

# The Employment Rights Act 2025.

Update for LCAS

Sharmin Chowdhury | Solicitor





# Overview.

- [The latest on the Act](#)
- [Implementation overview](#)
- [October 2025 consultations](#)
- [What is happening in Autumn 2025?](#)
- [Changes planned for April 2026](#)
- [Changes planned for October 2026](#)
- [Changes planned for 2027](#)



# What's the latest?

**6-month qualifying period for unfair dismissal**

**Removal of cap on compensatory awards**

**Fire and re-hire implementation delayed to January  
2027**

**First key measures to be implemented in April 2026**

# Implementation roadmap at a glance.

## Royal Assent or shortly after

Easier route to industrial action (repeal of TU Act provisions)

Notice cut: 14 to 10 days

Mandate extended: 6 to 12 months

No picketing supervisor required

Stronger unfair dismissal protection during action

## April 2026

Protective award doubled

Day one rights to paternity & unpaid parental leave

SSP simplified

Stronger whistleblowing protections

Fair Work Agency launched

## August 2026

Electronic and workplace balloting changes

## October 2026

Duty to prevent workplace & third-party harassment

Extra union protections (industrial action detriment)

Extended tribunal time limits

## 2027

Unfair dismissal rights

Restrictions on 'fire & rehire'

Collective redundancy establishment rule

Enhanced protection for pregnant employees/new mothers

New rights for zero-hours workers & wider access to flexible working

Bereavement leave



# Scan and save our tracker.



# Industrial action and trade unions.

Repeal of most provisions of the Trade Union Act 2016

Repeal of the Strikes (Minimum Service Levels) Act 2023

Removal of the 10-year ballot requirement for political funds

Industrial action notice period reduced from 14 to 10 days

Extension of ballot mandate for industrial action from 6 to 12 months

Simplified requirements for industrial action ballots and notices (less detailed information needed)

Removal of requirement to appoint a picketing supervisor

Protections against dismissal for taking part in industrial action strengthened

# Simplifying trade union recognition.

Power to vary current 10% membership requirement for application to CAC, to between 2-10%

The CAC will continue to accept recognition applications where a union has 10% membership for now, but Ministers may lower this threshold by regulation to as little as 2%

Removal of 40% support threshold for recognition ballot (simple majority sufficient)

Unions will only need a simple majority of votes cast in a recognition ballot, removing the current rule that at least 40% of the entire bargaining unit must vote in favour



# Guidance and publications.

## Guidance

- [Trade union law: transition to Employment Rights Act 2025 - GOV.UK](#)

## Updated (draft) Codes of Practice

- [Draft Code of Practice on Picketing](#)
- [Draft Code of Practice on electronic and workplace balloting for statutory union ballots](#)
- [Draft Code of Practice on Industrial action ballots and notice to employers](#)
- [Draft Code of Practice: Access and Unfair Practices During the Recognition and Derecognition Process](#)
- [Code of Practice on time off for trade union duties and activities \(draft\) | Acas](#)



# Protective award.

- The **protective award** for the failure to inform and consult is currently limited to 90 days' uncapped pay per employee
- This will be increased to 180 days' uncapped pay per employee from 6 April 2026
- Change will apply to dismissals **which happen on or after this date**
- Up to 25% uplift can also be applied for unreasonable failure to follow Code of Practice on dismissal and re-engagement (if applicable)



# Parental and paternity leave.

- Right to take unpaid parental leave will become a day one right (current one-year qualifying period to be removed)
- Right to take paternity leave will become a day one right (current 26-week continuous service requirement will be removed)
- Restriction on ability to take paternity leave after shared parental leave will be removed
- Bereaved partners' paternity leave takes effect (outside ERA 25) – right to up to 52 weeks paternity leave if mother/primary adopter dies in first year of child's life

Assent

April

October

2027



# Extension of whistleblowing protection.

**Sexual harassment disclosures to be given specific whistleblowing protection**

**A disclosure that harassment has occurred, is occurring or is likely to occur will be a qualified disclosure**

**This will create express protection against detriment and dismissal disclosing sexual harassment**

**Harassment policy and procedure may need to be reviewed**

**Whistleblowing policy may need to be reviewed**

**Consider sexual harassment training**

Assent

April

October

2027

# Statutory sick pay.

- **Removal of SSP ‘waiting days’ will mean SSP is payable from the first day of sickness**
- **Removal of lower earnings limit for SSP will mean all employees are entitled to SSP regardless of income**
- **For those with weekly earnings lower than the flat rate for SSP (currently £116.75 per week), the Act proposes to set SSP payments at 80% of the employee’s normal weekly earnings’**
- **This will mean that all employees will be entitled to the lower of the SSP weekly rate, or 80% of average earnings, from day 1 of sickness absence**





