

# 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. Whilst they have therefore not been included in the Government's roadmap for implementation, consultation on the proposals opened on 15 April 2026 and will run until 8 July 2026. The changes are expected to come into force in 2027.

### 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 14<sup>th</sup> 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.

<b>Area</b>	<b>Reform</b>	<b>What are the next steps?</b>
<b>Holiday pay records</b>	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.

<p><b>Tipping practices</b></p>	<p>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.</p> <p>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.</p>	<p>Consultation awaited. Implementation in October 2026</p>
---------------------------------	---	---

<p><b>Umbrella companies</b></p>	<p>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.</p>	<p>Consultation awaited. Implementation in 2027.</p>
<p><b>Time off for public duties</b></p>	<p>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.</p>	<p>Implemented on 18 December 2025. Review findings to be published by 18 December 2026.</p>

<p><b>Trade unions</b></p>	<p>The ERA contains various provisions aimed at strengthening trade unions including:</p> <ul style="list-style-type: none"><li>• requiring employers to notify workers of their right to join a trade union in writing when they start employment and at other times;</li><li>• enhancing the rights of trade unions to access workplaces for the purpose of meeting, recruiting and organising workers and facilitating collective bargaining;</li><li>• simplifying the process for trade union recognition;</li><li>• repealing rules which impeded the financing of trade unions;</li></ul> <p>and</p> <ul style="list-style-type: none"><li>• 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.</li></ul>	<p>Implementation in April and October 2026.</p>
----------------------------	--	--

<p><b>Workers involved in trade union activities</b></p>	<p>The ERA contains various detailed provisions aimed at strengthening protection for workers involved in trade union activities including:</p> <ul style="list-style-type: none"><li>• improved access to facilities for trade union representatives taking time off to carry out their duties;</li><li>• introducing a new statutory role for “union equality representatives” in workplaces with recognised unions;</li><li>• introducing protection from detriment for having taken part in industrial action;</li><li>• 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</li><li>• modernising the existing law on blacklisting to protect more people from blacklisting due to their trade union membership or activity.</li></ul>	<p>Consultation awaited. Implementation in October 2026 (save for the blacklisting reforms which will be in 2027).</p>
--	--	--

<p><b>Public sector</b></p>	<p>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".</p>	<p>Code of Practice and Regulations awaited. Implementation in October 2026.</p>
<p><b>Ships' crews</b></p>	<p>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.</p>	<p>Implementation in April and December 2026.</p>
<p><b>School support staff</b></p>	<p>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.</p>	<p>Consultation, Code of Practice and Regulations awaited. Implementation in October 2026.</p>

<p><b>Adult social care workers</b></p>	<p>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.</p>	<p>Consultation closed in January 2026. Response, Code of Practice and Regulations awaited. Implementation in October 2026.</p>
---	--	---

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](mailto:AmandaSteadman@bdbf.co.uk)), Rose Lim ([RoseLim@bdbf.co.uk](mailto:RoseLim@bdbf.co.uk)), or your usual BDBF contact

---

## **BDBF Webinar – The Employment Rights Bill: where are we now? – 7 October 2025**

In this 1-hour webinar, BDBF Principal Knowledge Lawyer [Amanda Steadman](#) and Associate [Esmat Faiz](#) unpack the landmark Employment Rights Bill, now on the brink of becoming law. This webinar was originally delivered on 7 October 2025 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:

## The Employment Rights Bill: where are we now?

7 October 2025

<https://youtu.be/X9cPDr2nEvg>

Please contact Amanda Steadman ([AmandaSteadman@bdbf.co.uk](mailto:AmandaSteadman@bdbf.co.uk)), Esmat Faiz ([EsmatFaiz@bdbf.co.uk](mailto:EsmatFaiz@bdbf.co.uk)) or your usual BDBF contact, for further advice.

---

## The unpaid intern-ship: sailing or sinking?

Last month the Government launched a Call for Evidence on unpaid internships and other similar roles, such as voluntary roles, unpaid work trials and work shadowing, to identify whether Government action is needed to ensure compliance with National Minimum Wage law.

What is the Call for Evidence about?

Currently, there is no legal definition of the term “intern” or of similar types of roles such as “trial work period”, “volunteer” or “work shadowing”. Historically, many employers have not paid individuals for carrying out internships and similar roles. However, where someone performing such a role meets the legal definition of “worker”, they are entitled to be paid at least the National Minimum Wage and benefit from certain other basic employment rights.

The Government is concerned that some employers are not complying with the law and misclassifying interns and possibly others in order to avoid making payment. The Government has said it wishes to crack down on non-compliance with the National Minimum Wage legislation.

In October 2024, the Government published [Next Steps to Make Work Pay](#), which set out plans to take forward workplace law reform commitments not covered by the Employment Rights Bill. This included a promise to issue a Call for Evidence on unpaid internships.

On 17 July 2025, the Government published the promised Call for Evidence, which seeks to understand the circumstances in which interns are not paid (or paid below the National Minimum Wage) and the reasons for this. Evidence is also sought on how similar roles operate in practice (namely, work trials, voluntary work, volunteers and work shadowing) in order to understand whether further work is required to ensure compliance with the law.

The Call for Evidence sets out various questions for employers including asking for the reasons for not paying an intern and whether unpaid internships (or those paid below the National

Minimum Wage) should simply be banned altogether.

### **What does this mean for employers?**

Currently, this is just a Call for Evidence, so employers will not be affected for some time. However, it is implied that after the evidence has been reviewed there will be some reform on internships. Businesses who offer such roles should, therefore, keep track of further developments in this area.

The Call for Evidence closes on 9 October 2025, with the Government's response expected early in 2026.

[Call for Evidence on Unpaid Internships](#)

*With thanks to our work experience student, Shaan Kailey, for his assistance in producing this article.*

**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](mailto:AmandaSteadman@bdbf.co.uk)) or your usual BDBF contact.**

---

# BDBF Webinar – Beliefs, backlash, and the workplace: navigating the new culture wars – 29 April 2025

In this 1-hour webinar, BDBF Managing Partner [Gareth Brahams](#) and Associate [Emma Burroughs](#) explore the legal rights and responsibilities surrounding belief expression in today's complex work environment. This webinar was originally delivered on 29 April 2025 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:



**BELIEFS, BACKLASH AND THE WORKPLACE:  
NAVIGATING THE NEW CULTURE WARS**

29 April 2025

The logo for BDBF Employment Law, featuring the letters 'B', 'D', 'B', and 'F' in teal, separated by vertical bars, with 'EMPLOYMENT LAW' in grey below.

<https://youtu.be/85bypaD9MVc>

Please contact Gareth Brahams ([GarethBrahams@bdbf.co.uk](mailto:GarethBrahams@bdbf.co.uk)), Emma

Burroughs ([EmmaBurroughs@bdbf.co.uk](mailto:EmmaBurroughs@bdbf.co.uk)) or your usual BDBF contact, for further advice.

---

# **BDBF Webinar – Unlocking the future: what the Employment Rights Bill means for employers – 28 January 2025**

In this 1-hour webinar, BDBF Managing Associate [Tom McLaughlin](#) and Principal Knowledge Lawyer [Amanda Steadman](#) discuss the “once-in-a-generation” changes the Employment Rights Bill will bring for UK employers. This webinar was originally delivered on 28 January 2025 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:

## Unlocking the future: what does the Employment Rights Bill mean for employers?

28 January 2025

<https://www.youtube.com/watch?v=dz9obtp5gRQ>

Please contact Tom McLaughlin ([TomMcLaughlin@bdbf.co.uk](mailto:TomMcLaughlin@bdbf.co.uk)), Amanda Steadman ([AmandaSteadman@bdbf.co.uk](mailto:AmandaSteadman@bdbf.co.uk)) or your usual BDBF contact, for further advice.

---

# An at-a-glance guide to the Employment Rights Bill

On 10 October 2024, the Government published the [Employment Rights Bill](#) (the Bill), which will take forward many of its proposals for workplace reform. Running to more than 150 pages, the Bill puts forward a vast array of reforms affecting the workplace, including dismissals, equality law, family-friendly rights, contracts and pay, trade unions and industrial action and labour market enforcement.

Alongside the Bill, a policy paper entitled [Next Steps to Make Work Pay](#) was published setting out how the Government intended

to deliver on its manifesto commitments through the Bill and also by way of wider reforms outside the Bill.

