



EMPLOYMENT LAW

The Employment Rights Act 2025: What do employers need to do and when?

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Speakers



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What are we going to cover today?

April 2026

- Increase to protective awards for collective consultation failures.
- Enhancements to Paternity and Parental Leave.
- Sexual harassment listed as a form of whistleblowing malpractice.
- Round up of other April 2026 reforms.

October 2026

- Enhanced duty to prevent sexual harassment.
- Employers' liability for discriminatory harassment by third parties.
- Increase to time limits for bringing Tribunal claims.
- Requirement to give a written statement of trade union rights.

January 2027

- Unfair dismissal – reduction of the qualifying period and removal of the cap on compensation.
- Restrictions on fire and rehire and fire and replace with a non-employee.

Later in 2027

- Ban on restricting the disclosure of discrimination and harassment.
- Higher bar for refusing flexible working requests.
- New right to statutory Bereavement Leave.
- New protections for zero and low hours workers.
- Round up of other 2027 reforms.

REFORMS COMING INTO FORCE ON 6 APRIL 2026

Collective redundancies: protective award

Current position

- **Protective award:** up to maximum 90 days' gross actual pay available for breaches of rules governing information and consultation or the election of representatives.

New position

- **Protective award:** increasing to maximum 180 days' gross actual pay for dismissals taking place on or after **6 April 2026**.
- Higher awards potentially available for:
 - 20-99 collective redundancy exercises beginning on/after **8 March 2026** (i.e. 30 days before 6 April); and
 - 100+ collective redundancy exercises beginning on/after **21 February 2026** (i.e. 45 days before 6 April).

What do you need to do?



Educate business leaders that protective awards will become materially more expensive (particularly when added to an uncapped unfair dismissal claim from 1 January 2027).



Consider whether “buying out” 180-day protective awards claims is palatable and, if not, optimise the collective consultation exercise to limit exposure to claims.



Improves an employee’s leverage in settlement discussions but a Tribunal will award only what is “just and equitable” relative to the seriousness of the employer’s failure.

Parental and paternity leave rights

Current position

- **Unpaid parental leave:**
 - 1 year's qualifying service.
- **Paternity leave:**
 - 26 weeks' qualifying service (by the 14th week before the expected week of childbirth).
 - Must be taken **before** any period of shared parental leave or will be lost.

New position

- **Unpaid parental leave:**
 - Day 1 employment right.
- **Paternity leave:**
 - Day 1 employment right.
 - May be taken **either before or after** a period of shared parental leave without being lost.

What do you need to do?



Workforce planning: more employees will be entitled to take Parental and Paternity Leave and absences will need to be managed.



Staff handbooks: policies will need to be updated to reflect new entitlements (and communicated to staff).



Future reform: monitor the Government's wider review of the family leave framework closing on 31 December 2026.

Sexual harassment: whistleblowing

Current position

- The Employment Rights Act 1996 lists out categories of potentially protected disclosures.
- Does not expressly include sexual harassment, but disclosures about such conduct may qualify as relating to an actual or likely:
 - criminal offence;
 - failure to comply with a legal obligation; or
 - danger to health and safety.

New position

- List of types of protected disclosures will be expanded to expressly include actual or likely sexual harassment.

What do you need to do?

Update Sexual Harassment and Whistleblowing Policies and related guidance.

Train HR, managers and others responsible for dealing with whistleblowing reports.

Other April 2026 reforms

Area	Detail
Statutory Sick Pay (6 April 2026)	<ul style="list-style-type: none">• SSP payable from the first day of sickness (rather than the fourth).• Requirement for the employee to earn at least the “lower earnings limit” (currently £125 per week) will be removed.
Holiday pay records (6 April 2026)	<ul style="list-style-type: none">• Requirement for employers to maintain certain records relating to annual leave and pay.
Equality Action Plans (6 April 2026)	<ul style="list-style-type: none">• Voluntary publication for employers with 250+ employees.• Initial guidance has been published.
Fair Work Agency (7 April 2026)	<ul style="list-style-type: none">• “Soft launch” on 7 April 2026.• FWA will have responsibility for enforcement of the following areas: National Minimum Wage; SSP; holiday pay; regulation of employment agencies and businesses; the unpaid Employment Tribunal financial penalties scheme; the licensing of gangmasters; section 1 of the Fraud Act 2006; and parts 1 and 2 of the Modern Slavery Act 2015.• Currently unclear when the FWA’s enforcement powers will come into force.

