

HR Hub - Employment Update

Participants' Q & A – 10 September 2026

Harassment: All Reasonable Steps and Third party Liability

1 – Under the new rules covering prevention of harassment at work, does the requirement to take 'all reasonable steps' (and the third party liability) apply to sexual harassment only or all types of harassment and bullying?

The positive obligation to take 'all reasonable steps' to prevent harassment, for now, relates only to sexual harassment - however this may change in the future to incorporate all seven relevant protected characteristics (sex, race, religion and belief, age, disability, sexual orientation, gender reassignment). However, do be aware that in any claim of harassment, employers can rely on the defence that they have taken all reasonable steps to prevent harassment. This is a high bar to reach and is not yet intended to be a positive duty outside of sexual harassment prevention.

The liability on employers for acts of harassment by third parties covers all forms of harassment.

Trade Union Rights

2. Do we need to reissue employment contracts for everyone to include the right to join a trade union, or can we just provide a letter? We have no one seeking recognition, in an industry where it would be very unusual.

You need to inform all employees of this right, regardless of whether or not you have an existing agreement with a trade union. If you decide to amend contracts for new starters to include this information, that will suffice. For existing employees, you will need to notify them too - you may choose to do this via a letter rather than re-issuing them with a new contract, but either option will meet the requirement.

Six-month service qualification for ordinary unfair dismissal claims

3. Some companies are still imposing a one-year probation period for jobs stating this autumn. In light of the new six-month service qualification for unfair dismissal rights coming in on 1 January 2027, what are the legal implications of that and are there any justifications for doing so?

There is nothing inherently wrong with setting a one year probation period that will continue to run after the new rules on minimum service come into play from 1 January next year. However, be aware that if you wish to dismiss an employee on probation after 1 January 2027 and they have at least six months' service by that point, you will need to run a fair process if you want to avoid a claim for unfair dismissal. This might cause you to consider your probationary process to see whether or not it is worth running a probation period for this length of time if the purpose is to assess the initial suitability of the employee and provide flexibility on ending the employment early if either the capability, conduct or internal working relationships is not working out as hoped.

4. If someone fails a probation at 4 months, what process would you suggest to ensure due process is followed but the process doesn't inadvertently cross over above 6 months.

The rule change regarding ordinary unfair dismissal claims brings the minimum service limit down from the current two years to six months. This means that following 1st January, if someone fails their probation after, say four months of employment, there will be no risk of an ordinary unfair dismissal claim meaning far less pressure on employers to follow the same rigorous process as if the individual had at least six months service. In this sense, there should be little or no risk in the process dragging on for a further two months so that the employee inadvertently gains ordinary unfair dismissal rights. However, if the employee can make an argument that their dismissal has been motivated by discrimination, or if they feel they are being 'punished' for making a protected disclosure (whistleblowing), or if they feel they are being punished for asserting a statutory right, they will be able to make a claim for automatic unfair dismissal which does not require any minimum service qualification. If risk of automatic unfair dismissal is present, an employer may want to ensure the risk of a claim is as low as possible by opting to run a full process despite the lack of service.

Zero Hours Contracts

5. Do the rules on workers undertaking regular additional hours needing to be offered guaranteed-hours, only apply in cases of zero-hour contracts?

The rules will apply to individuals who are employed on zero or low hours contracts but whose working patterns become regular over a set period – currently the proposal is for a 12 week reference period. The definition of "low hours contract" has not yet been confirmed.

Right to Work checks

6. Do the new rules on right to work checks apply to all freelancers and contractors?

The new rules apply to subcontractors but genuinely self-employed individuals are not caught. There is guidance and a draft code of practice which contain examples to explain the distinction and set out who is and is not within the scope of the changes. Unfortunately it is not completely clear at the moment - the code is only in draft form and has not yet been finalised. The draft guidance on the government website is here: [Draft employer's guide to right to work checks: 11 September 2026 \(accessible\) - GOV.UK](#).

7. Is there any leeway on right to work checks if you TUPE in workers that are to be made redundant on day 1?

In situations involving TUPE, employers receiving transferring employees have a 60 day grace period to carry out right to work checks after the transfer. If someone were to leave on day one, we would not expect the new employer to have to carry out a right to work check on that individual.

8. Do the right to work checks apply to existing contractors and supplier agreements? If so, what date in October do these new obligations become effective?

The new right to work rules apply to liability for employees and workers who start work from 1 October 2026. This means that if an employer has an existing contract and that contractor then employs or engages new staff from 1 October, this could be caught and it will be worth the employer reviewing contract templates to add the new prescribed information.

Holiday Records

9. With regards to holiday records to be kept for at least 6 years, is this still a requirement for employees that transfer into a business via TUPE where we only have access to the current holiday year?

It is a good idea to ensure that as part of the transaction process, full employee records including records of holidays are obtained from the transferor (seller) to the transferee (buyer) given the general principle that liability transfers from seller to buyer as part of the TUPE process.

Use of AI and Employee Data

10. Can AI /ChatGPT be used for meeting minutes and helping with creating outcome letters in (for example) a consultation or grievance process? Do employees have the right to ask whether we used AI and do they have the right to see the chat history?

AI can be used to transcribe meetings and help prepare documentation, however employers should ensure that this is accurately reflected in their privacy notice and a data protection impact assessment should be carried out for the intended use of AI. Employers have an obligation to be transparent with employees about how their data is used and therefore employees should be notified (usually via the privacy notice) as to how AI is being used. Employees have a right to access their personal data and therefore if a chat history contains their personal data, they have a right to access copies – this is usually facilitated via a data subject access request.