



EMPLOYMENT LAW

The Employment Rights Bill: where are we now?

7 October 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

Discrimination,
harassment
and NDAs

Equality action
plans

Flexible
working

Family leave
rights

Zero and low
hours workers

Employment
Tribunal claims

Day 1 unfair dismissal rights



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.



However, a **modified** approach to achieving a fair dismissal will apply during the “initial period of employment” (the “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?



Careful due diligence at the point of recruitment.



Diarise the IPE and notice dates when onboarding.



Active management of performance and conduct issues during the IPE.



Consider whether to align contractual probationary periods with the IPE.

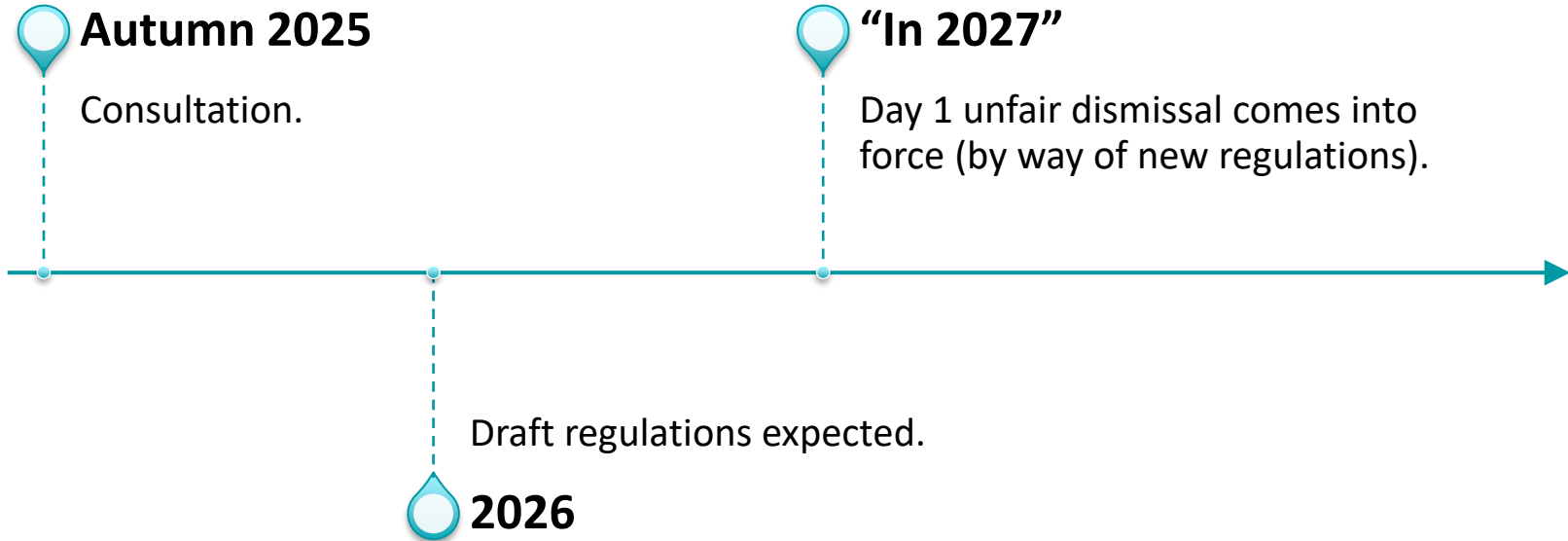


Observe the modified approach where it applies and know when it does not apply.



Consider whether economic to buy out relevant claims if compensation capped.

What's next?



Collective redundancies

Threshold for consultation

Triggered where, within a 90-day period, there are **EITHER** 20+ proposed redundancies at one establishment (**current position**) **OR** a “threshold number” of redundancies across the wider workforce (**new position**).

Protective award

Protective award to double from 90 days' gross actual pay to 180 days' gross actual pay.

What will this mean for employers?

Larger, multi-site employers risk being caught by the collective consultation rules more frequently.

Systems needed to track proposed redundancies across all sites on a rolling basis.

Election processes will be more burdensome (where no trade union or standing representatives).

Consultation may become more complex if consulting about pockets of redundancies with different rationales.

Higher protective award will act as a deterrent to buying out claims.

What's next?



Fire and rehire



Employees will be automatically unfairly dismissed if dismissed (i) for refusing to agree to a “restricted variation”, or (ii) in order to re-engage them (or engage someone else) under varied terms where the role is substantially the same but one of the differences is a “restricted variation”.