REFORMS COMING INTO FORCE IN OCTOBER 2026

Sexual harassment: upgraded duty to prevent

Current position

- Since October 2024, all employers have been required to take reasonable steps to prevent sexual harassment of workers.
- Consequences for breach are an uplift to compensation of up to 25% in relevant claims and possible EHRC investigation and enforcement action.
- List of suggested reasonable steps set out in EHRC guidance only.

New position

- Employers will be required to take **all** reasonable steps to prevent sexual harassment of workers from October 2026.
- No change to consequences for breach.
- Regulations to specify non-exhaustive list of reasonable steps, which will apply to the proactive duty and the existing reasonable steps defence (expected 2027).

What do you need to do?

Compliance with the duty to prevent will become more onerous – you must do **everything** that is reasonable for you to do.

Start working towards the upgraded duty now, by reference to the EHRC guidance and your previous risk assessment. Consult with your staff and document everything.

In disputes, expect employees to seek disclosure of internal decision-making documents about which steps are possible and reasonable.

Expect claimants in all sexual harassment cases to plead a breach of duty and seek an uplift to compensation.

Employer's liability for third party harassment

Current position

- No specific claim available where a worker is harassed at work by someone who is not a colleague.
- Duties may apply (e.g. to prevent sexual harassment) but remedy is limited.

New position

- New claim introduced making employers liable for harassment of their workers by third parties.
- Includes most protected characteristics and sexual harassment.
- Employer liable from first incident and regardless of whether it had knowledge of the harassment.
- Worker must show that the employer failed to take all reasonable steps to prevent the harassment.

What do you need to do?

Map 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.

Update Harassment Policy and training and review and update contracts with third parties

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 and policies.
- Having appropriate reporting mechanisms in place.
- Providing support to harassed employees.
- Reporting third party harassers to regulators / the police.

Increase to Employment Tribunal time limits

Current position

- Strict **three-month** time limit for most Employment Tribunal claims.
- Burden on the Claimant to prove why it could not be brought in time (can be applied harshly).

New position

- Time limit extended to **six months** for most claims (usual test for extensions of time will apply).
- Will not affect breach of contract claims in the Tribunal.
- Timeframe for implementation keeps changing but will not be in force before October 2026.

What do you need to do?



Revisit your approach to settlement negotiations – consider whether to ‘wait out’ the claim to see if employee gives up over longer timeframe or mitigates their losses.



Revisit document and evidence preservation to ensure evidence not deleted.



Higher risk of key witnesses leaving employment so ensure contracts and settlement agreements include “future assistance” clauses.

Requirement to give written statement of trade union rights

Current position

- Employers must provide a written statement of particulars of employment to employees and workers when they start work covering a range of core issues including pay, hours and place of work.

New position

- Employers must provide a written statement to employees and workers about trade union rights.
- To be given at the same time as the statement of particulars **and** at other times.
- Failure to provide the statement will give rise to a Tribunal complaint.
- Consultation seeking views on content and form of the statement and manner and frequency of delivery.

What do you need to do?

Check the outcome of consultation – the hope is that compliance should be relatively straightforward. Build into your onboarding process.

Combined with other measures in the Act, this change will raise awareness of trade unions among your workforce.

REFORMS COMING INTO FORCE IN JANUARY 2027

Unfair dismissal

Area	Current position	New position
Qualifying period	2 years	6 months (i.e. anyone employed by 2 July 2026 will <u>immediately</u> qualify on 1 January 2027)
Fair reasons	Five fair reasons (conduct, capability, redundancy, illegality, some other substantial reason)	Unchanged
Acted reasonably	Fair process and “range of reasonable” responses	Unchanged
Basic award	Calculated according to formula based on complete years of service	Unchanged
Compensatory award	Capped at lower of 52 weeks’ pay or £118,223	Uncapped (expected to apply to dismissals with an EDT on or after 1 January 2027)
Adjustments	Mitigation, Polkey, Acas Code compliance and contributory fault	Unchanged

What do you need to do?

Consider taking a more cautious approach to recruitment and probationary periods.

Expect settlement to be harder to achieve. Once in litigation, be prepared for more ambitious Schedules of Loss.

Ensure line managers are proactively line managing staff during the first six months of employment.

Take great care with dismissals in late December due to a rule which could allow the termination date to be extended into 2027 – take legal advice.

Once the unfair dismissal right has been acquired, take care with dismissal processes (especially for higher earners).

