

STANDING UP *for you*

EMPLOYMENT RIGHTS ACT 2025 - UPCOMING CHANGES

Spring 2026

INTRODUCTION

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 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 and equality rights, not least the removal of the two-year qualifying period employees have to meet in order to claim unfair dismissal together with the removal of the cap on compensation for unfair dismissal.

The detail on some of the most significant changes in the ERA is to be set out in secondary legislation that is yet to be published, including in relation to 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. However, we set out below a summary of some of the key provisions, how they look now and when they will come into force.

The ERA has the potential to be truly transformative and profoundly change workers' rights for the better. It also has the potential to significantly enhance trade union rights and allow unions to grow and exert greater influence in workplaces all over the country. However, this is dependent on effective secondary legislation that implements the proposals in full. It is vital to guard against the provisions being watered down as a result of the various ongoing consultations seeking views on the proposed reforms.

First Steps

Immediately on the ERA 2025 coming into force on 18 December 2025, the previous Conservative government's Strikes (Minimum Service Levels) Act 2023 was repealed. This pernicious provision constituted a direct attack on the trade union movement. Specifically, it required workers in certain public services to cross picket lines and work if they were identified in a "Work Notice" issued by the employer, notwithstanding the fact that there was a lawful mandate for industrial action. The repeal of this provision was a symbolic first step to herald a new dawn for workplace rights.



18 FEBRUARY 2026

The following key changes took effect from 18 February 2026.

Industrial Action

- Unions are no longer required to secure 40% support in favour of industrial action in ballots in key public services such as fire, health, education, transport, and border security.
- The information that unions are required to include in Notices of Ballot and Notices of Action have been simplified. In broad terms, Notices of Ballot are now required only to give lists of the categories of workers and workplaces to be balloted (not the numbers in each) and the total number of workers concerned in regard to non-check-off members. Notices of Action will be required to detail the number of members to be induced at each workplace but will not have to give the number of members in each category.
- Ballot Papers will no longer require a summary of the trade dispute, the dates of when it is envisaged the action will be called or the types of industrial action short of a strike that are being called.
- Ballots approving industrial action now have a 12-month mandate.
- Unions are now only required to give 10 days' notice to employers of their intention to take industrial action (reduced from 14 days).
- Unions are no longer required to appoint a picket supervisor.
- Protections for those dismissed for taking part in strike action have been enhanced.

However, the 50% turn-out requirement will remain until the advent of electronic balloting currently anticipated to take effect in August 2026.

Political Funds

There are also a number of key changes to institutional trade union law such as the removal of the 10-year ballot requirement for trade union political funds and an automatic opt-in to a union's political fund on joining a union.

6 APRIL 2026

Further changes to both trade union law and individual employment rights will come into force in April 2026.

