The future of employment law in the UK

- an employer's handbook to the Employment Rights Bill and beyond

Contents

‘One of the best employment teams in the country; they are at the top of their game.’

Legal 500 2025

Introduction

Prior to the general election in July 2024, Labour issued a document, 'Plan to Make Work Pay', in which it detailed an ambitious and wide-ranging set of employment law reforms that it planned to introduce if it came to power.

We all know what happened next…The Employment Rights Bill, which the government issued within its first 100 days, is the first significant step of Labour making good on its promise to deliver 'the biggest upgrade to rights at work in a generation'. With wide-ranging provisions that will deliver a host of new individual and collective rights as well as a more prominent role for trade unions, the Bill will have far-reaching consequences for employers when it becomes law.

Areas for change are not restricted to what is in the Bill. 'Next Steps to Make Work Pay', a 'route-map' to the full programme of reforms, issued at the same time as the Bill, lists many additional reforms (taken from the Plan to Make Work Pay) which will follow longer term.

From proposals to law – the path ahead

The Bill will now progress through Parliament and some of its provisions may be amended during this process. Additional (and necessary) detail to many of the reforms in the Bill will be issued as separate regulations. These regulations will be subject to consultation prior to issue – indeed consultations on certain issues have already begun. This means that, even though the Bill is expected to become law in the first half of 2025, many of the new rights will not come into force until much later – for example, the government has said that the majority of reforms will take effect no earlier than 2026 and changes to the unfair dismissal regime, which will see employees awarded protection from day one of employment, will not come into force until autumn 2026.

Whilst the Bill is the vehicle for many of the government's proposed reforms, it does not include all of them. The government will also be bringing forward the remaining reforms contained in its 'Plan to Make Work Pay' document, through other mechanisms including through additional primary legislation, regulations and codes of practice. Some of these measures will be alongside the Bill and others will be in the longer term.

Our handbook at a glance

Within this handbook you will find information, in an easy-to-read format, about each of the key proposed reforms, including the current legal position, details of the proposed changes and our commentary on the impact for employers.

This reform of our employment law will be an evolving process, and we will be adding to and updating this handbook on a regular basis.

Contact us

If you would like to discuss any of the proposed reforms contained within the Employment Rights Bill or any other of the government's anticipated changes, please feel free to contact Luke, Kate or Katie or your usual Burges Salmon contact.

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Employment Rights Bill

Reforms to individual employment rights

‘Day one’ unfair dismissal rights

The Bill introduces a right for employees not to be unfairly dismissed from day one of their employment. The Bill also introduces a new ‘Initial Period of Employment’ (IPE), during which a ‘lighter touch’ procedure will apply for dismissals on grounds of poor performance, misconduct, capability or some other substantial reason relating to the employee.

Current position

There is currently a 2-year qualifying period before an employee can bring an ordinary unfair dismissal claim – this means that (in most instances) an employer has more flexibility in the process that it chooses to use when dismissing an employee during their first two years. Many employers operate contractual probationary periods and look to take decisions on retaining staff during, or at the end of such periods, safe in the knowledge that these staff will not have ordinary unfair dismissal rights.

What is proposed under the Bill?

- Unfair dismissal would become a basic ‘day one’ right for employees (at this point, not ‘workers’).
- The new right would not apply where an employee has signed a contract but not yet commenced employment (save in limited circumstances).
- Regulations will set out a ‘lighter-touch’ dismissal process for employers to follow during the IPE. The government’s preference is for a process which at least includes a meeting with the employee.
- The length of the IPE is not defined in the Bill, but the government’s preference is for 9 months (with the modified process also applying where notice of no more than 3 months has been served at any point during the IPE).
- The dismissal needs to be related to the employee and any modified process will not, therefore, apply to redundancy dismissals or wider business-related SOSR dismissals.
- The government has confirmed that employers will retain the ability to run separate contractual probationary periods as well as to choose what non-statutory entitlements an employee can access during such periods.

Next steps

The government has committed to extensive consultation, covering not only the factors set out here, but also on the compensation regime that might apply for dismissals during any IPE. The government has stated that reforms to unfair dismissal will not come into effect before autumn 2026. Until then, the current 2-year qualifying period will continue to apply albeit there will, in effect, be a transition period with the qualifying period gradually reducing in time between now and any autumn 2026 implementation date.

Our thinking on what these proposals mean for employers

- This is a significant change meaning that many more employees will have unfair dismissal rights (the government has estimated around 9 million).
- It is currently unclear to what extent an employee will be able to challenge the reason for dismissal given by an employer during an IPE. When considered alongside the significant increase in employees who would have unfair dismissal rights, what this means for the already overloaded employment tribunal system remains to be seen.
- More robust recruitment and on-boarding procedures will be required alongside clear and well-communicated probationary review processes. This is likely to require additional line manager training to ensure they can appropriately deal with conduct and performance issues, particularly for new hires.
- Whilst all new starters (save for perhaps the most senior of hires) should have probationary periods included in their contracts, without more information on how any IPEs will work, it may be premature to make significant changes to existing contractual wording for now.
- The changes may potentially lead to some employers considering alternative mechanisms for hiring or engaging staff.

Flexible working

Couched as a move to 'make flexible working the default', the Bill would mean that where an employer refuses a request, that refusal would have to be reasonable with the onus on an employer to explain its reasoning.

Current position

Already a 'day one' right, an employer must deal with a flexible working request in a reasonable manner, make its decision within a period of two months (unless an extension is agreed) and consult with the employee before refusing the request. The employer can refuse the request on one or more of eight statutory grounds and there is limited scope for tribunals to scrutinise the employer's reasoning.

