



The Government has now published its Employment Rights Bill which introduces provisions relating to several employment law aspects.

Consultation on these reforms will commence in 2025 with no expected implementation date before Autumn 2026, so there’s no rush to start making any policy changes just yet.

For ease, the Employment Rights Bill is referred to as ‘the Bill’ throughout this overview.

This briefing focuses on the following as raised by the Bill:

Day one UD rights	Fire and re-hire	Zero hours	3rd party harassment	Flexible working	Pat, parental bereavement leave rights
Pregnancy & new mothers	Statutory sick pay	Gender pay gap/menopause	Collective redundancy consultation	Written statement of particulars	Additional Trade Union proposals

<p>Day One Unfair Dismissal Right</p>	<p>Currently, save for whistleblowing and discrimination dismissals; employees need to have two years employment before they can bring a claim of unfair dismissal against their employer. Under the Bill, this qualifying period will be removed provided they have commenced work, thereby enabling claims to be brought by employees from the start of their employment.</p> <p>There is to be consultation on a new statutory probation period – rumoured to be nine months. There may be a provision to allow dismissals to be fair if made during the probation period, such as introducing a probationary period dismissal. Presumably this will require employers to hold a meeting and give the employee the opportunity to argue their case before a decision to dismiss is considered. Proposals are awaited but we know it will require employees to be carefully monitored during their probationary period and a decision taken early on whether they are suitable to the employer.</p>
<p>Ending the opportunity to ‘Fire and Re-hire.’</p>	<p>Currently, where an employer seeks to change a contract term in an employee’s contract but the employee refuses to agree to that change, the employer may dismiss the employee and offer them employment on the varied contract of employment. It is a bit of a risk for the employer, as the employee could in theory submit a claim for unfair dismissal, rather than accept the new contract including new terms.</p> <p>The Bill now outlaws dismissal followed by offer of new employment (and remember, there is no two-year qualifying period once this comes into force) if the principal reason for the dismissal is because the employee refused to agree to a variation of their contract of employment sought by the employer.</p> <p>The only exception to this is where the employer can show they are in dire financial straits and the business will collapse unless the contract variation is implemented. It will be for an Employment Tribunal to determine the merits of this argument based on consultation with staff or a recognised trade union in seeking alternative solutions. This is a big win for trade unions who have long campaigned for an end to this practice.</p>

<p>Ending ‘Zero Hours’ contracts.</p>	<p>The Bill contains a guaranteed hours provision whereby the employer is required to offer employees a ‘guaranteed hours contract’ to reflect the number of hours the employee worked during the previous reference period (yet to be specified). This requirement also applies to ‘minimum hours’ contracts (ie contracts guaranteeing certain minimum hours) to prevent rogue employers from offering ‘30-minute’ or ‘one hour’ contracts to avoid this rule.</p> <p>If the employer does not offer the ‘guaranteed hours’ contract, the worker can bring a tribunal claim to recover any financial losses sustained as a result of not offering the contract.</p> <p>The Bill also gives workers the right to reasonable notice of a shift if they are on a guaranteed hours contract where the shift patterns are not known in advance. It doesn’t yet state what notice is deemed reasonable or sufficient.</p> <p>It also gives guaranteed hours workers a right to reasonable notice of cancellation of a shift, or changes to a shift. This prevents an employer from booking someone on a shift and then cancelling them just before the shift commences. Again, sufficient or reasonable notice is yet to be clarified, as is the compensation available for breach of these rights.</p>
<p>Protection from Third-Party Harassment</p>	<p>Employers have not so far been liable for third-party harassment, whereby employees are harassed by people at work who are not colleagues, (i.e, customers, service users, suppliers, etc). From 26 October 2024 the Equality and Human Rights Commission can intervene if employers fail to take reasonable steps to prevent third-party sexual harassment (i.e, harassment of a sexual nature).</p> <p>The new Bill imposes direct liability on employers if they fail to take all reasonable steps to prevent harassment by third parties on their workforce. This extends to sexual harassment under the above legislation and includes ‘all’ reasonable steps, not just preventative or reasonable steps.</p> <p>The requirements for employers will include carrying out risk assessments, having a sufficient policy outlining the protection, and a clear process for reporting and handling complaints. Employers may want to consider taking action to comply with this aspect of the Bill sooner rather than later.</p>