What is a “restricted variation”? Includes variations relating to pay, pensions, working hours, shifts, annual leave and the introduction of unilateral variation clauses.



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

What will this mean for employers?

Imposing “restricted variations” will become riskier
- consider auditing relevant terms now.

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

What's next?



Autumn 2025

Consultation on updating the existing Code of Practice.



1 October 2026

New fire and rehire rules come into force (by way of new regulations).

Dismissals and pregnancy / family leave

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

Pregnant employees

Employees returning from maternity, adoption, shared parental, neo-natal and paternity bereavement leave

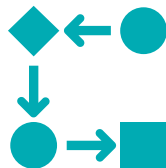
Key questions

- 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 claims they may have.



Robust systems and processes needed to monitor affected employees and comply with new rules.



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

What's next?

 **Autumn 2025**

Consultation.

“In 2027”

New dismissal protections
come into force (by way of
new regulations).

Sexual harassment

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” **may** be spelt out in law rather than guidance – awaiting outcome of Call for Evidence.
- Likely to cover risk assessment, 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?

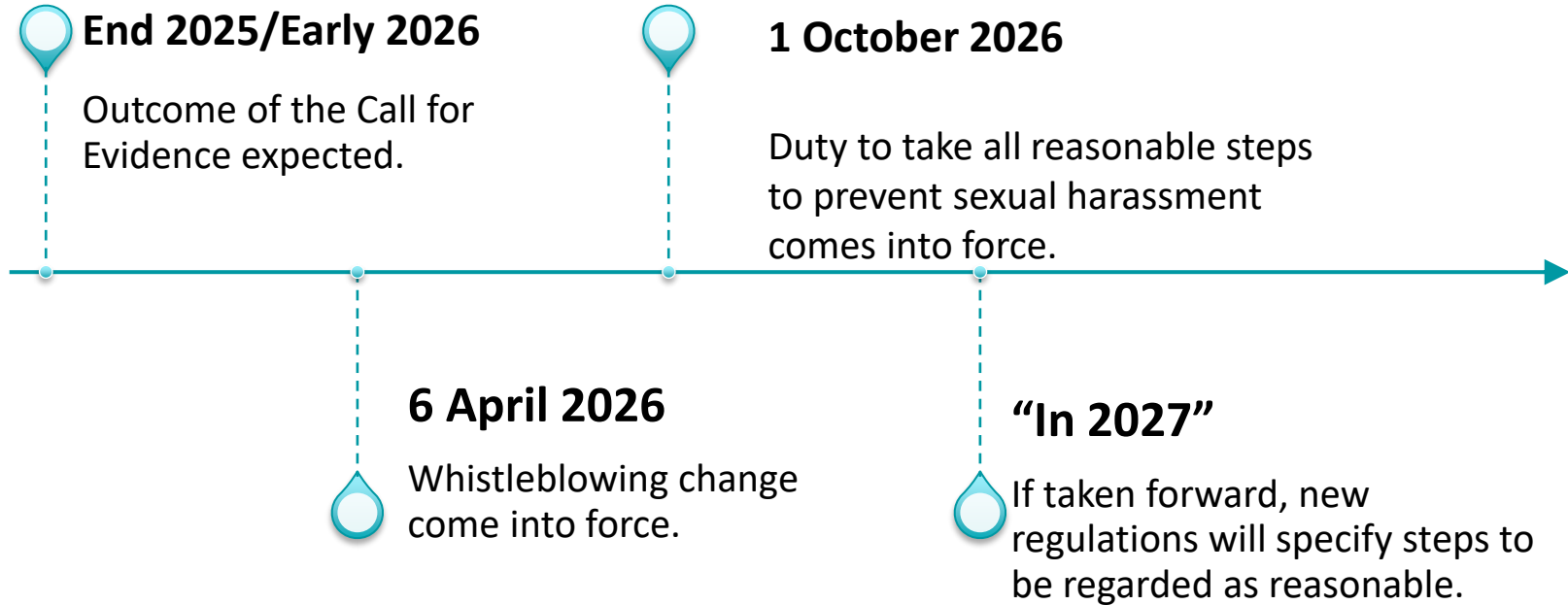
Compliance with the duty to prevent will become more onerous – especially for large and well-resourced employers.

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 also pursue whistleblowing claims.

What's next?