What is proposed under the Bill?

- Employers would only be able to refuse a request where it is 'reasonable' for it to do so on one or more of the existing eight statutory grounds.
- If the employer refuses the request, it would be required to state the grounds for refusal and explain why it considers that it is reasonable to refuse the request on those grounds.
- The Bill enables regulations to be issued that would specify the steps that an employer must take to comply with its obligation to consult with the employee before rejecting a request. Interestingly, an obligation to consult already exists and the ACAS Code of Practice on requests for flexible working (which tribunals may take into account if a claim is brought) provides employers with guidance on what steps they should take to consult.

Next steps

Regulations are expected to be published detailing the steps that an employer must take to comply with its obligation to consult with the employee before rejecting a request. The government has said it will consult on the same.

Our thinking on what these proposals mean for employers

- Although the right to request flexible working is not being extended to a wider category of employees, employers may well see an increase in the number of requests made given the press coverage on this proposal. This could include more requests for homeworking, particularly where a business is taking steps to increase office attendance.
- The changes would provide employees with additional grounds for challenging the handling of their flexible working request. The current rules are largely procedural and provide limited scope for challenging the employer's reasoning. In contrast, the changes in the Bill would mean that the substance of the employer's decision would be more open to scrutiny. Employers would need to review their processes and ensure that they are behaving reasonably in refusing a request and that clear reasoning is given on each occasion that a request is refused.
- It remains to be seen how interventionist tribunals might be in their assessment of when it is reasonable for an employer to refuse a request.
- It is worth noting that there are no proposals to change the maximum penalty that a tribunal can award where an employer fails to comply with its flexible working request obligations – it is capped at eight weeks' pay (currently capped at £5,600). That said, a claim under the flexible working regulations is often coupled with a discrimination claim where compensation is uncapped.

Zero / low hours contracts: right to be offered guaranteed hours

Whilst the Bill does not seek to ban 'exploitative' zero hours contracts, workers on zero hours and, importantly, also those on 'low hours' contracts (collectively 'qualifying workers'), will have the right to be offered a contract reflecting the hours that they regularly work.

Current position

Zero hour contracts are commonly used in many sectors where there is a variable and fluctuating demand for labour. Such contracts cannot include exclusivity clauses stopping a worker working for another employer but are otherwise lawful.

What is proposed under the Bill?

- Employers would be required to offer qualifying workers a contract guaranteeing them a minimum number of hours reflecting the work they carried out in a previous reference period (expected to be 12 weeks). A worker would be free to accept or refuse the offer but, if refused, the employer would need to make the offer again, on a rolling basis, at the end of each subsequent reference period. Importantly the employer must offer the contract – it is not simply a right for the worker to request.
- The form of any offer (including any working pattern or set days, hours etc) is still to be defined, as is how long any such offer must remain open for.
- The right would only be triggered if the hours worked in any reference period satisfy conditions, to be set out in regulations, as to their 'number, regularity or otherwise'.
- What constitutes a 'low' number of hours is also still to be defined – a balance will need to be struck so the number of hours is not so low that an employer can use this as an anti-avoidance measure by guaranteeing hours which are just above the threshold whilst it not being so high as to cover too broad a spectrum of worker.
- There are some limited exceptions in which an employer could limit the offer of guaranteed hours to apply for a fixed period only, for example, if the worker is only needed for a specific task or event or the employer reasonably believes there is only a temporary need for the worker to do the work.

Next steps

Important details have yet to be determined and will be set out in separate regulations. The Government has committed to consulting fully on these proposals. On 21 October 2024, the government launched a separate consultation on how to apply its zero hours contract measures to agency workers. Responses must be submitted by 2 December.

Our thinking on what these proposals mean for employers

- If the 'low' hours provision is set too high, employers will have to continually assess which of a larger set of workers have the right to an offer of guaranteed hours (and workers may have different reference periods which would be administratively difficult). The government has stated that full-time workers who occasionally pick up overtime will not be affected.
- It is not clear how the provisions will take account of sectors which have busy seasons and fluctuating levels of work. Will workers be able to lock in guaranteed hours based on busier periods and to what extent will employers be able to rely on the exceptions for limiting offers to fixed periods?
- Pending these clarifications, there is a real risk that employers will be disincentivised from offering zero hours contracts at all and/or limiting the number of hours offered to workers for fear of having to convert those arrangements into guaranteed hours.
- The potential extension of these proposals to agency workers would be very significant and would change the tri-partite relationship between agencies, end-users and agency workers.
- Employers with large numbers of zero hours/casual workers may want to consider reviewing those arrangements both to assess which workers might be caught by these changes and whether there may be alternative staffing models that, alongside existing arrangements, might help them better cover fluctuating work demands.

Zero / low hours contracts: right to notice of shifts / compensation for cancellation

The Bill also introduces a right for zero and 'low hours' workers, and workers who do not have a set working pattern, to reasonable notice of a shift and compensation where such shifts are cancelled, moved or curtailed at short notice.

Current position

Workers do not currently have any statutory right to a set working pattern nor to notice of shifts (or compensation for the short notice cancellation etc of such shifts).

What is proposed under the Bill?

- The Bill introduces a new right to reasonable notice of a shift a worker is required to work, setting out the time, day and how many hours are to be worked. There is also a right to reasonable notice of any changed, cancelled or curtailed shift.
- What is 'reasonable' of a shift will depend on the circumstances, but there will be a presumption that notice will not be reasonable if it is less than the minimum time to be specified in regulations.
- The right would apply even if an employer makes a request to multiple workers to work the same shift but does not need all of them to work that shift. This could potentially have wider implications in terms of workforce planning particularly in cases where urgent work or cover is required.
- The Bill further introduces a duty on employers to make a payment to workers each time there is a cancellation, movement or curtailment of a shift at short notice. 'Short notice' is to be defined in regulations (as is 'movement'). In such cases, any compensation could not exceed the amount the worker would have earned had they worked the hours that were cancelled, moved or curtailed.
- Claims in relation to guaranteed hours, reasonable notice of shifts and compensation for cancellation etc of shifts could be brought in the employment tribunal.