You can get up to speed with the key provisions of the Bill and what else lies ahead using our at-a-glance guide below.

Day 1 unfair dismissal rights

### **Abolition of the two-year qualifying service requirement**

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 to this rule, 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.

The Bill proposes to remove the two-year qualifying period for ordinary unfair dismissal claims, converting it to a Day 1 employment right. To complement the abolition of the qualifying period, a new provision will be introduced preventing employees who have not yet started work from claiming unfair dismissal. However, if the reason for dismissal is automatically unfair, relates to the employee's political opinions or affiliations, or is connected to their membership of a reserve force, then an employee who *has not even started work* will be able to claim unfair dismissal.

### **Special rules for new employees**

There has been much speculation in the press about whether the Bill will make it simpler to dismiss employees during a probationary period. Importantly, the Bill provides that

regulations may be introduced which will “modify” the standard of reasonableness that must be met to dismiss fairly during the “initial period of employment”. The initial period of employment is not specified in the Bill (this will be dealt with in the regulations) however, the Government has signalled its preference for this period to be set at nine months. In practice, this will be longer than most contractual probationary periods operated by employers, which generally sit at between three to six months.

Exactly how the test will be modified remains to be seen. Currently, employers must show that they have acted reasonably in treating the reason as sufficient to dismiss, viewed in light of the size and resources of the employer. In many cases, this requires the employer to comply with the steps set out in the statutory Acas Code of Practice on Disciplinary and Grievance procedures. In Next Steps to Make Work Pay it is suggested that, at the very least, the modified test will require employers to meet with employees to discuss proposed dismissals during an initial period of employment.

All of which will provide some reassurance for employers, however, there are some important limitations to note.

First, the modified test will *only* apply where the reason for dismissal is capability, conduct, illegality or some other substantial reason (**SOSR**) “*relating to the employee*”. It will *not* apply to redundancy dismissals during the probationary period, and nor does it seem to apply to SOSR dismissals which do *not* relate the employee. Where the dismissal is by reason of redundancy (or SOSR which does not relate to the employee), the existing reasonableness test will apply i.e. that the employer has acted reasonably in treating the reason as sufficient to dismiss, viewed in light of the size and resources of the employer.

Second, the modified test will *only* apply where the dismissal takes effect on or before the last day of the initial period

of employment, or where the employer gives notice to terminate before the end of the initial period of employment and the dismissal takes effect within three months of the end of the that period.

### **What will these changes mean for employers in practice?**

- The abolition of the qualifying period is certain to generate more grievances and Employment Tribunal claims, some of which will be justified and some not. But all of them will take time and money to deal with. Certainly, employers will wish to be more cautious when it comes to recruitment so as to limit the risk of a bad hire. And after recruitment, line managers will need to actively manage probationary periods to ensure that any performance or conduct issues are identified and dealt with at an early stage.
- Making it simpler to dismiss new employees takes some of the sting out of this reform for employers. However, care must be taken to diarise the relevant dates and ensure that notice to terminate is given before the end of the initial period of employment (which is expected to be nine months). And in cases where the employee has a notice period in excess of three months, that notice must be given earlier so as to ensure that the termination date falls within three months of the end of the initial period. A failure to do so may mean that the employer inadvertently falls outside the modified test, making a finding of unfair dismissal more likely.
- It is also important to remember that it is not the case that new employees can *never* bring an unfair dismissal claim. Although the modified test will make it easier to dismiss them, employers will still be required to do something. Short circuiting those modified requirements could open the door to an unfair dismissal claim. When it comes to redundancy dismissals, employers must remember that the current test of reasonableness will

apply. This means that in *all* redundancy dismissals employers will need to warn and consult with employees, adopt a fair basis on which to select employees for redundancy and consider suitable alternative vacancies (and, if applicable, collectively consult). Further, the reforms do not affect an employee's right to claim automatic unfair dismissal from Day 1 of their employment.

- The interplay between an employer's probationary period and the initial period of employment will need to be considered. Employers do not necessarily need to increase their contractual probationary periods in line with the initial period. On the face of it, there is nothing to prevent an employer dismissing an employee who has already passed their probationary period during the initial period of employment and relying on the modified test. For example, an employee could pass a probationary period of three months, after which time their conduct or performance declined, or a one-off serious act of misconduct or negligence occurred. In those circumstances, the fact that the employee has passed their probationary period should not make any difference. That said, some employers may wish to consider aligning probationary periods with the initial period of employment.
- Is there any upside for employers in making ordinary unfair dismissal a Day 1 employment right? Conceivably, it could lead to some reduction in claims for automatic unfair dismissal (such as whistleblowing claims) and discriminatory dismissal claims, which are currently the only statutory claims that employees with under two years' service can bring about their dismissal. 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, compensation is uncapped for certain automatic unfair dismissal claims

and for discriminatory dismissal claims, meaning there is still an incentive for claimants to bring such claims. Therefore, in terms of impact on claims, the most likely outcome is that claimants with automatic unfair dismissal or discriminatory dismissal claims (especially if higher paid) will continue to bring those claims but will plead ordinary unfair dismissal as an alternative claim.

### **What are the next steps?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, the various dismissal provisions will not come in straight away. Indeed, in the context of unfair dismissal alone, the Government has said it will consult on:

- the length of the initial period of employment for the purposes of unfair dismissal;
- how the initial period of employment interacts with the Acas Code of Practice on Disciplinary and Grievance procedures; and
- the appropriate compensation regime for dismissal during the initial period of employment;

Regulations will also be needed in relation to the modified unfair dismissal test.

Next Steps to Make Work Pay states that the unfair dismissal reforms will take effect *“no sooner than Autumn 2026”*.

Dismissal during pregnancy and following a period of statutory family leave

The Bill provides that regulations may be introduced which will provide enhanced protection from dismissal during pregnancy and following return from maternity leave, adoption leave or shared parental leave (it will also apply to return

from certain other forms of leave which are not yet in force and so are not discussed in this briefing). It is not known how long the protection will apply following the return from family leave, however, the Government has previously suggested it will be six months. No further details of this proposal are given in the Bill or the Explanatory Notes to the Bill.

### **What will these changes mean for employers in practice?**

- We must await the publication of the related regulations to understand the full extent of this proposal. However, it seems likely that the intention is to restrict the circumstances in which an employer may dismiss a pregnant employee or family leave returner fairly.
- It is *already* unlawful to dismiss an employee because of her pregnancy or maternity leave (or for a reason related to it), by reason of redundancy during pregnancy or following the return from maternity leave, adoption leave or shared parental leave where there was a suitable alternative vacancy available. Therefore, this proposal appears to go further and suggests that even if there is a non-discriminatory and fair reason for dismissal, the dismissal would be unlawful, subject to some exceptions. Common sense would suggest that the exceptions must, at least, permit dismissal for gross misconduct, gross negligence or illegality or also where there is a large-scale redundancy such as where the whole business is closing down.

### **What are the next steps?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, the various dismissal provisions will not come in straight away. Regulations will be needed in relation to the restriction of dismissals during pregnancy and following the return from family leave.

Next Steps to Make Work Pay states that the majority of the Bill's reforms will not come into force until 2026.

Dismissal for failing to agree a variation to a contract

"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. Before the election, the Labour Party had talked about wanting to end fire and rehire practices altogether. This was slightly watered down during the General Election, with a promise to end the practice, save in exceptional circumstances.

The Bill delivers on that promise and proposes that it will be automatically unfair to dismiss an employee:

- for failing to agree to a 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, but where the role is otherwise substantially the same.

The sole exception will be where the reason for the variation was to eliminate, prevent or significantly reduce or mitigate the effect of any financial difficulties which, at the time of the dismissal, were affecting, or were likely in the *immediate future* to affect, the employer's ability to carry on its business, and there was no way the need to make the variation could reasonably have been avoided.

However, even where the exception does apply, the dismissal could still be *ordinarily* unfair, even if not automatically unfair. The Bill provides that in such cases various matters must be taken into account by an Employment Tribunal when determining whether the dismissal is fair or not, including any consultation with the employee and any trade union or employee representatives about the proposed variation and anything offered to the employee in exchange for agreeing to the variation.

