify the steps that will be regarded as reasonable for the purposes of both: (i) this new proactive duty to prevent sexual harassment; and (ii) the existing defence that an employer has taken all reasonable steps to prevent sexual harassment. This may include steps such as carrying out risk assessments, publishing plans or policies, and steps relating to the reporting and handling of complaints.

This change is expected to come into force in October 2026, with the regulations to follow at a later date.

Disclosures constitute whistleblowing

In addition, disclosures about actual or likely sexual harassment will be listed as one of the types of malpractice about which a whistleblowing disclosure may be made. All other elements of the test for qualifying as a protected disclosure (such as being made in the public interest) will still apply. This change is expected to come into force in April 2026.

What will these changes mean for employers in practice?

- It will be harder for employers to discharge the duty to prevent sexual harassment once it has been enhanced in this way, as they will need to show that they have done everything that was reasonable for them to do. In particular, a lot will be expected from large and well-resourced employers and from employers where sexual harassment is especially prevalent.
- Once regulations are made setting out the list of potentially reasonable steps, this will hopefully offer a degree of certainty about what is required. For now, the recommended steps to prevent sexual harassment are set out in the EHRC's non-statutory **Technical Guidance on Sexual Harassment and Harassment at Work** and its **8-step Guide to Preventing Sexual Harassment at Work**.
- We are likely to see an increase in employers pleading the "all reasonable steps" defence in relevant cases. Given that the work that will have gone in to take steps to discharge the duty, employers are likely to want the added benefit of avoiding liability for a sexual harassment claim.
- Making it clear that disclosures about sexual harassment may amount to whistleblowing disclosures is helpful, although arguably unnecessary. The Tribunals have already made it clear that disclosures about sexual harassment are capable of amounting to whistleblowing disclosures, since they represent breaches of the Equality Act 2010 (see for example **Mysakowski v Broxborn Bottlers Ltd**). Nonetheless, it is a helpful sign to those wishing to report sexual harassment that they may be protected as whistleblowers.

What are the next steps?

Given that these measures are expected to take effect this year, employers would be wise to begin working towards taking all reasonable steps now. Not only will this help employers be ready for the raised requirement in good time, it opens up the

possibility of pleading the “all reasonable steps” defence in relevant sexual harassment claims.

As a starting point, employers should review the EHRC’s guidance on sexual harassment and their sexual harassment risk assessment and consider what further reasonable steps could be taken to prevent sexual harassment. Full implementation of those steps should be in place by October 2026.

Liability for discriminatory harassment by third parties

The ERA will reintroduce employers’ liability for discriminatory harassment of staff by third parties. This had originally been in place until 1 October 2013 under the Equality Act 2010, when it was removed by the Coalition Government.

This protection extends to all forms of discriminatory harassment under the Equality Act 2010, not just sexual harassment. Liability will also arise from the first instance of harassment (unlike the previous provisions, which required it to have taken place more than once). This means that, for example, racially motivated comments made towards a shopworker by a customer may lead to the employer being liable. However, similarly to the defence for sexual harassment claims, employers will be able to avoid liability where they can show they took “all reasonable steps” to prevent the third party harassment.

What will these changes mean for employers in practice?

- The reintroduction of liability for third party harassment is one of the most important reforms in the ERA, significantly widening an employer’s exposure to claims of discriminatory harassment. For employers operating in sectors where staff frequently come into contact with third parties (such as the transport, retail and hospitality sectors), that risk is heightened even further.

- While the “all reasonable steps” defence remains open to an employer to defend such a claim, it will be an onerous task to discharge every possible reasonable step – many employers are likely to fall short. For this reason, employers may wish to begin work on scoping out how it might meet this standard sooner rather than later.
- As far as sexual harassment is concerned, employers who are found liable for third party *sexual* harassment may also face the prospect of an uplift to compensation of up to 25%. A Tribunal may award this where it finds that the employer has breached the duty to prevent sexual harassment.

What are the next steps?

Liability for third-party harassment is expected to come into force in October 2026. Employers should be considering now what reasonable steps they could take to prevent harassment of their employees by third parties, and implement them before October.

Equality action plans

Currently, employers with 250 or more employees are required to publish information on their gender pay gap on an annual basis. However, in-scope employers must report their pay gap figures and nothing else – they are not required to explain the figures nor how they intend to close their gender pay gap (and, in fact, they are not required to close it all). The hope was simply that “what gets measured gets managed” and that reporting alone would drive employers to take steps to close their gaps. However, progress in closing gender pay gaps remains slow.

The ERA provides that regulations may be published requiring private employers with 250 or more employees to develop and publish “equality action plans” on an annual basis. These

action plans must set out the steps the employer is taking in relation to addressing its gender pay gap and also supporting employees going through the menopause.

The action plan will have to meet the minimum standards, which are to be set out in regulations. There will be consequences for failure to comply, but, again, this will be dealt with in regulations.

Further, when reporting their gender pay gaps, employers will be required provide information about whom they contract with for outsourced workers. Such workers are not employees of the employer and, therefore, do not need to be included in the gender pay gap figures. It seems that the intention here is to allow a fuller understanding of an organisation's gender pay gap. For example, if an organisation's outsourced roles were typically fulfilled by low-paid female workers, this would have the effect of improving the gender pay gap figures since this pay data would not need to be factored in. The new requirement, therefore, adds a layer of transparency to show this.

What will these changes mean for employers in practice?

- Gender pay gap reporting will become more onerous for in-scope employers. Although some employers already publish sophisticated narratives and actions plans, many do not. All will need to publish an annual plan setting out what action is being taken to close the gap. A failure to do so will have consequences, but what is not clear is whether there will be consequences for publishing a compliant plan and then not implementing it or attempting to implement it but failing to actually make a dent in the gender pay gap.
- The Government has confirmed that these requirements are part of a wider reform to expand equality and pay transparency, sitting alongside the planned Equality (Race and Disability) Bill. This Bill intends to

introduce both ethnicity and disability pay reporting which would mirror the gender pay gap reporting regime, on which the Government's consultation closed on 10 June 2025 (with feedback reportedly still being analysed). Further consultation will also be needed prior to the regulations implementing the ERA's reforms.

- The forthcoming requirement to publish information about the steps taken to support menopausal workers means employers will need to give thought to what can be said in this regard. Some employers are well advanced in terms of support offered. Others will need to start work on providing appropriate support measures in order to be able to populate the action plan. That said, most employers will already have some things to say here, for example, the provision of flexible working options and relevant benefits such as discounted gym memberships or employee assistance programmes. However, more is likely to be needed.

What are the next steps?

The Government's ERA factsheet indicates that implementation of equality action plans will be voluntary from Spring 2026 and mandatory from Spring 2027. Mandatory reporting of outsourcing measures is likely to take longer to take effect.

Ban on non-disclosure agreements preventing disclosures about discrimination or harassment

The ERA will prohibit the use of non-disclosure agreements (**NDAs**) to prevent disclosures of information about harassment or discrimination by the employer or fellow workers, including allegations of "relevant harassment or discrimination". Any term purporting to do so will be void, and this includes those in any contract (e.g. the employment contract, a settlement agreement or any separate NDA).

This prohibition will also apply to allegations or disclosures

of information relating to the employer's response to the harassment or discrimination (or to the allegation / information). This could arguably include steps such as the fact of exit discussions and the existence of a settlement agreement, where the underlying matter concerns harassment or discrimination.

"Allegation" for these purposes is not defined, and there is nothing (at present) to exclude the making of false or bad faith statements. This would mean that employers would be unable to prevent a worker from repeating false or bad faith allegations even where a claim had settled. An individual against whom false or bad faith allegations have been made would have to look to the law of defamation for recourse.

Additionally, the concept of "relevant harassment and discrimination" is very broad, including all forms of harassment and discrimination under the Equality Act 2010. The provisions specific to victimisation in the Equality Act 2010 are not expressly included, although the prohibition on preventing discussion of the employer's response may cover this in practice. It applies to any such conduct provided that it is **committed** by the employer or a co-worker or the **victim of the conduct** is the worker or a co-worker. This suggests that, once the new legal protections against third-party harassment come into effect, this will also be covered by the NDA prohibition.

The ERA anticipates that there will be certain types of "excepted agreements" (where disclosures can be validly restricted), but the detail of these will be set out in regulations. Regulations may also extend the protection to cover those outside the definition of "worker", such as those undertaking work experience or training.

For a deep dive into this provision – which has not substantively changed since it was added to the Employment Rights Bill in July 2025 – you can read our earlier article

here.

What will these changes mean for employers in practice?

- Currently, any provision banning workers from making protected disclosures will be void under the Section 43J of the Employment Rights Act 1996. However, this is subject to a stringent test, including that the disclosure has to be in the public interest and must be made to certain categories of persons. Equally, under section 17 of the Victims and Prisoners Act 2024, NDAs cannot be used to prevent victims of crime disclosing information to certain categories of person for the purposes of support.
- These amendments go much further and will, in effect, permit employees to make any allegation of discrimination or harassment (or about their employer's response to the same), regardless of the purpose of that statement and regardless of the recipient. In parallel, the Victims and Prisoners Act 2024 is **due to be expanded** (although it is unclear when), removing any restrictions around the purpose or recipient of disclosures that it covers.
- The key issue for employers will no doubt be clarification of what will constitute an "excepted agreement", and many may be more reluctant to resolve matters via settlement agreements (at the very least until this certainty is in place). Some employees may also be keen for this clarity, particularly those who are seeking closure via settlement and are happy for this to be on a confidential basis. It has not been set in stone that the restrictions will be forward-looking only (i.e. that they will not affect NDAs which are already in place), and so whilst commentary at the time of the proposals indicated that they would not apply retrospectively, the uncertainty may add to parties' concern.

What are the next steps?

These provisions were not anticipated in the original Employment Rights Bill, but were added via an Amendment Paper tabled in July 2025. They have therefore not been included in the Government's roadmap for implementation, and no date for consultation or implementation has yet been released.

Flexible working

Currently, employers may refuse flexible working requests where they consider that at least one of eight grounds specified in the Employment Rights Act 1996 applies. This includes things like the burden of additional costs, an inability to reorganise work among existing staff or detrimental impact on quality or performance. Importantly, this is a *subjective* test. In other words, as long as an employer considers that one of the eight grounds applies, and that view is based on correct facts, that is a sound basis upon which to reject a request.

There is no statutory right to appeal a refusal, but many employers offer an appeals process. Employees may also challenge the decision via other claims such as automatic unfair dismissal or indirect sex discrimination.

The ERA will require an employer's refusal of a request to be based on one of the existing eight grounds and be an *objectively reasonable* one. Further, when refusing a request, the employer must notify the employee of the ground for refusing the request and explain why it considers that it is reasonable to refuse the application on that ground. Where an employer's decision is not reasonable, or where it fails to explain this to the employee, the employee will be able to complain to an Employment Tribunal.

There is one further small change. From 6 April 2024,

employers have been required to consult with employees before refusing a request. Under the ERA, regulations may also be issued setting out the precise steps that an employer must take in order to comply with this consultation requirement.

What will these changes mean for employers in practice?

- We think that employers are going to have to go further to be able to justify the ground or grounds for refusal. For example, if a request is refused on the basis of an inability to reorganise work among existing staff or recruit additional staff, and the employer has not consulted with existing staff about the possibility of doing so or attempted to recruit additional staff, it is likely that a refusal on such grounds would be unreasonable. Or where a request was to be refused on the basis of detrimental impact on quality or performance, again, the question will be: what is the evidence for this view? Unless there is some historical evidence (e.g. if an employee has worked the same or similar pattern in the past and it was unsuccessful), it is likely that an employer would need to allow a trial period of the proposed working pattern for a reasonable period of time in order to assess whether there was, in fact, such a detrimental impact. The end result is that more requests are likely to be accepted.
- Where an employer breaches the rules governing flexible working requests, an employee may complain to an Employment Tribunal. The Tribunal may order the employer to pay compensation of up to eight weeks' pay (currently capped at £719 per week but due to rise in April 2026) and require the employer to reconsider the application. Where an employer's refusal is found to have been unreasonable, we can expect Tribunals to more readily order employers to reconsider requests.
- Further, if a refusal is unreasonable, this could assist the employee in other potential claims. For example, if

an employer has adopted an unreasonable position this may be sufficient to amount to a repudiatory breach of contract, justifying constructive dismissal. Indeed, in the case of **Johnson v Bronzeshield Lifting Ltd**, a Tribunal held that an employer's failure to take into account relevant information before refusing a flexible working request was a repudiatory breach. This was on the basis that the hours that an employee works has a major impact on their lives, and it also matters how flexible working applications are dealt with – the outcome is not the only thing of importance. It is not a stretch to see that a Tribunal could reach a similar decision where a request has been refused unreasonably.