Next steps

As with the Bill's guaranteed hours provisions, further consultation is required to fully bottom out how these changes would operate in practice, in particular, in relation to the notice periods to be given and the amounts of any cancellation payments.

Our thinking on what these proposals mean for employers

- The combined zero hours/low hours workers provisions in the Bill would inevitably reduce flexibility for employers in how they resource their workforce demands and put more of a premium on better planning and communication of relevant working patterns to its workers.
- It will be interesting to see what might be deemed 'reasonable' notice, and we can expect industry bodies to be lobbying hard for qualifications here to ensure that employers can respond to often urgent and fluctuating work demands.
- Employers may want to start considering how their shifts are rostered and how notice of them is given to relevant workers to see if any improvements and refinements can be made now and in advance of any changes coming into force.
- As with guaranteed hours contracts, the potential extension to agency workers of the right to reasonable notice of shifts and payment for cancelled shifts, would be significant. It could have a big impact on the way in which end-users engage with employment agencies and agency workers.

Changes to leave entitlement and statutory sick pay

The Bill will make paternity and unpaid parental leave 'day one' rights and make statutory sick pay (SSP) payable from the first day of absence, meaning these entitlements would be available to many more people.

Current position

An employee or worker (where eligible for SSP) who is absent from work due to sickness is not entitled to receive SSP until the fourth qualifying day of their absence. They must also earn above the Lower Earnings Limit (currently £123 per week) in order to be eligible.

Continuity of service requirements apply to paternity leave (26 weeks) and unpaid parental leave (1 year).

There is no statutory right to bereavement leave, other than a right for bereaved parents of a child.

What is proposed under the Bill?

- **Paternity and parental leave** - The qualifying periods for paternity leave and parental leave will both be removed, making these rights 'day one' rights for employees. In addition, the rule that means paternity leave entitlement is lost once the employee takes shared parental leave would be removed, providing eligible fathers and partners with more flexibility over when they take the different types of leave.
- **Statutory sick pay** - SSP would start on the first qualifying day of absence, rather than the fourth day, and would also be available to those who earn below the Lower Earnings Limit. The rate of SSP would also change – individuals would receive a flat rate of SSP (currently £116.75) or a certain percentage of their normal weekly earnings, whichever is lower.
- **Bereavement leave** - A new 'day one' right to bereavement leave would be introduced for employees. Key details about this new type of leave will need to be set out in regulations, including the length of the leave entitlement (as a minimum it will be at least one week for the death of an adult, and two weeks for a child) and the qualifying requirements, such as the required relationship that the bereaved employee must have with the deceased.

Next steps

A consultation was launched in October 2024 seeking views on what the 'prescribed percentage' of weekly earnings should be for SSP purposes. After consultation, the Bill will be amended to include the appropriate rate.

Regulations will set out further details of the new bereavement leave right.

We do not yet know the commencement date for these reforms, including in relation to the removal of paternity and parental leave qualifying periods.

Our thinking on what these proposals mean for employers

- Employers who do not already offer 'day one' company sick pay may see an increase in short term absences as a result of the move to make SSP available from the first day of absence.
- If your organisation operates SSP, these changes really highlight the importance of proactive absence management (albeit the government recognises that some employees may be worse off as a result of these changes). Effective return to work check-ins or meetings with employees returning from sick days will take on increasing importance.
- Payroll and time & attendance processes will need updating to reflect these new and expanded leave and pay entitlements. Make sure that you liaise with your payroll provider or team when more detail is known on the timing of these changes.
- Whilst the introduction of a wider right to bereavement leave is welcome, it is a floor and not a ceiling. Many employers provide more generous compassionate or bereavement leave entitlements, seeing it as an important investment in the wellbeing of their people.

Employment Rights Bill

Reforms to collective rights

‘Fire and rehire’

In a move that goes further than predicted, the Bill would effectively ban the practice of ‘fire and rehire’ in all but the most extreme of cases. It could also have significant consequences for any proposal to change employees’ terms and conditions.

Current position

When changing terms and conditions of employment, an employer may dismiss an employee and re-engage them on the new terms and conditions of employment if the employee does not agree to the variation. In these circumstances, the employee is entitled to bring a claim for ordinary unfair dismissal, but the employer can defend the claim by showing that the change to terms and conditions was for a ‘sound business reason’. It must also follow a fair process – if an employer unreasonably fails to comply with the Code of Practice on dismissal and re-engagement it risks an uplift in compensation of up to 25%.

What is proposed under the Bill?

The Bill would introduce a new category of automatic unfair dismissal.

- Dismissal would be automatically unfair if the reason for the dismissal was either a) that the employee did not agree to variation of their contract of employment or b) was to enable the employer to re-engage the employee (‘fire and rehire’) or employ someone else (‘fire and replace’) under a varied contract of employment to carry out substantially the same duties.
- There is a very tightly drawn exception to this where the variation to contractual terms was to eliminate, prevent or significantly reduce financial difficulties which were affecting, or likely to affect, the employer’s ability to carry on the business and the employer could not reasonably have avoided the need to make the variation. Essentially the business’ viability must be at stake in order for this exception to apply.
- Even if the employer can show it falls within the above exception, the tribunal would still go on to consider whether the dismissal was fair in all the circumstances, taking into account a range of factors listed in the Bill (including any consultation carried out and anything offered in return for agreeing to the variation).

