



UNION BRIEFING



From Thompsons Solicitors' Trade Union Law Group

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The Employment Rights Bill received Royal Assent on 18 December 2025 becoming the Employment Rights Act 2025 (ERA 2025).

The Employment Rights Bill was published over a year ago on 10 October 2024 within 100 days of the Labour Government coming into power. It was ambitious in its reach with a focus on repealing anti-trade union legislation, enhancing collective bargaining rights, as well as increasing the scope of individual employment rights, not least the removal of the two-year qualifying period employees have to serve in order to claim unfair dismissal.

Shortly after publication of the Bill, the Government launched four consultations on zero hours contracts, collective redundancy obligations and fire & rehire practices, the industrial relations framework and Statutory Sick Pay (SSP). Following this process, wide ranging amendments were made to the Bill as it progressed through the House of Commons and House of Lords, continuing until the last day of the “ping-pong” amendments on 16 December when agreement was finally reached on removing the cap on unfair dismissal compensation.

While the detail on some of the most significant changes in the Act regarding the right to guaranteed hours, the right of trade unions to access workplaces, electronic balloting, the reasonable steps employers will have to take to prevent sexual harassment in the workplace and dismissal during pregnancy and following family leave, are to be set out in secondary

legislation, we set out below a summary of some of the key provisions, how they look now and when they are likely to come into force.

Unfair dismissal

In breach of the Salisbury Convention (which means that the House of Lords should not vote down a Government Bill set out in an election manifesto), the House of Lords continued to stymie progress on making unfair dismissal law a day-one right by insisting on a six-month qualifying period for a right to bring a claim for ordinary unfair dismissal. In view of the risk that workers would lose out on important rights if progress of the Bill continued to be delayed, a deal was struck on a six-month qualifying period but with the cap on ordinary unfair dismissal compensation removed. It is likely that the new qualifying period will apply to employees who have six months' qualifying service on 1 January 2027.

The six-month qualifying period does not alter the position of employees who have been automatically unfairly dismissed such as on trade union grounds or for reasons of pregnancy, which remains a day-one right.

The power to vary the unfair dismissal qualifying period is removed and the six-month qualifying period is prescribed in the Act. This means that it will be harder for future governments to change the qualifying period as it will require a change to primary legislation.

Cap on unfair dismissal compensation removed

As a compromise on the six-month qualifying period for unfair dismissal, the government secured the removal of the cap on compensation. The current cap on compensation for claims for unfair dismissal is the lower of 52 weeks' gross salary or a statutory cap (currently set at £118,223).

The removal of the cap will bring unfair dismissal compensation into line with claims for discrimination, where compensation has not been subject to an imposed limit since 22 November 1993. It is not known when the cap will be lifted, and the government will carry out an impact assessment of the implications of removing it.

A consequence of removing the cap should mean that long-serving employees who are unfairly dismissed are properly compensated for the losses they have incurred, including the loss of benefits such as pension loss. It should also discourage unscrupulous employers from adopting bad practices such as providing damaging references or even failing to provide one at all, as the longer an unfairly dismissed employee is out of work as a result of their employer's actions, the more compensation they are likely to be awarded. This is a factor the government should consider when carrying out its impact assessment on removing the cap.

Day-one rights

Employees will still benefit from the other new day-one rights. These include entitlement to statutory sick pay and the right to paternity and parental leave.

Zero-hours contracts

Whilst zero-hour contracts are not banned under the ERA 2025, the government successfully resisted attempts by the House of Lords to limit the right to be **offered** guaranteed hours to a right for a zero-hours worker to "**request**" guaranteed hours. The duty to offer a 'guaranteed hours contract' (GHC) remains. The GHC must reflect the hours a qualifying zero-hours worker regularly worked over a reference period. In the case of workers on low hours, they will have the right to be offered a GHC where the number of hours they work exceeds the number set out in their contract over a defined reference period.

Following a further consultation process, regulations will set out the length of the initial and subsequent reference periods and the minimum hours that apply for low-hours workers.