- It looks like specific rules are on the way governing the form of consultation needed before refusing a request. The existing **statutory Acas Code of Practice on requests for flexible working** sets out recommendations on the scope of such consultation. The Code suggests gathering all relevant information, holding a meeting with the employee to discuss the request and considering alternatives if needed. A written record of the meeting should be kept, and a right of appeal is also recommended. A failure to follow the Code does not give rise to a claim but Tribunals will take it into account when considering relevant cases. Therefore, we think it is likely that the Code's provisions on consultation will be elevated into law.
- In due course, employers will need to update policies and practices to reflect the new rules on refusing requests.

What are the next steps?

The provisions regarding flexible working under the ERA are expected to come into force in 2027, following consultation which is expected to commence imminently. Regulations

regarding consultation steps prior to refusal will likely follow.

Family leave rights

There are three areas of change in the field of family leave rights under the ERA.

Unpaid parental leave

Currently, employees with one year's service have a right to take up to four weeks' unpaid parental leave per year in respect of children under the age of 18 (up to a maximum of 18 weeks' leave in total).

Under the ERA, the service requirement will be removed and unpaid parental leave will become a Day 1 employment right. This is expected to take effect in April 2026.

Paternity leave

Currently, employees with 26 weeks' service ending with the week immediately before the 14th week before the expected week of childbirth (or the week in which an adopter is notified of a match) have a right to take up to two weeks' paternity leave. The same service requirement applies in respect of eligibility for statutory paternity pay.

The ERA will remove the service requirement for paternity leave, making it a Day 1 employment right. However, there is no provision lifting the service requirement for statutory paternity pay, which suggests that it will remain at least for now.

Further, currently, where an employee is entitled to paternity leave and pay and shared parental leave and pay, the paternity leave and pay must be taken *before* the shared parental leave and pay. If the employee takes the shared parental leave and pay first, they lose their entitlement to paternity leave and

pay. The ERA will remove this restriction, meaning that employees may take shared parental leave and pay first if they wish, and retain their entitlement to paternity leave and pay. These changes to paternity leave will take effect in April 2026.

Bereavement leave

Currently, employees have a Day 1 employment right to take two weeks' bereavement leave if a child under the age of 18 dies or is stillborn after 24 weeks of pregnancy (and those with 26 weeks' service ending with the week before the child died are also entitled to receive statutory parental bereavement pay). Employees taking parental bereavement leave are also protected from detriment and dismissal. However, there is no general right to take bereavement leave outside of this, for example when a spouse, parent or sibling dies, or for losses earlier in pregnancy. Of course, many employers do permit compassionate leave in such circumstances, but there is no legal requirement to do so.

The ERA amends the parental bereavement leave rules (which are set out in the Employment Rights Act 1996) to turn "parental bereavement leave" into "bereavement leave", although some special rules will still apply where a child dies. Regulations will specify the relationships which will entitle an employee to take bereavement leave, however, we can expect it to cover most close relationships such as a spouse, civil partner, other life partner, grandchild, parent, sibling or grandparent (in line with the definitions used for time off for "dependants" in emergency circumstances). The ERA also confirms that pregnancy loss occurring before 24 weeks of pregnancy will be included.

The bereavement leave entitlement in most cases must be not less than one week, however, the leave entitlement will stay at two weeks where a child has died. It appears that the leave will be unpaid, save that statutory pay will remain available

where a child dies. The consultation for these rights encouraged employers to “go above and beyond” the ERA’s minimum requirements.

The substance of these changes remains to be set out in the forthcoming regulations, consultation for which closed on 15 January 2026. The changes are expected to take effect in 2027.

What will these changes mean for employers in practice?

- The removal of the service requirements for unpaid parental leave and paternity leave will mean that a larger cohort of employees will become eligible to take these forms of leave. The result is that employers will have to manage a higher number of these types of absences than is currently the case. In due course, employers will need to adjust relevant policies to reflect the wider scope.
- Many employers already offer paid bereavement leave but the new statutory right will introduce rules around how such leave is managed and provide protections for those taking the leave. Employers will need to revise their bereavement leave policy in due course and will also need to consider whether to enhance the right and offer paid leave.

What are the next steps?

The rights to unpaid parental leave and paternity leave from Day 1 (as well as the right to take both paternity and shared parental leave) will come into force in April 2026.

Implementation of the bereavement-related changes is subject to regulations, which have not yet been drafted following the closing of consultation in January 2026. The changes are not expected to take effect before 2027.

Separately, the Government acknowledges that some reforms will take longer to implement, including a full review of the

entire parental leave framework and a review of the benefits of introducing paid carer's leave. No specific time frame for these reviews is given, however we note that in parallel, draft regulations have very recently been published to bring into action the Paternity Leave (Bereavement) Act 2024. These regulations are intended to take effect in April 2026, setting out the detail of the rights of co-parents to extended leave where the "primary carer" of the child has died.

Zero and low hours contracts

A **zero hours contract** is one where the employer does not guarantee any number of hours of work, but the worker is obliged to accept work whenever it is offered, without any certainty of how much work there will be or when. Sometimes the contracts are less onerous, and the worker is permitted to reject the work offered if they wish. A **low hours contract** is similar, save the employer will guarantee some hours of work, but it will be at the employer's discretion as to when the work is performed.

The ERA introduces three key changes, which will restrict the use of such contracts and penalise employers who abuse them.

First, zero and low hours workers who have worked a certain number of hours regularly over a reference period will have the right to have those hours guaranteed in their contract. The rules governing this new right are complex, but, in summary, provide as follows:

- At the end of each reference period, the employer *must* make a guaranteed hours offer to any worker within scope.
- The offer must meet certain minimum requirements (to be further set out in regulations), including that it must set out the proposed working days and hours (or specific working pattern) which must reflect the working hours over the reference period.

- In most cases, the terms of the offer may not be less favourable to the worker, for example, making an offer on a lower rate of pay.
- On top of this, employers must also provide specified information to workers about their right to guaranteed hours within two weeks of starting employment and ensure they continue to have access to that information.
- A failure to make the offer, or making one incorrectly, will give rise to an Employment Tribunal claim for which compensation may be awarded.
- A worker will be able to complain to an Employment Tribunal where the employer fails to provide the specified information, fails to make the guaranteed hours offer or makes one incorrectly or where an employer deliberately adjusts a worker's working hours within the reference period to avoid having to make an offer.

We do not know who will qualify as a low hours worker, how many hours must be worked to trigger the right to a guaranteed hours offer, nor the length of the reference period to be used. All these finer details are to be dealt with in separate regulations.

Second, zero and low workers (and any other worker who does not have a set working pattern) will have the right to reasonable notice of shifts and changes to shift, with a right to compensation where late notice is given. Again, the rules are complex, but, in summary, provide as follows:

- Employers must give affected workers reasonable notice of a shift that the employer wants or requires the worker to work (specifying the day, time and hours to be worked).
- Employers must give notice of any change to, or cancellation of, a shift.
- Regulations will set out the minimum amount of notice that must be given which will not be more than 7 days.

- Where an employer cancels, moves or curtails a shift at short notice, it must make a fixed payment of a to the worker – regulations will specify how much that payment must be.
- A breach of any of the notice or payment requirements will give rise to an Employment Tribunal claim for which compensation may be awarded.

Third, similar rules will be introduced for agency workers. The above changes could have encouraged employers to consider switching away from using zero and low hours workers towards using agency workers instead. However, following consultation, the Government decided to amend the Employment Rights Bill to introduce similar rules for agency workers. In summary, the rules, provide as follows:

- The responsibility to make guaranteed hours offers will rest with the **end user** who must make an offer to the agency worker to enter into a guaranteed hours contract directly with them – thereby changing the structure of the tripartite relationship. This will be a significant deterrent to using agency workers as a flexible resource.
- The requirement to provide specified information about the right to guaranteed hours within two weeks of starting employment will rest with the **agency**.
- The duty to give reasonable notice about shift changes and cancellations will be shared **jointly between the hirer and agency**. And in related claims a Tribunal may apportion liability. However, the duty to make a fixed payment following short notice cancellation of a shift will rest with the **agency** (although there is nothing to stop the agency seeking to recoup such costs from the end user in the contractual agreement).

What will these changes mean for employers in practice?

- These changes will make it considerably more difficult for employers to manage these types of contracts and introduce risks for getting it wrong.
- The requirement to monitor working hours within reference periods on a rolling basis will be administratively cumbersome, particularly where there are multiple zero or low hours workers.
- The requirement for the employer to make repeated offers of guaranteed hours contracts at the end of each reference period is onerous. These offers must continue to be made even where a worker (or agency worker) has made it clear that their preference is to remain on a zero or low hours contract – no provision is made allowing workers to opt out of receiving offers. Could one unintended consequence of the Bill be that workers who genuinely prefer to work on a zero or low hours basis feel pressured to accept a guaranteed hours contract by virtue of the repeated offers from their employer? Will employers be left overstaffed when customer demand falls? Although the ERA does provide an option for employers to use fixed term contracts instead of being caught by these rules, this is only permitted in limited situations.
- As far as the giving notice of shifts and changes to, or cancellation of, shifts is concerned, there will be a risk of tripping up on the notice requirements especially if the notice is generous, leaving an employer liable to make a payment to the worker and at risk of an Employment Tribunal claim.
- What can employers do? For now, a sensible starting point would be to audit your workforce to identify any zero and part time workers (and it may be sensible to focus your attention here on those working below 16 hours). This will help you understand the likely impact of these changes for your business. Where you have workers regularly working in excess of their contracted hours you might consider regularising that situation

before these rules come in.

What are the next steps?

Multiple sets of regulations are needed to bring in these reforms. Detailed guidance is also expected.

The Government has committed to consult further on these changes before the regulations are produced. A consultation paper is due to be published soon (having been postponed from Autumn 2025).

The Government has said the changes will come into force in 2027.

Statements of particulars of employment: notification of right to join a trade union

Currently, employers must provide employees and workers with a written statement of the particulars of their employment when they start work. The scope of those particulars is set out in section 1 of the Employment Rights Act 1996.

The ERA provides that employers must give employees and workers a written statement that they have the right to join a trade union, and that this must be given *at the same time* as the statement of particulars (although it does not require it to be included within the statement itself). It must also be given at *"other prescribed times"* which are not specified.

Regulations will set out precisely what information must be included in the statement, the form of the statement and how and when it must be given to the employee or worker. In October 2025, the Government opened a **consultation** seeking views on the following matters:

- **Content of the statement:** it was suggested that the statement included a brief overview of the functions of a trade union, a summary of the statutory rights arising in relation to trade union membership, a list of trade

unions recognised by the employer (if any) and a signpost to the Gov.uk list of trade unions.

- **Form of the statement:** views were sought on where the statement should be in a standard form provided by the Government or drafted by the employer in line with specified requirements. The Government's preference is for a standard form on the basis that it would reduce the administrative burdens on employers and help ensure a clear statement is delivered to all workers.

- **Manner of delivery:** views were sought on direct methods of delivering the statement (e.g. letters or emails) versus indirect methods (e.g. posting on a notice board or intranet). The Government's preference appears to be for direct delivery.
- **Frequency of delivery:** as far as new employees and workers are concerned the statement must be delivered at the same time as the s.1 statement of particulars. Views are sought on how frequently it must be given thereafter, with three options on the table: once every six months, once a year or different frequencies for different sectors. The Government's preference appears to be for the statement (or reminders) to be provided on an annual basis.

The consultation closed on 18 December 2025 and the Government's final position is awaited.

A failure to provide the statement will give rise to an Employment Tribunal claim. A Tribunal will have the power to determine and amend the particulars and, if the claimant has been successful in certain other substantive claims before the Tribunal, award compensation of between two to four weeks' pay (currently capped at £719 per week).

What will this change mean for employers in practice?