Next steps

The government has commenced consultation on the introduction of interim relief awards (where the employer must continue to pay the claimant’s salary up to the employment tribunal hearing if the claimant can show that they are likely to succeed in their unfair dismissal claim) for this new category of automatic unfair dismissal.

The new category of automatic unfair dismissal is likely to come into effect in 2026. Ahead of its introduction, it remains to be seen whether the government intends to amend the Code of Practice on dismissal and re-engagement or replace it with an alternative.

Our thinking on what these proposals mean for employers

- In Labour’s Plan to Make Work Pay, the party outlined plans to provide more effective remedies against abuse of ‘fire and rehire’ and to strengthen the Code of Practice. The proposals in the Bill go much further than this – they would, if implemented in their current form, significantly restrict the employer’s ability to change terms and conditions of employment, unless the employees agreed to the change.
- As the exception is so narrow, dismissal and re-engagement would only be available as a potential option in the most extreme of cases (i.e. where a failure to change terms would affect the business’ survival or viability).
- Given the pace of technological advances and new ways of working, employers will need to look for ways to build in flexibility through their contracts of employment – for example a greater reliance on contractual variation clauses. Employers should review contracts to ensure that they contain well-drafted flexibility and variation clauses. This may provide some opportunity to vary terms and conditions without needing to obtain the consent of employees. It is worth noting that these clauses are not a panacea, however, and there are restrictions on the employer’s abilities to rely on such clauses.

Collective redundancies

The Bill strengthens protections for employees facing redundancy by ensuring that an employer's obligation to collectively consult will apply regardless of whether the redundancies are taking place 'at one establishment' or not.

Current position

At present, the duty to consult collectively where redundancies are proposed is triggered when an employer is proposing 20 or more redundancies 'at one establishment' within a period of 90 days. The same trigger applies to notifying the Secretary of State of proposed redundancies by way of an HR1 form.

What is proposed under the Bill?

- The Bill removes all references to 'at one establishment' from the Trade Union and Labour Relations (Consolidation) Act 1992.
- This means that an employer would need to count all redundancies being made, within the 90 day period, across its whole business as opposed to at individual sites or workplaces, to determine if the obligation to collectively consult is triggered.
- There is no change to the number of redundancies that will trigger collective consultation. Equally, this number will continue to be counted by reference to each employing entity (rather than across multiple employers forming part of a group of companies).
- Within Next Steps to Make Work Pay, the government states that it is committed to consulting on lifting the cap of the protective award (currently 90 days' uncapped pay per employee) for failure to collectively consult, as well as on what role interim relief could play in further protecting workers in collective redundancy scenarios. This consultation was launched on 21 October with a deadline for responses of 2 December.

Next steps

Whilst the government has commenced consultation on potential changes to the protective award and introduction of interim relief, the Bill and supporting documents are silent on whether further consultation will take place on the removal of the 'at one establishment' test.

The same consultation also notes the government's intention to gather further views, in 2025, on strengthening collective redundancy rights, including on whether to double the minimum consultation period when an employer is proposing 100 or more dismissals from 45 to 90 days.

Our thinking on what these proposals mean for employers

- There is no requirement for the redundancies across different sites to be linked and so the change is significant and would mean the duty to collectively consult would be triggered more frequently.
- Employers with multiple sites should be thinking now about how they can better track and record redundancies across their business on a rolling basis. Without such systems in place, the change would increase the risk of inadvertent breaches even if robust and otherwise generally fair (non-collective) redundancy exercises have been carried out at particular sites. The consequences of breach (of both the duty to consult and the duty to notify the Secretary of State) can already be significant and could become more severe if further changes are made to the cap on protective awards, not least given the current consultation seeks views on increasing the cap from 90 to 180 days uncapped pay per affected employee or removing the cap altogether.

Trade unions – industrial relations

The Bill includes significant changes aimed at strengthening the power and reach of trade unions in the workplace. It will make it easier for trade unions to access workplaces and seek statutory recognition and will increase protections for trade union representatives and their members.

Current position

Employers have limited obligations in terms of notifying workers of their right to join a trade union/their rights as a union member. Equally, there is currently no general right for trade unions to access workplaces for the purposes of recruitment and organisation.

The current thresholds for obtaining formal statutory recognition can sometimes be challenging for trade unions, particularly within workforces where there is no widespread appetite for trade union recognition.

What is proposed under the Bill?

- Alongside section 1 written statement of particulars of employment, the employer will need to provide a written statement informing the worker about their right to join a trade union.
- Trade unions would have a right to access a workplace for the purposes of meeting, recruiting or organising workers or facilitating collective bargaining. Such access would be organised through legally enforceable 'access agreements', either agreed between the employer and trade union or mandated through the Central Arbitration Committee.
- The hurdles trade unions need to overcome for statutory recognition would be lowered by:
  - removing the application requirement to show likely majority support for recognition in the chosen bargaining unit (BU).
  - removing the requirement at the ballot stage to show 40% support of the BU.
  - potentially reducing the initial threshold for union membership in the BU from 10% to as low as 2%.
- The existing rights for trade union officials to take time off for various union activities would be extended to include a new group of trade union 'equality' representatives and strengthened to provide a) that it would be for the employer to demonstrate that requested 'time off' was not reasonable; and b) an additional requirement for employers to provide 'such accommodation or facilities as are reasonable in the circumstances'.

