



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

28 January 2025

Speakers



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What are we going to cover today?

Day 1 unfair
dismissal rights

Collective
redundancies

Fire and rehire

Dismissals,
pregnancy and
family leave

Sexual harassment

Third party
harassment

Gender pay gap
and menopause

Flexible working

Family leave rights

Zero and low
hours workers

Employment
Tribunal claims

Round up of other
provisions and
beyond the Bill

Unfair dismissal: what is changing?



Employees will be able to claim **ordinary** unfair dismissal from Day 1 of employment, meaning employers will need to have a fair reason for dismissal, act reasonably and follow a fair process in every case

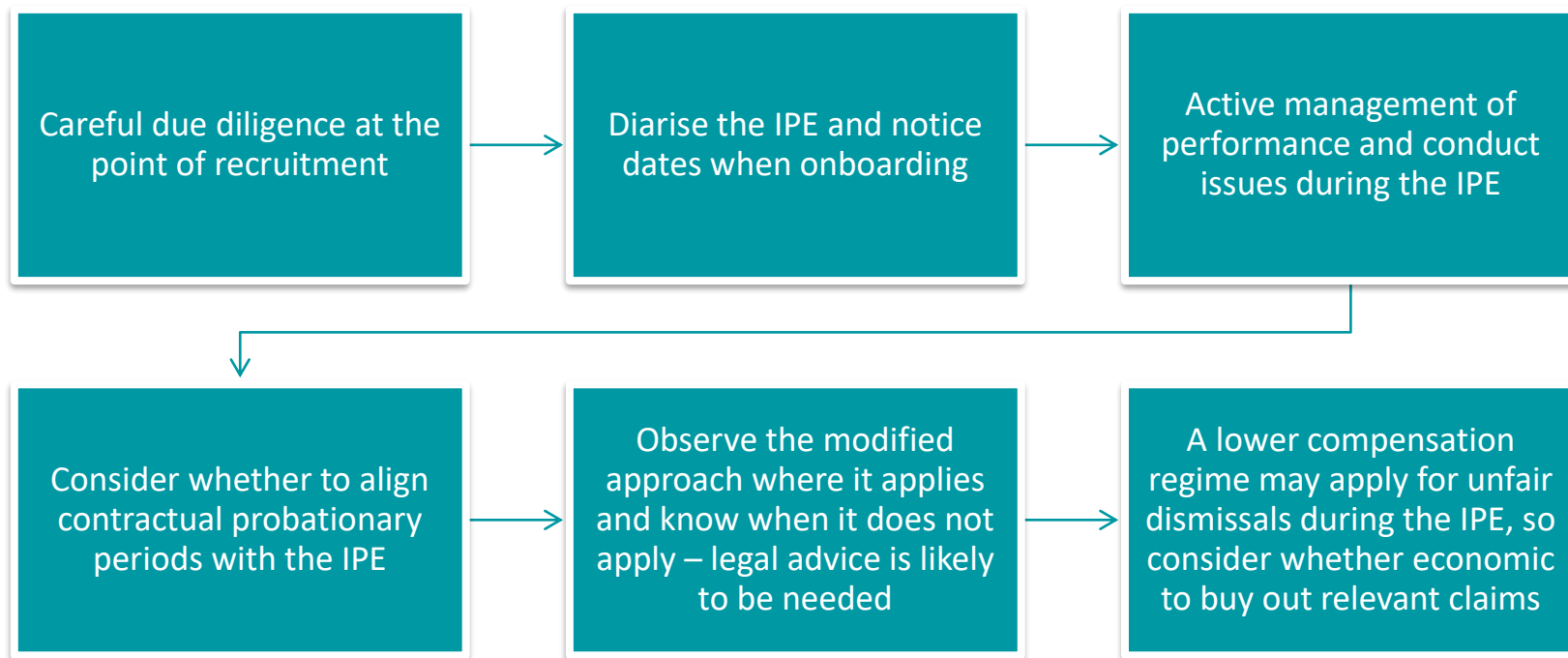


A **modified** approach to achieving a fair dismissal will apply during the “initial period of employment” (IPE). What will the modified approach require? How long will the IPE be?



The modified approach will **not** apply to dismissals (i) where notice expires more than three months after the end of the IPE; (ii) by reason of redundancy, or (iii) for some other substantial reason which does not relate to the employee

What will this mean for employers?