- The Government's preference appears to be for a standard

form statement to be provided directly to employees and workers on the commencement of employment and on an annual basis thereafter. If taken forward in this way, compliance should be relatively straightforward in most workplaces (e.g. sending the statement to new recruits with their contract and then sending to all staff by email once a year). However, we must await the outcome of the consultation to understand the precise requirements for employers.

- The policy aim behind this reform is to increase trade union membership. It remains to be seen whether a requirement to provide information to staff will have this effect. However, it is worth noting that certain unrecognised trade unions will also acquire the right to access workplaces under the ERA, meaning that, at the very least, awareness of trade unions is likely to increase among the workforce.

What are the next steps?

The Government has said this change will come into force in October 2026.

The consultation on the finer detail closed on 18 December 2025. The Government's response setting out its final position is awaited. Regulations providing the outstanding details will be needed before the change takes effect.

Statutory Sick Pay (SSP)

The ERA makes three small tweaks to SSP regime as follows:

- The "waiting days" will be removed, meaning that SSP will be payable from Day 1 of sickness, rather than from the fourth day as is currently the case.
- The "lower earnings limit" for SSP – which currently sits at £125 per week – will be removed meaning that workers will be entitled to SSP regardless of income levels.

- SSP will be calculated as the lower of 80% of an employee's average weekly earnings or the flat rate (currently £118.75 per week).

What will these changes mean for employers in practice?

- Employers will need to adjust payroll practices to ensure that SSP is paid from Day 1 of sickness and at the appropriate rate.
- Employers will need to review whether any of their workforce have been ineligible for SSP to date, because of the lower earnings limit, and ensure that they are now included as eligible to receive SSP for any period of sickness.

What are the next steps?

The changes regarding SSP are expected to take effect in April 2026.

Increase to time limits for bringing Employment Tribunal claims

Before the election, the Labour Party promised to extend the time limits to bring claims in the Employment Tribunal from three months (strictly, three months less a day) to six months (again, strictly, six months less a day). Although a few claims already have a six-month time limit (e.g. equal pay claims and statutory redundancy payment claims), the vast majority of statutory claims currently have a three-month time limit, for example, unfair dismissal and discrimination claims.

Curiously, this proposal was missing from the initial draft of the Employment Rights Bill. Then, in November 2024, the Government amended the Bill, to add a provision extending the time limits for statutory employment.

However, it should be noted that the time limit for bringing a

breach of contract claim in the Employment Tribunal will not be extended and will remain subject to a three-month time limit. It is unclear whether this exclusion is a deliberate policy choice or an oversight.

What will this change mean for employers in practice?

- Of course, settlement agreements are often used where it is thought that there is a high risk of claims, and this change will not affect that practice. In fact, the longer time frame to commence a claim may allow settlements to get over the line without the individual filing a protective claim.
- However, where a settlement agreement is not used, this change will mean that employers will not be "out of the woods" in terms of potential litigation for a longer period of time. In turn, this will mean that care will need to be taken to preserve relevant documents in case they are needed in the context of a future dispute.
- Further, the final Employment Tribunal hearing may be scheduled quite a long time after a claimant's employment has ended (as a result of this change combined with the recent increase to the maximum Acas early conciliation period to 12 weeks and the ongoing backlogs in the Employment Tribunal system). This may negatively affect witness evidence due to fading of memories and also the risk that witnesses have moved on to new employment by the time the hearing takes place.
- The Government's **impact assessment** estimates this change will result in annual direct costs to business of £13.6 million, covering the costs of an estimated 5% increase in Employment Tribunal cases and an initial familiarisation cost of £13.1 million.

What are the next steps?

The Government has said this change will come into force no

earlier than October 2026.

Fair Work Agency

Currently, most employment rights need to be enforced by individual workers in the Employment Tribunal system, something which is often challenging for workers with limited resources. A limited number of rights are enforced by the State on behalf of workers, namely, by the Gangmasters and Labour Abuse Authority, the Employment Agency Standards Inspectorate and HMRC's National Minimum Wage Enforcement Team.

Under the ERA, the Secretary of State will take over responsibility for enforcing certain aspects of labour market legislation via a new public authority, expected to be called the "Fair Work Agency". The Fair Work Agency will have responsibility for enforcement of the following areas of law, known as "relevant labour market legislation":

- statutory payment regimes, including National Minimum Wage and Statutory Sick Pay;
- holiday pay rights;
- the regulation of employment agencies and employment businesses;
- the unpaid Employment Tribunal financial penalties scheme for failure to pay sums ordered or settlement sums;
- the licensing regime for businesses operating as "gangmasters" in certain sectors;
- parts 1 and 2 of the Modern Slavery Act 2015; and
- penalties issued by the Fair Work Agency itself.

This list may be expanded in future under powers built into the ERA, however at least for now, it appears that primary enforcement of equality law is remaining with the EHRC.

In terms of addressing non-compliance with the laws within its remit, the Fair Work Agency will have the power to:

- obtain documents or information, including entering business premises to obtain them, requiring their production, and retaining them or taking copies;
- giving "notices of underpayment", which may order payment to be made to any underpaid individual within 28 days of the notice (for claims going back up to six years), with accompanying penalties payable to the Secretary of State;
- bring proceedings in an Employment Tribunal on behalf of a worker, where that worker is not planning to do so, for **any employment rights under any enactment** (with limited exceptions). Any financial award would still go to the worker;
- provide or arrange for legal advice, representation or assistance in relation to employment, trade union or labour relations law (excluding settlement facilitation), with the Agency's costs being recoverable if an award is made;
- require "labour market enforcement undertakings" to comply with prohibitions, restrictions or requirements stipulated by the Fair Work Agency (and which may last for up to two years); and
- apply to Court for a "labour market enforcement order" which prohibits or restricts certain actions or requires certain actions to be taken (and which may last for up to two years).

Where a person provides false information or documents, obstructs enforcement, fails to comply with a requirement of the Fair Work Agency and/or fails to comply with a labour market enforcement order, they will commit a criminal offence punishable by a fine or imprisonment. Notably, where an offence is committed by a company and it is shown that the offence was committed with the consent of an officer of the company, or was attributable to any neglect on their part, then that officer will also be guilty of a criminal offence. In this context, "officer" means a director, manager,

secretary or other similar officer or person purporting to act in such capacity

What do these changes mean in practice for employers?

- The possibility of State enforcement of labour market laws tends not to be on the radar of most employers. Naturally, the focus is usually placed on the risk of Employment Tribunal claims by individual employees, which carry the risk of compensation awards and bad publicity. Currently, State enforcement is dispersed amongst different bodies, with low levels of knowledge about the remit of those bodies and their enforcement powers. The transition to a single State enforcement body is likely to achieve the desired impact of creating a single, recognisable brand, which, in turn, may increase the reporting of malpractice.
- The Fair Work Agency has teeth. It has strong investigatory and enforcement powers, which could lead to fines and criminal convictions, including, in certain circumstances, for the senior executives working in the offending business. This has the effect of incentivising those individuals to ensure that the business is meeting its legal obligations. A failure to do so could mean they end up with a criminal record. Further, if they work in a regulated sector, this could result in regulatory action against them and potentially jeopardise their ability to practice in their chosen career. Therefore, a lot is at stake.
- Employers may also be alarmed by the ability of the Fair Work Agency to bring Tribunal proceedings on behalf of workers and/or provide legal assistance. In the areas within its remit, the Fair Work Agency will have specific enforcement powers as covered above, meaning it will likely be unattractive for them to try and enforce such rights via the Employment Tribunal. However, their ability to bring and/or offer support with proceedings

applies to any employment rights and could in theory therefore extend to matters such as unfair dismissal or even discrimination. It remains to be seen whether these powers will be used in practice, and they will be perhaps most attractive for landmark "test" cases making their way to higher courts where the costs risk is likely to put off most employees from litigating.

- The establishment of the Fair Work Agency will take time and its success will, in large part, depend on whether it has sufficient resources to discharge its duties.

What are the next steps?

The Fair Work Agency is expected to be established in April 2026, with further details of implementation timelines for its powers being provided in due course.

What else is covered?

To complete the picture, we have rounded up below the other areas covered by the ERA, some of which are sector-specific.

Area	Reform	What are the next steps?
Holiday pay records	The ERA will require all employers to keep records demonstrating compliance with holiday entitlement, covering both the amount of leave and pay, however, there is no prescribed format for these records. The records must be retained for six years and failure to comply will be a criminal offence punishable by a fine.	Implementation to be announced.

Tipping practices	Legislation regulating the allocation of tips introduced in 2025 requires affected employers to have a written policy on how it dealt with tips and gratuities. That policy must include information on whether the employer requires or encourages customers to pay tips, gratuities and service charges and how the employer ensures that all qualifying tips, gratuities and service charges are dealt with in accordance with the law, including how they are allocated between workers. The ERA will amend the law to provide that before producing the first version of the policy, an employer must consult with trade union or other worker representatives, or, if none, with the workers affected by the policy. Further, at least once every three years employers must review the policy and carry out further consultation with workers or their representatives. Whenever consultation is carried out, the employer must make a summary of the views expressed in the consultation process available in anonymised form to all workers.	Consultation awaited. Implementation in October 2026

Umbrella companies	The ERA will amend the definition of “umbrella companies” contained in section 13(3) of the Employment Agencies Act 1973 and enable the future regulation of umbrella companies.	Consultation awaited. Implementation in 2027.
Time off for public duties	The ERA provides that within 12 months of implementation, the Secretary of State must (i) review the purposes for which employers are required to permit their employees to take time off to carry out public duties; and (ii) publish a report setting out the findings of the review.	Implemented on 18 December 2025. Review findings to be published by 18 December 2026.

Trade unions	The ERA contains various provisions aimed at strengthening trade unions including: • requiring employers to notify workers of their right to join a trade union in writing when they start employment and at other times; • enhancing the rights of trade unions to access workplaces for the purpose of meeting, recruiting and organising workers and facilitating collective bargaining; • simplifying the process for trade union recognition; • repealing rules which impeded the financing of trade unions; and • repealing or amending existing laws governing industrial action (for example, in relation to balloting, voting and the giving of notice of industrial action) with the aim of making it easier for trade unions to call such action.	Implementation in April and October 2026.

Workers involved in trade union activities	The ERA contains various detailed provisions aimed at strengthening protection for workers involved in trade union activities including: • improved access to facilities for trade union representatives taking time off to carry out their duties; • introducing a new statutory role for "union equality representatives" in workplaces with recognised unions; • introducing protection from detriment for having taken part in industrial action; • removing the cap on the number of weeks for which an employee is protected from dismissal for taking part in industrial action (i.e. the first 12 weeks), meaning they will be protected throughout; and • modernising the existing law on blacklisting to protect more people from blacklisting due to their trade union membership or activity.	Consultation awaited. Implementation in October 2026 (save for the blacklisting reforms which will be in 2027).

Public sector	The ERA contains a power for regulations to be made to ensure that, where public services are outsourced, the private sector contractor's workforce are not treated less favourably than the incoming public sector workers, and vice versa, thereby preventing a "two-tier workforce".	Code of Practice and Regulations awaited. Implementation in October 2026.
Ships' crews	The ERA contains some fine-tuning amendments to the notification rules in certain collective redundancies involving ships' crews. In addition, it contains measures to strengthen seafarers' rights at sea and implement international conventions on seafarers' employment.	Implementation in April and December 2026.
School support staff	The ERA gives the power to reinstate the "School Support Staff Negotiating Body", a body which will have the power to negotiate on the pay and conditions of affected workers.	Consultation, Code of Practice and Regulations awaited. Implementation in October 2026.