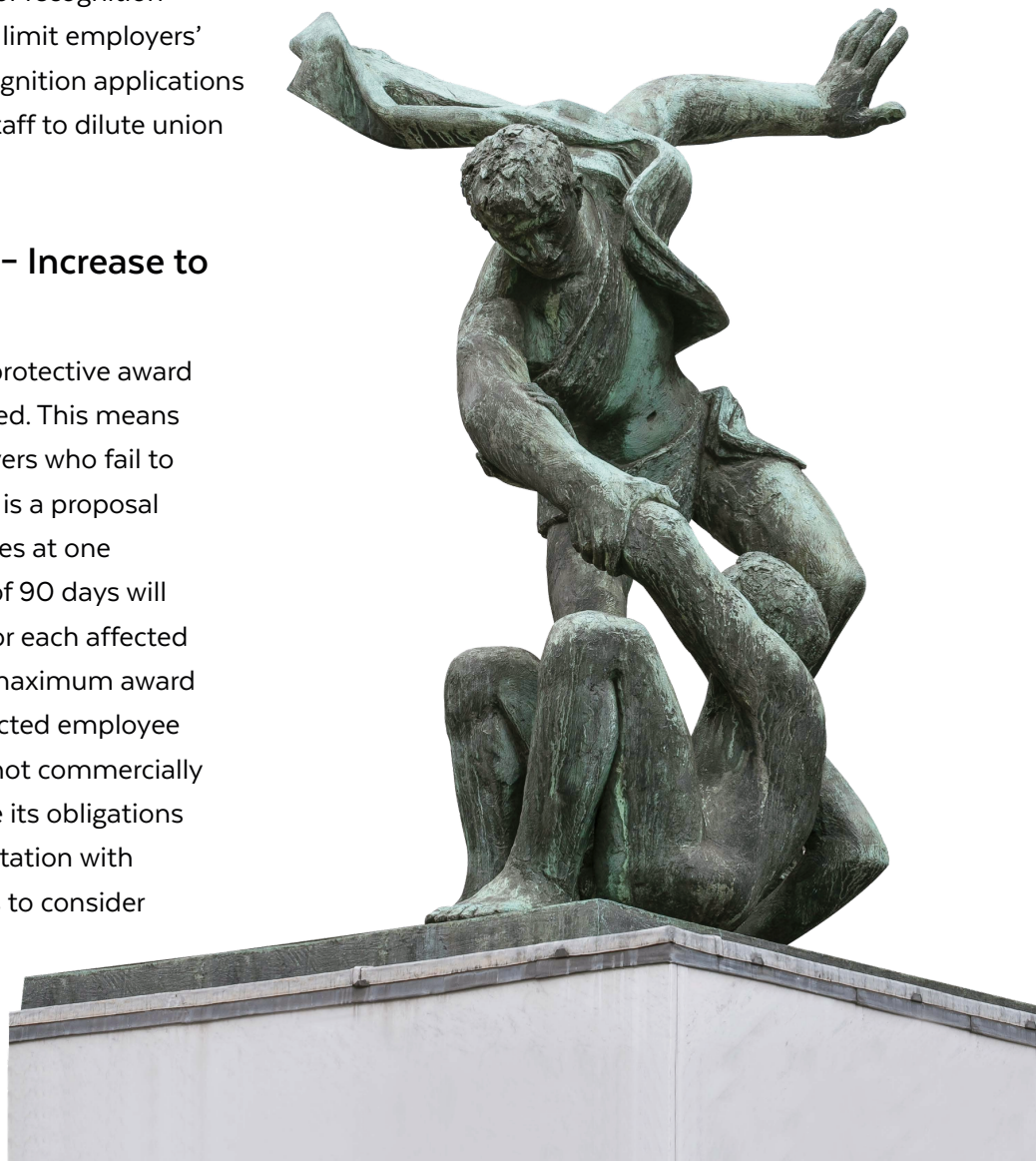
Trade Union Recognition

From 6 April 2026, the process for a trade union to obtain statutory recognition will be simplified. At the application stage, unions will no longer be required to demonstrate that there is “likely” to be majority support for trade union recognition in the bargaining unit for which recognition is sought, and the requirement for the union to have 40% of the balloted constituency voting in favour of recognition in a recognition ballot will also be repealed. Under the ERA 2025, a recognition ballot will succeed if a simple majority of those vote in favour.

The ERA 2025 also gives the government the power through future secondary legislation to reduce the required threshold for existing union membership in the bargaining unit when a recognition application is made to as low as 2%. Finally, employees recruited after the CAC receives the union’s application will not be eligible to vote in the recognition ballot or be counted towards the number of workers in the bargaining unit for recognition purposes. This measure should limit employers’ ability to undermine union recognition applications in future by seeking to recruit staff to dilute union density.

Collective Redundancy – Increase to Protective Award

The amount of the maximum protective award that can be made will be doubled. This means that, from 6 April 2026, employers who fail to collectively consult where there is a proposal to dismiss 20 or more employees at one establishment within a period of 90 days will be liable to pay 180 days’ pay for each affected employee. The increase in the maximum award from 90 days’ pay for each affected employee 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.



Statutory Sick Pay

Statutory Sick Pay (SSP) becomes payable from the first full day of sickness absence, due to the removal of the requirement to wait for three days before SSP becomes payable. The timing coincides with an increase in the statutory rate of sick pay on 6 April 2026 from £118.75 to £123.25 per week. Those who earn below the Lower Earnings Limit (LEL) (set at £129 from 6 April 2026), will be entitled to receive SSP from day one at the lower of the statutory SSP or 80% of their weekly pay. In its fact sheet on SSP, the government estimates up to 1.3 million employees will become eligible for SSP.

Fair Work Agency

A new state enforcement agency called the Fair Work Agency (FWA) is to be established and will eventually be responsible for enforcing the National Minimum Wage (NMW), holiday pay, modern slavery, labour exploitation laws and statutory sick pay (SSP). It will be given significant investigative powers to perform this role.