Start work on 'getting your house in order' now and executing fair dismissals before the end of 2026 to avoid uncapped claims.

Fire and rehire

Current position

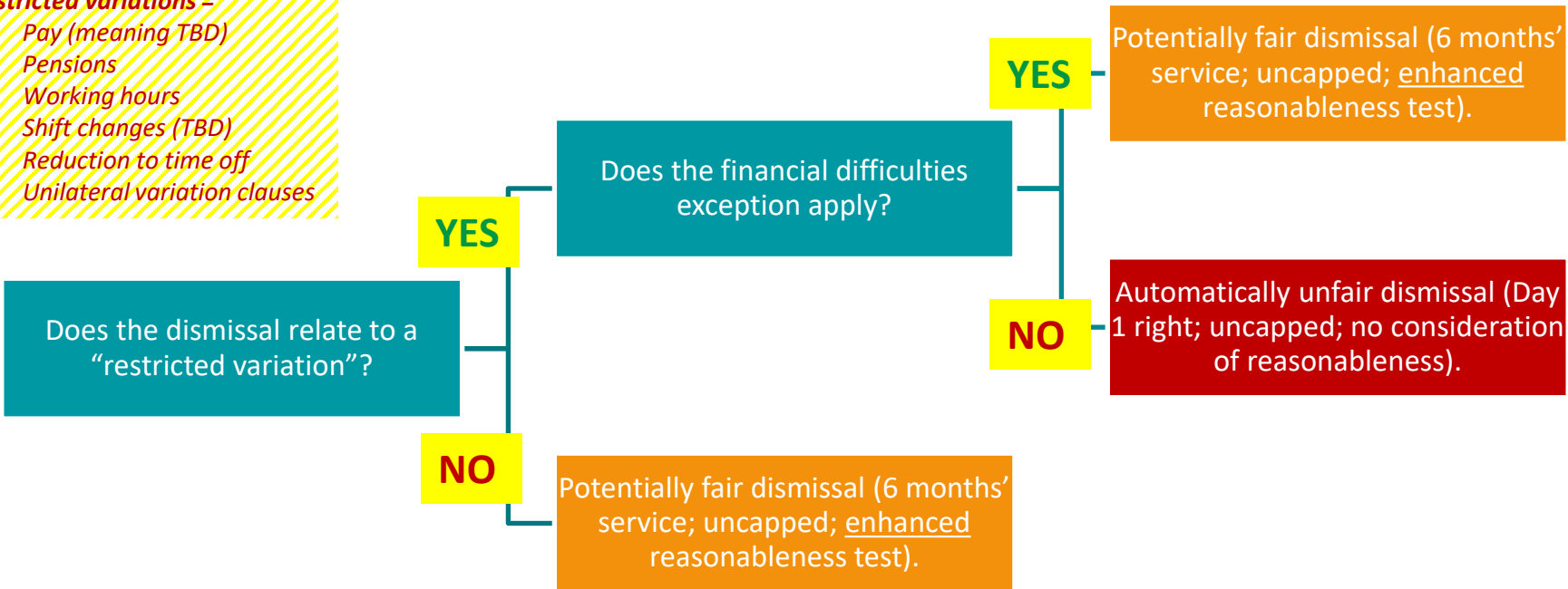
- Dismissal and offer to re-engage on inferior terms may be fair on SOSR grounds > if not, then will be **ordinarily unfair (needs qualifying service)**.
- Employer should also comply with the DBT's statutory Code of Practice on dismissal and re-engagement or face an uplift to compensation of up to 25%.

New position

- Dismissal for (i) refusing to agree a “restricted variation”, or (ii) to re-engage them (or someone else) under varied terms where the role is substantially the same but one of the differences is a “restricted variation” = **Day 1 automatically unfair dismissal**.
- What is a “**restricted variation**”? Includes variations relating to pay, pensions, working hours, shifts, annual leave and the introduction of unilateral variation clauses; consultation underway about some of the fine detail.
- Very limited exception made for businesses in financial distress – will only apply where there is an immediate risk to the ability to carry on trading.

How will it work?

- Restricted variations =**
- Pay (meaning TBD)
 - Pensions
 - Working hours
 - Shift changes (TBD)
 - Reduction to time off
 - Unilateral variation clauses



Fire and replacement with a non-employee

Current Position

- Dismissal of an employee to hire a non-employee is a potentially fair redundancy or SOSR dismissal > if not, then **ordinarily unfair (needs qualifying service)**.