## **What will these changes mean for employers in practice?**

- It will be much riskier for employers to impose contract variations on employees by way of fire and rehire practices. Nor can employers escape the risk of automatic unfair dismissal by simply “firing” in these circumstances and not offering to rehire. This is not to say that it will never be right to deploy fire and rehire practices – the practice may still be used but it carries a high risk of Tribunal claims. However, it is possible that the employee may relent and agree to be rehired on the varied terms. If the employee does not go on to bring a claim in time, the employer will have achieved its aim.
- Once this change comes into force, the current statutory Code of Practice on dismissal and re-engagement (which came into force on 18 July 2024) will need to be replaced. As it stands, that Code prescribes the process to be followed by employers before dismissing and offering to re-engage in any circumstances. A breach of that process does not give rise to a legal claim in itself but may lead to an uplift of 25% to any compensation awarded in related claims.

## **What are the next steps?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, the various dismissal provisions will not come in straight away. Indeed, on 21 October 2024, the Government opened a [consultation](#) on what role interim relief could play in protecting employees in fire and rehire situations. The consultation closes on 2 December 2024.

Next Steps to Make Work Pay states that the majority of the Bill’s reforms will not come into force until 2026.

## 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. After some to-ing and fro-ing the senior courts concluded that “establishment” meant the local unit where the employee works, *not* the business as a whole.

The Bill proposes to reverse this, so that collective consultation is triggered where there are 20 proposed redundancies within 90 days *across the business* rather than in just one workplace.

### **What will this change mean for employers in practice?**

- Collective consultation will be triggered more frequently and multi-site employers will need to have a system in place to ensure that they keep track of proposed redundancies across the whole business.
- The process will be administratively more burdensome as employers will need to have appropriate representatives in place for all affected employees no matter where they are based.
- The consultation itself will potentially be cumbersome and disjointed as employers may be consulting about several small pockets of unrelated redundancies.
- Getting it wrong will be costly: employees may claim a “protective award” which is currently capped at 90 days’ gross actual pay.

## What are the next steps?

The Bill has just started its passage through Parliament, which will take time. Even when passed, the various dismissal provisions will not come in straight away. On 21 October 2024, the Government opened a [consultation](#) on: (i) increasing the maximum protective award from 90 to 180 days (or having no upper limit at all) where an employer is 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. The consultation closes on 2 December 2024.

Next Steps to Make Work Pay states that the majority of the Bill's reforms will not come into force until 2026.

### Sexual harassment

From 26 October 2024, all employers were obliged to take reasonable steps to prevent sexual harassment at work. Where 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**) will have the power to investigate and take enforcement action. Initially, the plan was for this duty to require employers to take *all* reasonable steps, however, the word "all" was eventually dropped on the basis that it would be too onerous for employers. You can find out more about the duty in our recent webinar [here](#).

The Bill provides that the word "all" will be reintroduced, meaning that employers will be required to take every possible reasonable step to prevent sexual harassment, or risk a compensation uplift and EHRC action. Separately, the Bill provides that regulations may be introduced specifying the steps that are to be regarded as reasonable for the purposes of both the new duty to prevent sexual harassment and the existing reasonable steps defence. The Bill states that this may include steps such as carrying out risk assessments,

publishing plans or policies, and steps relating to the reporting and handling of complaints. Currently, 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](#).

In addition, the Bill provides that 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.

### **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. In particular, a lot will be expected from large and well-resourced employers and from employers where sexual harassment is especially prevalent. That said, the proposal to set out a list of reasonable steps in regulations will be helpful in that it gives employers legal certainty about the steps required.
- Although it will be some time before these changes to come into force (the Government has suggested not until 2026), 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.
- 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?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, the various equality provisions will not come in straight away. For example, regulations are needed for the reforms to the duty to prevent sexual harassment.

Next Steps to Make Work Pay states that the majority of the Bill's reforms will not come into force until 2026.

### **Discriminatory harassment by third parties**

Until October 2013, the Equality Act 2010 contained provisions making employers liable for harassment of staff by third parties, albeit that liability only arose where the worker had been harassed more than once. These provisions were repealed by the Coalition Government on 1 October 2013, with the result that it became much more difficult for workers to bring claims against their employer where they had been harassed by a third party. Currently, the only way in which an employer attracts liability is in respect of its *own* actions.

The Bill will reintroduce employer's liability for third party harassment. Importantly, this will extend to harassment for *all* protected characteristics under the Equality Act, not just sexual harassment, and liability will arise from the first instance of harassment. For example if a shopworker was racially abused by a customer, the employer would potentially be liable. However, employers will be able to avoid liability

where they can show they took “all reasonable steps” to prevent the 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 Bill, 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 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 and 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?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, the various equality provisions will not come in straight away. And it is likely that there will be consultations on this proposal.

Next Steps to Make Work Pay states that the majority of the Bill’s reforms will not come into force until 2026.

Gender pay gap reporting and the menopause

Currently, employers with 250 or more employees are required

to publish gender pay information 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 reporting alone would drive employers to take steps to close their gaps. However, progress in closing gender pay gaps remains slow.

The Bill provides that regulations may be published requiring employers with 250 or more employees to develop and publish “equality actions plans” on an annual basis. The equality actions plans must set out the steps the employer is taking in relation to addressing its gender pay gap and to supporting employees going through the menopause. The action plan will have to meet the minimum standards 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 to set out the identity of any person it contracts with for the supply of 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.

### **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 make a dent in the gender pay gap.

- The Government had promised to introduce both ethnicity and disability pay reporting which would mirror the gender pay gap reporting regime. These proposals are not included in the Bill. However, in Next Steps to Make Work Pay it is stated that this commitment will be delivered via the Equality (Race and Disability) Bill. The Government says it will begin consulting on that in due course, with a draft Bill to be published during this Parliamentary session for pre-legislative scrutiny. Further consultation will also take place prior to the making of regulations implementing these reforms. In other words, it is going to be some time before either of these promises come to pass.
- The forthcoming requirement to publish information about the steps taken to support menopausal workers means employers will need to give thought to what it is able to say 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 Bill has just started its passage through Parliament, which will take time. Even when passed, the various equality provisions will not come in straight away. For example,

regulations are needed for the reforms to the gender pay gap reporting regime. Separately, the Government also says it will produce new menopause guidance for employers.

Next Steps to Make Work Pay states that the majority of the Bill's reforms will not come into force until 2026.

### 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 (the **ERA**) 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. Employees are unable to challenge the decision on the basis that they feel the decision was an unreasonable one (albeit they may be able raise other claims such as automatic unfair dismissal or indirect sex discrimination).

The Bill proposes that the law is changed to 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. The Bill provides that, in future,

regulations may 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 £700 per week) 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 recent 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 Bill has just started its passage through Parliament, which will take time. Even when passed, the family-friendly provisions will not come in straight away; regulations will be needed to bring them into force. The Government may also consult on certain aspects of the proposals. Indeed, it has

said that it is important to take into account a range of views and it will develop the detail of the approach “...in consultation and partnership with business, trade unions and third sector bodies”.

Next Steps to Make Work Pay states that the majority of the Bill’s reforms will not come into force until 2026.

Family leave rights

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

### **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).

The Bill proposes to remove the service requirement and make unpaid parental leave a Day 1 employment right.

### **Paternity leave**

Currently, employees with 26 weeks’ service ending with the week immediately before the 14<sup>th</sup> 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 Bill proposes to remove the service requirement for paternity leave, making it a Day 1 employment right. However, the Bill is silent on whether the service requirement will be lifted for statutory paternity pay, which suggests that it will remain.

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 Bill proposes to 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.

## **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 (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. Of course, many employers do permit compassionate leave in such circumstances, but there is no legal requirement to do so.

The Bill proposes amending the parental bereavement leave rules (which are set out in the ERA) 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. The Bill says that the bereavement leave entitlement must be not less than one week, however, the leave entitlement will stay at two weeks where a child has died. It appears from the drafting of the Bill that the leave will be unpaid, save that statutory pay will remain available where a child dies.

**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 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 Bill has just started its passage through Parliament, which will take time. Even when passed, the family-friendly provisions will not come in straight away; regulations will be needed to bring them into force. The Government may also consult on certain aspects of the proposals.

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.

Next Steps to Make Work Pay states that the majority of the Bill's reforms will not come into force until 2026.

### **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. Before the election, the Labour Party promised to ban "exploitative" zero hours contracts.