Adult social care workers	The ERA gives the power to introduce a "Fair Pay Agreement" in the adult social care sector and establish an "Adult Social Care Negotiating Body", which will have the have the power to negotiate on the pay and conditions of affected workers.	Consultation closed in January 2026. Response, Code of Practice and Regulations awaited. Implementation in October 2026.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk), Rose Lim (RoseLim@bdbf.co.uk), or your usual BDBF contact

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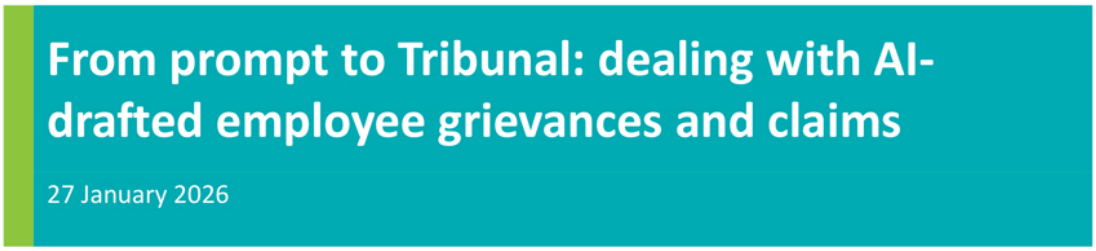
BDBF Webinar – From prompt to Tribunal: dealing with AI-drafted employee grievances and claims – 27 January 2026

In this 45-minute webinar, BDBF Senior Associate Leigh Janes and Knowledge Lawyer Rose Lim look at the perks and pitfalls of employees using AI tools and explore the options available to employers to manage these growing risks. This webinar was originally delivered on 27 January 2026 and reflects our understanding as of that date. Do get in contact with either of the speakers if you would like to discuss any of the issues raised.

To view the PDF webinar slides please click on the image below, or view the recording of the webinar:



https://youtu.be/GHhtVB05Vrg

Please contact Leigh Janes (LeighJanes@bdbf.co.uk), Rose Lim (RoseLim@bdbf.co.uk) or your usual BDBF contact, for further advice.

BDBF grows employment team with new associate appointment

BDBF, a leading employment law firm, welcomes **Ben Cowdry** who joins the firm as its newest associate.

Ben's broad experience across both employer and employee-side

matters, combined with his passion for achieving strong results through negotiation and advocacy, will further enhance the team's capabilities. His addition increases the firm's team to six partners, 17 associates, and an eight-member practice team.

The firm's success in recruiting talented lawyers such as Ben reflects the firm's strong standing for delivering outstanding client service, achieving robust litigation outcomes and offering top quality work in a collaborative environment. The firm continues to be top ranked, consistently securing tier one rankings from leading independent legal directories for its representation of senior executives over the past 12 years, while also growing its offering to employers on complex, high-value employment issues.

Gareth Brahams, Managing Partner said, *"Ben's practical experience in tribunal litigation, discrimination and dismissal claims, together with his skill in negotiating settlements and drafting key documents, adds further bench strength. We look forward to him joining our team."*

Ben Cowdry said, *"I am pleased to be joining BDBF, a market-leading employment firm recognised year after year for their elite level of advice. This continued recognition is a testament to its highly experienced team, whom I am excited to collaborate with and learn from. With many changes on the horizon in the employment sphere, I look forward to tackling these challenges together."*

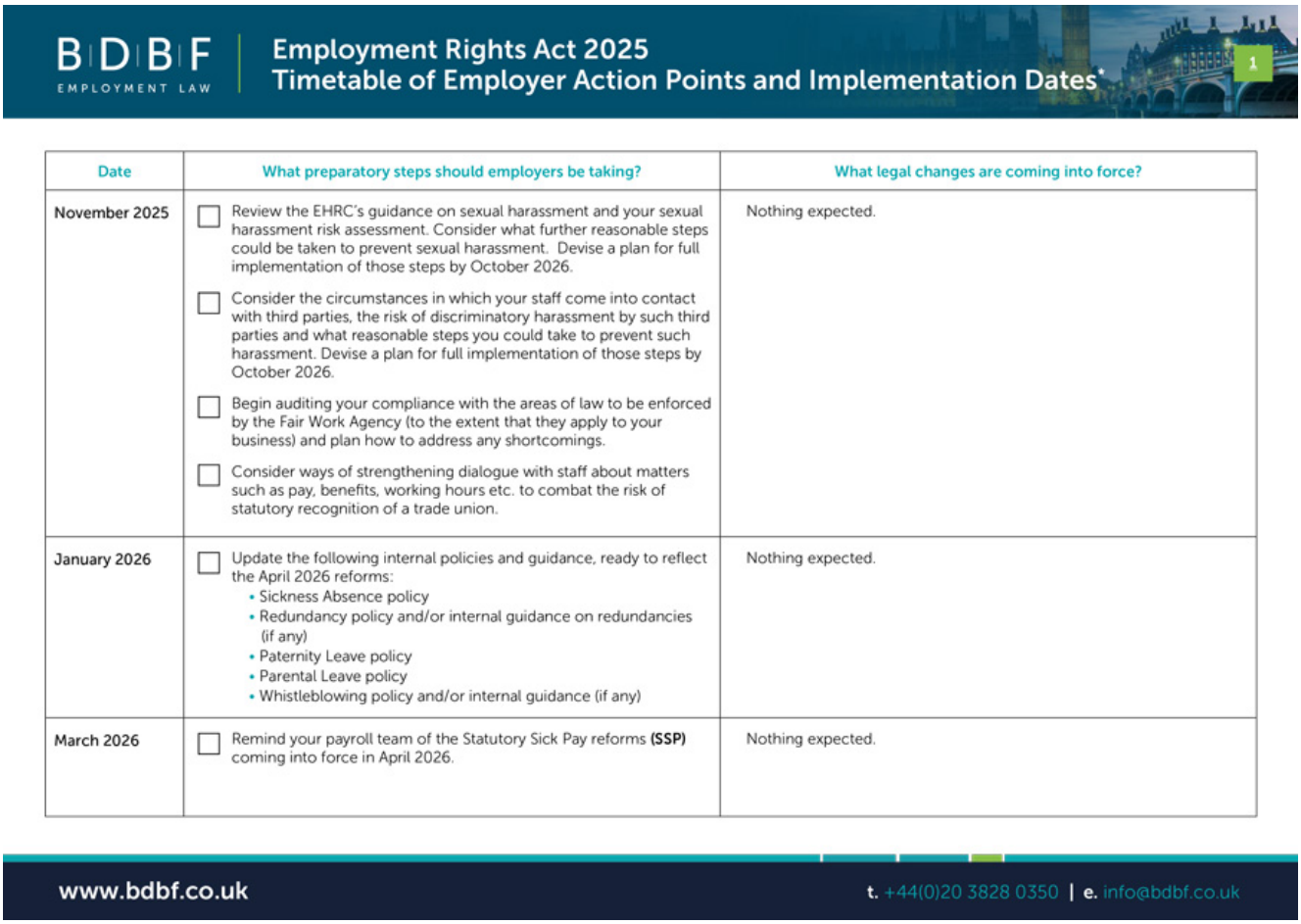
Employment Rights Act 2025. Timetable of Employer Action Points and Implementation Dates

The Employment Rights Act 2025 is due to receive Royal Assent on 18 December 2025 and represents one of the most significant reforms to UK employment law in recent years. The Act introduces wide-ranging new worker protections, including the expansion of unfair dismissal rights, changes to Employment

Tribunal time limits, broader access to family leave, and enhanced protections against harassment and discrimination. These reforms will have direct and lasting implications for employers' policies, procedures, and workforce management.

Most of the Act's key provisions will be introduced in stages over the next two years, making early awareness and forward planning essential. In this practical guide, we set out the anticipated implementation timetable and identify what actions employers need to take – and when – to ensure compliance, minimise risk, and adapt to the new regulatory landscape.

Click the image below to download the calendar.



BDBF EMPLOYMENT LAW

Employment Rights Act 2025
Timetable of Employer Action Points and Implementation Dates*

Date	What preparatory steps should employers be taking?	What legal changes are coming into force?
November 2025	☐ Review the EHRC's guidance on sexual harassment and your sexual harassment risk assessment. Consider what further reasonable steps could be taken to prevent sexual harassment. Devise a plan for full implementation of those steps by October 2026. ☐ Consider the circumstances in which your staff come into contact with third parties, the risk of discriminatory harassment by such third parties and what reasonable steps you could take to prevent such harassment. Devise a plan for full implementation of those steps by October 2026. ☐ Begin auditing your compliance with the areas of law to be enforced by the Fair Work Agency (to the extent that they apply to your business) and plan how to address any shortcomings. ☐ Consider ways of strengthening dialogue with staff about matters such as pay, benefits, working hours etc. to combat the risk of statutory recognition of a trade union.	Nothing expected.
January 2026	☐ Update the following internal policies and guidance, ready to reflect the April 2026 reforms: • Sickness Absence policy • Redundancy policy and/or internal guidance on redundancies (if any) • Paternity Leave policy • Parental Leave policy • Whistleblowing policy and/or internal guidance (if any)	Nothing expected.
March 2026	☐ Remind your payroll team of the Statutory Sick Pay reforms **(SSP)** coming into force in April 2026.	Nothing expected.

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If you would like to discuss how BDBF can help your organisation comply with this new law, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk), Rose Lim (RoseLim@bdbf.co.uk) or your usual BDBF contact.

Employment law highlights from 2025

In this briefing, we look back at the key developments that took place in this significant year for employment law, reflecting on the most interesting cases and legal changes to be aware of as 2025 draws to a close.

Success at BDBF

This year at BDBF, we celebrated 13 years of excellence and 30 years of expertise and were proud to be the only firm in our category with all six of our partners top ranked by Chambers UK and by Legal 500. We were also featured as one of The Times Best Law Firms 2026 for employment law, as endorsed by our peers, and were honoured to be awarded Senior Executive Team of the Year at the International Employment Lawyer Awards 2025.

Our partners continued to share their expertise far and wide, speaking at a White Paper Conference, the International Forum of Senior Executive Advisers Forum, the ELA Annual Conference 2025, the ABA International Labor and Employment Law Committee Midyear Meeting, and the International Employment Lawyer's Spring European Employment Summit in Paris (to name a few). They were also individually recognised in the Spears Employment Lawyers Index and Lexology Index, and developed groundbreaking case law in cases such as *Lapinski*.

In 2025, we also welcomed new Managing Associate Jamie Barton, Senior Associate Leigh Janes, Associates Edward Duthie, Esmat Faiz and Knowledge Lawyer Rose Lim. In recognition of their exceptional talent, we also promoted three of our outstanding employment lawyers (Blair Wassman, Theo Nicou and Connie Berry) and welcomed Samantha Prosser to the partnership.

Employment Rights Act 2025

The year has been a whirlwind of legal developments, primarily due to the proposals under the landmark Employment Rights Bill (the **Bill**).

The Bill completed its passage through Parliament on 16 December 2025 and is expected to receive Royal Assent in the coming days, turning the Bill into the Employment Rights Act 2025 (the **Act**). The Act will mean significant changes for day-to-day employment practices and Employment Tribunal claims. The latter will also be impacted by the increase to maximum ACAS early conciliation period from six to twelve weeks, which came into effect on 1 December 2025. Although there had been suggestion that they might do so, the Government has confirmed that they will *not* be reintroducing fees for bringing a case in the Tribunal.

In our October webinar and prior briefings, we covered the major changes expected under the Bill, including extension of Tribunal time limits, restrictions on 'fire and rehire' practices, expanded whistleblowing protections and a new prohibition on non-disclosure agreements for discrimination and harassment.

No doubt the biggest concern for many employers had been the Bill's promise of 'Day 1' unfair dismissal rights, which would have removed the current two-year time limit for bringing claims altogether. However, the Government dropped this proposal following considerable pushback from the House of Lords. In exchange, claims for unfair dismissal will be available after six months' employment and the cap on the compensation for unfair dismissal will be removed. You can read our article on what the removal of the compensation cap means for employers here.

The first consultations on the proposed new rights were also launched this year. In particular, we looked at the requirements to engage with trade union rights and expanding protections for pregnant women and new mothers, which will impact all employers when they come into force.

Whistleblowing

- **Detriment of dismissal:** In *Rice v Wicked Vision Ltd (Protect Intervening); (2) Barton Turns Developments Ltd v Treadwell*, the Court of Appeal held that they were bound by the case of *Osipov* to conclude that employers can be vicariously liable for the detriment of dismissal (even if they cannot be directly liable). The Court made it clear in their reasoning that they disagreed with *Osipov* but were bound to apply it. Permission to appeal to the Supreme Court has been granted.

- **Innocent decision-makers:** In *Henderson v GCRM Ltd & Ors*, the Employment Appeal Tribunal (**EAT**) decided that an 'innocent' decision-maker cannot be found personally liable for the detriment of dismissal. They concluded that unlike the way in which a state of mind can be attributed to the employer because of a tainted or manipulated decision-making process, it would not be correct to impute such knowledge in a way that exposes the innocent decision-maker to unlimited liability.

