

The Employment Rights Bill – Key Priorities

Winckworth
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Background

- The Employment Rights Bill (“**ERB**”) was published on 10 October 2024
- The ERB is a broad framework for changes to employment legislation
- Further details will be set out in regulations and Codes of Practice
- The changes are planned to come into force on a phased basis in 2026 and 2027

In this talk we are covering some of the changes which are coming into force in 2026:

From April 2026:

Statutory Sick Pay changes

Fair Work Agency body established

Whistleblowing protection

'Day 1' Paternity Leave and Unpaid Parental Leave

Collective redundancy requirements & protective award increased

From October 2026:

Fire and rehire clamp down

Extension of Employment Tribunal time limits

Requiring employers to take “all reasonable steps” to prevent sexual harassment of their employees

Introducing an obligation on employers not to permit the harassment of their employees by third parties

We will be covering the changes being implemented in 2027 in this afternoon's session, including:

Zero-hours contracts

Statutory bereavement leave

Umbrella companies

More detailed gender pay gap reporting

Enhanced rights for pregnant workers and maternity leave returners

Menopause action plans

Enhanced rights re flexible working

Day one unfair dismissal rights

Statutory Sick Pay



Current Law

Statutory Sick Pay (“**SSP**”) is only payable from the 4th day of sickness

You need to earn at least the Lower Earnings Limit (currently £125 per week) to be entitled to SSP

What's Changing

- SSP will be payable from the 1st day of sickness absence
- Lower paid employees will be entitled to SSP as the requirement to earn at least the Lower Earnings Limit will be removed
- The new level of SSP will be the lower of:
 - the prescribed rate (currently £118.75 per week); or
 - 80% of an employee's weekly earnings

Action Points

Review
and
update
sick pay
policies

Consider
the level
of
additional
cost

Manage
sickness
absence

WS

Fair Work Agency





Current Law

Typically enforcement of employment laws is by employees
e.g. holiday pay

Existing enforcement agencies

- HMRC enforces National Minimum Wage (“**NMW**”)
- Employment Agency Standards Inspectorate regulates employment agencies
- Gangmasters and Labour Abuse Authority works to protect vulnerable and exploited workers

What's Changing

- Fair Work Agency brings together existing enforcement functions and will also cover enforcement of other areas e.g. statutory holiday and SSP
- Range of enforcement powers including:
 - Issuing notices of underpayment and penalties to employers
 - Recovery of enforcement costs from employers
 - Bringing Tribunal proceedings on behalf of workers
 - Providing legal assistance for employment claims
 - Requiring individuals to attend meetings and answer questions
 - Entering premises to inspect and seize documents, and access computers

Action Points

Audit your contracts, policies and practices to ensure compliance with the NMW, SSP and holiday pay

Take advice

Make any necessary changes now

Build additional costs into financial planning

Keep records



Whistleblowing Protection

Current Law

A protected disclosure must:

- Be a disclosure of information about an area of wrongdoing set out in s43B ERA 1996 e.g. a breach of a legal obligation
- Must be in the public interest; and
- Be made to one of the categories of people listed in s43B ERA 1996 e.g. the employer



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What's Changing

Reporting that sexual harassment “has occurred, is occurring or is likely to occur” will be added as a further category for whistleblowing purposes

The disclosure must be in the public interest

Action Points

Ensure
whistleblowing
policies and
sexual
harassment
policies are up
to date

Consider how
you will
investigate
sexual
harassment
complaints

Undertake
training

WS



NDA's

Current Law

NDA's which seek to prevent an individual from making a protected disclosure under the whistleblowing legislation are void

NDA's signed after 1 October 2025 which seek to prevent a victim of crime (or a person who reasonably believes they are a victim of crime) from reporting the crime to the police or disclosing details to certain bodies and professionals to get advice or support to cope or recover from the crime is void (Section 17 of the Victims and Prisoners Act 2024 (VPA 2024))

What's Changing

A provision in an agreement between an employer and a worker (e.g. employment contract or settlement agreement) will be void to the extent that it prevents the worker from making either an allegation of, or a disclosure of information relating to:

- “Relevant” harassment or discrimination
- The employer's response to the relevant harassment or discrimination or the making of an allegation or disclosure

This does not apply to “excepted agreements” (subject to consultation)

“Relevant” discrimination or harassment means:

- It consists of, or is alleged to consist of, conduct of the employer or another of the employer's workers; or
- The actual or alleged victim is the worker themselves or a fellow worker

Action Points

Keep abreast of
consultation and
regulations

Update any
relevant
employment
documents once
we know more

Investigate and
take appropriate
action in relation
to complaints of
harassment and
discrimination

A photograph of a man with short dark hair and a beard, wearing a white t-shirt and blue jeans, sitting on a light-colored carpet. He is smiling and looking down at a baby who is sitting in front of him. The man is holding a green spoon and feeding the baby. The baby is wearing a white onesie and is looking up at the man. The background is a blurred living room with a white sofa and a wooden shelf with various items.