Collective redundancies: what is changing?

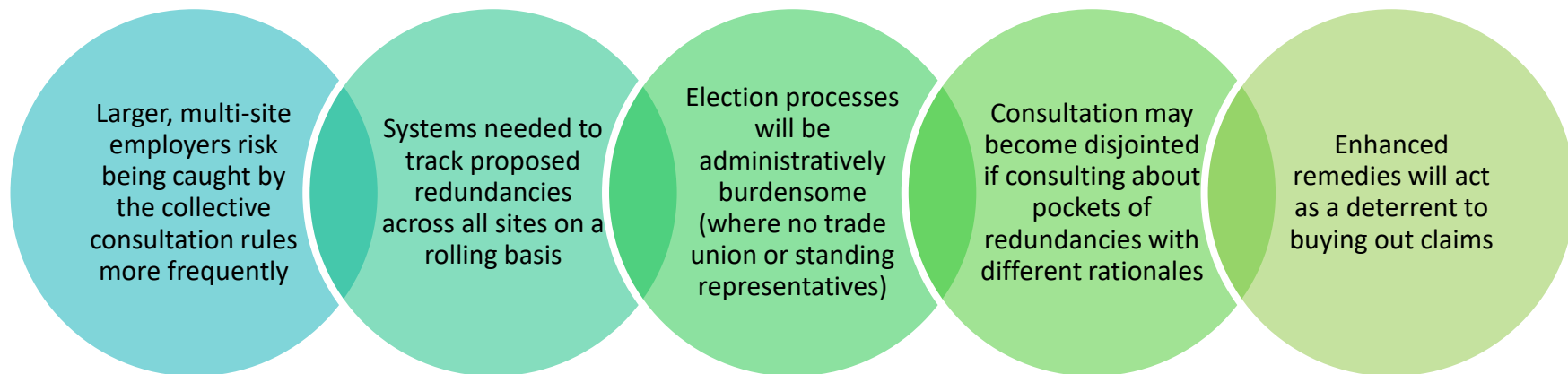
Threshold for consultation

- Triggered where there are 20+ proposed redundancies across the **whole business** within a 90-day period (as opposed to at the local place of work)

Consultation on remedies for breach

- Raise the protective award from 90 days' gross actual pay to either 180 days or uncapped?
- Make the remedy of interim relief available to workers with protective award claims?

What will this mean for employers?



Fire and rehire: what is changing?



Employees of a business will be automatically unfairly dismissed if dismissed (i) for refusing to agree to a change to varied terms, or (ii) in order to re-engage them or someone else under varied terms where the role is substantially the same

