HR Hub - Employment Update

Employment Rights Bill

The Employment Rights Bill was published on 10 October 2024. It proposes a number of potentially significant changes to employment law but the detail is currently lacking and there is currently no set date for when the changes will be implemented.

Some of the key proposed changes include:

1. Making Unfair dismissal a day one right

Currently employees need to have two years' service before they can pursue a claim of ordinary unfair dismissal. The Bill proposes removing the two-year qualifying period, making unfair dismissal protection available from the first day of work unless one of the exceptions applies. The exceptions are said to be for employees who have not yet started work and for dismissals during the initial period of employment (also described as a statutory probationary period). While the length of this initial period was not specified in the bill, an amendment to the bill published on 26 November 2024, referred to a period of 3-9 months.

The detail about what employers will need to do in order to dismiss during this initial period is unknown. However, bill does make it clear that this period only applies to dismissals for conduct, capability, statutory restriction or some other substantial reason. Redundancy dismissals will give employees rights from day one.

The government has said that substantial consultation will be undertaken in relation to:

- the length of the initial statutory probationary period;
- what a compensation regime for successful claims during probation will be, and whether tribunals will be prevented from awarding full unfair dismissal compensatory damages;
- how to "ensure the probation period has meaningful safeguards to provide stability and security for business and workers";
- how any lighter-touch dismissal process will interact with the ACAS Code of Practice on Disciplinary and Grievance procedures; and
- ways to signpost and "support employees to ensure they have proper recourse if they are unfairly dismissed but also make clear where bringing claims might be unsuccessful".

2. Zero Hour contracts

The headline proposal on Zero Hours outlined by the Bill is the right of workers to be offered a fixed hours contract based on hours that they habitually work over a set reference period, with the government's preference for this being 12 weeks (but ultimately with the secretary of state holding the power).

The key wording here is the right for workers to be offered such terms rather than any automatic trigger, maintaining the option for those wishing to retain the flexibility of a zero-hour arrangement. This does necessarily mean a reduction in flexibility for employers and a need for employers to address their staffing structures where zero hours arrangements are routinely used.

The Bill also states that workers on zero hours contracts will be given the right to reasonable notice of shifts and compensation for shifts that are moved or cancelled at short notice; what precisely constitutes "moved" or "short notice" will be set by the secretary of state in future regulations.

3. Family Friendly Rights

Parental Leave - The qualifying period will be removed and it will become a day one right.

Paternity Leave **-** The qualifying period will be removed and it will become a day one right. Employees will also be take paternity leave after a period of shared parental leave.

Bereavement Leave – this will be extended beyond the existing parental bereavement leave so as to cover the loss of others. It is anticipated it will mirror the people covered by legislation relating to time off for dependants.

Flexible Working – An element of reasonableness is to be added in relation to the decision rather than only the process.

Pregnancy and Maternity – the Bill introduces the idea of providing protection against dismissal and for this protection to apply to dismissals other than redundancy. However, the Bill refers to the additional protection being introduced through further regulations so no detail is given.

4. Harassment

The bill proposes that employers will be liable for third Party harassment. There will be a defence if an employer can show it has taken all reasonable steps to prevent it.

Currently, although employers have a duty to prevent employees being sexually harassed by third parties, there is no claim an employee can bring against the employer if harassment does occur. The proposal under the Bill will fill this gap.

5. Fire and Rehire

Presently if a contract variation is not accepted by an employee (following consultation), an employer can serve notice to terminate on the existing terms, offering to re-engage the employee on the amended terms. This is usually where there is a sound business reason such as addressing harmonisation or economic changes.

The proposal in the Bill is to remove this practice, and instead make it automatically unfair to dismiss an employee on their current terms where they refuse to accept a contract variation. There are exceptions where the reason for the change is to prevent or reduce the effect of financial difficulties it may be experiencing.

Given the challenge to amending employment contracts without the employee's consent, employers will have to use the consultation process to find a variation which is acceptable. It is likely that employers will increasingly be seeking to use well drafted contract variation clauses to make amendments.

6. Collective Consultation

The Employment Rights Bill proposed to change the way in which numbers of redundancies are looked at when deciding whether collective consultation obligations are triggered. It proposed to remove reference to a single establishment so that where 20 or more redundancies are proposed in total across a number of different locations, the employer will need to collectively consult, even if the number in one particular location is under 20.