- **Consultants as agents:** In *Handa v Station Hotel (Newcastle) Ltd and others*, the EAT concluded that independent HR consultants could (in theory) be viewed as agents for the employer and liable for detrimental treatment of a whistleblower, if they are contracted to make the decision to dismiss or run a process closely related to the employment relationship.

- **Protection for job applicants:** In *Sullivan v Isle of Wight Council*, the Court of Appeal determined that whistleblowing protection for job applicants remains very limited. Unlike workers or applicants for NHS posts, who are protected by the specific whistleblowing detriment provisions, general job applicants who believe they have made a protected disclosure will not be protected (save for where their treatment amounts to discrimination based on a protected characteristic under the Equality Act 2010).

- **Judicial proceedings immunity:** In *Rogerson v Erhard-Jensen Ontological/Phenomenological Initiative Limited*, the Court of Appeal decided that judicial proceedings immunity did not apply to the initiation of arbitration abroad, and doing so could therefore constitute unlawful whistleblowing detriment. The Court considered that only statements made within litigation are protected (e.g. witness' evidence), rather than the act of commencing proceedings based on a protected disclosure.

For more information regarding planned reform to whistleblowing legislation, please watch our October webinar on the Employment Rights Bill. In December it was also announced that the Government intends to review the UK's whistleblowing framework by the end of 2027.

Sexual Harassment, Equality and Discrimination

- **Beyond the workplace:** In *AB v Grafters Group Ltd*, the EAT found that an employer's liability for sexual harassment may extend to situations where the employee is 'off the clock'. Actions can occur 'in the course of employment' even if they are not on work premises or during working hours, such as at work parties or during work-related travel. For more information regarding planned reform to the duty to prevent sexual harassment,

please see our article on how employers can prepare for the changes expected under the Bill.

- **Neurodiversity:** In *Halstead v JD Wetherspoons plc*, the Tribunal assessed the powerful impact of making reasonable adjustments in the workplace for neurodivergent employees, and set out a list of 'exemplary' suggestions for employers to consider. The Tribunal took a dim view of the harsh way in which a 'zero-tolerance' policy had been applied to a colleague whose condition affected his ability to understand its requirements and agreed that his employer had failed to make reasonable adjustments when applying its standard disciplinary procedures. This year also saw new guidance from ACAS on embracing neurodiversity in the workplace, which encourages support, understanding and adjustments to processes. The requirement to make adjustments will, however, have its limits; in *Duncan v Fujitsu Services*, the EAT agreed with the Tribunal that a disabled employee's use of abusive and offensive language remained sufficient grounds to justify dismissal, despite his arguments that his behaviour resulted from neurodiversity.

- **Expressing beliefs:** In our April webinar, we explored the potential for conflicts and legal challenges surrounding controversial topics such as the war in Gaza and LGBTQ+ issues. This year saw the significant decision of *For Women Scotland Ltd v The Scottish*

Ministers, which determined that 'sex' in the Equality Act 2010 refers to biological sex only and not to acquired sex or gender under a Gender Recognition Certificate. This area of law continues to generate considerable debate, and both employers and service providers eagerly await the new Code of Practice due to be published by the Equality and Human Rights Commission. In the meantime, there have been several other significant decisions on trans issues, including:

- The Court of Appeal considered in *Higgs v Farmor's School* that the dismissal of a school pastoral administrator for gender-critical social media posts had been directly discriminatory. The employee's posts were found to have reflected her protected belief, and dismissal had been a disproportionate response in circumstances where the language used had not been grossly offensive or intended to incite hatred.

- In *Lockwood v Cheshire and Wirral NHS Foundation Trust and others*, the Tribunal concluded that a non-binary employee did not have the protected characteristic of gender reassignment under the Equality Act 2010, meaning their harassment complaints regarding incorrect use of pronouns could not succeed.

- In *Kelly v Leonardo UK Limited*, the Tribunal decided that an employer's policy of permitting trans women to access female facilities did not constitute harassment or either direct or indirect discrimination against female employees, as it did not place them at a significant disadvantage compared to male staff.

- Most recently in *Peggie v Fife Health Board and another*, the Tribunal determined that the employer had unlawfully harassed a female employee by failing to revoke permission, temporarily, for a trans colleague to use women's changing rooms after her complaint (until replacement rotas could take effect) and by taking too long to investigate that complaint, as well as by referencing irrelevant matters and giving inappropriate instructions as to confidentiality. However, the Tribunal dismissed all remaining allegations of discrimination and harassment, noting the careful balancing required between individuals' protected characteristics and human rights.

For our top tips on managing risks associated with expressing beliefs in the workplace, see our guidance note.

- **Pregnancy and maternity:** In our July webinar, we took a closer look at the legal risks in redundancy exercises

affecting pregnant employees and those on maternity, adoption or shared parental leave. This year also saw the introduction of new rights to neonatal care leave and pay as well as the Government's 18-month review of parental leave and pay entitlements, which aims to reconsider the complex legislative framework of family rights. For further information on the rights currently available, take a look at our coverage for National Work Life Week.

- **Equality reforms:** Earlier in 2025, the Government published a call for evidence on proposed equality reforms including changes to equal pay, pay transparency, combined discrimination protection and clarity on sexual harassment at work. In addition, a consultation was launched on mandatory ethnicity and disability pay gap reporting for employers with 250 or more employees. Whilst some equality reforms are reflected in the Bill (see above), the response to these consultations is expected to predominantly shape the new Equality (Race and Disability) Bill.

- **Practicalities of bringing claims:** This year also brought some helpful case law regarding more practical aspects of bringing discrimination (and related) claims. In *HSBC Bank plc v Chevalier-Firescu*, the Court of Appeal clarified that being unaware of a discriminatory motive could mean that it is just and equitable to allow a claim to proceed, even where it is outside of the

statutory time limit. Additionally, in *Kokomane v Boots Management Services Ltd*, the EAT confirmed that workers can be protected against victimisation even if they do not expressly refer to having suffered discriminatory treatment; the key is what the employer can have reasonably understood the worker to mean in the context.

Dismissals and HR practices

- **Importance of proper disciplinary process:** In *Alom v Financial Conduct Authority*, the EAT expressed their concerns over the extent to which HR had framed a pre-prepared disciplinary script that ultimately led to dismissal. Although they found that the employee's dismissal had been fair and non-discriminatory in all the circumstances, the EAT agreed with the submission that this had been inappropriate, particularly where the script seemed to state the decision-maker's opinion as to the nature of the conduct. Additionally, in *Woodhead v WTTV Limited and anor*, the High Court concluded that an employer had breached their duty of care not to expose an employee to a risk of psychiatric injury during an investigation and disciplinary process into allegations against him of sexual harassment. The Court noted significant failings from the employer to take account of the employee's pre-existing conditions, as well as general inadequacy in the process which had caused considerable distress.

- **Constructive dismissal:** In *Kinch v Compassion in World Farming*, the EAT considered that an employee had not necessarily affirmed her contract by extending her notice period several times. The employer argued that by continuing to work for eight months after her resignation (including two extensions which they said she had requested), pursing a grievance and negotiating sick pay, the employee had clearly not been constructively dismissed and that the claim should be struck out. The EAT disagreed and said that this was not necessarily the case, and remitted the case for a full hearing. Delay in an employee's leaving was also considered in *Barry v Upper Thames Medical Group and others*, where the EAT held that a six-month delay in resigning did not mean the employee had affirmed their contract, in circumstances where she had been seeking to resolve the dispute that eventually led to her departure.

- **Parent company relationships:** In *Fasano v Reckitt Benckiser Group plc and anor*, the Court of Appeal found that an agency relationship did not exist between a parent company and subsidiary, as there was no basis to say that the employing subsidiary had authorised the parent entity to act on its behalf (or otherwise had control). The employee, a senior executive, had missed out on a valuable long-term incentive plan award when the rules were amended by the parent company of his employer, which he said constituted age discrimination. The Court disagreed and said that, even if the agency relationship had existed, the change would not have been

discriminatory as it was a proportionate means of achieving the legitimate aim of retaining staff.

- **Competing for talent:** In September 2025, the Competition and Markets Authority published guidance for employers on staff recruitment, pay and other working conditions. This outlined how competition law may apply in the workplace, the potential consequences of anti-competitive practices (e.g. wage-fixing or sharing competitively sensitive information), and guidance as to what may constitute 'risky' behaviour.

- **Sickness absence:** In *Kitching v University Hospitals of Morecambe Bay NHS Foundation Trust*, the Tribunal held that an employee who had been dismissed for 406 days of sickness absence in four years had been discriminated against and unfairly dismissed. The Tribunal considered that the employer had failed to accommodate her disability when applying its absence policies, failed to make reasonable adjustments, and in dismissing the employee had failed to evaluate her current and future capability to work with reasonable adjustments in place.

- **Directors' duties:** In *Cheshire Estate & Legal Limited v Blanchfield & Ors*, the Court of Appeal confirmed that

alleged breaches of statutory and fiduciary duties will be highly fact-sensitive. In this case, the Court considered that the directors had not crossed the line into breaching their fiduciary duties by planning to set up a competing firm prior to resigning from their roles, as they had continued to serve their firm faithfully and had factored in a delay between their resignation and the new firm opening.

- **Be careful what you say:** Several cases this year highlighted the importance of making accurate statements and promises, including during Tribunal proceedings:

  - In *Dixon v GlobalData Plc*, an employer had provided verbal assurances regarding an employee's ability to exercise share options post-termination, and had entered into ambiguous settlement terms which incorporated those assurances. The High Court determined that the employer was bound by these assurances as a result of proprietary estoppel, emphasising the importance of checking share plan rules and exercising caution when drafting any explanations or settlement terms.

  - In *Wainwright v Cennox plc*, the EAT agreed with an

employee that she had suffered a repudiatory breach of contract due to misleading statements made by her employer. The employee, who was on sick leave for cancer treatment, was informed that she had been replaced on a temporary basis; in fact, the new colleague had been appointed permanently, and other alterations had been made to the employee's role and responsibilities. The EAT agreed that providing untrue statements could be a contractual breach and that this should have been addressed by the Tribunal, therefore remitting the case for reconsideration.

- In *Easton v Secretary of State for the Home Department (Border Force)*, the EAT considered that an employer had acted reasonably in dismissing an employee who had omitted details of a prior dismissal and a three-month employment gap on his application form. Particular attention was paid to the fact that the employer had thoroughly investigated the omissions and concluded that the employee had been dishonest in withholding this information.

- In *Commerzbank AG v Ajao*, the High Court found an employee to have been in serious contempt of court for having made false statements of truth and giving false evidence in an Employment Tribunal claim. The employee had pursued a claim against his former employer and several former colleagues, alleging (among other matters) discrimination, sexual

harassment (including assault), harassment and victimisation. Following an application by his employer, the High Court found that he had knowingly made false accusations which were designed to, and did, interfere with the administration of justice. The employee has been sentenced to 20 months' imprisonment and ordered to pay £150,000 towards his employer's legal costs.

- **Legal privilege:** In *Shawcross v SMG Europe Holdings Ltd and others*, the EAT found that the 'iniquity' exception did not apply to emails between the employer and their solicitors prior to dismissal of the employee, and therefore they were subject to legal privilege. The employee, who had been inadvertently copied into such a chain, argued that privilege could not apply where the emails showed her dismissal to be a sham and were evidence of iniquitous conduct. The EAT disagreed, finding that the emails were the sort of advice that employment lawyers would often offer around the risks of dismissal, and they were therefore privileged. The importance of careful handling of privileged materials was also considered in *Sinclair Pharmaceuticals Ltd v Burrell*, where a without notice injunction obtained by the employer regarding the treatment of inadvertently disclosed materials was set aside by the High Court, who considered that the Employment Tribunal was best placed to decide whether (among other things) the documents were disclosable.

- **Non-disclosure agreements (NDAs):** The Victims & Prisoners Act 2024 came into force on 1 October 2025, meaning that NDAs cannot be used to prevent victims of crime from making 'permitted disclosures' (such as to regulated professionals, victim support services or family members). Shortly afterwards, the Government announced that this Act will be amended in due course to enable victims to speak to anyone for any purpose, including (for instance) the press. These changes sit alongside the planned prohibition under the Bill on NDAs preventing disclosure of discrimination and harassment.

