

Employment Rights Bill – October 2024

The current Labour government is making wide-ranging changes to employment laws in line with its “Make Work Pay” (MWP) pledge and Green Paper. These changes will affect your internal employees, or your temporary workers / contractors, or both.

The new Employment Rights Bill (ERB) takes forward 28 measures from the government’s MWP paper, and was introduced to Parliament on 10th October. Other measures will be dealt with in subsequent or different legislation. While we expect the Bill to become law in early 2025, most of the measures therein won’t be effective without additional consultation and/or secondary legislation. This means **none of the changes will take effect immediately**, but there’s a lot in the pipeline. Most changes won’t take effect until some time in 2026.

1. Changes taking place in the next 12 months

(A) National Minimum Wage / Living Wage (1st April 2025)

Agencies can expect to see a significant increase in the NMW / LW rates from 2025, since the rates will now take account of the current cost of living and expected inflation.

The government also intends to “phase out” the 18-21 rate, so expect the rates for those workers to increase even more than usual. Over time (timescale not confirmed), the 18-21 rate will be increased to match the 21+ rate, so that all workers over 18 will be paid the same rate in the future.

Actions for you to take: In the run up to April 1st, keep checking the Gov.uk website for the new rates, and ensure that – where needed – pay rates are increased to comply with the new rates from 1st April onwards. If you’re on fixed charge rates with clients and/or don’t have the right to increase charge rates without your client’s consent, start negotiating the increased charge rates with those clients as soon as you know the new NMW rates.

2. Changes expected to take effect in 2025

(A) Fair Work Agency (FWA) to be established

- FWA will replace EASI, GLAA and other regulatory bodies.
- FWA will monitor and enforce: Minimum wage, sick pay, working time, holiday pay, Conduct Regulations and gangmaster legislation compliance, labour market enforcement orders and offences, labour exploitation and modern slavery.
- FWA will have wide investigatory and enforcement powers, up to and including fines and even imprisonment.
- Company directors can be held personally liable for non-compliance with any legislation under the FWA’s remit.

(B) Changes to Statutory Sick Pay

- Affects your own employees, direct PAYE workers and umbrella company workers.
- SSP will become payable from Day 1 of sickness absence (not Day 4).

- SSP will become payable even for those earning under the Lower Earnings Limit (though the amount they will receive will likely be lower).
- Full details of the changes TBC via additional regulations.

(C) Changes to Parental Leave and Paternity Leave

- Affects your own employees, direct PAYE workers and umbrella company workers.
- The current qualifying periods to claim both types of leave will be removed, so both will become a “Day 1” right.
- In addition, employees will be able to take paternity leave after shared parental leave if they so choose (current law requires paternity leave to be taken before shared parental leave).

(D) New Bereavement Leave to be introduced

- Applies to employees; unclear if temporary workers will have these rights as well.
- Right to take time off (assume unpaid) for any specified bereavement, not just the death of a child (as per the current law).
- When the leave can be taken, and for which family members, and for how long, will be set out in separate regulations.

(E) Changes to Pay & conditions in certain sectors

- Employees and temporary workers who work in the adult social care sector, or as school support staff, will have their pay and (certain) conditions agreed by a “Negotiating Body” set up by the government. More information to be issued when details are finalised.
- Employers within the hospitality and entertainment sectors will be obliged to consult with staff (and possibly temporary workers supplied by agencies) on their tipping policies (and any changes to those policies).

(F) Flexible working requests.

- Affects employees (not any temporary workers). More regulations will be implemented to specify how and when employers can refuse a flexible working request.
- Requests for flexible working must be accepted unless the request is not reasonably feasible, and employers must give reasons for refusing a request.
- The existing / current reasons for which employers can refuse a flexible working request won't change.

(G) New Fair Payment Code

- This will replace the Prompt Payment Code (PPC) and aims to protect the self-employed and other small business from late payments.
- Compliance with the [Code](#) will be voluntary, but some clients require that their agencies sign up to similar existing codes and charters.
- If you are a large company (as defined in the Companies Acts) expect greater enforcement of the Prompt Payment Regulations and new legislation to be implemented requiring you to include late payment information in your annual reports.

