

EMPLOYMENT RIGHTS BILL

The much-anticipated Employment Rights Bill (the Bill) has now been published. The substantive nature of, and the timeframe for, implementation of the Government's employment law reforms are now a little clearer. Published alongside the [Bill](#) is a '[Next Steps to Make Work Pay](#)' paper outlining the Government's plans in relation to future reforms including: the 'Right to Switch Off', mandatory ethnicity and disability pay gap reporting for large employers, a single employment status of 'worker' and a review of the parental leave and carers' leave regimes. Much of the detail of the reforms will be set out in secondary legislation, and, in some cases prior consultation will also be carried out. The Government is taking a phased approach to its reforms. The majority of the reforms will not take effect earlier than 2026 with the unfair dismissal reforms unlikely to come into effect before autumn 2026. This briefing examines some of the key employment law reforms featured in the [Bill](#) and the [Next Steps paper](#), the implications for employers and the applicable timeframe.

Key issues

- Single employment status
- Unfair dismissal
- Flexible working
- Zero hours contracts
- Family leave
- Trade Unions
- Right to switch off
- AI/Surveillance
- Fire and Rehire
- Equality (Race and Disability) Bill
- Equality action plans (closing pay gaps and menopause action plans)
- Sexual harassment
- Collective redundancy consultation
- TUPE
- Next steps

SINGLE EMPLOYMENT STATUS

What: The Government will consult on moving towards a single status of 'worker' and a clearer framework to differentiate between workers and the self-employed. It is anticipated that all workers will be afforded '*the same basic employment rights and protections*'. The genuinely self-employed will have the right to be given a written contract.

Implications: A single employment status of 'worker' will significantly expand the number of individuals entitled to statutory protection and rights, such as minimum wage, redundancy pay, and protection from unfair dismissal.

When: Consultation on this is expected early 2025.

UNFAIR DISMISSAL

What: Unfair dismissal protection will become a day one right. Employers will however be permitted to have probationary periods for new hires during which time a modified unfair dismissal regime will apply. The precise duration of probationary period will be consulted on. The Government's preference is for a 9-month probationary period. Employers will be permitted to follow an (as yet

unspecified) 'light touch' process to dismiss employees during the statutory probation period.

As part and parcel of this reform the Government will also consult on revisions to the ACAS Code of Practice on Disciplinary and Grievance procedures and the appropriate compensation regime in respect of claims that arise in the probation period. The suggestion is that levels of compensation may be lower than that currently available in unfair dismissal cases.

When: The reforms to unfair dismissal will not come into effect any sooner than autumn 2026. Until then the current qualifying period will continue to apply.

FLEXIBLE WORKING

What: Flexible working will become a day one right for all workers, except where the employer has reasonably refused the request on one or more of the following unchanged grounds: (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; or (h) planned structural changes.

Where a request is refused, the employer will have a new obligation to state the ground upon which the refusal is made and why it considers that it is reasonable to do so. Secondary legislation will specify additional steps that an employer will be required to take in the context of a flexible working request. There is no change to the maximum 8 weeks' pay available by way of remedy for breach.

When: Consultation on the detail of the revised flexible working request regime is expected early 2025.

ZERO-HOURS CONTRACTS

What: To end so called exploitative zero-hours contracts employers will be required to offer contracts that reflect regular hours worked over a 12-week reference period to workers on zero hours contracts and workers with a 'low' number of guaranteed hours, who regularly work more than these hours. Workers offered guaranteed hours will be free to remain on zero hours contracts if they so wish. These measures will also be adapted and applied to agency workers following consultation.

Employers will be required to give reasonable notice of any changes in shifts and to pay compensation for any shifts moved, cancelled or curtailed.

Compensation subject to (an as yet undetermined cap) can be awarded by an employment tribunal where an employer is found to be in breach of the obligation to offer contracts that reflect regular hours.

Implications: For companies that make significant use of zero hours contracts and agency workers consideration will need to be given to how workforce flexibility can be retained and an assessment of the impact on cost base. Employers will have to plan their staffing needs more carefully and efficiently or face financial consequences of not doing so.