# Gender equality action plans.

- **Current position:** Employers with 250+ employees must publish annual gender pay gap reports; publishing an action plan is not mandatory
- **What the Act provides:** New regulations will require employers with 250+ employees to publish Equality Action Plans, including gender pay gap action plans and menopause action plans.
- **Enforcement:** Specific penalties will apply for failure to publish; enforcement will sit alongside existing equality powers
- **Timing:** Voluntary publication from 6 April 2026, with mandatory requirements expected to come into force in 2027 (details to follow in regulations, with publication required at least annually)



# Launch of Fair Work Agency.

**Holiday pay & record-keeping**

**Statutory payments**

**Tribunal action**

**Cost recovery**

**Enforcement powers**

Assent

April

October

2027



# Autumn 2026 changes.

## August 2026

- Electronic and workplace balloting changes

## October 2026

- Duty to prevent workplace & third-party harassment
- Extra union protections (industrial action detriment)
- Extended tribunal time limits



# Electronic and workplace balloting.

- **Secure electronic balloting for statutory trade union ballots to be introduced alongside workplace balloting options**
- **Expected to replace reliance on postal voting, making participation easier**
- **Supported by updated Acas Codes of Practice and cybersecurity guidance**
- **Government must consider impact of electronic balloting before removing 50% turnout threshold in industrial action ballots**
- **Note, electronic balloting for recognition will take effect in 2027**





# Trade union right of access.

Union officials will be entitled to access workplaces for recruitment, organising workers and collective bargaining with the aim of gaining recognition

Digital/virtual access as well as physical access is covered

Access for the purposes of the organisation of industrial action is expressly not included

Application process will apply; schools will have very limited power to reject requests for access



# Right to statement of trade union rights.

New duty on employers to inform workers of their right to join a trade union

Must include information in written statement of particulars

Must remind workers of their rights on a regular basis

Times and manner of communication to be set out in future regulations



# Trade union rights.

Duty to provide statement of trade union rights

Employers must give workers written information about their right to join a trade union, included with the section 1 statement of employment particulars

Union right to physical and digital access to workplaces

Certified independent unions will be able to request physical and digital access to the workplace for the purposes of engaging, recruiting and organizing workers, or to facilitate collective bargaining

Strengthened rights to reasonable paid facility time (presumption of reasonableness)

Recognised unions will benefit from a presumption that requested time off is reasonable unless the employer proves otherwise, with an added duty to provide reasonable access to facilities

Paid time off for union equality representatives

New right for trained equality reps of recognised independent unions to take reasonable paid time off for equality-related duties and training.

New protections for taking industrial action

Introduces a right not to suffer detriment short of dismissal for participating in protected industrial action, ensuring compliance with Article 11 ECHR



# Prevention of workplace sexual harassment.

Extends the 2024 duty to prevent sexual harassment

Duty increased to taking *all* reasonable steps

Regulations may set out required actions

Enforcement unchanged: 25% uplift or EHRC action



# Protection against third party harassment.

## New duty

Employers must not permit harassment by third parties, including clients and customers (in schools this will include parents and pupils).

## When liability arises

An employer “permits” harassment if it happens during employment and they failed to take **all reasonable steps** to prevent it.

## Scope

This duty applies to all forms of harassment, **not just sexual harassment**. Regulations may specify what steps are reasonable.

## Enforcement

Failure to comply could lead to a standalone claim.



# What might “all reasonable steps” look like?

- Carrying out risk assessments
- Publishing plans or policies
- Mechanics to report
- Effective handling of complaints
- But remember... the duty is to take “all *reasonable* steps”



# Implementation timetable.

**The government intends to implement the requirement to take all reasonable steps to protect against harassment in October 2026.**

**The regulations to specify the steps that are to be regarded as reasonable are expected to be made some time in 2027.**

**Why does the regulation-making power come into force after the legal duty?**

Assent

April

October

2027



# Ban on NDAs.

## Ban on employers using NDAs to silence workplace harassment and abuse

- Confidentiality provisions will be void if they prevent workers disclosing information
  - relating to harassment, discrimination or failure to make reasonable adjustments
  - relating to the employer's response to an allegation of harassment or discrimination
- The ban will relate to harassment or discrimination suffered by the worker making the disclosure, or by another worker of the employer