An amendment to the provisions made clear that the duty to offer guaranteed hours applies to agency workers, strengthening the provisions further. However, a late amendment allows for regulations to be introduced that provide for exceptions to the duty to offer guaranteed hours where this might have a "significant adverse effect" on employers who are dealing with "exceptional circumstances".

An employer can opt out of the provisions altogether if they enter into a collective agreement with the Union, provided the terms of any collective agreement are incorporated into individual contracts of employment. This provides an ideal opportunity for Unions to approach employers to negotiate a system of guaranteed hours which best suits the needs of their members according to the sector in which they work (e.g., retail or care).

¹ The Sex Discrimination and Equal Pay (Remedies) Regulations 1993

Trade Union Rights

Immediately on the ERA 2025 coming into force, the Conservative government's Strikes (Minimum Service Levels) Act 2023 was repealed. This pernicious provision was a direct attack on the trade union movement requiring workers in certain public services to cross picket lines and work in circumstances where there was a lawful mandate for industrial action. It is symbolic that this provision was the first thing to be abolished when the Act obtained Royal Assent.

The following changes will occur within the next two months (as the Act has now received Royal Assent):

- The requirement for a Union to obtain 40% support within the ballot constituency in important public services will be removed, the requirements for certain prescribed information in notices of ballot, notices of action and on ballot papers will be reduced, the period in which a Union must give notice of industrial action will change from 14 days to 10 and the mandate for industrial action is extended from 6 months to 12 months.
- The right to protection from dismissal for taking part in industrial action will be extended from 12 weeks to the full period of the dispute.
- The requirement to appoint a picket supervisor will be repealed.
- There will be a reversal of political fund rules so new members will be automatically opted into a union's political fund.

However, the 50% turn-out requirement will remain until the advent of electronic balloting.

From April 2026, there will be a simplification of the statutory recognition procedure at the application stage by removing the requirement for the Union to demonstrate that there is likely to be majority support for trade union recognition and the requirement for the Union to have 40%

of the balloted constituency voting in favour of recognition in a recognition ballot. Under the ERA 2025, a simple majority is all that will be required.

The following changes will take effect from October 2026:

- Introduction of a new right for trade unions to access the workplace either physically or digitally to meet, support, represent, recruit and organise workers.
- Introduction of a new right for all workers to be given a written statement confirming they have a right to join a trade union. This is to be provided at the same time as the statement of particulars required by Section 1 of the Employment Rights Act 1996 or at any other prescribed time (to be set out in regulations)
- Workers will also have a right not to be subject to a detriment for taking part in industrial action as the ERA will put into law the decision of the Supreme Court in *Secretary of State for Business and Trade v Mercer* [2024] UKSC 12.

Consultations on the new rights of access and to a written statement ended on 18 December 2025, the day that the ERA 2025 came into force. A consultation on a new statutory code of practice on electronic and workplace balloting was launched on 19 November and ends on 28 January 2026

Collective redundancy

An employer must collectively consult with appropriate representatives (which will be the union where the union is recognised) where it proposes to dismiss as redundant within a period of 90 days:

- 20 or more employees at one establishment: or
- At least the "threshold number of employees".

It had originally been proposed to remove the requirement that redundancies of 20 or more had to be “at one establishment” but that was subsequently abandoned. This would have prevented a situation as happened in USDAW v WW Realisation 1 Limited & Ethel Austin (C/80-14), 30 April 2015, where the employer was not obliged to collectively consult about the dismissal of employees in many of the individual shops which were being closed, because there were fewer than 20 employees, despite the fact that there was one proposal to dismiss all of the employees across the entire organisation.

It is understood that the alternative threshold is likely to be based on redundancies across the whole of the employer’s business. The threshold is to be set out in regulations which could be either a percentage, or a specified number of employees across the business as a whole.