Next steps

Separate regulations will be required governing the statutory process for implementing 'access agreements' and the proposed changes to the formal statutory recognition regime. The government has stated it is committed to working with stakeholders to make sure the new right of access is effectively enforced and to seeking views on how to strengthen provisions to prevent unfair practices during the trade union recognition process. This consultation was launched on 21 October with responses due by 2 December.

There is no specified commencement date in the Bill or otherwise for the proposed addition to the section 1 statement or increased trade union official rights and the government has committed to further consultation.

Our thinking on what these proposals mean for employers

- Alongside changes to the industrial action regime, these proposed changes will inevitably mean that trade unions have a larger role to play in employee relations.
- In advance of the changes, employers should assess their employee relations strategy, particularly if they do not currently recognise trade unions. Employers should assess how they engage with their staff on a collective level and give their workers their 'voice'. In doing so, employers should potentially consider putting in place other employee bodies such as forums and councils if they feel they would be more representative of their workforce.

Trade unions – industrial action

The Bill will repeal the Strikes (Minimum Service Levels) Act 2023 and large parts of the Trade Union Act 2016 making it significantly easier for trade unions to organise, and take, industrial action and conversely, harder for employers to plan for it.

Current position

The existing minimum services legislation allows the government to set minimum service levels during strikes in essential services. These recently introduced powers have not been used to date in any event.

The Trade Union Act 2016 imposed various additional requirements for trade unions organising industrial action including longer notice periods, higher ballot thresholds, appropriately supervising pickets and increased information provision to employers.

What is proposed under the Bill?

- The minimum services levels legislation will be fully repealed as soon as the Employment Rights Bill is passed.
- Large parts of the Trade Union Act 2016 will be repealed two months after the Employment Rights Bill is passed. If implemented:
  - trade unions will require a simple majority of those voting for a ballot to be successful, with no requirements for any level of turnout.
  - additional information to be included on the ballot paper (e.g. a summary of the issues in dispute and the type of industrial action short of a strike) will no longer be required.
  - the notice a trade union needs to give an employer of industrial action will be reduced from 14 to 7 days.
  - provisions requiring trade unions to supervise pickets will no longer apply.
- Following the decision in *Mercer* earlier this year, the Bill also seeks to introduce protection for workers against detriments short of dismissal for taking part in industrial action and increase protection against dismissal for the length of any strike action by removing the current 12-week protected period. There is no set implementation date for these particular provisions.

Next steps

On 21 October, the government launched a wide-ranging consultation on creating a modern framework for industrial relations seeking views on updating trade union legislation in line with the above proposals (and including reference to extending the expiry of a trade union's mandate for industrial action from 6 to 12 months).

The government has also committed to launching a working group on the introduction of electronic balloting for industrial action, with a full rollout likely planned for next year.

Our thinking on what these proposals mean for employers

- The proposed changes will make it easier for trade unions to threaten and/or take industrial action. When considered alongside wider proposed changes making it easier for trade unions to gain access to workplaces and secure statutory recognition, the Bill represents a significant shift in the balance of power between employers and trade unions and is very much reflective of the government's desire to increase collectivism and worker voice.

Adult social care negotiating body

The government intends to dip its toe into the water of sectoral collective bargaining by introducing a new negotiating body and framework for the adult social care sector.

Current position

With some notable exceptions, collective bargaining in the UK typically takes place at employer level, with negotiation taking place between each employer and its recognised trade union(s).

Next steps

The government plans to launch a consultation soon to explore exactly how the Fair Pay Agreement should work and be implemented.

What is proposed under the Bill?

- The Bill contains a framework for the introduction of a 'Fair Pay Agreement' process in the adult social care sector. The Fair Pay Agreement is intended to be a national sector-level agreement covering remuneration and other terms and conditions of social care workers (both employees and workers).
- The intention is that the agreement would be negotiated by a new adult social care negotiating body made up of officials from trade unions that represent social care workers and representatives of employers in the sector.
- Once agreed, the agreement would be ratified by the Secretary of State and would then govern workers' pay and terms and conditions for all employers in the sector.
- The Bill gives the government the power to create that negotiating body and stipulate how it will operate and make decisions and allows it to step in where agreement cannot be reached.

Our thinking on what these proposals mean for employers

- The nuts and bolts of this new process are not yet known. The government intends to seek views on this in its consultation – employers in this sector will need to keep a close eye on developments and may wish to respond to the consultation, once launched.
- Sectoral bargaining would be a significant shift in approach from the current norm in the UK. Contrast this to the situation in the EU where collective bargaining on a sectoral basis is commonplace - indeed a recent EU Directive has introduced a requirement for any member state with less than 80% collective bargaining coverage to introduce an action plan to promote collective bargaining and increase coverage.
- This new sector-level bargaining arrangement is currently only proposed for the adult social care sector, but employers in other sectors should take note as the Labour Party has previously stated (in its Plan to Make Work Pay) that it intends to assess how, and to what extent, similar agreements could benefit other sectors.

Tips and gratuities

The government intends to strengthen recently introduced tipping laws by requiring employers to consult with workers when developing or revising their tipping policies.

Current position

The Employment (Allocation of Tips Act) 2023 (the "Tipping Act") came into effect in October 2024 and made it unlawful for employers to withhold tips, gratuities and service charges from workers. Under the Tipping Act, employers are required to maintain a written policy detailing how tips are allocated. A new code of practice on fair and transparent distribution of tips was introduced to provide employers with guidance.

What is proposed under the Bill?

The Bill mandates that employers consult with workers when developing or revising their tipping policies.