# Ban on NDAs.

## The Act also introduces the concept of “excepted agreements”

- The Act allows for limited “excepted agreements” to be defined in future regulations
- Expected to apply only where the worker themselves requests confidentiality
- Government materials point to the Irish model, where:
  - confidentiality can be included if requested by the employee
  - the employee must receive independent advice and a cooling-off period; and
  - confidentiality remains possible for statutory settlements reached through the Irish equivalent of Acas conciliation.
- No confirmation yet that Acas COT3s will be treated the same way here



# Practical implications for employers.

What to do now	What to watch
<ul style="list-style-type: none"><li>• Review and map where confidentiality is used</li><li>• Anticipate template updates once regulations finalised</li><li>• Train HR and managers on culture of fairness and openness</li><li>• Re-focus reputation management on process integrity, not silence</li></ul>	<ul style="list-style-type: none"><li>• Concern: employers less inclined to settle without NDAs</li><li>• Risk: longer tribunal proceedings, delayed justice</li><li>• Early evidence (Ireland, US): limited practical change – settlement still attractive</li><li>• Settlement still viable; confidentiality just narrower</li></ul>



# Time limits for Tribunal claims.

- The Act extends the limitation date to bring the majority of employment tribunal claim, from three to six months
- The only exception is breach of contract claims arising or outstanding on the termination of employment (which is currently three months from the EDT)
- It is unclear whether this is an intentional omission
- Will extending the limit to six months give more scope to resolve disputes early, reducing the need for claims?



# 2027 changes.

## 2027

- Unfair dismissal rights
- Restrictions on 'fire & rehire'
- Collective redundancy establishment rule
- Enhanced protection for pregnant employees/new mothers
- New rights for zero-hours workers & wider access to flexible working
- Bereavement leave



# Protection from unfair dismissal.

- Six-month qualifying period will take effect on 1 January 2027
- This means appointments from July 2026 are in-scope
- Appointments from January 2026 will have a 12-month qualifying period
- Effective recruitment and management of probationary periods will be key
- No exception for fixed-term appointments





# Removal of statutory cap on compensatory awards.

- Compensation for ordinary unfair dismissal claims comprises a basic award (calculated in same way as statutory redundancy pay) plus compensatory award
- Compensatory award currently subject to a cap: lower of 52 weeks' pay or a financial amount (currently around £118k)
- Statutory cap on compensatory award will be **completely removed**
- Implications for:
  - higher earners
  - Long-term loss of earnings
  - Pension loss



# Preparing for change.

**Carefully consider vacancies and recruitment need**

**Ensure job descriptions/specifications are clear**

**Essential to have good management of probationary periods**

**Ensure recruitment processes are robust**

**Good induction processes**

**Importance of process in other cases, focus on performance management**



# Fire and re-hire.

There will be an automatic unfair dismissal in **four scenarios** where the employee did not agree to a **restricted variation** and is dismissed as a result.

Straight dismissal (no re-engagement or replacement)

Dismissal and re-engagement (same employee, new terms)

Dismissal and replacement (new employee)

Dismissal and replacement (“another person”)



# Fire and re-hire.

What is a restricted variation?

**Pay (including pension)**

**Hours and time off**

**Specified in regulations**

**Variations clauses**

Assent

April

October

2027



**What changes will fall  
outside the “restricted  
variation” definition?**



# Collective redundancies.

- The **establishment rule** will change so the duty to collectively consult will be triggered:
  - **either** where 20 or more redundancies occur at a single establishment; **or**
  - where a new “threshold test” is met
- The “threshold test” will be set in regulations



# Guaranteed hours offers.

Employers must offer guaranteed hours to qualifying workers based on their average hours worked during a reference period

## Who qualifies?

Zero-hour workers,  
low hours workers  
and agency workers

Workers with a  
minimum number of  
contractual hours

## Process

Workers will have a  
response period to  
accept/reject offer

Cyclical process

## Next steps

Minimum hours,  
hours threshold and  
length of reference  
period to be defined  
in regulations



# Guaranteed hours offers.

## Reference periods and recurring obligations

### Initial and subsequent reference periods

GHOs must be offered at the end of each qualifying reference period

Government had said it favours 12 weeks for the “initial reference period” and that length of subsequent reference periods would be the subject of consultation

Is the government’s position less certain following the September 2025 reshuffle?