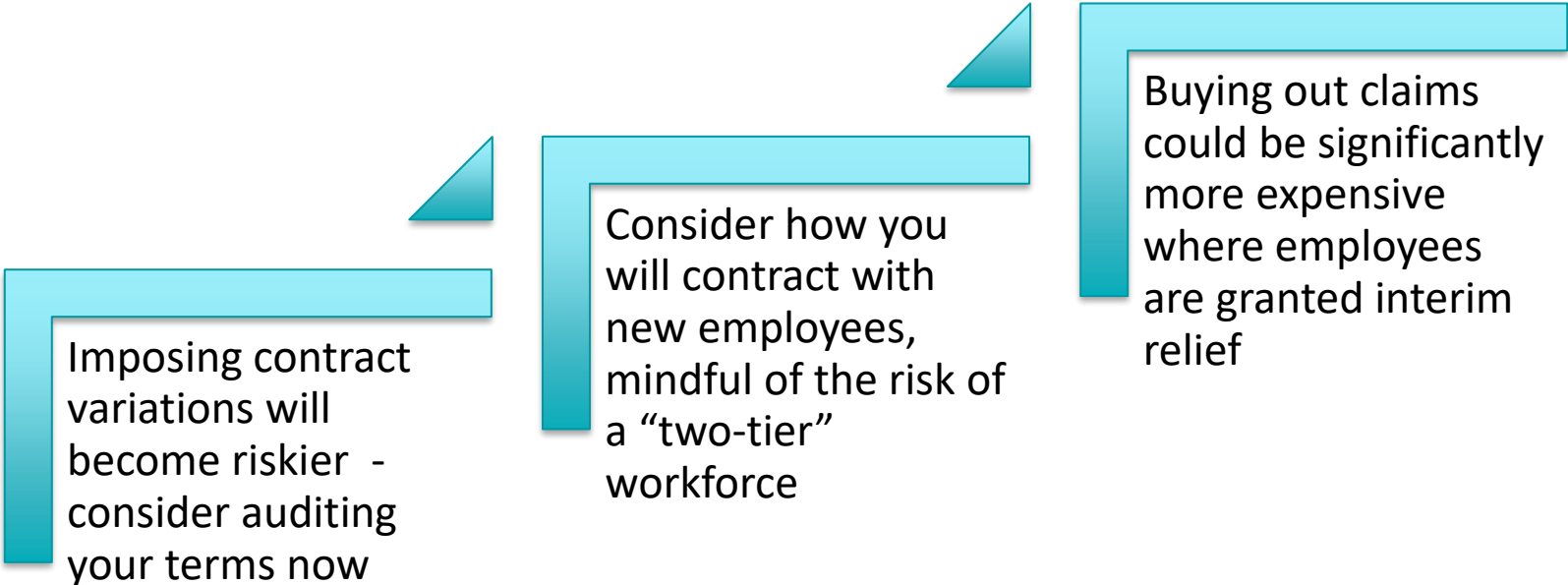


Exception is made for businesses in financial distress – but will only apply where there is an immediate risk to the ability to carry on trading



Consultation on making the remedy of interim relief available to employees with fire and rehire dismissal claims

What will this mean for employers?



Imposing contract variations will become riskier - consider auditing your terms now

Consider how you will contract with new employees, mindful of the risk of a “two-tier” workforce

Buying out claims could be significantly more expensive where employees are granted interim relief

Dismissals and pregnancy / family leave: what is changing?

Special protection from dismissal for the following groups (even if the dismissal would be fair and non-discriminatory)

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graph TD; A[Special protection from dismissal for the following groups (even if the dismissal would be fair and non-discriminatory)] --> B[Pregnant employees]; A --> C[Employees returning from maternity, adoption or shared parental leave]; A --> D[In future, employees returning from neo-natal leave and paternity bereavement leave];
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Pregnant employees

Employees returning from maternity, adoption or shared parental leave

In future, employees returning from neo-natal leave and paternity bereavement leave

Key questions

- When will a dismissal be permitted? Gross misconduct or negligence? Business closure? Illegality?
- How long will the protection apply for returners?

What will this mean for employers?



Raises the risk of dismissing these already 'high-risk' employees – adding another claim to the suite of potential claims they may have



Managers and HR will need training on the new rules in due course

Sexual harassment: what is changing?

Scope of the duty to prevent sexual harassment

- Employers will be required to take **all** reasonable steps to prevent sexual harassment (as opposed to some steps)
- Steps needed will vary from employer to employer

What counts as a reasonable step?

- Reasonable steps to be spelt out in law rather than guidance
- Likely to cover risk assessment, plans, policies, and steps relating to reporting and handling complaints

Disclosures about sexual harassment

- Disclosures about actual or likely sexual harassment will be listed in law as one type of malpractice about which a worker may blow the whistle
- Other hurdles to obtain whistleblower protection must still be jumped

What will this mean for employers?

Compliance with the duty to prevent will become much more onerous – especially for large and well-resourced employers

Consider working towards the upgraded duty now, by reference to the EHRC guidance and your own risk assessment

Compliance increases the prospects of succeeding on the ‘reasonable steps defence’ in relevant cases (which already requires **all** reasonable steps to be taken)

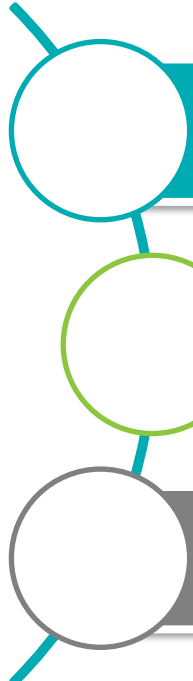
Greater risk that sexual harassment claimants will pursue whistleblowing claims

Third party harassment: what is changing?

Employers to be liable
for discriminatory
harassment
committed by third
parties of workers
during employment

- Liability to arise from the first time a worker is harassed
- Worker must show that the employer failed to take all reasonable steps to prevent the harassment

What will this mean for employers?