- Under the Bill, employers would be required to consult with trade union or worker representatives or, where there are no such representatives, workers directly. This requirement applies when the employer first introduces the policy and when it carries out a review of the policy.
- Employers would also be required to review their policies 'from time to time'. As a minimum, they must review the policy at least once during the first three years of the operation of the policy and at three-year intervals after that.
- Whenever an employer has carried out consultation in accordance with these new obligations, it must produce a summary of the views expressed during consultation and make that summary available in an anonymised form to all workers at their place of business.

Next steps

We do not yet know the commencement date for these reforms, but they may be some of the earliest reforms to take effect as they are more straight forward for the government to introduce.

Our thinking on what these proposals mean for employers

- The new proposals go further than the current Tipping Act by giving a stronger voice (in line with other proposals) to trade unions and workers.
- The statutory code that sits alongside the Tipping Act currently recommends that the approach to tipping is regularly reviewed, and that staff are consulted on any updates to the policy. However, the proposals in the Bill take this a step further and introduce a statutory obligation for employers to conduct reviews at set intervals and to consult with representatives when doing so.
- The statutory code currently recommends that employers consult with workers to 'seek broad agreement' on the fairness of the allocation of tips. It is important to note, however, that a breach of the statutory code does not currently give rise to a standalone claim in the employment tribunal.
- Affected employers, particularly those in the hospitality industry, should keep a close eye on developments and may wish to respond to any consultation that touches on these tipping reforms.

Employment Rights Bill

Reforms to equality laws

Protection from harassment

Building on the new employer duty to prevent sexual harassment, the Bill would extend employers' obligations to prevent harassment and, crucially, would re-introduce liability for third party harassment.

Current position

Employers are under a new proactive duty to take reasonable steps to prevent sexual harassment of their workers in the course of their employment. A failure to do so can lead to an uplift of up to 25% to compensation awarded where a sexual harassment claim succeeds. Although the duty also requires employers to take steps to prevent sexual harassment by third parties (and the EHRC could take enforcement action for a failure to do so), workers cannot currently bring a standalone claim.

What is proposed under the Bill?

- The preventative duty would be changed to require employers to take '**all** reasonable steps' to prevent sexual harassment of their workers (rather than 'reasonable steps').
- The Secretary of State would be given powers to specify certain steps that will be regarded as 'reasonable' (such as risk assessments) and to require employers to have regard to certain matters when taking those steps.
- The definition of protected disclosure in whistleblowing legislation would be amended to include a disclosure that 'sexual harassment has occurred, is occurring or is likely to occur'. A worker raising an allegation of sexual harassment would therefore be covered by whistleblowing protections preventing them from being subjected to a detriment or being dismissed as a result of raising the allegation.
- Perhaps most importantly, a new third party harassment claim would be introduced into the Equality Act, allowing workers to bring a claim against their employer where they are harassed by a third party in the course of their employment and the employer failed to take **all** reasonable steps to prevent the third party harassment. This would cover all forms of harassment (not just sexual harassment) and third parties may include clients, customers, contractors, suppliers, visitors to the workplace etc.

Next steps

Regulations are expected to set out a non-exhaustive list of the 'reasonable' steps that an employer must take in order to comply with the preventative duty. Those steps will be a minimum and each employer will have to consider what additional steps it is reasonable for it to take.

Our thinking on what these proposals mean for employers

- These proposed changes put even greater focus on compliance with the preventative duty. Read more about how you can prepare for the new duty here.
- To comply with the amended duty, employers would need to take all steps that are reasonable, which is a high bar. When regulations are published which stipulate the steps that will be regarded as reasonable, employers will need to ensure that they carry out those steps as well as any additional steps that they have identified as being reasonable for their organisation.
- The new Equality Act claim contained in the Bill would make prevention of all forms of third party harassment a priority area for employers. Employers are likely to have significantly less control over third parties than they have over their workers. We would anticipate that the bar of what constitutes 'all reasonable steps' would therefore be lower than it is for workers, but there will be different steps employers can take in relation to third parties, including to the terms and conditions in place with suppliers and customers.

Maternity, pregnancy and gender equality

The Bill paves the way for significant new protections against dismissal for pregnant employees and new parents. It also builds on existing gender pay gap reporting obligations for large employers.

Current position

There are relatively limited additional dismissal protections for pregnant employees and those who are on, or who have recently returned from, family-related leave. The main additional protection is a requirement in a redundancy situation for such employees to be offered suitable alternative vacancies, where available. In April 2024, this additional protection was extended to pregnant employees and those returning from maternity, adoption and eligible shared parental leave.

All employers with 250 or more employees are required to publish data on their gender pay gap every year, but there is no requirement to publish an action plan with this data.

What is proposed under the Bill?

- **Dismissal protections** - The Bill itself contains relatively little information at this stage, but it introduces a provision enabling the Secretary of State to issue regulations concerning dismissals during pregnancy and after maternity leave (and other types of family-related leave, such as adoption and shared parental leave). In 'Next Steps to Make Work Pay', the government stated that it intends to make it unlawful to dismiss pregnant employees and new mothers within 6 months of their return to work, except for in specific circumstances.
- **Gender equality action plans** – Acknowledging that reporting alone has not brought about change, large employers (those with 250 or more employees) would be required to create and publish action plans showing the steps they are taking to address their gender pay gap and the steps they are taking to support employees through the menopause.
- **Outsourced workers** – The Bill contains powers enabling regulations to be issued that would expand the information that large employers must provide as part of their gender pay gap reporting to include information about the service providers that they contract with for outsourced services (but not the gender pay gap data of such providers).

Next steps

Regulations will set out the detail of the new protections for pregnant employees, new mothers and employees returning from other types of family-related leave.