Importantly, the Bill does *not* go as far as banning zero (or low) hours contracts. Instead, it introduces two 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 a new statutory right to have those hours guaranteed in their contract. The meaning of low hours worker will be defined in regulations, as will the qualifying number of hours to be worked and the reference period (Next Steps to Make Work Pay talks of a possible 12-week reference period). The rules governing this new right are extremely complex, but, in summary, require that at the end of *each* reference period, the employer *must* make a guaranteed hours offer to any worker within scope. That offer must meet certain minimum requirements set out in the Bill (and 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. Further, 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. A failure to make the offer, or making one incorrectly, will give rise to an Employment Tribunal claim for which compensation may be awarded.

Second, employers will be required to give zero and low workers (and any other worker who does not have a set working pattern), reasonable notice of shifts and changes to shift, with a right to compensation where late notice is given.

Again, the rules are extremely complex. In a nutshell, they

require employers to 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. Similarly, they must give notice of any *change* to, of cancellation of, a shift. Regulations will set out the minimum amount of notice that must be given. Where an employer cancels, moves or curtails a shift at short notice, it must make a payment of a specified amount to the worker. Regulations will set out 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.

### **What will these changes mean for employers in practice?**

- These changes do not make zero or low hours contracts unlawful, but they will make them considerably more difficult for employers to manage and introduce risks for getting it wrong. The requirement to monitor working hours within a reference period on a rolling basis will be administratively cumbersome, particularly where an employer has multiple zero or low hours workers. Similarly, the employer is required to make repeated offers of guaranteed hours contracts at the end of each reference period. The drafting of the Bill suggests that these offers must continue to be made even where a worker has made it clear that their preference is to remain on a zero or low hours contract. 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?
- As far as giving notice of shifts and changes to, or cancellation of, shifts are concerned, it remains to be seen what the minimum notice required will be. If it is generous, this raises the risk of employers tripping up on the notice requirements, meaning they will be liable

to make a specified payment to the worker and leave themselves open to an Employment Tribunal claim (which given the levels of public interest in these proposals would be likely to spark high levels of media coverage).

- All in all, employers may feel the benefit of a flexible workforce is not worth the potential cost and lead to a move away from the use of zero and low hours contracts, which is perhaps the intention behind these provisions. It could lead to a switch in the use of agency workers, who would not be covered by these rules (although the Bill reserves the right to introduce similar rules for them in the future).

### **What are the next steps?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, some of the provisions may not come in straight away. Regulations are also needed in connection with all of the zero hours measures. Further, on 21 October 2024, the Government opened a [consultation](#) on how the Bill's provisions on zero hours contracts should be applied to agency workers. The consultation closes on 2 December 2024.

Next Steps to Make Work Pay states that the majority of the Bill's reforms will not come into force until 2026.

### Statements of particulars of employment

Currently, employers must provide employees and workers with a 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**).

The Bill provides that employers must give workers a written statement that the worker has the right to join a trade union, and this must be given at the same time as the statement of particulars under s.1 of the ERA and at "*other prescribed*

*times*". Regulations may prescribe what information must be included in the statement, the form of the statement and how it must be given to the worker. A failure to provide the statement will give rise to an Employment Tribunal claim. A Tribunal may determine and amend the particulars and, if the worker has been successful in certain other substantive claim before the Tribunal, compensation of between two to four weeks' pay (currently capped at £700 per week) may also be awarded.

### **What will this change mean for employers in practice?**

- This is a small change that should be easy for employers to deal with. Although there is no obligation to include the statement within the statement of particulars of employment, in practice this will be the easiest way for employers to meet this requirement. In most cases, employers discharge the obligation to provide a statement of particulars by way of the contract of employment.
- It remains to be seen what is meant by providing the statement at "*other prescribed times*".

### **What are the next steps?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, some of the provisions may not come in straight away.

Next Steps to Make Work Pay states that the majority of the Bill's reforms will not come into force until 2026.

Pay measures: Statutory Sick Pay and Tips

### **Statutory Sick Pay (SSP)**

The Bill makes some small tweaks to SSP regime. First, the "waiting days" will be removed, meaning that SSP will be payable from the first day of sickness, rather than from the

fourth day as is currently the case. Second, the lower earnings limit for SSP – which currently sits at £123 per week – will be removed meaning that workers will be entitled to SSP regardless of income levels. However, nothing is said about raising the rate of SSP (currently £116.75 per week).

### **Tips and gratuities**

Legislation regulating the allocation of tips introduced earlier this year requires affected employers to have a written policy on how it deals 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 Bill amends 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, employers are required to review the policy at least once every three years, and as part of such reviews the employer must 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.

### **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.
- Employers affected by the tips legislation will need to undertake consultation with staff about their tips policies and remember to diarise reviews as appropriate. There are no specific rules in the Bill governing what form that staff consultation should take, but,

typically, it should include the provision of written information followed by one or more face-to-face meetings.

### **What are the next steps?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, some of the provisions may not come in straight away. On 21 October 2024, the Government opened a [consultation](#) on what the percentage replacement rate for those earning *below* the current flat rate of SSP should be. The consultation closes on 4 December 2024.

Notably the Bill does not address changes to the National Minimum wage regime. Before the election, Labour promised that it would “*make sure the minimum wage is a genuine living wage*”. It planned to do this by changing the remit of the Low Pay Commission (the **LPC**), the independent body that advises Government about the minimum wage. The expanded remit would mean that the minimum wage rates should account for the cost of living. Labour also promised to remove the “discriminatory” minimum wage rate age bands, so that all adults would be entitled to the same rate. Although not addressed in the Bill, the Labour Government has already taken steps to fulfil this promise by changing the remit of the LPC and asking them to recommend a new wage rate for 18-20 year olds. It is anticipated that these changes will come into force in April 2025.

### **Enforcement by the 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. The Bill provides that the Secretary of State will take over responsibility for enforcing certain aspects of labour market legislation. The Explanatory Notes to the Bill indicate that the Secretary of State will discharge this responsibility by establishing a new body, likely to be called the “Fair Work Agency”, which will have responsibility for enforcement of the following areas of law:

- the National Minimum Wage regime;
- the Statutory Sick Pay regime;
- 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.

The Government’s hope is that bringing these areas together under one roof will help create a “*strong, recognisable single brand*” so individuals know where to go for help and lead to a more effective use of resources. For now, it appears that enforcement of equality law is remaining with the Equality and Human Rights Commission (the **EHRC**), however, the Bill reserves the right to expand the Fair Work Agency’s areas of enforcement in future.

### **Role of the Fair Work Agency**

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

- obtain documents or information;
- enter business premises in order to obtain documents or

- information;
- remove and retain documents or information;
- request that “labour market enforcement undertakings” are provided, which are 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.

Further, the Bill sets out that the Fair Work Agency must establish an Advisory Board of not fewer than nine members who represent the interests of trade unions and employers, as well as independent experts. In consultation with the Advisory Board, the Fair Work Agency must publish a “Labour Market Enforcement Strategy” every three years addressing the scale and nature of non-compliance with labour market laws and setting out how its enforcement functions will be exercised in future. It must also publish an annual report outlining how its enforcement functions were exercised that year, with an assessment of whether its strategy had an impact on the scale and nature of non-compliance.

## **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.
- 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 Bill has just started its passage through Parliament, which will take time. We do not expect the Fair Work Agency to be up and running until 2026 at the earliest. It is worth noting that the Next Steps to Make Work Pay document commits to introducing a separate regulatory and enforcement unit for equal pay. It is not clear whether this unit will sit within

the EHRC (which would be its natural home) or be a standalone body.

What else is covered in the Bill?

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

<b>Area</b>	<b>Bill proposal</b>
<b>Public sector workers</b>	A power to make regulations to protect workers who are outsourced from the public sector.
<b>Ships' crews</b>	Some fine-tuning amendments to the notification rules in certain collective redundancies involving ships' crews. In addition, measures to strengthen seafarers' rights at sea and implement international conventions on seafarers' employment will be added to the Bill by way of an amendment as it progresses through Parliament.
<b>School support staff</b>	Provisions reinstating the "School Support Staff Negotiating Body", a body which will have the power to negotiate on the pay and conditions of affected workers.