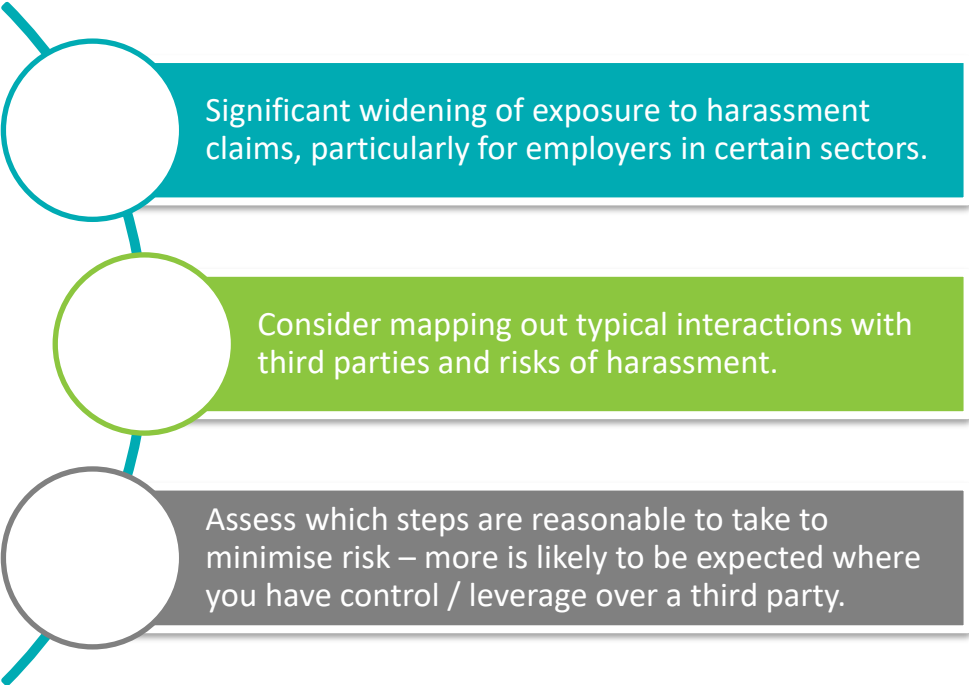


Third party harassment

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

- 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.

Reasonable steps to consider

- Signs in the workplace.
- Warning notices on telephone calls.
- CCTV.
- Barring third party harassers from the premises.
- Codes of conduct sent to third parties before contracting with them.
- Amending contractual terms with third parties to cover consequences of harassment.
- Terminating contracts with third party harassers.
- Addressing third party harassment in relevant staff training.
- Having appropriate reporting mechanisms in place.
- Providing support to harassed employees.
- Reporting third party harassers to regulators / the police.

What's next?

1 October 2026

Liability for third party harassment of workers comes into force

New guidance expected - tbc

Discrimination, harassment and NDAs

Any provision in an agreement between an employer and a worker **void** in so far as it attempts to prevent the worker from making an “allegation” or a “disclosure of information” relating to either:

relevant harassment or discrimination

the employer’s response to EITHER relevant harassment or discrimination OR the making of an allegation or disclosure of relevant harassment or discrimination

What will this mean for employers?



NDA's aimed at preserving secrecy about dispute and/or preventing disparagement will be weakened and may make settlement less attractive.



If NDA's are permitted where they have been requested by workers (**tbc**), expect strict procedural rules to prevent abuse.



The ban will not be retrospective meaning existing NDA's cannot be unpicked.

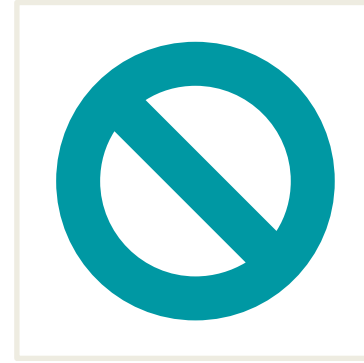


Confidentiality provisions may still be used to protect IP, trade secrets and commercially sensitive information.

What's next?



Consultation on scope of “excepted agreements”.



Unclear when the ban will come into force – not covered in Government Roadmap.

Equality action plans

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

Potentially other matters
- 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 deliver on the promises set out in the action plan.

What's next?



April 2026

Equality action plans introduced on a voluntary basis.



“In 2027”

Equality action plans to become compulsory for in scope employers (by way of new regulations).