Latest Developments

Following the initial publication of the Employment Rights Bill, the legislation has undergone substantial amendments as it continues its progression through Parliament.

Zero Hours Contracts and Shift Changes

To close loopholes in the original Bill, agency workers will now be entitled to similar protections as employees, particularly regarding zero hours contracts and short-notice shift changes. Employers will be required to offer guaranteed hours contracts to workers consistently exceeding their contracted hours, with this responsibility falling on the end hirer, not the agency.

Both agencies and hirers will share liability for providing reasonable shift notice, and compensation for short notice will generally come from agencies, although they may recover costs from hirers. Employers are warned against manipulating hours or ending contracts to bypass these rules, as anti-avoidance measures with financial penalties are being introduced.

A new opt-out clause allows collective agreements to override zero hours and shift change protections, though it remains to be seen how unions will respond to this power.

Statutory Sick Pay

The Bill now confirms that workers below the Lower Earnings Limit will receive statutory sick pay set at 80% of their normal earnings.

Bereavement Leave

Employees who experience a miscarriage before 24 weeks of pregnancy will be entitled to two weeks of paid leave, although the broader scope of bereavement-related leave is yet to be clarified.

Pregnancy Protections

Enhanced protections for pregnant employees now extend beyond redundancy scenarios. The amended Bill empowers secondary legislation to define circumstances in which any dismissal during pregnancy or maternity-related periods could be deemed automatically unfair.

Fire and Rehire

While the proposed interim relief for dismissed employees has been dropped, dismissals related to fire and rehire remain automatically unfair unless employers face serious financial jeopardy. Failure to follow the statutory Code of Practice can result in increased compensation awards.

Redundancy Consultation Rules

The amended Bill restores the requirement for collective consultation to be based on dismissals at a single establishment but hints at future reforms to include organisation-wide thresholds. Notably:

- Consultation timelines now match HR1 notice periods at 45 days (up from 30).

- Maximum protective awards have doubled from 90 to 180 days' pay.
- Employers will no longer be required to consult all employee representatives together, enabling more flexible handling of localised redundancies.

Annual Leave Record-Keeping

Employers will be legally required to keep records of annual leave entitlements and payments for six years. Failure to do so will constitute a criminal offence.

Enforcement by the Fair Work Agency (FWA)

The FWA gains sweeping new powers to:

- Issue underpayment notices with steep penalties (up to 200% of the underpaid amount, capped at £20,000 per individual).
- Act on behalf of workers in Employment Tribunal claims.

The Bill is currently at the Committee stage.

Immigration White Paper

On 12 May 2025, the UK government published a white paper titled "Restoring Control Over the Immigration System", outlining its future vision for immigration reform. The key aims are to reduce net migration and promote community cohesion. While these are only proposals at this stage, and not yet legally binding, they signal significant potential changes to the immigration landscape. Here is a summary of the main proposals.

Higher salary and skills thresholds

The government plans to raise both the salary and skills thresholds under the skilled worker route. The minimum skills requirement will increase from RQF Level 3 (A-level equivalent) back to RQF Level 6 (graduate level), reversing the 2020 post-Brexit expansion of eligibility. This shift is likely to have a notable impact on sectors such as construction and healthcare, where many roles do not meet the proposed threshold but remain critical to operations.

In addition, the Immigration Salary List, which currently allows a 20% salary discount for listed roles, will be abolished (though transitional arrangements will apply).

New Temporary Shortage Occupation List (TSL)

A more limited Temporary Shortage Occupation List will be introduced for roles requiring skills at RQF levels 3 to 5. Access to the points-based immigration system via the TSL will require clear justification, and employers will need to demonstrate workforce planning strategies aimed at increasing domestic recruitment. This may reduce long-term reliance on overseas workers in lower-skilled roles.

Changes to Graduate Visas

The length of stay under the Graduate visa route will be reduced. Currently, graduates are granted up to two years' permission to work in the UK (three years for doctoral-level graduates). Under the new proposal, this will be shortened to 18 months for all. This could reduce the time available for graduates to transition into long-term employment or sponsorship.