When: Consultation on what constitutes 'low hours' and other features of the proposals expected 2025.

FAMILY LEAVE

Termination after statutory family leave: It will be unlawful to dismiss an employee who is pregnant, on maternity leave, or in the 6-month period after her return except in specified circumstances. In addition, new regulations on the dismissal of employees following adoption, shared parental, paternity or bereavement leave, will be introduced. Dismissal will be permissible in specific circumstances to be set out in secondary legislation.

Bereavement leave: A new right to bereavement leave will be introduced, at present only parental bereavement leave is available. The details on duration and pay level will be set out in secondary legislation.

Carers' leave: The existing right to 1 week's unpaid carer's leave will be reviewed, with consideration given to introducing paid leave. No timeframe or details have been provided.

Parental leave: Will become a day one right for all workers.

Paternity leave: The right to take paternity leave will become a day one right. Parents will be permitted to take their paternity leave and pay after their shared parental leave and pay.

Implications: Employers will need to review existing family leave policies, and in particular whether leave and pay policies will need to be revised.

When: Unlikely to be earlier than 2026 in respect of the day one paternity and parental leave rights. Consultation on other revisions to the parental leave regime more generally is expected in 2025. The timeframe for the new maternity and family leave termination protections is unknown.

TRADE UNIONS

What: The Bill will make the statutory trade union recognition process easier by: (a) removing the requirement at the application stage for a union to demonstrate that there is likely to be majority support for trade union recognition; (b) removing the 40% support threshold at the recognition ballot stage; and (c) consulting on reducing the 10% application threshold for the Central Arbitration Committee to accept a recognition case.

Employers will be required to inform all new employees in a 'statement of trade union rights' of their right to join a trade union and to regularly inform employees of this right.

Trade unions will have the right to request access to workplaces to meet, represent, recruit or organise workers (whether or not they are members of a trade union) and to facilitate collective bargaining but not to organise industrial action. Regulations will specify the form and manner of a request for access and the form and timing of the employer's response.

Implications: In due course it seems likely that greater trade union recognition will result in some sectors if current recognition procedures are modified.

When: Unknown: secondary legislation will set out the detail.

RIGHT TO SWITCH OFF

What: A statutory Code of Practice on the 'right for workers to switch off' will be introduced.

Implications: Without further detail it is difficult to assess the potential impact of the Code.

When: Unknown. Unlikely to be before 2026.

AI/SURVEILLANCE

What: A consultation will be launched on workplace surveillance technologies. It is anticipated that this will address an employer's obligation to consult and negotiate with trade unions or elected staff representatives before introducing surveillance technologies.

When: Consultation early 2025?

FIRE AND REHIRE

What: An employee will be treated as automatically unfairly dismissed if the employment is terminated because the employee did not agree to a contract variation or the contract was terminated so that the employee, or another individual could be engaged on a contract with different terms to perform substantially the same duties.

Such a dismissal will not be regarded as automatically unfair if the employer can show that the reason for the variation was to eliminate, prevent or significantly reduce or mitigate the effect of any financial difficulties which at the time of the dismissal were affecting, or were likely in the immediate future to affect, the employer's ability to carry on the business as a going concern or otherwise to carry on the activities constituting the business, and in all the circumstances the employer could not reasonably have avoided the need to make the variation ('financial difficulty exception').

An employment tribunal will be required to consider a number of additional factors when considering the fairness of a dismissal coming within the financial difficulty exception; including the nature of any consultation carried out in relation to the variation, with whom and what was offered by the employer in return for the variation.

The Government will consult on lifting the cap of the protective award (currently 90 days' pay (uncapped)) if an employer has breached its collective redundancy consultation obligations. It will also explore what role interim relief (i.e. a contract continuation order) could play in protecting workers in these situations.