The amount of the maximum protective award that can be made doubles from 90 to 180 days’ pay for each employee where an employer fails to collectively consult in line with its statutory obligations. The increase in the maximum award is designed to ensure that it is not commercially viable for an employer to ignore its obligations to enter into meaningful consultation with the appropriate representatives to consider alternatives to redundancies. It should also incentivise employers to consult in accordance with the ACAS Code of Practice on Dismissal and Re-engagement

The new penalty is due to come into force in April 2026.

Fire and Rehire

The Act has been amended so that only employees who refuse a “restricted variation” (as opposed to any variation) to their contract can claim automatic unfair dismissal. A restricted

variation is where the change to the contract relates to the following:

- pay
- working hours
- shift times and length
- time off rights
- pension

An employer is prohibited from varying an existing contract to impose a unilateral variation clause that relates to one of the restricted variations above, such as a new clause in the contract which provides for the employee “to work such shifts as required in accordance with the needs of the business”.

An employee will also be treated as automatically unfairly dismissed if they are replaced by self-employed independent contractors, workers who are not employees, agency workers or any other individuals who are not employed by the employer and are doing substantially the same work. This is intended to prevent what happened at P&O Ferries where the employer sacked workers without notice and replaced them with temporary staff on much lower rates of pay.

A dismissal will not be automatically unfair if the employer is in extreme financial difficulties. These should be construed narrowly. An employer will also have to comply with the Code of Practice on dismissal and re-engagement, which is to be updated in light of the ERA 2025.

An employee dismissed for refusing changes imposed by the employer which are not restricted changes, e.g. relating to the location or job duties, may still be unfairly dismissed but such dismissals will not be automatically unfair. In that case, in considering the fairness of the dismissal, the employer will be required to show the reason for the variation, whether they consulted with the individual and appropriate representatives (which

will be the Union if recognised) and what if anything was offered in return for the change.

The provisions on fire and rehire are due to come into force in October 2026.

Collective bargaining

In a move towards more widespread collective bargaining, the ERA 2025 will establish a national negotiating body for school support staff and Fair Pay Agreements (FPAs) for those working in adult social care.

The School Support Staff Negotiating Body (SSSNB) in England is established by the ERA 2025 which amends the Education Act 2002. The old SSNB was abolished in 2010 following the election of the Conservative-Liberal Democrat coalition government. It is intended that the body will bring together Unions, employers, and a government representative to negotiate on pay and terms and conditions as well as to advise on training and career progression. Following consultation, further regulations will define what constitutes 'support staff'. The regulations will also set out the remit of the SSSNB, which will not be able to alter existing terms and conditions that would be detrimental to workers.

New provisions will enable the Secretary of State, Scottish Ministers and Welsh Ministers to establish the process for FPAs for the adult social care sector in England, and for both adult and children's social care workers in Scotland and Wales, through secondary legislation following engagement with the sector.

The government launched a consultation on the FPA process in the adult social care sector for England only which is open until 16 January 2026. Extending the right to protection from dismissal following pregnancy and other family leave

The Act introduces day-one rights to paternity leave and parental leave bringing them into line with other family leave rights such as maternity, adoption and neonatal care.

These are expected to come into force in April 2026, presumably to tie in with the date when increases in the rate of statutory paternity pay take effect. However, parental leave (which is different from shared parental leave) remains unpaid.

The right not to be dismissed for redundancy during or after a period of pregnancy is extended to dismissals for any other reason. The extended right not to dismiss a pregnant employee during pregnancy and following her return to work is to be set out in regulations and the government is currently consulting on the content of those regulations.

Two options are proposed:

- either a stricter test, which would require employers to show that dismissal was for one of the existing five fair reasons for dismissal; or
- limiting the scope of an existing fair reason, for example, a dismissal on grounds of conduct, capability or SOSR would be potentially fair if continued employment would pose a health and safety risk to others.

The consultation closes on 15 January 2026 and regulations implementing the right are not expected to come into force until 2027.

The Act also introduces a power permitting the Secretary of State to introduce regulations protecting employees taking family leave (maternity, adoption, shared parental leave, parental bereavement leave, carers leave and neonatal leave) from being dismissed during and after the leave.