Focus on Global Talent

Despite the drive to reduce migration, the government also aims to attract the "brightest and best" global talent. Specific changes to visa routes and eligibility criteria are expected in due course to support this aim, with a continued focus on high-skilled professionals and innovators.

Tougher English Language Requirements

The white paper also refers to higher English language requirements, not only for visa applicants themselves but also for their dependants. Skilled workers will need to meet a level B2 (equivalent to A-level) English language requirement and for adult dependants there will be a new basic level English language requirement introduced.

Increased Sponsorship Costs

The Immigration Skills Charge for sponsor employers will rise by 32%. This will be the first increase since its introduction in 2017, representing a significant additional cost for employers reliant on international recruitment.

Closure of Overseas Social Care Visa Route

The visa route for overseas social care workers will close to new applicants. However, individuals already in the UK under this route will be able to extend their stay or switch visa categories until 2028. Employers in the care sector may face renewed challenges in sourcing workers internationally.

Longer Residency Requirements for Settlement and Citizenship

The qualifying residence period for Indefinite Leave to Remain and British citizenship will double from five to ten years. While there will still be a shorter path for certain dependants of British citizens, future applicants will need to demonstrate longer-term integration. There may also be flexibility for those making significant contributions to the UK economy or society.

New Labour Market Evidence Group (LME Group)

A Labour Market Evidence Group will be established to track sector reliance on overseas labour and promote domestic workforce investment. The group's findings will likely influence future immigration policy decisions, including which sectors may be supported or restricted under new visa rules.

What This Means for Employers

Although these are only proposals and subject to change following consultation, employers should take proactive steps to prepare for potential impacts:

- Assess your workforce: Identify roles and employees that could be affected by higher salary and skills thresholds.
- Revisit recruitment strategies: Consider how changes to visa routes and timelines may impact hiring plans.
- Plan for talent pipeline resilience: Explore options to train and recruit from the domestic workforce.
- Anticipate cost increases: Budget for higher sponsorship fees and potential compliance obligations.

Neonatal Care Leave and Pay

As of 6 April 2025, a new statutory right to Neonatal Care Leave (NCL) and Statutory Neonatal Care Pay (SNCP) is in effect. This allows eligible working parents to take up to 12 weeks of additional leave and pay when their baby requires specialist medical care shortly after birth.

Who Can Access Neonatal Care Leave?

This leave is available from day one of employment for eligible parents whose baby has required neonatal care. To qualify for NCL, the baby must be born on or after 6 April 2025 and the employee must be one of the following:

- Birth parents
- Intended parents of the baby (in surrogacy arrangements)
- The partner of the baby's mother, if they live together in a committed relationship and have the responsibility for raising the child

The same principles as above apply for adoption.

What Is Classed as 'Neonatal Care'?

To qualify, neonatal care must have started before the end of the period of 28 days beginning with the day after the baby's birth and also continue for a period of at least 7 days beginning with the day after the care starts.

Neonatal care includes the following:

- Medical care received in a hospital
- Medical care received elsewhere upon the child leaving hospital, provided it is under the direction of a consultant and includes ongoing monitoring and visits to the child by healthcare professionals arranged by the hospital; or
- Palliative or end of life care.

How Much Leave Can Be Taken?

The length of NCL depends on how long the baby receives neonatal care. Parents are entitled to one week of leave for every full week their baby receives neonatal care without interruption, up to a maximum of 12 weeks. The earliest that NCL can start is the ninth day following the start of the baby's uninterrupted care.

There is no additional leave for parents of twins or multiple births for babies who are receive neonatal care at the same time. For example, if both twins receive neonatal care at the same time for six weeks, the parent is entitled to six weeks of NCL. The maximum amount of leave is still 12 weeks.

When Can Neonatal Care Leave Be Used?

NCL can be taken at any point within 68 weeks of the baby's birth (or placement in the event of adoption). In most cases, it is expected to follow the end of maternity, paternity, or shared parental leave. However, the framework also allows flexibility for parents not already on leave when neonatal care is required, for example, if paternity leave has ended while the baby is still in hospital.

There are two categories of NCL:

Tier 1 leave: taken while the baby is receiving care or within one week of discharge. This can be taken in non-continuous blocks of at least one week.

Tier 2 leave: taken after the Tier 1 period. This must be used in one continuous block.