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

Matthew Taylor, a former Interim Director of Labour Market Enforcement 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 on 7 April 2026.

Significantly, the FWA will have the power to bring employment tribunal claims on behalf of individuals. This relates to almost any tribunal claim in circumstances where the individual is not going to bring proceedings. The FWA will also be able to lend assistance to parties in civil claims relating to employment or trade union law or the law of labour relations. The government has confirmed that further guidance will be published to explain how this will work in practice. How effective the FWA is as an enforcement agency will ultimately depend on the resources it is allocated.

Day 1 Right to Paternity and Unpaid Parental 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. As with statutory sick pay, the right comes into force on 6 April 2026, 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. Employees that are newly eligible under day-one rights to paternity and unpaid parental leave have been able to give notice of their leave since 18 February 2026.

Sexual Harassment and Whistleblowing

A report of sexual harassment which has happened already, is currently happening, or is likely to happen will amount to an express prescribed disclosure for the purposes of whistleblowing legislation. This means that if an employee is dismissed for having made a report of sexual harassment to their employer or other relevant body which is in the public interest, they can bring a claim for interim relief if they are “likely to establish” at a full tribunal hearing that the protected disclosure was the reason or principal reason for their dismissal.

Voluntary Equality Action Plans

Currently employers with more than 250 employees are obliged to report annually on their gender pay gap, but there is no requirement to publish an action plan setting out how the employer proposes to address this. The ERA 2025 introduces a power for regulations to be introduced requiring employers with 250 employees or more, including public authorities, to develop and publish an equality action plan” showing what steps they are taking in relation to “prescribed matters” relating to gender equality. The prescribed matters related to gender equality are addressing the gender pay gap and supporting employees going through the menopause.



While the mandatory duty to publish equality action plans is not due to come into force until Spring 2027, employers are being encouraged by the government to produce and publish a voluntary action plan alongside their pay gap data from April 2026. To inspire employers, a series of 18 recommended actions covering the recruitment, promotion and development of staff, building diversity within organisations, increasing transparency and supporting employees experiencing the menopause have been launched.

The government factsheet on equality action plans states that the national average gender pay gap for all employees stands at 12.8% and that 8 out of 10 menopausal women who are in work have no basic support in place.

OCTOBER 2026

Set out below are rights which are expected to come into force from 1 October 2026.

The Right to be Informed You Can Join a Trade Union

The ERA 2025 expands the list of required particulars that employers must give to their employees to include an explicit statement that workers have the right to join a trade union. The specific content and form of this statement and the obligations placed on employers in terms of when and how it should be provided will be set out in future secondary legislation. The government launched a consultation on how the duty to inform workers of their right to join a trade union should work in practice, which closed on 18 December 2025.



Trade Union Workplace Access Rights

The ERA 2025 will introduce the right for unions to make workplace access requests to employers. The access requested can be either physical entry into a workplace or for a right to communicate with workers (including by way of digital communication). The purposes for which access can be requested is for a trade union to meet, support, represent, recruit or organise workers or to facilitate collective bargaining. Organising industrial action is excluded.

The employer may then grant or refuse the request. If the employer and the union agree the terms of an access agreement, they must jointly notify the CAC that an access agreement has been reached. If the employer does not respond or if the employer and the union do not reach agreement on the terms of access within a set negotiation period, then the union can make an application to the CAC, which will have the power to specify the terms on which access will be allowed. If the employer responds to the union's request, but no agreement is reached, the employer also has a right to apply to the CAC.

In making determinations, the CAC must have regard to the access principles. In broad terms, the access principles provide that union officials should be allowed access in any manner that does not unreasonably interfere with an employer's business, and employers should take reasonable steps to facilitate access. Access should only be refused if it is reasonable in all the circumstances to do so.

Access agreements can be enforced by means of an application to the CAC by either the employer or the union. The deadline for an application is 3 months. If the CAC upholds an application, it can order an employer to take steps to ensure that access takes place in accordance with the access agreement. If the employer breaches the agreement again within 12 months of the CAC decision, the union can make a further application to the CAC, and the CAC can then impose a fine. Conversely, if the CAC determines that a union has breached an access agreement and the CAC subsequently upholds a further application by the employer about conduct by the union that took place within 12 months of the CAC decision, the CAC has the power to fine the union. Access agreements are conclusively presumed not to be legally enforceable contracts.