New Position

- **If the reason (or principal reason) for the dismissal is to enable the employer to replace the employee with someone who is not an employee of the employer...**
 - where the non-employee would carry out the same or substantially the same role (alone or taken together with others)
 - the business still has a need for the activities to be performed

....will be **Day 1 automatically unfair** (unless the financial difficulties exception applies)

What do you need to do?

Fire and rehire

- Very high risk to force through restricted variations – exposed to automatic and uncapped unfair dismissal claims from Day 1 of employment.
- If you have known issues on pay, benefits, hours, shifts or leave terms execute those variations before the new fire and rehire rules (and uncapped unfair dismissal) come into force.
- Going forward, try to negotiate and offer carrots to encourage acceptance, rather than use the stick of dismissal.

Fire and replace

- Pause to do some groundwork before changing your resourcing model – your freedom to contract on whatever basis you wish has been restricted.
- The key battlegrounds will be (i) the rationale for the change and (ii) the similarity of the role performed by the non-employee/s. Document the process.

REFORMS COMING INTO FORCE LATER IN 2027

Non-disclosure agreements

Current position

- Common feature of settlement agreements and employment contracts.
- Prohibitions on using NDAs to restrict:
 - Whistleblowing.
 - Disclosures to police or regulators, or by victims of crime (within specified boundaries under VPA 2024).
 - Matters in the SRA's Warning Notice.

New position

- Prohibition on using NDAs to prevent disclosure of information or allegations about harassment or discrimination.
- Includes information or allegations about the employer's response.
- As drafted, nothing to prevent this capturing bad faith or untrue allegations, or third-party harassment.
- Regulations may set out categories of "excepted" agreements, i.e. where an NDA may be used.

What do you need to do?



Update template agreements (employment contracts, settlement agreements, stand-alone NDAs).



Consider whether settlement is still of value without secrecy about dispute and/or prevention of disparagement.



If NDAs 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 NDAs cannot be unpicked.



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

Flexible working

Current position

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

New position

- 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 do you need to do?

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.

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

Bereavement and pregnancy loss leave

Current position

- Day 1 right to two weeks' Parental Bereavement Leave when a child under the age of 18 dies or a child is stillborn after 24 weeks of pregnancy.
- No statutory right to leave for other types of bereavement or following a pregnancy loss before 24 weeks of pregnancy (other than sick leave).

New position

- "Parental Bereavement Leave" will be converted to "Bereavement Leave".
- Where a child under the age of 18 dies / is stillborn after 24 weeks, the entitlement will remain at two weeks' leave (and possibility of statutory pay).
- For all other types of bereavement and for pregnancy loss before 24 weeks, the entitlement is expected to be one week's unpaid leave.
- Awaiting final details of scope of the right.

What do you need to do?



Train managers on the change from discretionary leave to a statutory entitlement to take leave.



Introduce a Bereavement Leave Policy setting out entitlement, notification, pay position etc.



Consider whether you will enhance the right e.g. allow more time / offer paid leave.

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 do you need to do?

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

Consider other resourcing solutions....but not agency workers.

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

Other 2027 reforms

Area	Detail
New workforce trigger in place for collective redundancy consultation	<ul style="list-style-type: none">• Collective redundancy consultation to be triggered when a new threshold number of redundancies across the business are proposed within a 90-day period. This will be in addition to the existing trigger of 20+ redundancies at one establishment within a 90-day period.• Currently under consultation until 21 May 2026.
Enhanced protection from dismissal during pregnancy, maternity leave and after return from maternity family leave	<ul style="list-style-type: none">• Higher protection from dismissal during pregnancy and after family leave into force.• Consultation closed on 15 January 2026 and awaiting final proposals and regulations.
Compulsory publication of Equality Action Plans for large employers	<ul style="list-style-type: none">• Compulsory publication by employers with 250+ employees.• Initial guidance on what is required has been published and awaiting final guidance and regulations.

Other 2027 reforms

Area	Detail
Duty to prevent sexual harassment	<ul style="list-style-type: none">• New regulations may be published specifying reasonable steps for the purposes of duty to prevent sexual harassment.
Gender pay gap reporting	<ul style="list-style-type: none">• New requirement for employers that are in scope to report their gender pay information, to publish information on their use of outsourced workers.
Umbrella companies	<ul style="list-style-type: none">• Definition and regulation of umbrella companies.• Currently under consultation until 1 May 2026.

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