Notice Requirements

Employees must provide notice of their intention to take NCL stating:

- Their name
- The baby's date of birth (or date of placement/entry to Great Britain if adopting)
- Start date or dates of neonatal care
- The end date of neonatal care (where applicable)
- The date on which the employee wants to take the leave
- The number of weeks of NCL the notice is being given for
- A statement confirming their relationship to the baby and that the leave is being used to care for the child

The amount of notice required will depend on when the leave is being taken. For Tier 1 leave, the notice must be given before the first day of absence or as soon as reasonable practicable and there is no need for the notice to be in writing. For Tier 2 leave, 15 days' notice is required for a single week of leave and 28 days' notice for two or more consecutive weeks of leave, and notice must be given in writing. Employers can agree to waive notice periods, particularly in urgent or compassionate circumstances.

What About Statutory Neonatal Care Pay (SNCP)?

To receive SNCP, the employee must have 26 weeks' continuous service and earn at least £125 per week on average. Statutory neonatal care pay is paid at the same rate as other family related payments so either the current statutory rate (£187.18) or 90% of weekly earnings, whichever is lower.

As with other family leave, employees remain entitled to their terms and conditions (except pay) during NCL and have the right to return to their job afterwards.

Extended Protection Rights

Employees who take six or more continuous weeks of NCL will qualify for enhanced redundancy protection, unless they already qualify through other leave (e.g. maternity or paternity). This protection lasts until the child's 18-month birthday, meaning affected employees must be given priority for suitable alternative roles in any redundancy situation.

Dismissal related to taking NCL is considered automatically unfair, and employees are also protected from being treated detrimentally.

Key Considerations for Employers

Now that NCL is in effect, employers should ensure the following:

- Policy updates: Update or create a clear policy on NCL, and consider how it fits into existing family leave and pay structures. Consider drafting template forms to help manage notice requirements.
- Leave sequencing: Be aware that some employees may shift from maternity/shared parental pay into NCL to extend paid time off. For example, moving to SNCP after maternity pay ends could extend the overall paid period close to 12 months.
- Notice flexibility: Given the complexity of notice rules and "tier" periods, many employers may choose to adopt a more flexible and compassionate approach, waiving notice requirements where practical.
- Training: HR teams may benefit from refresher training on family leave entitlements, including how to administer NCL fairly and compliantly.

- Redundancy tracking: Ensure systems are in place to monitor NCL use and apply enhanced redundancy protections consistently.
- Privacy and sensitivity: Medical details about the baby are sensitive. Only share such information internally with consent and on a need-to-know basis.
- Wellbeing and support: Consider that time in neonatal care can have lasting effects, physically and emotionally, for parents. Be prepared to support staff returning from NCL and handle related absences with care.

ICO AI and Biometrics strategy

On 5 June 2025, the ICO announced the launch of a new AI and biometrics strategy aimed at providing support to organisations developing and deploying new technologies while ensuring the public is safeguarded. The ICO recognises that AI can be helpful but flags that people need to be able to trust that those using this technology:

- are transparent about the personal information they use;
- use this personal information fairly; and
- take appropriate care putting in place governance and technical measures to protect people from harm

Recent surveys in relation to recruitment show that 64% believe employers will rely too heavily on QI and 61% are concerned it will perform worse that human decision makers when assessing individual circumstances.

The ICO plan is to:

- Give organisations certainty on how they can use AI and ADM responsibly under data protection law by developing a statutory code of practice providing clear and practical guidance.
- Ensure high standards of automated decision making in central government.
- Set clear expectations for the responsible use of automated decision-making in recruitment
- Scrutinise foundation model developers to ensure they are protecting people's information and preventing harm by setting regulatory expectations.
- Support and ensure the proportionate and rights-respecting use of facial recognition technology by the police
- Anticipate and act on emerging AI risks

There is nothing specific from this strategy announcement that employers need to do, but caution should be exercised if using AI to ensure data protection and employment law compliance.

Case Law

For Women Scotland v The Scottish Ministers

In 2018, the Scottish Government introduced the Gender Representation on Public Boards (Scotland) Act with the goal of increasing the number of women represented on public boards. The related statutory guidance broadened the definition of "woman" to include transgender women who hold a Gender Recognition Certificate (GRC), in line with the Gender Recognition Act 2004.