Bereavement leave

A new right to at least one week's unpaid bereavement leave on top of the existing right to paid parental bereavement leave is introduced by the Act. This applies for the loss of a loved one, including pregnancy loss that occurs in the first 24 weeks. The detail as to who will be eligible and how the right will apply will be set out in regulations following consultation, which was launched on 23 October and ends on 15 January 2026. Disappointingly, there is no proposal for this leave to be paid. Union members may benefit from existing collective agreements which provide for similar leave but on a paid basis.

Flexible working

Amendments to the right to request flexible working by employees provide that an employer can only refuse a flexible working request if it is reasonable for them to do so. The employer will also be required to put in writing which of the business reasons it relies on and explain why it is reasonable to refuse the employee's application on that ground.

This right is due to come into force in 2027

Harassment

The provisions which strengthen protection from harassment remain unchanged. To recap, the Act will require employers to take **all** reasonable steps to prevent sexual harassment (as opposed to just reasonable steps) making clear that the preventive duty is consistent with the statutory defence to an individual claim for harassment.

Regulations will set out what steps are reasonable for the employer to take to prevent sexual harassment in the workplace. A report of sexual harassment having taken place also amounts to an express prescribed disclosure for the purposes of whistleblowing, meaning that a claim for interim

relief is available in claims which would have "a pretty good chance of success" at a full tribunal hearing.

Employers will be liable for harassment by third parties (clients, customers and service users) related to the protected characteristics of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation unless the employer took all reasonable steps to prevent it. This provision is due to come into force in October 2026.

Non-disclosure agreements ban

A new provision restricting the use of non-disclosure agreements is also implemented. This provides that a term in an agreement, be that a contract of employment or a settlement agreement, which prevents a worker from making allegations or disclosures about harassment or discrimination (including a failure to make a reasonable adjustment) will be void. This includes allegations about any alleged discriminatory conduct including an allegation about harassment by a third party. It also applies to disclosures about the employer's response to an allegation.

It will be important to scrutinise agreements and contracts which seek to prevent workers from making disclosures about harassment, discrimination and the failure to make reasonable adjustments. It is not clear when this provision will come into force.

Fair Work Agency and SSP

A new state enforcement agency, called the Fair Work Agency (FWA) is established which will be responsible for enforcing the National Minimum Wage (NMW), holiday pay, and modern slavery and labour exploitation laws. It will also be responsible for enforcing statutory sick pay (SSP) which becomes payable from day 1 in April 2026 including to eligible low-paid workers.

The FWA brings together the Employment Agency Standards Inspectorate (EASI) and the Gangmasters and Labour Abuse Authority (GLAA) and will regulate umbrella companies which are defined in the ERA 2025 as an employment business.

Matthew Taylor, a former Interim Director of Labour Market Enforcement and who was commissioned to carry out a review of modern working practices under the previous government, has been appointed as the Chair of the FWA, which is expected to be created in April 2026.

Significantly the FWA will have the power to bring employment tribunal claims on behalf of individuals and offer legal assistance in civil proceedings. It is not clear how this will work in practice and the government has confirmed that further guidance will be published. How effective it is as an enforcement agency will ultimately depend on the resources it is allocated.

Employment tribunal limits increased

The Act will extend the time limit for bringing an employment tribunal claim from three months to six months. This, coupled with the increase to the early conciliation period from six weeks to 12, which came into force on 1 December 2025, is likely to mean it will take much longer for claims to be heard in the employment tribunal. The extended time limit is due to come into force in October 2026.

What next?

The Act, which represents a shift in focus to protecting rather than exploiting low paid and vulnerable workers, is just the start of improving workplace practices. In its updated 'Factsheet Employment Rights Act 2025 - Overview' the government remains committed to its roadmap published on 1 July 2025. The provisions brought in under the Act will be phased in over a two-year period using the common commencement dates of 6 April and 1 October.