Implications: A new [statutory code](#) on dismissal and re-engagement came into effect on 18th July. It appears for the time being that this will remain in place and employers should ensure that they are familiar with it as it sets out expectations and behaviours that will stand them in good stead if the fairness of a fire and rehire dismissal falls to be considered in a situation where the financial difficulty exception applies.

When: Unknown.

EQUALITY (RACE AND DISABILITY) BILL

What: The Equality (Race and Disability) Bill will provide for the full right to equal pay for ethnic minorities and disabled people and is expected to introduce mandatory ethnicity and disability pay reporting.

Implications: Employers will have to consider their approach to data collections and employee communications to facilitate greater engagement in data provision.

When: A draft Equality Bill will be published during this parliamentary session for pre-legislative scrutiny.

EQUALITY ACTION PLANS (CLOSING PAY GAPS AND MENOPAUSE SUPPORT)

What: Large firms (i.e. with more than 250 staff) will be required to develop, publish and implement equality action plans with regard to prescribed matters related to gender equality; this will include gender pay gaps and supporting employees going through the menopause.

Regulations will set out the required form, frequency and content of the plans which are likely to have to have senior approval prior to publication. They will also address the consequences of non-compliance.

Large firms will be required to inform the Government of those organisations, also required to report, which they received outsourced work from.

Implications: In scope employers should start to consider their approach to equality action plans and assess what benchmarking data they may wish to start collating.

Many employers have adopted menopause policies drawing on various pieces of guidance including that from [ACAS](#), [the EHRC](#) and the [British Standard Institute Guide](#). What employers may lack, however, is a formal action plan against which the employer is measured.

When: Unknown – not expected to be before 2026?

SEXUAL HARASSMENT

What: The new statutory duty on employers to take 'reasonable steps' to prevent sexual harassment (that comes into effect on 26 October) will be strengthened to a duty to take **all** reasonable steps. Regulations will specify steps that are to be regarded as 'reasonable'. These are likely to include: carrying out risk assessments, having clear anti-harassment policies and having clear procedures for the reporting of sexual harassment and handling of complaints.

Employers will be liable if a third party harasses an employee during the course of employment if it has failed to take all reasonable steps to prevent the third party from doing so.

In addition, a worker who reports sexual harassment at work will be given the same protection as other whistleblowers.

Implications: Employers will need to consider whether the steps being taken to meet the new reasonable steps statutory duty need to be amplified. The Government's view is that an employer will have taken all reasonable steps if there are no further steps that they could reasonably have been expected to take.

When: Unknown but unlikely to be prior to 2026.

COLLECTIVE REDUNDANCY CONSULTATION

What: The right to collective redundancy consultation will be determined by the number of people impacted across the business rather than in one workplace ('establishment').

Implications: This is likely to lead to collective redundancy exercises having to be carried out (and HR1 forms being submitted) in many more cases than

TIMEFRAME

- **10 October 2024** Employment Rights Bill published
- **10 October 2024** Next Steps to Make Work Pay Paper
- **Q4 2024** Equality (Race and Disability) Bill
- **Early 2025:** Targeted consultations
- **Autumn 2026** – day one unfair dismissal rights?

at present as the 20-employee trigger threshold will be attained more readily. Employers will need to factor this obligation into their timeframes and redundancy costings as this will potentially extend redundancy timelines and/or lead to more tribunal litigation for protective awards.

When: Unknown – not before 2026?

TUPE

What: A call for evidence will be launched to examine the TUPE regulations and how they are implemented in practice.

When: Unknown.

Implications: Unknown whether call for evidence will lead to reform and, if so when.

NEXT STEPS

Employers will need to consider closely the changes proposed as the details emerge and how their own policies, processes and frameworks align. There is scope for a significant impact on workplace culture and governance. Key areas of planning and focus for businesses will be changes to probation periods, default day one flexible working, the expanded duty to prevent sexual harassment coupled with the whistleblower protections, equality action plans, and pay transparency.

[Employment Rights Bill](#)

[Next Steps to Make Work Pay Paper](#)

[Plan to Make Work Pay Policy Paper](#)

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