Flexible working

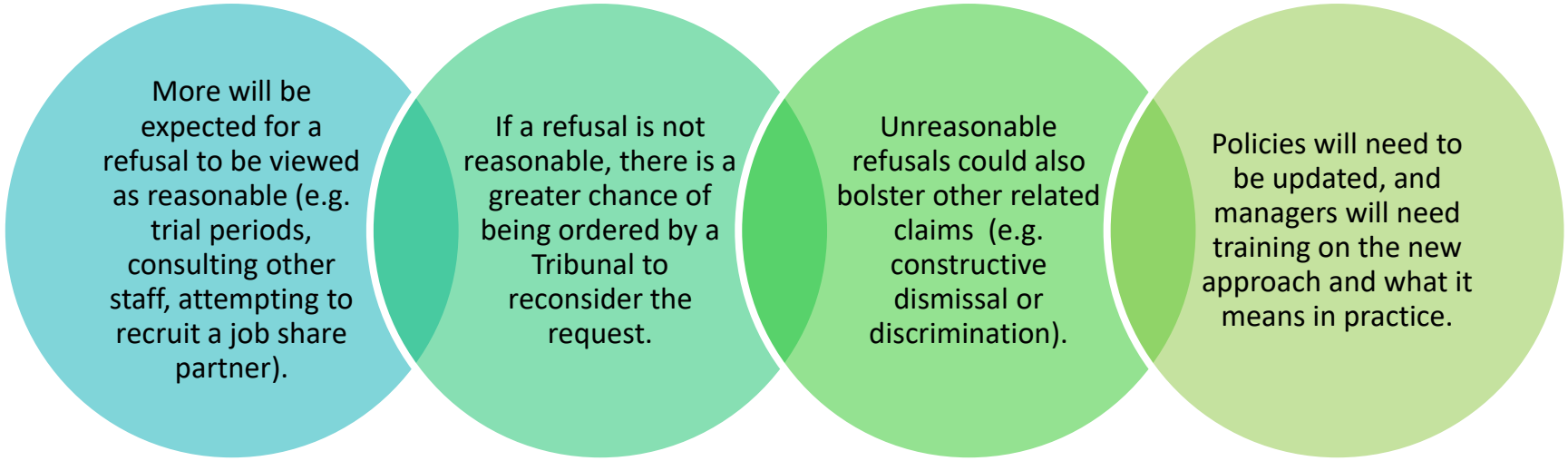
Current position: refusal of a flexible working request

- 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 regulations 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.

What's next?



End 2025/Early 2026

Consultation on proposals for change.



“In 2027”

Flexible working request change comes into force (regulations needed to specify the consultation requirements).

Family leave rights

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 1 week's unpaid leave following a bereavement or pregnancy loss before 24 weeks.

(2 weeks' paid leave available where a child dies or stillbirth after 24 weeks)

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.

What's next?



Zero and low hours workers

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...but not agency workers.



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

What's next?



Autumn 2025

Consultation on proposals for change.



“In 2027”

Zero and low hours changes come into force (by way of new regulations).

Employment Tribunal claims



The time limit to bring most Employment Tribunal claims will increase from three to six months on **1 October 2026**.



What does this mean?

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

When?	What?
Early November 2025	• Employment Rights Bill expected to become law (the Employment Rights Act 2025)
Autumn 2025 - Early 2026	• Consultations on: ○ day 1 unfair dismissal ○ updating fire and rehire Code of Practice ○ the new threshold trigger for collective redundancy consultation ○ new dismissal protection during pregnancy and after family leave ○ the scope of “excepted agreements” for the purposes of the NDA ban ○ flexible working request reform ○ bereavement leave ○ zero/low hours reforms
6 April 2026 (tbc)	• Protective award for failure to collectively consult to rise from 90 to 180 days • Sexual harassment to become a standalone category of whistleblowing malpractice • Day 1 Paternity Leave and Parental Leave into force (plus the right to take Paternity Leave after Shared Parental Leave)
1 October 2026 (tbc)	• New fire and rehire rules into force • Duty on employers to take <u>all</u> reasonable steps to prevent sexual harassment into force • Employers’ liability for third party discriminatory harassment into force • Equality action plans introduced on a voluntary basis • New six-month time limit to bring most Employment Tribunal claims into force
In 2027	• Day 1 unfair dismissal rights into force • New collective redundancy consultation trigger into force • New dismissal protection during pregnancy and after family leave into force • New regulations to specify reasonable steps for the purposes of duty to prevent sexual harassment • Equality actions plans into force • Flexible working request change into force • Right to take bereavement leave into force • Zero and low hours changes into force

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