<b>Adult social care workers</b>	Provisions introducing a “Fair Pay Agreement” in the adult social care sector and giving the Government the power to establish an “Adult Social Care Negotiating Body”, which will have the have the power to negotiate on the pay and conditions of affected workers. A consultation on how the Fair Pay Agreement should work will be launched soon.
----------------------------------	--

<p><b>Trade unions</b></p>	<p>Provisions aimed at strengthening trade unions including:</p> <ul style="list-style-type: none"><li>• requiring employers to notify workers of their right to join a trade union in writing when they start employment and at other times (you can read more about this <a href="#">here</a>);</li><li>• enhancing the rights of trade unions to access workplaces for the purpose of meeting, recruiting and organising workers and facilitating collective bargaining;</li><li>• simplifying the process for trade union recognition;</li><li>• repealing rules which impeded the financing of trade unions; and</li><li>• 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.</li></ul> <p>On 21 October 2024, the Government published a <a href="#">consultation</a> on modernising the legislative framework underpinning trade unions. The consultation closes on 2 December 2024.</p>
----------------------------	---

<p style="text-align: center;"><b>Workers involved in trade union activities</b></p>	<p>Provisions aimed at strengthening protection for workers involved in trade union activities including:</p> <ul style="list-style-type: none"> <li>• improved access to facilities for trade union representatives taking time off to carry out their duties;</li> <li>• modernising the existing law on blacklisting to protect more people from blacklisting due to their trade union membership or activity;</li> <li>• introducing protection from detriment for having taken part in industrial action; and</li> <li>• 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.</li> </ul>
--	---

Beyond the Bill: what else is promised?

The Government's appetite for employment law reform does not end with the Bill. The [Next Steps to Make Work Pay](#) document issued alongside the Bill sets out the plans to take forward the remaining Manifesto commitments on workplace law reform. The table below summarises the position.

<p style="text-align: center;"><b>Manifesto commitment</b></p>	<p style="text-align: center;"><b>Next steps?</b></p>
--	---

<p><b>Improving the National Minimum Wage</b></p>	<p>The Government has already widened the remit of the Low Pay Commission (the <b>LPC</b>) and the LPC's recommendations for the new rates to apply from April 2025 are expected shortly. You can read more about this <a href="#">here</a>.</p>
<p><b>Extending the time limit for statutory Employment Tribunal claims from three to six months</b></p>	<p>It is stated that this will be introduced by way an <b>amendment to the Bill</b> as it progresses through Parliament.</p>
<p><b>Strengthening and expanding equal pay and pay reporting laws</b></p>	<p>A new <b>Equality (Race and Disability) Bill</b> will:</p> <ul style="list-style-type: none"> <li>• introduce ethnicity and disability pay gap reporting for employers with 250 or more staff;</li> <li>• introduce the right to bring equal pay claims on the basis of race or disability;</li> <li>• introduce measures on equal pay, including permitting comparisons with outsourced workers; and</li> <li>• introducing a new regulatory and enforcement unit for equal pay.</li> </ul> <p>A draft Bill is expected to be published in this Parliamentary session for “pre-legislative scrutiny” and public consultation on the proposals will begin in due course.</p>

<p><b>Introducing a “right to switch off”</b></p>	<p>A new <b>statutory Code of Practice</b> will address the right to switch off, rather than endowing workers with a statutory right to do so. We can expect a public consultation on the draft Code before it comes into force.</p>
<p><b>Regulating employee surveillance</b></p>	<p>A <b>consultation</b> on workplace surveillance technologies has been promised.</p>
<p><b>Introducing a single worker status</b></p>	<p>A <b>consultation</b> on introducing a single worker status has been promised.</p>
<p><b>Better rights for the self-employed</b></p>	<p>This will be addressed as part of the <b>consultation</b> on introducing a single worker status.</p>
<p><b>Reviewing the parental leave framework</b></p>	<p>A <b>review</b> will be undertaken.</p>
<p><b>Reviewing the right to carer’s leave</b></p>	<p>A <b>review</b> will be undertaken.</p>
<p><b>Reviewing health and safety law and guidance</b></p>	<p>A <b>review</b> will be conducted “<i>in due course</i>”. Among other things, the review will consider neurodiversity, extreme temperatures and Long Covid.</p>

<b>Improving TUPE rights and protections</b>	A <b>call for evidence</b> will be launched to examine a <i>“wide variety of issues”</i> .
<b>Banning unpaid internships</b>	A <b>call for evidence</b> will be launched by the end of 2024.
<b>Permitting collective grievances</b>	The Government will <b>engage with Acas</b> about how to facilitate the raising of collective grievances.
<b>Employer guidance on the menopause at work</b>	It is stated that this will be delivered but no further detail is given.

---

## **The Employment Rights Bill: a closer look at the remaining provisions of the Bill and at what else is promised**

On 10 October 2024, the Government published the Employment Rights Bill, which will take forward many of its proposals for workplace reform. In the final article in our series analysing the Bill, we consider the remaining proposals in the Bill and what else is promised.

Running to more than 150 pages, the [Employment Rights Bill](#) (**the Bill**) puts forward a vast array of reforms affecting the workplace, including family-friendly rights, dismissals, equality law, contracts and pay, trade unions and industrial action and labour market enforcement. In the final article in our series of articles explaining the Bill, we sweep up what else is covered by the Bill and consider what else has been promised by the Labour Government.

## **What else is covered in the Bill?**

In our previous five articles we have discussed the core provisions of interest for most employers across all sectors as follows:

- [Article 1: Family-friendly provisions.](#)
- [Article 2: Dismissal-related provisions.](#)
- [Article 3: Equality law provisions.](#)
- [Article 4: Contract and pay provisions.](#)
- [Article 5: Enforcement provisions.](#)

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

<b>Area</b>	<b>Bill proposal</b>
<b>Public sector workers</b>	A power to make regulations to protect workers who are outsourced from the public sector.
<b>Ships' crews</b>	<p>Some fine-tuning amendments to the notification rules in certain collective redundancies involving ships' crews.</p> <p>In addition, measures to strengthen seafarers' rights at sea and implement international conventions on seafarers' employment will be added to the Bill by way of an amendment as it progresses through Parliament.</p>
<b>School support staff</b>	Provisions reinstating the "School Support Staff Negotiating Body", a body which will have the power to negotiate on the pay and conditions of affected workers.
<b>Adult social care workers</b>	Provisions introducing a "Fair Pay Agreement" in the adult social care sector and giving the Government the power to establish an "Adult Social Care Negotiating Body", which will have the power to negotiate on the pay and conditions of affected workers. A consultation on how the Fair Pay Agreement should work will be launched soon.

<p><b>Trade unions</b></p>	<p>Provisions aimed at strengthening trade unions including:</p> <ul style="list-style-type: none"> <li>• requiring employers to notify workers of their right to join a trade union in writing when they start employment and at other times (you can read more about this <a href="#">here</a>);</li> <li>• enhancing the rights of trade unions to access workplaces for the purpose of meeting, recruiting and organising workers and facilitating collective bargaining;</li> <li>• simplifying the process for trade union recognition;</li> <li>• repealing rules which impeded the financing of trade unions; and</li> <li>• 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.</li> </ul>
<p><b>Workers involved in trade union activities</b></p>	<p>Provisions aimed at strengthening protection for workers involved in trade union activities including:</p> <ul style="list-style-type: none"> <li>• improved access to facilities for trade union representatives taking time off to carry out their duties;</li> <li>• modernising the existing law on blacklisting to protect more people from blacklisting due to their trade union membership or activity;</li> <li>• introducing protection from detriment for having taken part in industrial action; and</li> <li>• 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.</li> </ul>

## Beyond the Bill: what else is promised?

The Government's appetite for employment law reform does not end with the Bill. The [Next Steps to Make Work Pay](#) document issued alongside the Bill sets out the plans to take forward the remaining Manifesto commitments on workplace law reform. The table below summarises the position.

<b>Manifesto commitment</b>	<b>Next steps?</b>
<b>Improving the National Minimum Wage</b>	The Government has already widened the remit of the Low Pay Commission (the <b>LPC</b> ) and the LPC's recommendations for the new rates to apply from April 2025 are expected shortly. You can read more about this <a href="#">here</a> .
<b>Extending the time limit for statutory Employment Tribunal claims from three to six months</b>	It is stated that this will be introduced by way an <b>amendment to the Bill</b> as it progresses through Parliament.