This guidance was legally challenged by For Women Scotland (FWS), a gender-critical advocacy organisation. FWS argued that the Equality Act 2010 defines "woman" by reference to biological sex and claimed that the Scottish Government had exceeded its devolved powers by redefining this term. Although the Court of Session initially upheld the Scottish Government's position, FWS appealed to the UK Supreme Court.

On 16 April 2025, the UK Supreme Court unanimously ruled in favour of FWS. The Court determined that under the Equality Act 2010, the words "man", "woman", and "sex" refer specifically to biological sex. It concluded

that allowing sex acquired through a GRC to be included within these definitions would undermine the integrity and consistency of the legislation, particularly in areas such as maternity protections and the operation of sex-based rights.

Importantly, the Court made clear that this interpretation does not remove protections for transgender individuals. The Equality Act 2010 continues to safeguard people with the protected characteristic of gender reassignment, ensuring they are protected against direct and indirect discrimination, as well as harassment.

Key Takeaways

- Employers should revisit and, if necessary, revise their policies to ensure alignment with the clarified legal position—that "man", "woman", and "sex" in the Equality Act 2010 are defined by biological sex. For organisations providing single-sex services, it is essential to evaluate existing practices to confirm compliance with these legal definitions. Where exclusions or restrictions are applied, they must be justified as serving a legitimate aim and be proportionate.
- Staff training materials should also be updated to reflect the distinction between biological sex and gender reassignment as separate protected characteristics. Employees should be informed about the rights of transgender individuals and the legal protections that remain firmly in place.
- When developing or reviewing diversity and inclusion strategies, employers must ensure they operate within the framework of the Equality Act 2010. Inclusive policies must be carefully balanced to respect legal definitions while upholding fairness and dignity for all.
- Given the complex and sensitive nature of this area of law, employers are advised to seek legal guidance to ensure their practices are both inclusive and compliant. This will help create a workplace where all individuals—regardless of sex or gender identity—feel respected and protected.

Campbell v Sheffield Teaching North Hospitals NHS Foundation Trust & Hammond

In this case, the Employment Appeal Tribunal (EAT) examined two key legal questions: what constitutes conduct "in the course of employment" and what qualifies as taking "all reasonable steps" to prevent harassment under the Equality Act 2010.

The claimant, Mr Campbell, was a UNISON branch secretary at the NHS Trust. He was racially abused by Mr Hammond, a colleague, during a disagreement about union membership fee deductions. The incident occurred on Trust premises during working hours, but while Mr Hammond was on a break.

The tribunal found that although both individuals were employees and the event took place at work, the incident did not arise "in the course of employment" under s.109 of the Equality Act 2010. Although it had been made on the Trust's premises during working hours, the conversation had been between a union official and a union member about union membership.

Even so, the tribunal and EAT went on to consider whether the NHS Trust had taken "all reasonable steps" to prevent harassment. They found that it had. The Trust provided induction training, regularly assessed behaviour in line with its core values, displayed these values prominently, and delivered mandatory equality and diversity training, which Mr Hammond had completed just days before the incident. With no further preventative steps suggested by the claimant or EAT, the NHS Trust successfully established the statutory defence under s.109(4).

Key Takeaways

- Employment-related conduct is fact-sensitive: Whether an incident occurs "in the course of employment" depends on specific circumstances. Not all conduct between colleagues on workplace premises will qualify.

- Proactive training is crucial: Employers must be able to demonstrate that they have taken active, practical steps to prevent discrimination and harassment—including thorough induction training, regular performance reviews tied to core values, and up-to-date equality and diversity training.
- Visual and cultural reinforcement matters: Displaying behavioural expectations (e.g. posters of core values) and embedding them in workplace culture supports the "reasonable steps" defence.
- Documentation and timing count: That the harasser had recently completed mandatory training was influential in the tribunal's conclusion that the employer had done enough.
- Be prepared to show there's nothing more you could reasonably do: The "all reasonable steps" defence will only succeed if no further realistic or practical measures can be identified.

Hendy Group Ltd v Kennedy

Mr Kennedy was employed by Hendy Group Ltd (Hendy), a car dealership. When he started in 2013, he first worked in used cars before moving on to manage a new distributorship. He then began to train people working at Hendy's dealerships and, in 2015, moved to his final role as a full-time trainer within its Training Academy. Mr Kennedy had 30 years of experience in the motor trade, specifically in sales, before taking on the training role.

