

## CHANGES IN EMPLOYMENT LAW FROM 2026

The election of Keir Starmer and the Labour government has heralded a whole host of improved worker rights in the UK. Wasting no time, on 10 October 2024, the government published the Employment Rights Bill, proposing a multitude of changes beyond anything we have seen in a very long time. Whilst this is a draft and many of the proposed changes are not due to be implemented until 2026, the changes are coming and so it is best to be aware of what is on the horizon. A high-level summary of the key changes is set out below.

### Summary of key changes

Presently, the key proposed changes are as follows:

1. **Day one protection against unfair dismissal rights:** Presently, employees must have two years' service to claim protection against unfair dismissal. The government will be making protection against unfair dismissal a day one right. This will be a massive change and will have a big impact on the way employers are obliged to manage staff. There will be new rules allowing for a statutory initial period of employment, but we do not yet know what the new rules will be.
2. **Statutory Sick Pay ("SSP"):** The government is proposing to make SSP a right from day one and to remove the lower earnings limit. For some low earners, the SSP weekly rate may be abolished and replaced by a percentage of their weekly salary.
3. **Trade union protection:** Trade union involvement in businesses and trade union protection will be significantly extended. Trade unions will have the right to access to the workplace and it will be easier to obtain union recognition.
4. **Unlawful hiring and firing:** The government is against the practice of dismissing and re-engaging employees, in order to change their terms and conditions of employment. In practice, not many employers in my world do this but if you are looking to make significant changes (e.g. to benefits), you should look to implement this as soon as possible and ensure all new hires are engaged on the chosen new terms.
5. **Zero hours workers:** It is clear that the government is against zero hours workers and supports providing greater predictability and stability of work and remuneration for zero hours workers. It could be that zero hours contracts are outlawed entirely at some point, or any benefit of them eradicated by rules and regulation such that they are no longer a viable option.
6. **Day one rights for paternity, parental and bereavement leave:** Further details to come.
7. **Enhanced duty to prevent sexual harassment:** The law changed on 26 October 2024 to require all UK employees to take reasonable steps to prevent sexual harassment in the workplace. These rules will be extended to require employers to take "*all reasonable steps*", which will be an expansion of the law. Under the new rules, liability for third party harassment will also be introduced. Again, this is a significant change.

8. **Equality action plan and menopause support:** Large employers will be required to develop equality action plans and provide menopause support.
9. **Collective consultation:** The rules will be changed so that if the business makes 20 or more people redundant, it will have to enter into collective consultation. The requirement for the 20 employees to be at one “*establishment*” will be removed. This will be particularly impactful for larger employers that may go through rounds of redundancies in different parts of the business, which may then find it is more frequently caught by the obligation to collectively consult.

Future reforms are expected to include legislation regarding the right to switch off; a new single definition of “*workers*”; and amendments to parental leave and carers rights.

#### **Things to think about now**

**Recruitment:** It sounds obvious, but try to ensure you appoint the right candidate and minimise poor recruitment decisions. This can include:

- Ensuring references are obtained. It is surprising how many references are not up. If you are struggling to obtain references, this may be a red flag.
- Having a well-managed probationary period:
  - A well-drafted probationary clause can confirm that probation is only passed once confirmed in writing. The probationary clause can also state in the event of employee absence, the employer will have to make a decision on the information available. This can help where the employee goes on sick leave to avoid the review meeting.
  - Diarise the probation review date and set it in stone. Ensure you diarise regular probation reviews before then and stick to them.
  - Ensure you record in writing all concerns during the probationary period.

**Changes to terms and conditions:** If you haven’t reviewed your employment contracts in the last three years, now would be a good time. It will be easier to engage new recruits on new terms and, if you address your employment contracts now, you will have time to effect the new employment contract (if different) for existing staff. If you wait, it is likely to become more difficult. So:

- If there are certain rules, policies or terms of employment you are thinking about implementing or need to implement, again, now is the time! Changes will only become harder to effect when the law changes.
- Are your job descriptions drafted broadly enough to enable you to require employees to undertake additional duties where reasonably required?
- You may want to be able to make organisational changes without changes being deemed to be a change to terms and conditions.

**New Joiners?** Consider allowing new recruits access to better terms over time to encourage longevity and minimise your exposure during the initial period of employment. Are there benefits you might prefer not to offer to employees who are new that they could ‘earn’ over time?

**How about your policies?** Consider making all your policies relevant to a modern workplace: be explicit about levels of conduct and performance expected in the business. In particular, around disciplinary matters, relationships at work, and use of internet and social media.

**Proactive management:** Train your managers and require them to manage staff proactively and comply with your policies and procedures. Minor disciplinary matters should be properly dealt with and recorded,

as they often lead to bigger issues down the line. Ensure you keep a record of all important communications. More than ever this could come back to haunt you.

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