- **Senior Managers & Certification Regime (SMCR):** Over the summer, the Treasury launched a consultation paper looking for views on changing the legal framework underpinning the SMCR to reduce the burden on the financial services sector. The Financial Conduct Authority (**FCA**) and Prudential Regulatory Authority similarly launched consultations on the same date. These consultations closed on 7 October 2025, and firms await the outcome to determine any reforms that will take place.

- **Non-financial misconduct**: In July 2025, the FCA's new rules on non-financial misconduct were published, setting out amendments to their Code of Conduct to empower firms to tackle serious misconduct such as bullying, harassment and violence. These will come into force in September 2026, and from then onwards all SMCR

firms will be required to assess whether incidents of non-financial misconduct constitute breaches of the FCA conduct rules.

- **Non-compete clauses:** In November 2025, the Government published a working paper on options for reforming non-compete clauses in employment contracts. This paper, which is due to close on 18 February 2026, considers options such as limiting the length of non-competes on a blanket basis, limiting the length based on company size, banning such clauses altogether (or based on annual salary), or a combination of these suggestions.

- **Redundancy notifications:** From 1 December 2025, the Government moved to a digital-only platform for advance notification of redundancies. The HR1 form, which could previously be submitted by email, must now be completed online.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact

Uncapped unfair dismissal – a game changer for employers

The Employment Rights Bill completed its passage through Parliament on 16 December 2025 and is expected to receive Royal Assent in the coming days. Controversially, the Bill was amended at a late stage to abandon Labour's flagship manifesto pledge to make unfair dismissal a Day 1 right. In its place came a six-month qualifying period and the abolition of the statutory cap on compensation for unfair dismissal. In this briefing we consider the impact of lifting the cap on compensation for employers.

A shift in the types of claims brought

The removal of the cap on compensation for ordinary unfair dismissal means the risk profile of many employment disputes will change dramatically. While unfair dismissal will not become identical to discrimination or whistleblowing claims, the financial exposure could be very similar. For HR, this means more expensive claims, more complex cases, and far greater scrutiny of dismissal decisions.

Claimants may increasingly rely on straightforward unfair dismissal claims rather than bolting on weaker discrimination or whistleblowing allegations. These claims are cheaper, simpler, and will be potentially much more valuable.

Some dismissal scenarios will also take on a new seriousness. Cases involving an employee's personal beliefs or expression, for example, may involve arguments about freedom of speech under human rights law. With uncapped compensation at stake, tribunals will expect employers to clearly justify any dismissal in these areas. Legal advice is likely to be needed at an early stage.

Higher earners: expect more claims and bigger numbers

Removing the cap opens the door to very substantial awards for employees with high salaries or valuable benefits such as bonuses, LTIPs, share options, carried interest, or final salary pensions. Once tribunals can award full financial loss, the numbers escalate fast – especially if the employee takes time to find a new job.

Expect to see larger and more sophisticated claims for financial loss, regular use of expert evidence and longer and more complex remedy hearings.

Multi-year loss claims on the table

With no cap on future loss, some claimants will push for multi-year or even career-long compensation. These may include:

- Older workers struggling to re-enter the labour market.
- Disabled workers whose prospects are limited (but where

the case isn’t a discrimination claim).

- Regulated professionals whose dismissal harms their ability to continue in their profession.

HR teams will need to gather strong evidence on mitigation and future employability to challenge these claims.

Tribunals will come under greater pressure

More complex, higher-value claims will stretch limited tribunal resources even further. HR should expect:

- More prescriptive case management.
- Longer waits for hearings (which, turn, may adversely affect witness evidence).
- Increased use of experts.
- Longer hearings at both liability and remedy stages.

This may affect access to justice for lower-income workers and may also prolong litigation for employers.

Settlement dynamics will change

Without a cap, claimants may feel they have more leverage, and some may push for very high settlements, or refuse to negotiate at all. Expect higher claimant expectations and tougher negotiations.

Employers will need to rely more heavily on tools like contributory fault, failure to mitigate, and *Polkey* reductions to reduce compensation risk.

Employer behaviour will need to change

Procedural mistakes could become far more costly, meaning that HR teams will need to tighten up dismissal processes significantly. Key changes should include:

- Longer and more strictly monitored probation periods.
- More terminations before the new 6-month qualifying period.
- Greater procedural rigour in performance and conduct cases.
- Much closer attention to the Acas Code (since uplifts could be huge in uncapped cases).

Next steps and final thoughts

As yet, it is unclear exactly when the cap will be removed. Although the Act contains the provision to abolish the cap, separate regulations are needed to bring that provision into effect. Separately, the Government has stated that it intends the new six-month qualifying period to come into force on 1 January 2027, but it has not said whether the compensation cap will be removed at the same time. For now, we think it would be sensible for employers to work on the assumption that it will be removed on 1 January 2027.

When the cap goes, ordinary unfair dismissal stops being a mid-range statutory claim and becomes a major financial threat on par with discrimination and whistleblowing in many cases. For HR, this means more careful planning, more documentation, more robust processes, and more strategic decision-making from the very start of any dismissal. This is the biggest shift in dismissal risk for employers in decades – HR leaders will need to adapt quickly.

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Non-compete restrictions in

employment contracts under the spotlight once again

On 26 November 2025 the Government published a working paper setting out options for the reform of non-compete clauses in employment contracts.

What is the background to this proposal?

Non-compete restrictions in employment contracts have come under intense scrutiny over the last decade, with repeated calls for restricting their use.

In May 2016, David Cameron's Government launched a Call for Evidence which sought views on whether non-compete clauses stifled innovation and unfairly hindered workers from moving freely between employers. The responses to that consultation were fairly polarised with established businesses favouring the current law but new ones looking for more flexibility. However, further work in this area was ultimately shelved in the wake of the Brexit vote.

Yet it was back on the table again just a few years later. In December 2020, Boris Johnson's Government launched a consultation on proposals for limiting, or potentially even banning, the use of non-compete clauses in employment contracts. The consultation put forward two proposals. The first was that non-competes should only be enforceable where the employer compensated the employee for the length of the restriction, potentially combined with a maximum length of

three, six or 12 months. The second was to ban non-competes altogether. However, the proposals were moth-balled, with no response to the consultation ever published by the Government.

Then in May 2023 Rishi Sunak's Government announced that it intended to legislate to limit the length of non-competes in employment contracts to three months (with no requirement to compensate the employee for the length of the restriction). However, the change of Government in 2024 meant this proposal never made it onto the statute books.

Given the Labour Government's focus on the wide-ranging employment law reforms contained in the Employment Rights Bill, many assumed that non-compete reform was a distant memory. It, therefore, came as a surprise to learn that reform of non-competes, is once again, back on the table. On 26 November 2025, the Government published a Working Paper inviting views on options to reform non-compete clauses in employment contracts.

What is proposed in the Working Paper?

The Government's stated aims in reforming non-competes is to advance the following objectives:

- **Boosting labour market dynamism** by making it easier for workers to move jobs or start their own business.

- **Reducing barriers to recruitment** so that businesses (particularly those scaling-up) can access the talent they need.

- **Promoting competition and innovation** by maximizing opportunities for innovators, experts and entrepreneurs.

- **Protecting workers** so that they do not have to face extended periods of time out of the labour market in their area of expertise.

The Working Paper goes on to set out five possible options for reform of non-compete clauses:

- **Option 1: Introduce a statutory limit on the length of non-compete clauses:** it is said that a statutory limit would protect workers by limiting the time they are unable to work in their area of expertise. However, the Government does not indicate what that statutory limit should be. Although arguments supporting a three-month

limit are acknowledged, the Government expresses concern that it would leave some lower-paid workers facing the prospect of three months out of work in their chosen area. Concern is also expressed that a statutory limit of any sort could be interpreted as an "industry standard" and lead to an assumption that non-competes of that length would be enforceable in *all* cases. The Government underlines that this is not the intention – the existing principles would continue to apply, namely that where the restraint of trade doctrine applied, a clause in restraint of trade will be unenforceable unless the employer can demonstrate it is reasonable.

- **Option 2: Introduce a statutory limit on the length of non-compete clauses according to company size:** as a variation on Option 1, it is suggested that the Government could apply different statutory limits according to company size – with lower limits (e.g. three months) for large companies and higher limits (e.g. six months) for smaller companies. It is said that this approach would aim to promote competition by making it easier for those working in large companies to move to competitors or start a competing business. This would also give smaller organisations an advantage over larger companies in that they could utilise longer non-compete restrictions. On the other hand, the downside of this approach is that it leaves those working in smaller companies, especially those in lower paid sectors, exposed to longer non-competes.

- **Option 3: Ban non-compete clauses:** a more radical suggestion is to ban the use of non-compete clauses in employment contracts altogether. The Working Paper says this would have the dual benefit of supporting worker mobility and boosting labour market dynamism. Further, employers might respond to a ban by offering positive incentives to retain staff (such as increased pay, bonuses or greater flexibility) which would benefit workers further. Alternatively, employers might deploy garden leave as an alternative to non-competes, which would also benefit workers since they would be paid. Concern is expressed about the possibility of employers strengthening their use of other restrictive covenants, and confidentiality and intellectual property clauses. The Government said it would need to ensure that other restrictions were not used in a way that would have a similar effect to a non-compete clause.

- **Option 4: Ban non-compete clauses below a salary threshold:** a more moderate version of Option 3 would be to permit the use of non-competes only where a worker earns over a certain salary threshold. This Working Paper highlights there is international precedent for this approach, for example, the Washington State ban on non-competes for workers earning below approximately £93,000. It is said the impact of the policy would vary depending on the level at which the threshold was set – with a suggestion of aligning it with the additional rate tax threshold of £125,140 being mooted. A partial ban such as this would achieve some of the benefits of an outright ban and provide greater protection to lower paid workers. Yet this proposal has several drawbacks including difficulties in calculating

pay (and the potential for satellite litigation about what should and should not be included in pay calculations) and the risk of creating certain incentives and cliff edges around pay levels that might lead to unintended consequences. It would also leave higher-paid and higher-skilled workers out of scope of the ban.

- **Option 5: Combining a ban below a salary threshold with a statutory limit:** a final option would be to combine Options 1 and 4, namely a ban below a salary threshold, with non-competes up to a maximum of three months allowed for those earning above the threshold. This would eliminate non-competes for lower paid workers while ensuring that non-competes could be deployed for higher paid workers in a limited way.

Finally, the Working Paper highlights that the Government is interested in hearing views and evidence on whether the threat of high legal costs presents obstacles to workers in contesting the enforceability of restrictive covenants. It is also interested in suggestions for how the Government might tackle this issue.

What don’t we know?

There are a number of important points not made clear in the

Working Paper:

- **What is an "employment contract" for these purposes?** Will the proposals apply to contracts of employment only or also to other agreements which are collateral to the employment relationship e.g. shareholders' agreements, long term incentive plans (**LTIP**) or carried interest agreements?In Duarte v Black & Decker Corp EWHC 2720 (QB), the High Court held that restrictive covenants contained in an LTIP agreement separate from the employment contract was no bar to the LTIP agreement being treated as an "individual employment contract" for the purposes of deciding the governing law. It is possible that a similar approach will be taken in the new legislation. The Working Paper is also silent on whether settlement agreements between employer and employee are within scope.

- **Will "workers" be covered?** The Working Paper refers reforming non-competes in "employment contracts", yet in the body of the part it refers in places to "employees" and in other places to "workers". Therefore, it is unclear whether the intention is to capture workers as well as employees. If the proposals do *not* extend to workers then this would mean that longer non-competes could still be used for certain independent contractors or LLP members.

- **Will the law apply to existing employment contracts?** It is not clear whether the proposals would apply retrospectively or only to new contracts. In the event that it applied retrospectively, employers would potentially need to renegotiate non-compete restrictions (depending on which proposals are taken forward). Thought should also be given to strengthening other terms to offset the reduction in the non-compete restriction. For example, notice periods, non-solicit and non-dealing covenants. However, in order to ensure the enforceability of any revised terms some form of "consideration" would need to be given to the employee in return for their agreement.