Significant widening of exposure to harassment claims, particularly for employers in certain sectors

Consider mapping out typical interactions with third parties and risks of harassment

Assess which steps are reasonable to take to minimise risk – more is likely to be expected where you have control / leverage over a third party

Gender pay gap and menopause: what is changing?

**Employers with 250+ employees
required to publish “equality action
plans” setting out steps taken in
relation to “gender equality” – to
cover:**

Actions to address the
gender pay gap

Actions to support
employees going through
the menopause

Other matters may be added
- menstrual health problems
and disorders?

What will this mean for employers?



Gender pay reporting exercises will become more onerous for employers who are currently just reporting figures, without an accompanying narrative or action plan



In scope employers will need to assess relevant measures already in place for menopausal workers and what more should be offered



There will be consequences for failure to comply – but unclear what they will be and whether they will apply if an employer does not go on to deliver the promises set out in the action plan

Flexible working: what is changing?

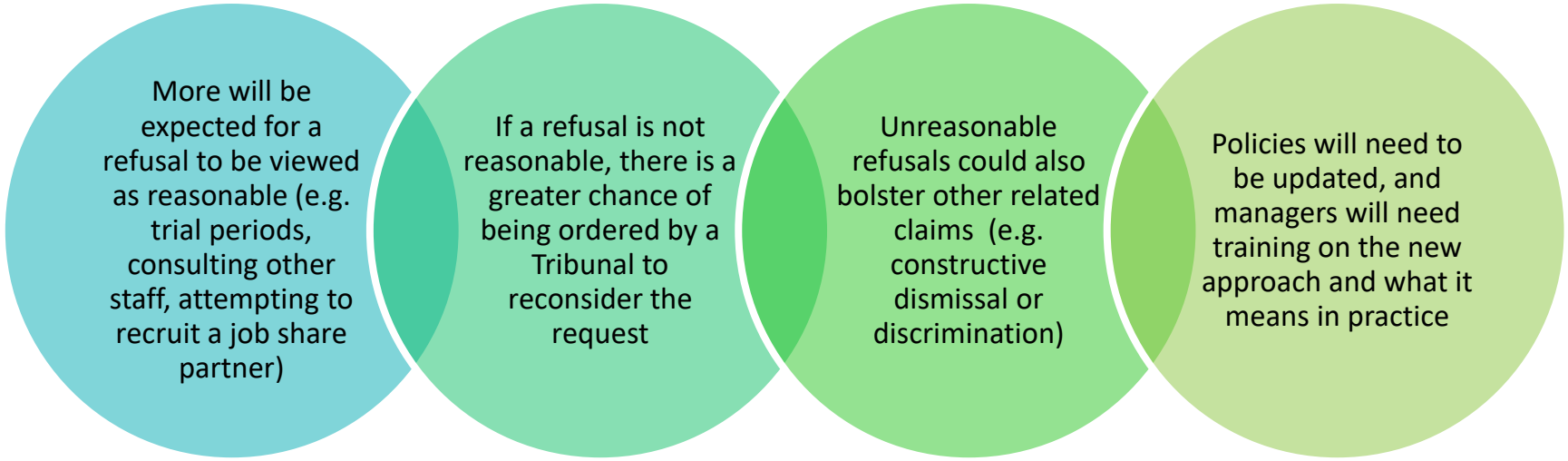
Current position: refusal of a flexible working request

- Must be for one of eight specified grounds and based on correct facts
- **Subjective** decision for the employer

New position: refusal of a flexible working request

- Must be for one of eight specified grounds and based on correct facts
- **Objectively** reasonable decision – suggests a fair and balanced assessment of employer's and worker's needs
- New law will specify the consultation to be undertaken before refusing a request

What will this mean for employers?



More will be expected for a refusal to be viewed as reasonable (e.g. trial periods, consulting other staff, attempting to recruit a job share partner)

If a refusal is not reasonable, there is a greater chance of being ordered by a Tribunal to reconsider the request

Unreasonable refusals could also bolster other related claims (e.g. constructive dismissal or discrimination)

Policies will need to be updated, and managers will need training on the new approach and what it means in practice

Family leave rights: what is changing?