### Ongoing duty to offer

Obligation to make GHO applies after each reference period where the worker qualifies, even if previous GHO was declined

No rolling period or workforce-wide alignment mechanism

High administrative burden for employers

Assent

April

October

2027

# Guaranteed hours offers.

## Contractual structure and evidential risks

### Form and content of GHOs

Must reflect hours worked during the reference period

May be a new contract or a variation of existing terms

Fixed-term GHOs only allowed if reasonably time-limited

### Risks and Justification

Employers must justify any less favourable terms compared to those worked

Presumption against limited-term GHOs where similar work is being done by others

No guidance yet on what counts as “reasonable” or “proportionate”



# Guaranteed hours offers.

## Anti-avoidance provisions

Will apply where contracts guarantee hours but give flexibility on when hours are worked

Prevents employers from bunching guaranteed hours into one part of the year, or issuing a token low-hours contract alongside zero-hours work

## Right to information on guaranteed hours offers

Employers will be required to take reasonable steps to inform workers who are or might become qualifying workers, of their rights

Obligation to ensure workers continue to have access to specified information about their rights



# Reasonable notice of shifts and compensation for late changes.

**Right to reasonable notice of shifts**

**Right to compensation for late changes, cancellations or curtailments**

**Compensation will not exceed the pay for the lost shift**

**Definition such as “short notice” and “qualifying shift” will be set out in regulations**

**The government has confirmed these rights will also apply to agency workers**

# Application to agency workers.

**All zero hours rights will also apply to agency workers**

**GHOs: end hirer responsible for making the GHO**

**GHOs: the offer must be of a worker's contract between end hirer and worker**

**Both agency and end hirer can be responsible for failure to give reasonable notice of shifts**

**Compensation for late changes: agency can reclaim payments from hirer if hirer caused late change**

**Lots of tricky issues to consider**

# Opt out mechanism.

**Employers and unions will be able to contract out of the zero hours framework via a collective agreement**

**Opt out mechanism applies to both workers and agency workers**

**Four conditions must be met:**

**Worker is under contract**

**Agreement expressly excludes and replaces statutory right**

**Replacement terms incorporated into contract**

**Worker is notified in writing**

**In agency cases the agreement would be between union and agency, not the hirer.  
How will this work in practice?**



# Enforcement.

## Right to complain to ET where:

- Employer fails to make guaranteed hours offer
- Employer makes non-compliant offer
- Employer limits hours in reference period to avoid or prevent obligation to make an offer arising
- Employer fails to comply with duty to provide specified information

Penalty = declaration and just and equitable compensation not exceeding the “permitted maximum” (TBC)

**?** Big question: will employees bother to enforce their rights?



# Dismissal during pregnancy.

- The Act introduces a power to make regulations to protect expectant mothers from dismissals during or after pregnancy
- Power will not apply to redundancy dismissals which are covered under existing law
- Full details will be set out in regulations, including:
  - How the protected period is calculated
  - How the protection can apply after pregnancy, such as in cases of miscarriage
- Consultation closed on 15 January 2026

Assent

April

October

2027



# Extended protection from dismissal following statutory family leave.

Introduction of a power to regulate dismissals during or after maternity, adoption, shared parental, neonatal care, and bereaved partners' paternity leave

The length of the protected period running after the end of the relevant leave is to be confirmed

Current protection against redundancy during/after family leave runs for 18 months following birth or adoption – it is not clear at the moment whether the same level of protection will apply here





# Preparing for change.

**Have clear notifications and records for pregnant employees/on family leave**

**Document protected period**

**Factor in enhanced rights when planning redundancies and other dismissals**

**Note broadened scope of protection once confirmed in regulations**

**Raise awareness amongst managers**



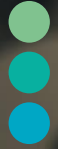
# Statutory bereavement leave.

- Expands statutory bereavement leave to persons other than parents
- This will include the right to statutory bereavement leave for pregnancy loss before 24 weeks (for both parents)
- An employee will be a “bereaved person” if they satisfy conditions specified in regulations as to their relationship with the person who has died
- Where the employee’s child has died, they will retain their statutory entitlement to two weeks leave and pay
- In other cases, the statutory entitlement will be to one week’s leave
- The new statutory right will be to unpaid leave – employers can offer leave with pay at their discretion

# Flexible work requests.

- The Act will require flexible work requests to be granted unless:
  - One of the statutory grounds for refusal applies; and
  - The employer's refusal is **reasonable**
- The statutory grounds for refusal will remain unchanged, but it will be much harder to refuse a flexible work request
- Regulation-making power will allow government to set out the steps an employer must take in order to comply with the existing requirement to consult the employee before rejecting a request





Any questions?



# Thank you.

**Sharmin Chowdhury | Solicitor**

[schowdhury@vww.co.uk](mailto:schowdhury@vww.co.uk)

Phone number 07900 570 032