- **How will the new law work alongside garden leave clauses?** As the Working Paper recognises, the risk is that employers will respond to the loss of non-competes by extending periods of notice in order to place the employee on garden leave and keep them out of the market that way. This would undermine the stated intention of the proposals and so it seems likely that the interplay of garden leave and non-competes will need to be addressed. In our anecdotal experience, employers in some sectors responded to the Federal Trade Commission's (now abandoned) rule banning non-competes by seeking to significantly increase employee's notice periods.

Next steps?

Responses to the Working Paper must be submitted by 18 February 2026. It is said that the responses will inform the Government's engagement with relevant stakeholders before a decision is made about which proposals (if any) are taken forward.

No indication is given about when any such proposals might be implemented but given that a further programme of stakeholder engagement is envisaged before the Government settles on a policy, it seems unlikely that any legislation would come into force in the course of 2026.

Working paper on options for reform of non-compete clauses in employment contracts

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk), Tom McLaughlin (TomMcLaughlin@bdbf.co.uk) or your usual BDBF contact.

LUNCHTIME WEBINAR – From prompt to Tribunal: dealing with AI-drafted employee

grievances and claims

LUNCHTIME WEBINAR – 27 January 2026

It’s no secret that employees are increasingly turning to AI tools to support them in the workplace, whether as an official part of their role or behind the scenes. With this growing popularity, there is a sense that employees’ use of AI should be encouraged as a force for good, increasing productivity and driving better expression and innovation.

However, when things go wrong in the employment relationship, employees’ use of AI tools can quickly turn already tricky situations into minefields for employers to manage.

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- Common misconceptions surrounding AI.
- What challenges do AI-generated grievances present to employers?
- How should employers deal with AI-generated grievances?
- AI and Employment Tribunal claims.

Date: Tuesday, 27 January 2026

Time: 12.00pm-12.45pm

Click here to register

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From prompt to Tribunal: dealing with AI-drafted employee grievances and claims

BDBF Lunchtime webinar: 27 January 2026

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Newsflash: Government abandons Day 1 unfair dismissal rights in favour of 6-month qualifying period

Following several rounds of debate between the House of Commons and the House of Lords on the Employment Rights Bill (**Bill**), the Government announced in a press release published on Thursday 27 November 2025 that it intends to drop its commitment to giving employees unfair dismissal rights from Day 1.

Instead, the Government has confirmed that they will implement the six-month qualifying period proposed by the House of Lords. The press release also announced that the compensation cap for unfair dismissal will be lifted, and the six-month period will only be able to be varied in future by primary legislation. The Government states that this is now intended to be a "*workable package*".

This move follows considerable pushback from the Lords on the proposal for Day 1 rights in their latest debate on 17 November 2025, in which they expressed concern over the potential impact on employment rates and the Employment Tribunal system.

The question of Day 1 unfair dismissal rights has been a key

sticking point for finalisation of the Bill, and this development therefore brings the Bill significantly closer to being passed. The House of Commons is due to consider the Lords' message on 8 December 2025.

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Employers continue to be vicariously liable for "detriment of dismissal" claims brought by employee whistleblowers, for now, at least

The Court of Appeal has ruled that *Timis and Sage v Osipov* binds Employment Tribunals to permit claims brought by employee whistleblowers for the "detriment of dismissal" against co-workers and also against employers on a vicarious liability basis but only on the basis of precedent. They disagreed with the reasoning in *Osipov* and the question may now go to the Supreme Court. For now though this means employees complaining that they have been dismissed for

whistleblowing only have to meet a lower legal threshold to succeed and can sue managers in an individual capacity.

What protections do whistleblowers have in the workplace?

Since 1998, whistleblowers at work have been protected from dismissal (employees only) and detrimental treatment (employees and workers). When the law was first introduced, only detrimental treatment meted out by the employer was covered. Further, if the detrimental treatment in question amounted to a dismissal, an exclusion clause in the law meant that employees (but not workers) could not frame it as a detriment claim. Instead, they had to pursue an unfair dismissal claim.

This was significant not least because the threshold for succeeding in a detriment claim is lower than in a dismissal claim. In other words it was harder for a claimant to complain about being dismissed than otherwise being treated unfavourably for being a whistleblower.

In 2013, detriment protection was expanded to cover detrimental treatment committed by co-workers. This change meant that a co-worker could be personally liable, and the employer could be vicariously liable for the actions of the co-worker (although the employer had a defence if it could show that it had taken "all reasonable steps" to prevent the detrimental treatment). However, the exclusion clause which prevented employees from bringing detriment claims about dismissal was left unchanged.

In 2018, in the landmark case of Timis and Sage v Osipov

(**Osipov**) in which BDBF acted for the successful Claimant, the Court of Appeal considered whether an employee was entitled to bring a whistleblowing detriment claim against a co-worker, where the detriment was the dismissal, and where the compensation sought included loss of earnings flowing from the dismissal. In that case the employee did not claim that the employer was vicariously liable for that detriment because the employer was in administration.

The Court of Appeal, agreeing with the Employment Appeal Tribunal (**EAT**) and the Employment Tribunal, ruled that the purpose of the law was to protect whistleblowers, and, therefore, it was appropriate to construe the exclusion clause in such a way as to provide protection rather than deny it.

The Court said the exclusion clause only prevented employees from bringing direct detriment of dismissal claims against an employer. However, it did *not* prevent detriment of dismissal claims against *co-workers*. Nor did it prevent the employer from being vicariously liable for such a claim (albeit that this was not a live issue before the Court because the employer in that case was insolvent). The Court concluded that if employees were prevented from bringing such claims by the exclusion clause, this would lead to an unsatisfactory situation where workers (e.g. independent contractors or LLP members) could bring such claims, but employees could not and that the employee who was treated badly at work but not dismissed had a lower legal threshold to meet than the employee who had suffered the ultimate form of retaliation: dismissal.

The Court acknowledged that its interpretation did not produce *"a particularly elegant result"* insofar as it meant that a dismissed whistleblower who was an employee could claim the

employer was directly liable for their dismissal under the unfair dismissal provisions and vicariously liable for the detriment of dismissal under the detriment provisions. The inelegance was inherent in the fact that the causation test differs between the two claims (being higher in unfair dismissal claims), as does the possible compensation (with no injury to feelings award available in an unfair dismissal claim). However, the Court said these *"awkwardnesses"* were insufficient to justify a construction that would result in more serious anomalies, and which would be contrary to the underlying policy of the law.

What happened in these cases?

The key facts of Rice v Wicked Vision Ltd (**Rice**) and Barton Turns Developments Ltd v Treadwell (**Treadwell**) are the same. Both claimants were dismissed allegedly after having blown the whistle. Both brought unfair dismissal claims against the employer. As the litigation unfolded, both sought to amend their claims, arguing that they had been subjected to the detriment of dismissal by their co-workers and that their employers were vicariously liable for such detriments. In neither case did the claimants seek to bring the detriment of dismissal claim against the co-workers as individual respondents. The aim of the amendment in each case was presumably to benefit from the lower threshold for liability in detriment claims. In *Rice*, the employer opposed the amendment on the basis that a vicarious liability claim for detriment of dismissal could not proceed where no claim had been made against the co-worker.

Decisions of the Employment Tribunal

In *Rice*, the Tribunal took a wide view of Osipov, holding that it permitted the amendment. It also held that it was *not* necessary for a detriment of dismissal claim to have been brought against a co-worker in order to bring to bring the vicarious liability claim against the employer.

In *Treadwell*, the Tribunal refused the amendment on the basis that the exclusion clause meant that a detriment claim against an employer had to be about something *other than* a dismissal. The Tribunal's view was that the decision in *Osipov* was confined to the potential liability of individuals only and the exclusion clause prevented a claim that the employer was vicariously liable for the detriment of dismissal. As such, the Tribunal took a narrower view of *Osipov* than the Tribunal in *Rice*.

Decisions of the EAT

In *Rice*, the employer appealed to the EAT, again arguing that the claim could not proceed without a concurrent claim against the co-worker. The EAT considered that it was not necessary to bring a detriment claim against the co-worker. However, the EAT overturned the decision of the Tribunal, concluding that the exclusion clause prevented the vicarious liability claim against the employer. Notably, the EAT said it would be odd if Parliament had banned detriment of dismissal claims directly against employers but, at the same time, allowed them to be vicariously liable for the detriment of dismissal by a co-worker, since in virtually every case a dismissal has to be executed by a co-worker. As such, the EAT took a narrow view of *Osipov*, holding that it only determined that detriment of dismissal claims may be brought against co-workers.

In *Treadwell*, the EAT allowed the employee's appeal, taking a wide view of *Osipov* as meaning that detriment of dismissal claims could be brought against co-workers *and* against employers on a vicarious liability basis. It held that the exclusion clause only excluded direct detriment of dismissal claims against employers.

Unsurprisingly, both decisions were appealed to the Court of Appeal, and the appeals were heard together.

What did the Court of Appeal decide?

Delivering a unanimous judgment, the Court of Appeal ruled that *Osipov* was binding authority for the proposition that employers could be vicariously liable for detriment of dismissal claims. Accordingly, the Court ruled that the amendments should have been allowed in both claims. However, the Court reached this decision with a great deal of reluctance, suggesting that a further appeal to the Supreme Court may lie ahead.

The meaning of the exclusion clause

The Court's reluctance was rooted in the fact that it considered the exclusion clause was unambiguous in preventing detriment claims about dismissal. Where a detriment amounts to a dismissal within the meaning of the legislation, the exclusion clause disapplied the *entire* detriment provision, meaning that detriment of dismissal claims are not possible against *anyone*, whether employer or co-worker.

The Court rejected the argument that "dismissal" only covers dismissals by the employer, and that there exists the possibility of a dismissal by a co-worker, which would sit outside the exclusion clause (because it would not be a "dismissal" within the meaning of the legislation). The Court rejected this approach for three reasons:

- First, the Court rejected the argument that the exclusion clause only applied to dismissals by the employer as meaningless because it said a dismissal is *always* the act of the employer – it ends the contract between the employer and employee. Where the employer is a limited company the dismissal can only ever be effected by a co-worker, and the Court did not accept there was a relevant legal distinction between a dismissal by the employer and a dismissal by a co-worker.

- Second, the Court observed that under the vicarious liability provisions anything done by a co-worker is treated as having been done by the employer. The legal effect of this is that the employee is, therefore, dismissed by the employer and, in turn, that act will "amount to a dismissal" within the meaning of the legislation and so the exclusion clause applies.

- Third, the question is not about primary or vicarious liability, the correct question is simply: what does the act amount to? If it amounts to a dismissal then the employer is liable for it and *all* detriment claims about the dismissal are barred, including against a co-worker.

The decision in Osipov

Although it considered the exclusion clause was abundantly clear, the Court had to grapple with the decision in *Osipov*, which had permitted detriment of dismissal claims. The Court disagreed with the decision in *Osipov* for several reasons including:

- It ignored the clear and unambiguous statutory wording and improperly downplayed the statutory text in favour of a perceived purpose.
- It wrongly assumed that Parliament or the draftsman made mistakes.
- It misconstrued the statutory purpose and ignored the fact that Parliament deliberately chose to have distinct remedial schemes for employees and workers.
- It wrongly treated dismissal by a co-worker as distinct from dismissal by an employer.
- Its conclusion that the exclusion clause only barred direct detriment of dismissal claims against an employer because the "identical remedy" of unfair dismissal was available was fundamentally flawed.

However, the Court said that, despite its own construction of the legislation, it was bound by the decision in *Osipov*. Importantly, it concluded that *Osipov* had ruled that detriment of dismissal claims are permissible against co-workers and that employers may be vicariously liability for such claims (thus taking a wide view of the decision unlike the Tribunal in *Treadwell* or the EAT in *Rice*). The Court said it was bound by the doctrine of precedent to give the same interpretation to the exclusion clause as was given in *Osipov*, even though the context in the present cases was slightly different.

Accordingly, despite the Court's own view of the meaning of the law, it ruled that the exclusion clause did not prevent detriment of dismissal claims against the employer on a vicarious liability basis. Therefore, the employees succeeded, and their claims were allowed to proceed.

The Court observed that it was "plainly unsatisfactory" that the construction of the legislation had produced conflicting decisions at three levels of court, but noted that this could only be resolved by the Supreme Court or through a change to the legislation.

What does this decision mean for whistleblowers and employers?