Separate regulations will also be published which will provide further details regarding the gender pay action plans (including what they will need to contain and how frequently they will need to be revised) and service provider information.

Our thinking on what these proposals mean for employers

- The reforms concerning pregnant employees and new parents are limited in detail and much will hinge on the detail in the regulations. It seems likely that the 'specific circumstances' in which dismissal may be permitted (subject to all the usual fairness principles) will be narrow. 'Next Steps to Make Work Pay' only refers to new mothers, but the Bill allows for protections to also be put in place for those returning from other types of family-related leave, such as adoption and shared parental leave.
- Many large employers already voluntarily produce an action plan to accompany their gender pay gap data (although possibly not menopause action plans). Once regulations are published with further detail, large employers should start considering what they will include in their first action plan or how they will revisit their existing action plans to ensure they are compliant.
- Employers will also need to ensure that their gender pay gap data reporting complies with any new requirements surrounding service provider information.

Employment Rights Bill

Other reforms contained in the Bill

Other reforms in the Bill

A single enforcement body

A new ‘Fair Work Agency’ (FWA) would be established to enforce certain employment law rights, including National Minimum Wage (NMW), holiday pay and statutory sick pay. It would bring together several existing enforcement bodies and powers, in order to create what the government describes as a ‘single brand’ so that workers know where to go for help.

The Bill sets out broad powers that the government intends to delegate to the FWA. These include powers to inspect documents, enter business premises to obtain documents, request undertakings and seek court orders where it identifies non-compliance. The government also intends to expand these powers to enable the FWA to issue civil penalties and to order employers to compensate workers, in line with existing NMW enforcement powers.

Our thinking on what the proposal means for employers

The FWA could herald a real change of approach to the enforcement of employment rights – to date, state intervention has been limited and enforcement has largely been driven by individuals bringing employment tribunal claims. It remains to be seen when the FWA will be established (it is not likely to be a quick process) and what resources and level of funding it will ultimately receive.

Outsourced worker protections

The Bill would amend the Procurement Act 2023 to enable regulations to be issued that would require outsourced contracts to contain provisions ensuring that outsourced workers are treated no less favourably than those transferred from the public sector.

These regulations would cover contracts for services that are, or have previously been, performed by a public authority. The Bill also provides for a code of practice to be issued in relation to outsourcing contracts. Public authorities would be under obligations to ensure the contractual provisions were complied with, and to have regard to the code of practice.

Our thinking on what the proposal means for employers

Contractors regularly working with relevant public authorities will need to keep a close eye on this proposal to reintroduce a ‘two-tier’ code, as it could impact on the commercial terms that they enter into and the terms and conditions they put in place for their existing staff and for inherited staff transferring under TUPE. We do not yet know the commencement date for these reforms.

Extension of tribunal time limits

In ‘Next Steps to Make Work Pay’, the government indicated that it intends to amend the Bill to extend the time limit for bringing tribunal claims. Although ‘Next Steps to Make Work Pay’ is silent on the length of this extension, the government has previously indicated that it plans to make the time limit six months (rather than three months).

Our thinking on what the proposal means for employers

As well as creating a longer period of uncertainty for employers before they know whether a claim has been brought, this could increase the time it takes for cases to get to hearing and could impact on document retention procedures. The change is also likely to put the employment tribunal system under even more pressure with increased claims. It is unclear at this stage when any time limit extension would take effect.

Additional reforms outside of the Bill

Short to medium term reforms outside of the Bill

Whilst a large number of the government's plans for employment law reform are contained in the Employment Rights Bill, the government will also start the process, 'from autumn 2024', of bringing forward additional (and important) reforms through other mechanisms.

Proposed reform

Extension of pay gap reporting to ethnicity and disability for employers with more than 250 staff

Implementation mechanism

The Equality (Race and Disability) Bill

Our thinking on what this means for employers

Potentially complex for employers to comply with due to

- lack of available data
- reticence from workers to provide what will be 'special category' data
- results may be skewed due to geographical limitations and small data sets

Proposed reform

Ensuring that equal pay protections apply when services are outsourced

Implementation mechanism

The Equality (Race and Disability) Bill

Our thinking on what this means for employers

Potential cost implications for organisations which outsource services as contractors' staffing costs may need to increase.

Proposed reform

Extending equal pay rights to protect against pay discrimination on the grounds of race or disability

Implementation mechanism

The Equality (Race and Disability) Bill

Our thinking on what this means for employers

Equal pay legislation is complex and arguably the Equality Act 2010 already provides sufficient protection.

Proposed reform

Implementing a regulatory and enforcement unit for equal pay with trade union involvement

Implementation mechanism

The Equality (Race and Disability) Bill

Our thinking on what this means for employers

It remains to be seen how this new unit would work alongside any newly created Fair Work Agency.

Short to medium term reforms outside of the Bill (continued)

Proposed reform

Removal of age bands in setting adult national living wage

Implementation mechanism

Non-legislative delivery mechanism

Staggered approach to start taking effect from April 2025

Our thinking on what this means for employers

To reduce the immediate financial impact on employers, the rate for 18 to 20 year olds will be increased over time to narrow the gap between that and the National Living Wage (NLW) for those aged 21 and over before the NLW is expanded at some point to cover those aged 18 and over. As a first step, the government announced ahead of the Autumn Budget that the rate for 18 to 20 year olds will increase to £10.00 with effect from 1 April 2025.

Proposed reform

Right to switch off

Implementation mechanism

A new code of practice

Our thinking on what this means for employers

The aim will be to put guardrails around employer contact with workers outside of working hours.

In a move which will please employers, reform will be through a new code of practice and not through legislation, so should have a lesser impact than was initially reported. Employers are expected to be able to devise a policy, with their workers, which fits with their own working practices.