In 2020, a redundancy situation arose, largely due to the COVID-19 pandemic. Mr Kennedy accepted that there was a genuine redundancy situation and that he was fairly selected for redundancy within his team. However, he claimed that his dismissal was unfair because Hendy had not adequately, appropriately or fairly considered the possibility of him continuing to work for them in a different role.

During the consultation process he was told he could apply for posts listed on Hendy's intranet but, the HR department took no steps to assist Mr Kennedy in finding alternative employment. He was not at work and was given no assistance to apply for any post and nor was any post suggested for him to apply for. The most assistance he was offered was from his line manager, who offered to speak to anyone on the telephone.

Mr Kennedy was dismissed as redundant on 7 weeks' notice. The correspondence did not make any reference to the possibility of help to find another role. A week after being given notice of dismissal, Mr Kennedy was required to return his laptop and had no access to internal email or the intranet. He therefore had only the same access as a member of the public to jobs listed on the Hendy website.

There were multiple sales jobs available with Hendy in the seven-week period between Mr Kennedy being given notice and his dismissal. Despite the lack of assistance from Hendy, Mr Kennedy applied for several jobs within the company, including roles as sales manager at various dealerships. He was interviewed for one position but was unsuccessful. There was no support from HR or management in these applications, and in some cases, his applications were negatively influenced by feedback from the previous unsuccessful interview. HR did not inform the hiring managers that Mr Kennedy was at risk of redundancy.

On the last day of his employment, Mr Kennedy received an email (which had previously been sent a few days earlier to his internal email address to which he no longer had access) stating that his applications for other roles would not be progressed. The email cited concerns about his motivations for applying for sales roles and that the response would be consistent for other sales-related roles.

An employment tribunal found that Hendy had failed in its obligation to Mr Kennedy to seek to avoid dismissal. It held that he had been unfairly dismissed and ordered Hendy to pay compensation of £19,566.73.

Hendy appealed to the EAT. The EAT dismissed all grounds of appeal and upheld the tribunal's decision. The judge's conclusion was that Hendy did nothing in terms of alternative employment.

Key Takeaways

- Consideration must be given to ways a redundancy could potentially be avoided and alternative roles looked at.
- Pointing to a vacancy list is unlikely to be enough and employers should engage with the employee about what may be suitable and then take steps to support the process.
- Efforts to consider alternative roles should continue during the notice period.

Sullivan v Isle of Wight Council

Ms Sullivan applied for two roles at the Isle of Wight Council but was not successful. After the interviews, she submitted a police report alleging verbal assault during the process and raised concerns about financial irregularities linked to a charitable trust associated with one of the interview panel members. She also reported these concerns through various channels, including the Council's safeguarding helpline and the Care Quality Commission.

Following an internal investigation, the Council deemed her claims unsubstantiated and denied her the opportunity to appeal—contrary to their standard complaints procedure. Ms Sullivan brought a claim to the Employment Tribunal, arguing that her complaint was a protected disclosure (i.e. whistleblowing) and that she had suffered a detriment by being denied the right to appeal.

Both the Employment Tribunal and the Employment Appeal Tribunal (EAT) rejected her claim, finding that whistleblower protections under the Employment Rights Act 1996 (ERA) did not extend to external job applicants outside the NHS.

Ms Sullivan appealed to the Court of Appeal. The Court acknowledged that external applicants could fall under the scope of "other status" under Article 14 but ultimately held that they were not in a sufficiently comparable position to workers or NHS applicants, for whom the legislation makes explicit provision due to public interest in patient safety.

The Court concluded that the difference in treatment was justified and proportionate, and therefore lawful.

Key Takeaways

- Whistleblower protections do not extend to external job applicants (except for specific sectors like the NHS).
- The right to be protected from detriment for making a protected disclosure under the ERA applies only to workers and employees, not to candidates applying from outside the organisation—unless explicitly stated in legislation.
- Courts distinguish NHS applicants due to the unique public safety concerns associated with their roles, justifying their special legal protection.
- Employers should still take care to handle interview complaints professionally and in line with internal procedures, even if the complainant is not legally protected as a whistleblower.

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