Unpaid parental leave

To become a Day 1 right

Paternity leave

To become a Day 1 right and
may be taken after shared
parental leave

Bereavement leave

New statutory right to take not
less than one week's unpaid
leave following a bereavement
(two weeks' paid leave
available where a child dies)

What will this mean for employers?



More employees will be entitled to take parental and paternity leave and absences will need to be managed



Statutory right to bereavement leave will introduce legal protections for those taking such leave – training for managers will be needed



Policies will need to be updated / drafted, and consideration given to whether to enhance the bereavement leave entitlement



A full review of the entire parental leave framework has been promised which could lead to more radical changes

Zero and low hours workers: what is changing?

Duty to offer “qualifying workers” a guaranteed hours contract reflecting hours worked regularly over a reference period

- Who is a “qualifying worker”?
- What is “regular”?
- What is the “reference period”?
- How often must offers be made?
- Consequences for breach

Duty to give qualifying workers (and others without a set working pattern) reasonable notice of shifts, and of changes or cancellations

- What information must be given?
- How much notice must be given?
- Failure to give requisite notice gives rise to a pay entitlement
- Consequences for breach of notice and pay provisions

What will this mean for employers?

Significant administrative burden

Monitoring working hours
on a rolling basis

Recurring obligation to
offer guaranteed hours

Issuing revised
contracts

Dealing with
overstaffing

Shift notice rules



May lead some employers to use other resourcing solutions e.g. agency workers



Audit your workforce now to identify zero hours and part-time workers

Employment Tribunal claims: what is changing and what will this mean for employers?



Time limit to bring most Employment Tribunal claims to increase from three to six months (e.g. unfair dismissal and discrimination)



Implications:

- May dissuade protective claims and facilitate settlement
- Threat of claims hanging over your head for a longer period of time
- Impact on litigation

Other measures in the Bill

Area	Bill proposals
Statutory sick pay	<ul style="list-style-type: none">• SSP to be payable from Day 1 of sickness regardless of earnings
Tips and gratuities	<ul style="list-style-type: none">• Requirement to consult with staff every three years about tips policy
Trade unions	<ul style="list-style-type: none">• Numerous provisions aimed at strengthening trade unions, concerning access, recognition, financing and industrial action• Numerous provisions aimed at strengthening the protection of workers engaged in trade union-related activities / industrial action including new protection against detriment for having participated in industrial action and better protection from dismissal for having done so
Enforcement	<ul style="list-style-type: none">• New Fair Work Agency will have responsibility for State enforcement of aspects of employment law• Powers to enter premises, seize documents, request undertakings and obtain Court orders• Misleading or obstructing the FWA or failing to comply with requirements will give rise to corporate and individual criminal offences
Sector-specific reforms	<ul style="list-style-type: none">• Public sector workers• Ships' crews• School support staff• Adult social care workers

Beyond the Bill

Manifesto commitment	Next steps?
National Minimum Wage	<ul style="list-style-type: none">• The Government has already widened the remit of the Low Pay Commission (the LPC) and the LPC's recommendations for the new rates to apply from April 2025 will be taken forward.
Equal pay and pay reporting	<p>A new Equality (Race and Disability) Bill will:</p> <ul style="list-style-type: none">• introduce ethnicity and disability pay gap reporting for employers with 250+ staff;• introduce the right to bring equal pay claims on the basis of race or disability;• introduce measures on equal pay, including permitting comparisons with outsourced workers; and• introducing a new regulatory and enforcement unit for equal pay.
Right to disconnect	<ul style="list-style-type: none">• A new statutory Code of Practice.
Regulating employee surveillance	<ul style="list-style-type: none">• A consultation.
Single worker status and better rights for the self-employed	<ul style="list-style-type: none">• A consultation.

Beyond the Bill

Manifesto commitment	Next steps?
Parental leave framework	<ul style="list-style-type: none">• A review
Right to carer's leave	<ul style="list-style-type: none">• A review
Health and safety law and guidance	<ul style="list-style-type: none">• A review
Improving TUPE rights and protections	<ul style="list-style-type: none">• A call for evidence
Banning unpaid internships	<ul style="list-style-type: none">• A call for evidence
Permitting collective grievances	<ul style="list-style-type: none">• The Government will engage with Acas about how to facilitate the raising of collective grievances.
Dual discrimination	<ul style="list-style-type: none">• Unclear

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