



No 18 Barristers Chambers

**The Employment Rights Bill
and beyond**

The Bill is now an Act

- Royal Assent: 18 December 2025
- Now the Employment Rights Act 2025
- A framework Act: much detail remains in regulations
- Use the roadmap, but keep commencement under review

Implementation comes in waves

- April 2026: early rights and institutional changes
- October 2026: harassment, NDAs and tribunal time
- 2027: major dismissal, hours and reporting reforms
- Some dates remain indicative or unspecified

The detail is still moving

- Regulations will define key thresholds and exceptions
- Codes and guidance will shape reasonable practice
- Consultations affect both substance and timing
- Advice should distinguish enacted law from live detail

Unfair dismissal: six months

- Day-one ordinary unfair dismissal was dropped
- The qualifying period falls from two years to six months
- Existing day-one automatic grounds remain untouched
- Expected commencement: 1 January 2027

The compensation cap is removed

- The unfair dismissal compensatory cap will be lifted
- No commencement date was fixed in the note
- High earners and long-loss cases become more valuable
- Settlement strategy and insurance exposure will change

Probation becomes operational

- Set objectives and review dates at the outset
- Surface conduct and capability issues early
- Give reasons and follow a fair process
- Screen for automatic and discriminatory reasons throughout

Fire and rehire is recast

- Restricted variations broadly cover pay, hours and holiday
- Dismissal for refusal will usually be automatically unfair
- Replacement on restricted terms is also caught
- Non-restricted variations remain under ordinary fairness

The exception is deliberately narrow

- Financial difficulty must threaten going-concern ability
- The threat must exist or be likely in the immediate future
- The variation must materially address that difficulty
- The employer must show it could not reasonably avoid it

Collective redundancy gains a second trigger

- 20 dismissals at one establishment remains
- A new business-wide threshold will sit alongside it
- The threshold must be at least 20
- Regulations will supply the decisive number or percentage

The protective award doubles

- Maximum award rises from 90 to 180 days' pay
- A Code uplift may add up to a further 25%
- Tribunals retain discretion below the maximum
- Process failure becomes materially more expensive

Zero hours: a statutory system

- The Act does not impose a simple outright ban
- It creates recurring rights around hours and shifts
- Workers and agency workers are within scope
- Much of the machinery awaits regulations

Guaranteed hours follow reality

- Regular hours in a reference period trigger an offer
- The offer must reflect the established working pattern
- Workers may accept or reject the offer
- Fresh reference periods can create recurring duties

Shift notice becomes a right

- Workers gain reasonable notice of a shift
- They also gain notice of cancellation or change
- What is reasonable will be shaped by regulations
- Scheduling evidence will become tribunal evidence

Short-notice change has a price

- Cancelled, moved or curtailed shifts may trigger payment
- Regulations will set the amount and notice bands
- Contractual pay offsets the statutory liability
- Exceptions require a compliant explanatory notice

Agency work is fully engaged

- Equivalent rights extend to agency workers
- The agency may owe offers and shift payments
- The hirer controls much of the relevant information
- Contracts must allocate data, notice and recoupment risk

Retaliation creates separate claims

- Detriment protection covers use of the new rights
- Dismissal for specified reasons is automatically unfair
- No qualifying period applies to those dismissal claims
- Six-month claim periods apply within the new scheme

Flexible refusal must be reasonable

- The existing statutory business grounds remain
- Reliance on a ground must itself be reasonable
- The refusal notice must explain that reasonableness
- Regulations may prescribe consultation steps

SSP starts on day one

- The three waiting days are abolished
- The lower earnings limit is removed
- Rate: prescribed amount or 80% of earnings, if lower
- Expected commencement: April 2026

Two family leaves become day-one rights

- Paternity leave loses its service requirement
- Unpaid parental leave loses its one-year requirement
- Paternity leave can follow shared parental leave
- Expected commencement: April 2026

Bereavement leave broadens

- A general day-one bereavement leave right is created
- Regulations will define qualifying relationships
- At least one week where the deceased is not a child
- Pre-24-week pregnancy loss is included

Pregnancy dismissal protection expands

- Regulations may protect dismissal during pregnancy
- Protection can continue after return from family leave
- The stated aim includes six months after maternity return
- Exceptions and interaction with redundancy await detail

Prevention rises to 'all reasonable steps'

- The existing duty is strengthened
- The duty concerns sexual harassment at work
- Compensation uplift and EHRC enforcement remain
- Expected commencement: October 2026

Third-party harassment returns

- Liability covers all relevant protected characteristics
- One incident may be enough
- Prior knowledge is not a statutory gateway
- The defence is taking all reasonable preventive steps

Sexual harassment becomes explicit whistleblowing

- Sexual-harassment reports enter the qualifying categories
- Public-interest reasonable belief is still required
- The permitted-disclosure rules still apply
- Expected commencement: April 2026

NDAAs cannot silence discrimination

- Relevant harassment and discrimination disclosures are protected
- The employer's response is also within scope
- The offending restraint is void to that extent
- Excepted agreements will be defined by regulations

Tribunal time generally doubles

- Primary limitation moves from three to six months
- Most employment tribunal jurisdictions are covered
- Termination breach-of-contract claims appear excluded
- Expected commencement: October 2026

The Fair Work Agency changes enforcement

- A single body will combine existing enforcement functions
- It can obtain information and enter premises
- It can pursue underpayment and some tribunal claims
- Establishment was announced for April 2026

Holiday records become compulsory

- Records must demonstrate leave and holiday-pay compliance
- Irregular-hours and part-year workers are included
- Records must be retained for six years
- Failure is an offence punishable by a fine

Tips policies require worker input

- Consult before issuing the first written tips policy
- Consult representatives or workers directly
- Review and consult at least every three years
- Publish an anonymised summary of views

Trade union engagement widens

- Workers will receive a statement of trade union rights
- Unions gain a statutory route to workplace access
- Recognition rules are simplified
- Representatives gain stronger time-off and facilities rights

Industrial action rules shift

- Minimum service levels legislation is repealed
- Industrial-action notice reduces from 14 to 10 days
- Ballot mandates extend to 12 months
- Dismissal and detriment protection is strengthened

Equality reporting becomes action-led

- Employers with 250+ staff must publish action plans
- Plans cover gender pay and menopause support
- Publication will be at least annual, once commenced
- Outsourcing information may join pay-gap reporting

Umbrella companies enter regulation

- Umbrella arrangements join the employment-agency perimeter
- Enforcement can sit with the Fair Work Agency
- Supply chains face greater compliance scrutiny
- Status, pay and contractual allocation need review

Some reforms are sector-specific

- A negotiating body returns for school support staff
- Adult social care gains sectoral pay machinery
- Public-sector outsourcing receives statutory treatment
- Seafarer provisions have a wider territorial reach

Beyond the Act

- Wider whistleblowing reform remains unresolved
- A full parental-leave review is under way
- Employment-status simplification remains a future project
- Race and disability pay-gap reform sits separately

The practical message

- Build one verified commencement tracker
- Audit probation, rota, leave and settlement processes
- Centralise redundancy and workforce-change visibility
- Treat evidence and consultation as core controls

Any Questions?

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