<p>Flexible Working</p>	<p>Currently, employees can request changes to their working arrangements up to twice a year. Employers must deal with these requests in a ‘reasonable manner’ and can refuse the request for one or more of eight reasons, which remain unchanged as follows:</p> <ul style="list-style-type: none"> (a) the burden of additional costs. (b) detrimental effect on ability to meet customer demand. (c) inability to re-organise work among existing staff. (d) inability to recruit additional staff. (e) detrimental impact on quality. (f) detrimental impact on performance. (g) insufficiency of work during the periods the employee proposes to work. (h) planned structural changes. <p>The proposed legislation provides for an employer to only state the ground for refusing the application and explain why they consider it reasonable to refuse the request on one or more of the grounds that already exist. It’s not so much a change but employers just need to give clearer reasons for the refusal of the request.</p>
<p>Paternity, Parental, and Bereavement Leave</p>	<p>Parental Bereavement Leave was introduced a few years ago but there is currently no entitlement for anyone else who has been bereaved. Many businesses offer this as a policy or an ad-hoc practice.</p> <p>Parental Leave allows an employee up to 18 weeks’ leave up to the child’s 18th birthday.</p> <p>Paternity Leave allows an employee whose partner is having a baby two weeks’ leave.</p> <p>Under the Bill, Parental Leave and Paternity Leave will be ‘Day One’ rights. Bereavement Leave following the loss of a child remains at two weeks but indicates this is extended to anyone who is bereaved, although the details of the relationship to the deceased is not clear.</p>

<p>Enhanced Protection for Pregnancy and New Mothers</p>	<p>Currently there are protections against dismissal for pregnancy and maternity leave but minimal protection for new mothers. The Bill proposals strengthened protections for pregnant employees and returning mothers. The period of such protection is not set out in the Bill but is anticipated to be for six months following her return to work.</p>
<p>Statutory Sick Pay</p>	<p>The Bill proposes this is paid from the first day of sickness, rather than from the fourth day as at present. Also, the lower earnings limit for SSP will be removed with the amount of SSP will be set as a percentage of an employee’s salary.</p>
<p>Gender Pay Gap / Menopause</p>	<p>The Bill contains increased obligations on large employers (those employing more than 250 staff) to have an action plan on gender pay reporting and supporting employees going through the menopause.</p>
<p>Collective Redundancy Consultation</p>	<p>Consultation is triggered when a business is considering the dismissal of 20 or more employees within 90 days on the ground of redundancy across an entire business. The European Court of Justice ruled that the requirement for collective consultation applies when an employer proposes 20 or more redundancies within 90 days at one establishment, not across the entire business. This means a business intending to make 500 redundancies across 35 stores will not be bound by the requirement to consult if no individual store requires the loss of 20 or more staff.</p> <p>The Bill reverses this so when a business intends to make redundancies of 20 or more staff within a 90-day period, the number of redundancies at each site will need to be aggregated rather than each site being treated as a separate entity.</p>
<p>Written Statement of Particulars of Employment</p>	<p>The requirement to provide new employees with a written statement of their main terms of their employment will require an additional statement that the worker has the right to join a trade union. The exact details of what is to be included will be made available in a statutory instrument.</p>



There are additional trade union proposals which include:

- Trade union 'access agreements' whereby unions can request an 'access to the workplace' to meet members, recruit new members, support a member with an employment-related matter, or to facilitate collective bargaining.
- Reduce the right for 50% of workers to support union recognition to 10% of workers wanting recognition and to simplify the final ballot to a majority of those voting, rather than to those entitled to vote.
- Where refusal for time off for representatives to attend to union duties was made, the burden of proof will be on the employer to show the time off requested was unreasonable.
- Workers will be protected from detriment for participating in unlawful strike action. The Government will consult on what type of detriment should be prohibited.

The above is a brief overview of the Government's proposed Employment Bill. It is not a statement of the law but an indication of what the Labour Government states it will be introducing into legislation during this and, possibly, at any future term of office.

There are some things the Government committed to including in their manifesto but do not appear in the Bill, although they have committed to implementing them at a future date. These include:

- The right for employees to be allowed to 'switch off' whereby employers are prevented from contacting staff outside their contractual working hours, except in exceptional circumstances.
- A review of parental leave and carers leave to ensure fairness for employers and workers.
- A requirement on large employers (those employing more than 250 staff) to disclose their ethnicity and disability pay gap.
- Having a single status of worker.

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