The recently closed consultation on access agreements sets out more detail on the way in which the government proposes access rights will operate in practice. The proposals include details of the information to be included in access requests and responses; a timetable allowing 5 working days for the employer to respond to a request; a negotiation period of 15 days; and a deadline of 25 days (from the date of the union's request) for either party to complain to the CAC. The consultation also canvassed views on a possible exemption for employers with fewer than 21 workers; whether access agreements should expire automatically after 2 years; whether the CAC should have discretion to refuse access where another union is already recognised; whether access should take place on a weekly basis; whether unions should be required to give at least 2 days' notice of access; and the level of fines the CAC should be empowered to impose, with a proposed maximum of £75,000 with the possibility of £150,000 for repeated breaches.



Right Not to be Subject to a Detriment for Participating in Industrial Action

The ERA 2025 addresses the Supreme Court declaration in Secretary of State for Business and Trade v Mercer [2022] UKSC 12 that subjecting a worker to a detriment for exercising the right to take part in industrial action is incompatible with the right to freedom of association under Article 11 of the European Convention on Human Rights. The ERA 2025 introduces statutory protection for workers not to suffer a detriment short of dismissal, where the sole or main purpose of the employer is to prevent or deter the worker from taking part in industrial action or penalise the worker for doing so. This protection is achieved by way of the introduction of a new section 236A to TULRCA, prohibiting the imposition of “detriments of a prescribed description”, the detail of which is to be set out in regulations following consultation. This consultation was launched on 26 February and closes on 23 April 2026.

Preventing Harassment

Employers will be required to take all reasonable steps to prevent sexual harassment (as opposed to just reasonable steps), such amendment making clear that the preventative duty is consistent with the statutory defence available to an employer in 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.

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.

Employment Tribunal Time Limits to Increase

The ERA 2025 extends the time limit for bringing an employment tribunal claim from three months to six months from the date of the act complained of, such as the date of discrimination or the date of dismissal.

The increase in the time limits to bring a legal claim follows the increase to the early conciliation period from 6 weeks to 12 weeks, which came into force on 1 December 2025. Together, these extensions are likely to result in it taking much longer for claims to be heard in the employment tribunal. This increases the importance of gathering evidence to support a claim at the time of the act complained of, as memories are likely to have faded by the time a full hearing date is set.

2027

Looking ahead towards 2027 we set out some of the changes anticipated to come into force.

Further Reform to Collective Redundancy Law

The obligation on an employer to collectively consult in redundancy situations will be amended so that 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 entirely the requirement that the redundancies had to be “at one establishment”, which would have meant that the duty to consult would be triggered if there were 20 or more redundancies across any organisation as a whole. However, this proposal has been abandoned in response to intense lobbying from various business groups. This approach 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 (Woolworths) shops which were being closed. This was because there were fewer than 20 employees employed at each shop, and this exemption applied notwithstanding the fact that there was one proposal to dismiss all employees across the entire organisation.

The Government launched a consultation on a new organisation-wide threshold on 26 February 2026. Views are sought on the method used to set the new threshold and what level it should be set at, with the government proposing either a fixed number or a percentage. The government’s preferred approach is to set the level at a fixed number of employees according to the size of the employer. The consultation sets out a table showing the number and proportion of employers who could be in scope if the threshold was set at varying levels between 250 and 1,000, and an options assessment sets out an analysis of the impact of the government’s proposals. The consultation closes on 21 May 2026.

Unfair dismissal

In breach of the Salisbury Convention, the House of Lords continued to vote down the Government's key manifesto commitment to introducing a day-one right to claim unfair dismissal. In view of the risk that workers would lose out on important rights should the Bill not achieve royal assent, the government reached a deal reducing the qualifying period to claim unfair dismissal from two years to six months, but with the cap on ordinary unfair dismissal compensation removed. The new rights will apply to employees who already have six months' service on 1 January 2027, with other employees gaining protection once they have six months' service.

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.

The cap on unfair dismissal compensation will also be removed. It currently stands at the lower of either 52 weeks' gross salary or a statutory cap (currently set at £118,223).



Fire and Rehire

The ERA 2025 provides that employees who refuse a “restricted variation” to their contract and are subsequently dismissed and re-engaged can claim automatic unfair dismissal.

A restricted variation is a contractual variation relating to:

- Pay
- Working hours
- Shift times and length
- Time off
- Pension rights; or
- The introduction of a variation clause relating to a restricted term

The original draft Employment Rights Bill had proposed making dismissal and re-engagement automatically unfair in the context of any contractual variation, but this was subsequently limited to the restricted variations listed above.