<p><b>Strengthening and expanding equal pay and pay reporting laws</b></p>	<p>A new <b>Equality (Race and Disability) Bill</b> will:</p> <ul style="list-style-type: none"> <li>• introduce ethnicity and disability pay gap reporting for employers with 250 or more staff;</li> <li>• introduce the right to bring equal pay claims on the basis of race or disability;</li> <li>• introduce measures on equal pay, including permitting comparisons with outsourced workers; and</li> <li>• introducing a new regulatory and enforcement unit for equal pay.</li> </ul> <p>A draft Bill is expected to be published in this Parliamentary session for “pre-legislative scrutiny” and public consultation on the proposals will begin in due course.</p>
<p><b>Introducing a “right to switch off”</b></p>	<p>A new <b>statutory Code of Practice</b> will address the right to switch off, rather than endowing workers with a statutory right to do so. We can expect a public consultation on the draft Code before it comes into force.</p>
<p><b>Regulating employee surveillance</b></p>	<p>A <b>consultation</b> on workplace surveillance technologies has been promised.</p>
<p><b>Introducing a single worker status</b></p>	<p>A <b>consultation</b> on introducing a single worker status has been promised.</p>
<p><b>Better rights for the self-employed</b></p>	<p>This will be addressed as part of the <b>consultation</b> on introducing a single worker status.</p>
<p><b>Reviewing the parental leave framework</b></p>	<p>A <b>review</b> will be undertaken.</p>

<b>Reviewing the right to carer's leave</b>	A <b>review</b> will be undertaken.
<b>Reviewing health and safety law and guidance</b>	A <b>review</b> will be conducted " <i>in due course</i> ". Among other things, the review will consider neurodiversity, extreme temperatures and Long Covid.
<b>Improving TUPE rights and protections</b>	A <b>call for evidence</b> will be launched to examine a " <i>wide variety of issues</i> ".
<b>Banning unpaid internships</b>	A <b>call for evidence</b> will be launched by the end of 2024.
<b>Permitting collective grievances</b>	The Government will <b>engage with Acas</b> about how to facilitate the raising of collective grievances.
<b>Employer guidance on the menopause at work</b>	It is stated that this will be delivered but no further detail is given.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.

---

## The Employment Rights Bill: a closer look at the provisions concerning enforcement

On 10 October 2024, the Government published the Employment

**Rights Bill, which will take forward many of its proposals for workplace reform. In the fifth article in our series analysing the Bill, we consider the proposals concerning enforcement of employment law.**

Running to more than 150 pages, the [Employment Rights Bill](#) (**the Bill**) puts forward a vast array of reforms affecting the workplace, including family-friendly rights, dismissals, equality law, contracts and pay, trade unions and industrial action and labour market enforcement. In the fifth article in our series of articles explaining the Bill, we consider the proposals affecting enforcement of employment law.

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. The Bill provides that the Secretary of State will take over responsibility for enforcing certain aspects of labour market legislation. The Explanatory Notes to the Bill indicate that the Secretary of State will discharge this responsibility by establishing a new body, likely to be called the "Fair Work Agency", which will have responsibility for enforcement of the following areas of law:

- the National Minimum Wage regime;
  
- the Statutory Sick Pay regime;

- 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.

The Government’s hope is that bringing these areas together under one roof will help create a “*strong, recognisable single brand*” so individuals know where to go for help and lead to a more effective use of resources. For now, it appears that enforcement of equality law is remaining with the Equality and Human Rights Commission (the **EHRC**), however, the Bill reserves the right to expand the Fair Work Agency’s areas of enforcement in future.

### *Role of the Fair Work Agency*

In terms of addressing non-compliance with the labour market laws within its remit, the Fair Work Agency will have the

power to:

- obtain documents or information;
- enter business premises in order to obtain documents or information;
- remove and retain documents or information;
- request that “labour market enforcement undertakings” are provided, which are 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.

Further, the Bill sets out that the Fair Work Agency must establish an Advisory Board of not fewer than nine members who represent the interests of trade unions and employers, as well as independent experts. In consultation with the Advisory Board, the Fair Work Agency must publish a "Labour Market Enforcement Strategy" every three years addressing the scale and nature of non-compliance with labour market laws and setting out how its enforcement functions will be exercised in future. It must also publish an annual report outlining how its enforcement functions were exercised that year, with an assessment of whether its strategy had an impact on the scale and nature of non-compliance.

*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.
  
- 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 Bill has just started its passage through Parliament, which will take time. We do not expect the Fair Work Agency to be up and running until 2026 at the earliest. It is worth noting that the Next Steps to Make Work Pay document commits to introducing a separate regulatory and enforcement unit for equal pay. It is not clear whether this unit will sit within the EHRC (which would be its natural home) or be a standalone body.

Stay tuned for our final article in the series, where we will sweep up the outstanding provisions of the Bill not covered in our first five articles and also look ahead to what else is promised.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.

---

## **The Employment Rights Bill: a closer look at the provisions concerning contracts and pay**

On 10 October 2024, the Government published the Employment Rights Bill, which will take forward many of its proposals for workplace reform. In the fourth article in our series analysing the Bill, we consider the proposals concerning contracts and pay.

Running to more than 150 pages, the [Employment Rights Bill](#) (the Bill) puts forward a vast array of reforms affecting the workplace, including family-friendly rights, dismissals, equality law, contracts and pay, trade unions and industrial action and labour market enforcement. In the fourth in our

series of articles explaining the Bill, we consider all the proposals affecting contracts and pay.

## **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. Before the election, the Labour Party promised to ban "exploitative" zero hours contracts.

Importantly, the Bill does *not* go as far as banning zero (or low) hours contracts. Instead, it introduces two 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 a new statutory right to have those hours guaranteed in their contract. The meaning of low hours worker will be defined in regulations, as will the qualifying number of hours to be worked and the reference period (the [Next Steps to Make Work Pay](#) document talks of a possible 12-week reference period). The rules governing this new right are extremely complex, but, in summary, require that at the end of *each* reference period, the employer *must* make a guaranteed hours offer to any worker within scope. That offer must meet certain minimum requirements set out in the Bill (and 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.

Further, 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. A failure to make the offer, or making one incorrectly, will give rise to an Employment Tribunal claim for which compensation may be awarded.

Second, employers will be required to give zero and low workers (and any other worker who does not have a set working pattern), reasonable notice of shifts and changes to shift, with a right to compensation where late notice is given.

Again, the rules are extremely complex. In a nutshell, they require employers to 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. Similarly, they must give notice of any *change* to, of cancellation of, a shift. Regulations will set out the minimum amount of notice that must be given. Where an employer cancels, moves or curtails a shift at short notice, it must make a payment of a specified amount to the worker. Regulations will set out 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.

*What will these changes mean for employers in practice?*

- These changes do not make zero or low hours contracts unlawful, but they will make them considerably more difficult for employers to manage and introduce risks for getting it wrong. The requirement to monitor

working hours within a reference period on a rolling basis will be administratively cumbersome, particularly where an employer has multiple zero or low hours workers. Similarly, the employer is required to make repeated offers of guaranteed hours contracts at the end of each reference period. The drafting of the Bill suggests that these offers must continue to be made even where a worker has made it clear that their preference is to remain on a zero or low hours contract. 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?

- As far as giving notice of shifts and changes to, or cancellation of, shifts are concerned, it remains to be seen what the minimum notice required will be. If it is generous, this raises the risk of employers tripping up on the notice requirements, meaning they will be liable to make a specified payment to the worker and leave themselves open to an Employment Tribunal claim (which given the levels of public interest in these proposals would be likely to spark high levels of media coverage).
- All in all, employers may feel the benefit of a flexible workforce is not worth the potential cost and lead to a move away from the use of zero and low hours contracts, which is perhaps the intention behind these provisions.

It could lead to a switch in the use of agency workers, who would not be covered by these rules (although the Bill reserves the right to introduce similar rules for them in the future).

## **Statements of particulars of employment**

Currently, employers must provide employees and workers with a 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**).

The Bill provides that employers must give workers a written statement that the worker has the right to join a trade union, and this must be given at the same time as the statement of particulars under s.1 of the ERA and at "*other prescribed times*". Regulations may prescribe what information must be included in the statement, the form of the statement and how it must be given to the worker. A failure to provide the statement will give rise to an Employment Tribunal claim. A Tribunal may determine and amend the particulars and, if the worker has been successful in certain other substantive claim before the Tribunal, compensation of between two to four weeks' pay (currently capped at £700 per week) may also be awarded.