A breach of the code is not expected to give rise to a standalone claim but may be relevant in other claims e.g. unfair dismissal.

Proposed reform

Tightening the ban on unpaid internships

Implementation mechanism

Call for evidence to be launched by end of 2024

Our thinking on what this means for employers

Currently whether an intern has the right to be paid will depend on their employment status with some interns, e.g. students on a placement as part of their course, not entitled to NMW. These exceptions look set to reduce.

Proposed reform

Public procurement changes to raise employment standards

Implementation mechanism

As a starting point, a new National Procurement Policy Statement will be published ahead of the commencement of the Procurement Act 2023 in February 2025.

Our thinking on what this means for employers

Limited detail on this reform is available at this stage. In ‘Next Steps to Make Work Pay’, the government indicated that it intends to ensure social value is mandatory in contract design, use public procurement to raise standards on employment rights and ensure public bodies carry out a quick and proportionate public interest test.

The National Procurement Policy Statement is expected to provide more detail on the government’s plans in this respect.

Longer term reforms outside of the Bill

Whilst a large number of the government's plans for employment law reform are contained in the Employment Rights Bill, the government will also start the process, 'from autumn 2024', of bringing forward additional (and important) reforms through other mechanisms.

Proposed reform	Proposed reform	Proposed reform	Proposed reform	Proposed reform
Parental leave review Review within first year of this government (Plan to Make Work Pay)	Carer's leave review	Single 'worker' status	Progress commitments on paid travel time	Surveillance technologies - requiring employers take a more collaborative approach before introducing surveillance technologies
Overview of proposal Unpaid parental leave will become a Day 1 right (read more here) under the Employment Rights Bill but a 'full review' of the parental leave system is promised. Whether this will also include a review of 'shared parental leave', a system which currently attracts criticism from many quarters not least for its operational complexity, remains to be seen.	**Overview of proposal** The previous government brought in a right to a week's unpaid leave per annum for carers. This government will examine the benefits of introducing paid carer's leave whilst being mindful of the impact on employers – particularly small employers.	**Overview of proposal** The government will consult on a 'simpler framework' for differentiating between workers and the genuinely self-employed. This may also see 'employee' and 'worker' conflated to a single 'worker' status with the full suite of employment rights extending to all workers. Moving to a single status has significant employment and tax implications. The ensuing complexities may lead to a shift in position.	**Overview of proposal** The government will work with HMRC and the Fair Work Agency to ensure National Minimum Wage (NMW) regulations on travel time are enforced.	**Overview of proposal** Employers wanting to introduce surveillance technologies would need to consult and negotiate with trade unions and elected staff representatives prior to implementation. New provisions would not override existing provisions in collective agreements on the use of surveillance technologies.

Longer term reforms outside of the Bill (continued)

Proposed reform

Supporting workers with terminal illness by introducing a ‘Dying to Work’ Charter

Overview of proposal

The Charter will set out best practice for employers to ensure terminally ill workers are treated with respect and dignity and are supported at work.

A breach of the Charter is not expected to give rise to a standalone claim but may be relevant in other claims e.g. unfair dismissal.

Proposed reform

Strengthening protections for the self-employed through the right to a written contract. A ‘Fair Payment Code’ tackling late payments will further protect the self-employed.

Extending blacklisting and health and safety protections

Overview of proposal

These measures will be consulted on as part of the ‘single worker status’ consultation – see above.

Proposed reform

‘Holistic examination’ of Transfer of Undertaking Regulations (TUPE)

Overview of proposal

The government will issue a Call for Evidence to examine a wide variety of issues relating to TUPE including how it operates in practice.

Labour’s Plan to Make Work Pay refers to strengthening the rights and protections for workers subject to TUPE processes – this reference to ‘workers’ may hint at the potential for TUPE to be extended to cover workers, and not just employees. The current position for workers is unclear after a non-binding tribunal case concluded workers are protected.

Proposed reform

Raising collective grievances

Overview of proposal

Consultation with Acas on enabling employees to collectively raise grievances about conduct in their workplaces.

Employees can already seek to raise collective grievances, but the relevant Acas code does not currently apply in those circumstances.

Longer term reforms outside of the Bill (continued)

Proposed reform

Review of health & safety guidance including in relation to 'modernising' legislation (including in relation to extreme temperatures, long Covid, neurodiversity, and ensuring health and safety reflects the 'diversity of the workforce')

Overview of proposal

Potential for significant reform but not an immediate priority as the review is promised 'in due course'.

Proposed reform

Enacting the socioeconomic duty

Overview of proposal

This duty, when enacted, will apply to all public bodies.

Proposed reform

Public Sector Equality Duty

Overview of proposal

The government will ensure these provisions cover all parties exercising public functions.

Proposed reform

Extend the Freedom of Information Act (FOIA) to

- private companies holding public contracts
- publicly funded employers

Overview of proposal

Whilst this proposal is a longer term one, the proposed extension of the FOIA would likely have a significant impact on those in the private sector who would come within its remit for the first time.

In 'Next Steps to Make Work Pay', the government has indicated its plans to extend FOIA provisions to private companies that hold public contracts (in relation to information relevant to those contracts) as well as to publicly funded employers.

As with DSARs, requests under the FOIA can be time-consuming and costly to comply with.

Employment Rights Bill

Resources

Resources

- Employment Rights Bill
- Employment Rights Bill - explanatory notes
- Next Steps to Make Work Pay
- Employment Rights Bill factsheets
- Government resources relating to the reforms
- Labour's Plan to Make Work Pay

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This content is correct and up to date as at 5 November 2024.

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