Importantly, employers are prohibited from varying existing contracts to impose unilateral variation clauses that relate 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 a self-employed independent contractor, a worker who is not an employee, an agency worker or any other individual who is not employed by the employer but who does substantially the same work. This is intended to prevent scenarios such as that which arose 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. This exception 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 variations, e.g. relating to location or job duties, may still be unfairly dismissed, but such dismissals will not be automatically unfair. In such cases, 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. Where a dismissal is not automatically unfair because of a financial distress exception, the dismissal may still be unfair based on ordinary unfair dismissal principles.

Importantly, the government is currently consulting on narrowing the list of restricted variations, which risks weakening the provision further. The consultation closes on 1 April 2026.

Zero-Hours Contracts

Despite media portrayal, the ERA 2025 does not ban zero-hour contracts outright. A zero-hours contract is in effect a casual work arrangement, which can be legitimate. However, there has been widespread abuse of these arrangements in many sectors, limiting the employment rights of many vulnerable, often low-paid, workers. The ERA 2025 seeks to address this.

The Act creates a right to guaranteed hours after a set period of continuous work over a reference period. During the passage of the Bill, 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 the reference period. In the case of workers on low hours, they will have the right to be offered a GHC if 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. The government also agreed a concession that they must have regard to the specific needs of industries requiring seasonal workers in the further consultation.

An amendment to the provisions during the passage of the Bill made it 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”. Again, the detail of this will likely become clear in the regulations.

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 that best suits the needs of their members according to the sector in which they work (e.g., retail or care).

The provisions are due to come into force during 2027, following consultation and the passing of further regulations.

Flexible Working

Amendments to the right to request flexible working by employees will provide that an employer can only refuse a flexible working request if it is reasonable for them to do so and that one of the statutory grounds applies. The existing eight statutory grounds remain unchanged. These grounds are: the burden of additional costs; detrimental effect on ability to meet customer demands; inability to reorganise work among existing staff; inability to recruit additional staff; detrimental impact on quality; detrimental impact on performance; insufficiency of work during the periods the employee proposes to work; and planned structural changes.

The employer will also be required to put in writing which of the eight statutory reasons it relies on and explain why it is reasonable to refuse the employee's application on that ground.

Extending the Right to Protection from Dismissal following Pregnancy and other Family Leave

The right not to be dismissed for redundancy during or after a period of pregnancy has been extended to dismissals for any other reason. The further right not to dismiss a pregnant employee during pregnancy and following her return to work will be set out in regulations due to be implemented in 2027. Failure by an employer to comply with these regulations will result in the dismissal of the pregnant employee or new mother being automatically unfair. Consultation on these measures ran from the 23 October 2025 until 15 January 2026.

Bereavement Leave

The ERA 2025 introduces a new right to at least one week's unpaid bereavement leave, in addition to the existing right to paid parental bereavement leave. Consultation on these new measures ran from 23 October 2025 until 15 January 2026. The new right applies to the loss of a loved one, including pregnancy loss occurring in the first 24 weeks. The government proposes that the leave can be taken within a window of 56 days, with the detail on eligibility and application of the right to be set out in regulations to be implemented in 2027. 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.

WHAT NEXT?

The government remains committed to implementing the provisions of the ERA 2025 in accordance with the roadmap published in July 2025 and updated in February 2026. A raft of consultations have been published and how the Government takes forward its position once those processes have concluded will be key in determining just how effective the ERA will be in advancing worker rights. The consultations on fire and rehire, the thresholds for triggering collective consultation, protection from detriments for taking industrial action and improving flexible working present opportunities for unions to push for improvements which best protect their members and at the same time resist challenges to weaken the provisions. One thing which is certain is that Thompsons remains committed to supporting unions to achieve the best possible outcomes for their members. We will continue to update our ER Hub so that you are up to date with developments which are moving at pace – something we have not experienced in a long time as far as employment and collective rights are concerned.

To access our Employment Rights Act 2025 Hub, please scan the QR code:



WE'RE HERE STANDING UP *for you*

For general enquiries and more information:

0800 0 224 224

www.thompsons.law



@Thompsons.Law



thompsons_solicitors

Disclaimer: This publication is for information purposes only and should not be taken as constituting legal advice. For specific matters, legal advice should always be sought.



THOMPSONS
SOLICITORS