*What will this change mean for employers in practice?*

- This is a small change that should be easy for employers to deal with. Although there is no obligation to include the statement within the statement of particulars of employment, in practice this will be the easiest way for employers to meet this requirement. In most cases, employers discharge the obligation to provide a statement of particulars by way of the contract of employment.
  
- It remains to be seen what is meant by providing the statement at *“other prescribed times”*.

## **Pay measures**

### *Statutory Sick Pay (SSP)*

The Bill makes some small tweaks to SSP regime. First, the “waiting days” will be removed, meaning that SSP will be payable from the first day of sickness, rather than from the fourth day as is currently the case. Second, the lower earnings limit for SSP – which currently sits at £123 per week – will be removed meaning that workers will be entitled to SSP regardless of income levels. However, nothing is said about raising the rate of SSP (currently £116.75 per week).

### *Tips and gratuities*

Legislation regulating the allocation of tips introduced earlier this year requires affected employers to have a written policy on how it deals 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 Bill amends 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, employers are required to review the policy at least once every three years, and as part of such reviews the employer must 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.

*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.
  
- Employers affected by the tips legislation will need to undertake consultation with staff about their tips policies and remember to diarise reviews as

appropriate. There are no specific rules in the Bill governing what form that staff consultation should take, but, typically, it should include the provision of written information followed by one or more face-to-face meetings.

### **What are the next steps?**

The Bill has just started its passage through Parliament, which will take time. Even when passed, some of the provisions may not come in straight away. Regulations are needed in connection with all of the zero hours measures, and consultation may also be needed. As far as the SSP change is concerned, the Government has said it will consult on what the percentage replacement rate for those earning *below* the current flat rate of SSP should be.

Notably the Bill does not address changes to the National Minimum wage regime. Before the election, Labour promised that it would *"make sure the minimum wage is a genuine living wage"*. It planned to do this by changing the remit of the Low Pay Commission (the **LPC**), the independent body that advises Government about the minimum wage. The expanded remit would mean that the minimum wage rates should account for the cost of living. Labour also promised to remove the "discriminatory" minimum wage rate age bands, so that all adults would be entitled to the same rate. Although not addressed in the Bill, the Labour Government has already taken steps to fulfil this promise by changing the remit of the LPC and asking them to recommend a new wage rate for 18-20 year olds. It is anticipated that these changes will come into

force in April 2025.

Stay tuned for our fifth article in the series, where we will consider the provisions of the Bill affecting enforcement.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.

---

## **Two new pieces of guidance for employers on the new right to carer's leave**

From 6 April 2024, employees acquired a new Day 1 right to take at least one week's unpaid carer's leave per year to provide or arrange care for a dependant who has a long-term care need. To accompany this change, two new pieces of guidance for employers have been published.

A new statutory right to carer's leave came into force on 6 April 2024. You can read more about the new right in our detailed briefing [here](#). We also discussed carer's leave in our recent webinar [here](#).

To coincide with the introduction of the new right, both the Government and Acas have published new guidance for employers.

The [Government's guidance](#) provides a basic introduction to how carer's leave works. It covers:

- who is entitled to take carer's leave;
- how much carer's leave employees may take;
- how much notice must be given before taking carer's leave; and
- when employer's may delay a period of carer's leave.

The [Acas guidance](#) covers the same matters, in some cases in a little more depth. For example, when discussing entitlement to carer's leave, the guidance explains who counts as a "dependant" for the purposes of the new right. It also provides some examples of what carer's leave may be used for. This is helpful as the law simply states that the leave may be taken in order to give or arrange care for a dependant but is silent on what this means in practice. Acas suggests that this may include things like:

- taking a disabled child to a hospital appointment;

- moving a parent who has dementia into a care home;
- accompanying a housebound dependant on a day trip; or
- providing meals and company for an elderly neighbour while their main carer is away.

It is important to remember that this list is not exhaustive, and other activities may qualify, for example, taking a dependant to rehabilitation or counselling sessions, or attending relevant meetings with Social Services.

The Acas guidance also addresses the question of pay for carer's leave. Although the right is to unpaid leave, the guidance highlights that some employers may elect to offer paid leave. For example, the law firm Kingsley Napley has [recently announced](#) that it would offer staff one week's fully paid carer's leave. Employees are advised to check their employment contracts or their employer's policy (where there is one) to find out what is offered in this respect. Alternatively, they should speak to their employer.

In terms of giving notice to take carer's leave, the Acas guidance encourages employers to be as flexible as possible, noting that employees might need to take time at short notice on occasion. It should also be remembered that employees who qualify for carer's leave may also qualify for emergency time off for dependants, which may be taken without advance notice in appropriate cases.

The Acas guidance also sets out employees' rights when taking carer's leave, namely the right to return to the same job on the same terms and conditions, and protection from detriment or dismissal because of something related to carer's leave. For example, if an employee had their hours reduced, or if they were overlooked for training, promotions or development opportunities because of something related to carer's leave, this would amount to an unlawful detriment.

### **What are the next steps for employers?**

With carer's leave now in force, employers should ensure that they have considered their position on carer's leave (e.g. will the amount of leave be enhanced, and will it be paid?) and have a staff-facing policy in place. Further, line managers should be educated about the new right. A good starting point would be to ask them to read the Acas guidance, as well as any staff-facing policy. Consideration should also be given to addressing carer's leave rights in training for new line managers. As well as understanding the framework for taking the leave, it is important for managers to be aware of the protections against detriment and dismissal, and guard against any treatment which could give rise to legal claims.

**BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.**

---

# Government changes approach to discarding EU laws and announces plans to reform the Working Time Regulations 1998 and TUPE

The Government has backtracked on its pledge to discard all retained EU laws at the end of year. Instead, around 600 pieces of legislation will be revoked, including some relatively niche employment laws. The rest will remain on the statute books but may be reformed over time. In connection with this, the Government has already announced plans to reform the Working Time Regulations 1998 and the Transfer of Undertakings (Protection of Employment) Regulations 2006.

## What is the Retained EU Law Bill?

A large proportion of the UK's legal framework – including its employment law framework – was underpinned by the law of the European Union as follows:

- EU “directives” had to be implemented into UK law, either as an Act of Parliament or a statutory instrument.
- Certain other forms of EU law were directly applicable in the UK without the need for any implementing laws.

- Decisions of the Court of Justice of the European Union were also binding on the UK.

Brexit required changes to be made to this legal framework. Acts of Parliament which implemented EU directives (e.g. the Equality Act 2010) remained in place. However, all the relevant statutory instruments would have automatically fallen away upon Brexit. To avoid legal chaos when Brexit happened, the Government decided to keep these statutory instruments and transfer them into UK law. It also chose to keep directly applicable EU law and decisions of the Court of Justice of the European Union made on or before 31 December 2020. Together, all these laws and decisions became known as “retained EU law”.

In September 2022, the Government decided that the time was right to look again at whether retained EU law should be kept or repealed. The Government published the [Retained EU Law \(Revocation and Reform\) Bill](#) (the Bill), which is aimed at removing the presence and influence of retained EU law within UK law. Initially, the Bill provided that all retained EU law contained in statutory instruments would automatically expire on 31 December 2023 unless a positive decision was made to keep it after this date. This was referred to as the “sunset” provision.

### **How has the Government changed its approach?**

On 10 May 2023 the Government performed a surprise U-turn on the sunset provision. The Government [announced](#) that it would table an amendment to the Bill which would scrap the sunset provision and replace it with a list of around 600 pieces of

retained EU law to be revoked on 31 December 2023. Any piece of retained EU law which was not included in that list would stay on the statute books (for now at least – it may be revoked or reformed at a later date).

Why did the Government change its approach? It had become clear that civil servants would simply not have enough time to assess which retained EU laws should be kept, reformed or discarded before the sunset date. If the sunset provision had stayed, the concern was that we would be left with a legal vacuum on 1 January 2024 – including in the field of employment law.

**Will any retained EU employment laws be revoked on 31 December 2023?**

Yes. The Government's [list of retained EU law to be revoked](#) contains the following employment laws:

- The Posted Workers (Enforcement of Employment Rights) Regulations 2016.
- The Posted Workers (Agency Workers) Regulations 2020.
- The European Cooperative Society (Involvement of Employees) Regulations 2006.

The concepts of a “posted worker” and a “European Cooperative Society” do not apply to the UK as they did when we were members of the EU. The consultation says the revocation of these rules should be regarded as a “*tidying up of the statute book*”.