'Day 1' Paternity Leave and Unpaid Parental Leave



Current Law

Parental leave: employees need to have been employed for one year to be eligible for parental leave

Paternity leave: employees need to have been employed for 26 weeks, assessed 15 weeks before the expected birth week

Employees lose entitlement to paternity leave and pay if they take shared parental leave

What's Changing

- **Parental leave:** removal of any length of service requirement
- **Paternity leave:** removal of any length of service requirement
- Employees will be able to take paternity leave and pay even after they have taken shared parental leave and pay

Action Points

Ensure policies
are updated to
reflect the
changes

Update
manager and
HR guidance
notes and
training



Collective redundancy
requirements & protective
award increased

Current Law

Employers must engage in collective consultation if proposing 20 or more redundancies at “*one establishment*” within a 90 day period

Maximum Protective Award = 90 days’ pay per affected employee

What's Changing

- Collective consultation will be required if:
 - 20+ redundancies at one establishment; **or**
 - threshold test is met (to be defined in regulations, but could be based on a percentage or number higher than 20)within a period of 90 days
- Increase to the maximum protective award from 90 to 180 days' pay

Action Points

Be aware of timeframes if redundancies are in contemplation in the near future

Consider implementing a system now to keep track of proposed redundancies across all sites

Keep an eye on developments around the new threshold test

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A woman in a white lab coat is shaking hands with a man in a dark sweater. They are standing behind a dark desk. On the desk, there is a laptop, a small potted plant, and a clipboard with a pen. The background is slightly blurred, showing a patterned wall and a framed document.

Fire and Rehire

Current Law

Fire and rehire is the practice of forcing changes to employees' contractual terms by dismissing them from their old contracts, and seeking to re-engage them on new terms

Practice of fire and rehire is not currently unlawful

Statutory Code of Practice on dismissal and re-engagement says it should be a **last resort**

What's Changing

- Fire and hire will (almost always) be unlawful, and it will be automatically unfair to dismiss an employee who refuses a contractual change amounting to a “restricted variation” (including introducing a variation clause)
- A ‘**Restricted Variation**’ will include changes to the following terms :
 - Pay (reduction in pay; changes to performance-based pay; pensions)
 - Working time
 - Inclusion of variation clauses
- Very limited exception where the business is in financial distress
- Restriction on dismissing an employee and replacing them with someone who is not an employee to do substantially the same activities

Action Points

Consider making any proposed changes now (although note the bar for lawful dismissal and re-engagement is already high, so tread carefully!)

Ensure existing contracts and contracts for new starters are drafted to allow for as much flexibility as possible



Employment Tribunal Time Limits



Current Law

- Currently the time limit for bringing a claim in the Employment Tribunal is 3 months minus 1 day from the date the issue occurred (in most cases)
- Subject to ACAS early conciliation

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What's Changing

- The Bill extends the time limit for bringing Employment Tribunal claims from 3 months to 6 months
- Longer period of 'risk' or longer period to achieve settlement?

Action Points

Manage leaver
relations &
processes

Review data
retention
policies &
practices

Consider
current
settlement
strategies



Preventing Sexual Harassment

Current Law

In October 2024 a new duty was imposed on employers to take reasonable steps to prevent sexual harassment of their staff

Employment Tribunals have the power to uplift Tribunal compensation by up to 25% if this duty is breached

The Equality and Human Rights Commission can enforce the new duty

What's Changing

Employers will have a duty to take **ALL** reasonable steps to prevent sexual harassment of their staff

There is provision in the ERB for regulations to specify what “all reasonable steps” will entail

Action Points

Anticipate:

- risk assessment
- policy

Train

Raise awareness

Actions speak louder than words

Monitor

The background image is a blurred office scene. In the foreground, a white computer keyboard is visible on a desk. To the left, a person's hand is raised, possibly gesturing. To the right, another person is holding a pen over a document. The overall tone is professional and slightly muted.

Third Party Harassment

Current Law

Third party harassment provisions were repealed in 2013

The new duty to prevent sexual harassment covers harassment by third parties but a breach of the duty is not a stand-alone legal claim

What's Changing

An employer will be liable if they have failed to take ALL reasonable steps to prevent harassment of their staff by third parties in relation to all protected characteristics



Action Points

Anticipate:

- risk assessment
- policy

Train

Raise awareness

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Monitor

THANK YOU

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