This decision underlines the impact and importance of *Osipov*, for now at least. It continues to bind Tribunals to permit detriment of dismissal claims against co-workers *and* against employers on a vicarious liability basis. The exclusion clause does not bite to prevent either type of claim. Further, as the Court identified in this case, no concurrent claim against a co-worker is needed in order to bring a vicarious liability claim.

Of course, the Court of Appeal has fired a warning shot about the validity of the decision in *Osipov*. In light of the Court's profound misgivings about *Osipov*, it seems likely that permission to appeal to the Supreme Court would be given if sought. Whether there will be a further appeal remains to be seen (and it should be noted that Wicked Vision Ltd is currently in administration). However, even if there is no further appeal in this case, it seems inevitable that the point will arise in another case in due course. And when it does, there is a good chance that we will see a "leapfrog appeal" from the EAT to the Supreme Court, given that the remedies available to whistleblowers is a matter of general public importance.

In the meantime, it is business as usual for whistleblowers and employers. Employees who are dismissed for having blown the whistle should continue to bring unfair dismissal claims against their employer and should always explore the possibility of detriment of dismissal claims as well, pleading them where appropriate.

Employers wishing to avoid vicarious liability for such claims should take all reasonable steps to prevent such detriment. In practice, this will mean taking steps to ensure that anyone involved in the dismissal of a whistleblower is not materially influenced by the whistleblowing (essentially, the causation test in detriment claims). Codes of conduct should set out the standards expected from managers and emphasise the importance of honest and ethical behaviour in all dealings, and the consequences of failure. Ideally, a programme of whistleblowing training should support and reinforce this. In some sectors, relevant training may be mandatory. For example, the FCA requires financial services firms to provide tailored whistleblowing training to various stakeholders, including managers, which should explain that victimisation of

whistleblowers is prohibited.

(1) Rice v Wicked Vision Ltd (Protect Intervening); (2) Barton Turns Developments Ltd v Treadwell

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Employment Rights Bill: First Consultations Launched on Trade Union Rights

On 23 October 2025, the UK Government launched the first of their consultations on the new rights set out in the Employment Rights Bill (Bill), which is expected to be passed into law imminently.

The Bill provides the framework for numerous changes to employment law but much of the substance of the new rights will be set out in regulations. As promised earlier this year, the Government has now published a series of consultations to help shape those regulations and determine exactly how the Bill's provisions will be implemented.

Below we will briefly cover two of the consultations which look at changes to trade union rights, each of which is due to close on 18 December 2025. These changes are vital for all employers to understand as, even if their workforce is not currently unionised, they will nevertheless be impacted by the new duties.

Duty to Notify

The Bill introduces a new duty on employers to give their employees a written statement of their right to join a trade union from October 2026. The consultation paper is said to be aimed at ensuring the duty is effective, proportionate and workable for workers and employers.

The key questions considered as part of the consultation are:

- **Content:** What information needs to be included in the statement, and whether the statement should be drafted by the employer (in line with any minimum content requirements) or be based on a government standard.
- **Manner:** Whether information needs to be given directly or indirectly, and whether this should be different for new workers compared to existing workers.
- **Timing:** How often the information needs to be given, and whether this standard should be the same for all organisations regardless of sector or size.

Right of Access

The Bill sets out that trade unions will have a new right to access workplaces and engage with workers for the purpose of meeting, recruiting, supporting, representing or organising them, as well as for facilitating collective bargaining. This is expected to take effect in October 2026.

Access for these purposes means both physical access and digital communications.

Under the Bill's framework, unions and employers are expected to work together to voluntarily agree access arrangements, which will then be recorded by the Central Arbitration Committee (**CAC**). Where they are unable to agree, either the union or the employer can make a referral to the CAC to determine whether (and how) access should be granted. The CAC will also have the power to enforce agreements in line with the five 'access principles' set out in the Bill, with the ability to issue fines for non-compliance.

The substantive questions asked by the consultation are as follows:

- How access requests need to be made, including whether they should follow a standard government template (provided via a new Code of Practice on Trade Union

Right of Access), and the level of information that must be included in the request and employer's response.

- How notification should be made to the CAC of successful agreements and any variations.

- The appropriate length of response and negotiation periods, and the maximum duration of an access agreement. The government proposes a relatively short initial 5 working day period for the employer to respond to a union's request, a 15 working day period to negotiate, and a maximum of 25 days from the request for a referral to be made to the CAC. The latter requirement is said to be aimed to ensure that employers are not left in a position of uncertainty about whether a referral will be made. Once an agreement is in place, the government proposes a maximum duration of two years.

- Whether small employers with fewer than 21 workers should be exempt.

- What factors the CAC will consider when assessing a request, with the government proposing that requests are likely to be unreasonable if there is already a recognised union, it would use a disproportionate level of resource, or if it would give the employer less than 5 working days to prepare. For the terms of agreements, the government suggests that weekly access may be reasonable, with a minimum of two working days' notice required.

Views are also being sought on the proposed £75,000 maximum

standard cap on fines from the CAC, with a higher amount of £150,000 for repeated breaches, as well as the factors that the CAC should consider when assessing the fine.

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Employment Rights Bill: Consultation on expanding protection from dismissal for pregnant women and new mothers

Last month, the Government opened a consultation on enhancing protection from dismissal for pregnant women and new mothers during a protected period. At its most restrictive, the proposed protection would ban capability and SOSR dismissals altogether, permit redundancy dismissals only where a business is closing and allow conduct or illegality dismissals in very limited circumstances.

What is the current legal position and what did the Employment Rights Bill propose?

In the UK, there is already extensive protection from dismissal for pregnant women, new mothers and other parents. It is unlawful to:

- treat an employee unfavourably because of her pregnancy or maternity leave during the “protected period” (which begins when a woman becomes pregnant and ends when she returns from maternity leave);

- treat an employee less favourably than a male comparator for reasons to do with her pregnancy or maternity leave outside the protected period;

- dismiss an employee for a reason connected to her pregnancy or maternity leave (or to certain types of other family leave including adoption, shared parental and neonatal care leave);

- make an employee redundant during pregnancy or maternity leave (or adoption leave, shared parental leave or neonatal care leave) where there is a suitable alternative vacancy available; or

- make an employee redundant who has recently returned to work from a period of maternity leave (or adoption leave, shared parental leave or neonatal care leave) where there is a suitable alternative vacancy available.

Despite this wide protection, the Government is concerned that pregnant women and new mothers remain especially vulnerable to mistreatment and dismissal. This is supported by a 2016 report from the Equality and Human Rights Commission which indicated that up to 54,000 mothers leave their jobs each year, including approximately 4,100 dismissals.

Accordingly, the Employment Rights Bill (the **Bill**) (currently on its passage through Parliament) provided that regulations would be introduced to allow enhanced protection from dismissal during pregnancy, maternity leave and following the return from maternity leave. This would mean that such employees could not be fairly dismissed at all, save where the law allowed for an exception. The Bill does not specify how long the protection would apply following the return from leave, however, the Government has said it should be at least six months.

The Bill also proposed extending the enhanced protection to those returning from certain other forms of extended family leave, namely, adoption leave, shared parental leave, neonatal care leave and bereaved partner's paternity leave (the latter of which is not yet in force).

What does the consultation paper propose?

On 23 October 2025, the Government published a consultation paper entitled *"Enhanced dismissal protections for pregnant women and new mothers",* seeking views on how the enhanced dismissal protection should work in practice. The Government says it wishes to strike a fair balance between strengthening the protection for employees and preserving the ability to dismiss *"…in cases where continuing employment would have serious consequences for the employer or other staff".* It is also concerned to avoid unintended consequences, such as employers becoming hesitant to hire women of child-bearing age if the protections are overly restrictive.

The consultation proposes two broad options:

- **Option 1 – Introduce a stricter fairness test:** one option is to introduce a stricter test to assess the fairness of such dismissals for any of the existing five fair reasons for dismissal (i.e. conduct, capability, redundancy, illegality or some other substantial reason (**SOSR**)).

- **Option 2 – Narrow the five fair reasons for dismissal:** an alternative option is to narrow the existing five fair reasons for dismissal (and/or potentially remove some of them entirely) when applied to pregnant women or new mothers. The proposals to narrow down the scope of each reason are as follows:

- **Conduct:** the options put forward range from permitting conduct dismissals only where the employee commits gross misconduct (as defined by the employer), to allowing dismissal only for a much narrower band of serious misconduct where continuing employment would either (i) pose a health and safety risk to a third party, (ii) have a serious negative impact on the wellbeing of others, or (iii) cause significant harm to the business.

- **Capability (covering both performance and ill-heath):** again, various options are put forward, ranging from permitting capability dismissals only if there is no suitable alternative role available (or where one was offered and refused), to allowing dismissal only for a much narrower band of incapability where continuing employment would either (i) pose a health and safety risk to a third party, (ii) have a serious negative impact on the wellbeing of others, or (iii) seriously harm the business. An even more restrictive proposal of banning capability dismissals altogether is also given.

- **Redundancy:** two options are proposed. First, permitting redundancy dismissals only where there is no suitable alternative vacancy available and where termination would mitigate any financial difficulties that were affecting (or likely to affect in the immediate future) the employer’s ability to continue the business. The

second and more restrictive option is to permit redundancy dismissals only where the business ceases to exist (and where any suitable alternative vacancy that is available has been offered).

- **Illegality:** only one possible change is put forward: to allow dismissal for illegality only if there is no suitable alternative role available (or where one was offered and refused).

- **SOSR:** various options are put forward, ranging from permitting SOSR dismissals only where there is no suitable alternative role available (or where one was offered and refused), to allowing SOSR dismissals only for a much narrower band of dismissals where continuing employment would either (i) pose a health and safety risk to a third party, (ii) have a serious negative impact on the wellbeing of others, or (iii) seriously harm the business. An even more restrictive proposal of banning SOSR dismissals altogether is given.

Additionally, in each of the above cases, the option of either making no changes to the law, or of making some other type of unspecified change are given (and in the latter case, the respondent is asked to set out what change they think should

be made).

When should the protection start and end?

The existing dismissal protections for pregnant women and new mothers are all “Day 1” employment rights. The consultation paper asks whether an employee should also be entitled to benefit from the proposed enhanced protections from Day 1 of employment. Set against that, it is acknowledged that this could require an employer to retain and pay an employee throughout pregnancy, maternity leave and for at least six months thereafter, and that this might be considered an unreasonable burden on employers especially in respect of new employees who may not have demonstrated their capability for the role. Therefore, the consultation gives the alternative option of only affording these rights to women who have completed a qualifying period of employment of somewhere between three to nine months. It is said that such a qualifying period could help to mitigate unintended consequences, such as reluctance to hire women of childbearing age.

In terms of when the enhanced protection should end, the consultation paper proposes either 18 months from the birth of the child (which has the benefit of aligning with the redundancy priority rules) or six months after the return to work from maternity leave, whenever that is. The first option would mean that all new mothers would have an 18-month window of protection – regardless of when they returned to work. The second option would mean that women taking less than 12 months maternity leave would have a shorter overall window of protection. However, it would be simpler for employers to navigate, since they would know that all returners have six months protection after their return from maternity leave. No

individual calculations would be needed.

Should the enhanced protection be available where certain other types of family leave are taken?

The consultation paper goes on to seek information and views on the extent to which parents taking either adoption, shared parental or neonatal care leave are subjected to unfair treatment, including dismissal. It goes on to ask whether the proposed enhanced dismissal protections should be extended to employees taking these forms of leave (and also bereaved partner's paternity leave) and, if so, when the protection should start and end. For adoption leave, it is proposed that the protection should end 18 months after the birth of the child or placement for adoption. For the other three types of leave, it is proposed that the protection should end either on the last day of the leave (where less than six weeks of continuous leave was taken), or 18 months from the birth or adoption placement (where more than six weeks of continuous leave was taken).

Other points and next steps

The consultation paper asks whether various unintended consequences could arise from the enhanced protection including increased discrimination, delaying dismissal decisions and unrealistic asks of small businesses. Finally, the consultation asks what the main causes of pregnancy and maternity discrimination are and what more the Government should be doing to tackle it.

The consultation closes on 15 January 2026, after which the

Government's response and final position will be published. The measures are due to be implemented some time in 2027.

Consultation paper – Enhanced dismissal protections for pregnant women and new mothers

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