## **Will any retained EU employment laws be kept or reformed after 31 December 2023?**

Yes. On 12 May 2023, the Government published a [consultation paper](#), setting out its plans regarding the future of retained EU employment law. The consultation confirms the Government's intention to keep retained EU employment laws in the following areas without any change:

- Family leave rights (maternity, paternity, adoption and parental leave).
- "Atypical" workers' rights (part-time workers, fixed-term workers and agency workers).
- Information and consultation rights.

However, some reforms are proposed to the Working Time Regulations 1998 (**WTR**) and the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) namely:

- Changes to working time record-keeping requirements.
- Changes to annual leave entitlements.
- Introduction of "rolled up" holiday pay.
- Changes to the consultation requirements under TUPE.

You can read our detailed briefing on the proposed changes [here](#).

## **What are the next steps?**

The Bill has completed its passage through the House of

Commons and is currently at the report stage in the House of Lords (meaning it has almost completed its passage there). There will then be a consideration of amendments before the Bill passes into law. Assuming that the Bill passes in its revised format, the employment laws concerning posted workers and European Co-operative Societies will be revoked on 31 December 2023.

The consultation seeking views on the proposed reforms to the WTR and TUPE closes on 7 July 2023. The Government will need to consider the responses and decide what changes, if any, it wishes to make to the law. Its position will be set out in a response paper, which we would expect to be published by the end of 2023. Legislation will then need to be passed, meaning that the reforms to the WTR and TUPE are unlikely to take effect before the latter part of 2024 at the earliest. However, we will continue to monitor this development and keep you updated.

**BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.**

---

**Government consults on  
reforms to working time**

# rules, holiday pay and TUPE

On 12 May 2023, the Government published a consultation paper, setting out its plans regarding the future of retained EU employment law.

The [consultation paper](#) confirms the Government's intention to keep retained EU employment laws in the following areas without any change:

- Family leave rights (maternity, paternity, adoption and parental leave).
- "Atypical" workers' rights (part-time workers, fixed-term workers and agency workers).
- Information and consultation rights.

However, certain reforms are proposed in the areas of working time, paid holiday rights and rights upon the transfer of a business or an outsourcing. The Government says it has identified areas for reform of laws it considers are *"too onerous for business to be used effectively or too complex for workers to know, understand and use"*.

It is seeking views on the following changes.

## Changes to working time record-keeping requirements

In 2019, the ECJ [ruled](#) that the Working Time Directive (WTD) required employers to have a system in place to measure the daily working time of all workers. Importantly, that system had to go beyond merely recording overtime hours or drawing upon other sources of information which could be pieced together to identify daily working hours. The system of recording daily hours had to be objective, reliable and accessible.

The consultation says the Government believes that this requirement is “*disproportionate*” and “*damaging to relationships between employers and their workers*” (although it is not said exactly how it is damaging). The Government wishes to legislate to clarify that businesses do not have to keep a record of daily working hours of their workers.

In fact, the Working Time Regulations 1998 (WTR) (which implement the WTD) only require employers to keep adequate records to show whether the weekly working time limits (and night work limits) are being complied with. Currently, there is no requirement in the WTR to record daily or weekly rest breaks, or the actual number of hours worked overall each day. Therefore, the proposal does not involve removing anything from the WTR, rather it would mean adding a new provision stating that such records are not required.

Technically speaking, employers should have complied with the daily working time record-keeping obligation following the ECJ’s decision. Yet we suspect that many employers would not even have been *aware* of the ECJ’s ruling and, even if they had been, would not have put in place such a system without it

being required expressly by the WTR. In conclusion, this reform is unlikely to make much difference in the real world to the way that the majority of employers are managing their working time records.

### **Creation of a single annual leave entitlement of 5.6 weeks**

Currently, the WTR provides that workers are entitled to 5.6 weeks' annual leave per year. However, this holiday entitlement is split into two allocations:

- 4 weeks' leave as required by the WTD (known as "regulation 13 leave"); and
- 1.6 weeks' leave which was granted by the UK Government on top of the minimum WTD requirement (known as "regulation 13A leave").

Different rules about pay apply to regulation 13 leave and regulation 13A leave. Workers should be paid their "normal pay" for regulation 13 leave, which may include things like commission, bonuses, allowances and some types of overtime payment. In contrast, workers are only entitled to be paid basic pay for regulation 13A leave.

The consultation says having these two types of leave causes administrative hassle for employers and confusion for workers. The proposal is to replace regulation 13 leave and

regulation 13A leave with a new regulation creating a single statutory annual leave entitlement of 5.6 weeks. Therefore, the amount of leave per year will not increase or decrease, rather this is a “behind the scenes” change to make the management of such leave more straightforward.

In terms of pay for the new single pot of annual leave, the consultation says that the new regulation would set out the minimum rate of holiday pay. The consultation seeks views on what that rate of pay should be. Ultimately, if the Government decided that only basic pay should be paid for the whole 5.6 weeks this will represent a cut to the holiday pay of workers who are normally in receipt of additional elements of pay such as commission and overtime.

Additional changes are also proposed in relation to the accrual and carry-over of annual leave.

On the accrual of leave the proposal is that workers should accrue their annual leave entitlement at the end of each “pay period” (rather than each month as is currently the case) until the end of the first year of their employment. The aim is to provide workers with a steady amount of holiday entitlement as they work and to simplify the calculation of holiday entitlement for employers.

On the carry-over of unused leave the proposal is to remove the regulations which permitted workers to carry over their regulation 13 leave into the following two annual leave years where it was not reasonably practicable to take it during the coronavirus pandemic. The consultation notes that these regulations are no longer needed. Apart from this change, the rules on carry-over would not change (i.e. 4 weeks’ annual

leave *could not* be carried over unless the worker was unable to take it in certain scenarios and 1.6 weeks' annual leave *could* be carried over where there was a written agreement between the worker and employer).

## **Introduction of rolled-up holiday pay**

“Rolled-up” holiday pay is a system where no holiday pay is paid when a worker actually takes annual leave, but, instead, an additional amount of pay is added to their pay for periods of work. In other words, the additional pay represents a payment in lieu of holiday pay. In 2006, the ECJ [ruled](#) that the practice of rolled-up holiday pay was unlawful and that workers should be paid holiday pay at the time that the annual leave is taken. The UK Government did not amend the WTR in line with the ECJ's ruling, however, it updated [non-statutory guidance](#) to provide that rolled-up holiday was not permitted.

The consultation proposes that rolled-up holiday pay be introduced as an option for all workers. Employers could choose between paying holiday pay when the worker takes the annual leave or “rolling up” holiday pay with wages and not paying anything during periods of annual leave. It is said that this system would make life simple for employers as the calculation of holiday pay would be a straightforward enhancement to every pay slip. The consultation proposes that the default enhancement rate is 12.07% of the worker's pay (which is the result of 5.6 weeks' annual leave divided by 46.4 working weeks of the year).

This reform will be welcomed by employers of workers who work irregular hours or part-year arrangements as it will simplify the calculation of holiday pay significantly.

## Changes to TUPE consultation requirements

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) protect employees' rights when the business or undertaking for which they work transfers to a new employer, either when the business changes owner or a service transfers to a new provider. Currently, before such a transfer, the outgoing employer must inform and consult with representatives of the affected employees. These can be existing representatives (e.g. trade union representatives) or ones that are elected just for this purpose. However, outgoing employers with up to nine employees may inform and consult with affected employees *directly* if there are no existing representatives in place.

The consultation proposes that the option of consulting with affected employees directly should be extended to businesses:

- with up to 49 employees; and
- with any number of employees where a transfer of up to nine employees is proposed.

However, this option would only be available where there were no existing representatives. The aim is to help businesses avoid the administrative burden of holding elections for employee representatives. This reform will be welcomed by employers – albeit that consulting with, say, 40 employees may be more challenging than consulting with just three or four

representatives.

### **What are the next steps?**

The consultation closes on 7 July 2023. The Government will need to consider the responses and decide what changes, if any, it wishes to make to the law. Its position will be set out in a response paper, which we would expect to be published by the end of 2023. Legislation will then need to be passed, meaning that the reforms are unlikely to take effect before the latter part of 2024 at the earliest. However, we will continue to monitor this development and keep you updated.

**BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.**