(H) Union-related powers and provisions

The government will implement a whole raft of union-related legislation and powers in the coming 12-36 months, including greater rights of unions to access workplaces, easier recognition procedures and greater protection for workers who are considering or have taken industrial action. Some important points to note for agencies are:

- Agencies will continue to be prohibited from supplying temporary workers to cover strikes / industrial action.
- Employers must inform their employees and temporary workers of the right to join a union. This information must be included in the “written statement of particulars” that you issue to your employees or direct PAYE workers.

Actions for you to take:

- Ensure you stay up to date with when the Fair Work Agency (FWA) is established and its exact remit, including the scope of personal liability for directors of non-compliant businesses. We can expect more proactive enforcement of existing legislation, so make sure your procedures relating to sick pay, holiday pay, Conduct Regulations etc are all compliant.
- Monitor the date on which you need to start including union-related information in your written statements of particulars, and make sure both your employee template and your (direct) PAYE worker template is amended accordingly. Ensure your PAYE umbrella companies are doing the same.
- Monitor the date(s) on which Statutory Sick Pay and Statutory Paternity Pay become a “Day 1” right and ensure you’re paying the right SSP / SPP to your workers. Ensure your PAYE umbrella companies are doing the same.
- For all other changes / new legislation, ensure you know the exact requirements of the new measures before they go “live” and make sure you’re updating processes, systems, contracts etc to ensure compliance.

3. Changes expected to take effect in 2026 (or later)

- (A) **Changes to (unfair) dismissal:** this will become a “Day 1” right, although a less onerous process can be used during probation period. The law will be changed to implement a maximum probation period; details TBC but likely to be 9 months. Employees who are pregnant, on any type of family-related leave, or who have returned to work after pregnancy, will be more protected from all types of dismissal. Dismissal for failure to agree a variation to a contract (of employment, or for services) will become automatically unfair except in very narrow circumstances.
- (B) **Zero / low hours contracts:** Employees (and later, agency workers) on zero-hours or low-hours contracts must be offered a contract with guaranteed hours, based on the times / days worked during a specified reference period – likely 12 weeks. These measures will replace the Workers (Predictable Terms and Conditions) Act, which gave workers a right to request more predictable working pattern, and that Act is being repealed.
- (C) **Notice of shifts and changes to shifts:** Employees (and later, agency workers) on zero-hours or low-hours contracts must be given “reasonable” notice of: shifts they are expected to work; changes to shift times; shift cancellations or curtailments. Where such notice isn’t given, employees / workers will be entitled to payments in compensation.

Details of the notice period(s) and compensation payments will be implemented via additional regulations.

- (D) **Other changes as set out in the Bill** include: increased obligations for employers to prevent sexual harassment and prevent third party harassment (of any type), changes to collective redundancy procedures, increased worker protections and reporting requirements when public functions are outsourced, new mandatory equality action plans.

Actions for you to take:

- The measures relating to unfair dismissal and zero-hours contracts will have a major impact on recruitment agencies. Monitor the consultations that will be released for these measures and respond to them. Those drafting the new laws don't work in your industry, they simply don't know if their ideas are commercially unworkable, or too costly to implement, unless they are told of the problems by enough stakeholders. The more people who respond to the consultations, the more persuasive the arguments will be.
- Keep up to date with the changes and implement new processes etc as needed. Communication (with clients, with workers, with umbrella companies etc) will be key to managing these (likely complex) changes.

4. Other commitments - no expected timescales announced

The government wants to implement most, if not all, of the measures from its "Make Work Pay" pledge within this parliamentary session (i.e. before the next General Election). Therefore, we can expect those measures to be legislated on between now and 2029. No expected timescales have yet been announced, but many could come into force as soon as 2025.

These measures include:

- Creating a single status of "worker" to replace the 2 current statuses of "employee" and "worker". This is likely to mean that all "workers" will become entitled to the same rights as employees, including unfair dismissal (from Day 1), paid notice periods, additional statutory family leave rights etc. This will have a huge impact on the recruitment industry.
- Enacting the Equality (Race and Disability) Bill: extends gender pay gap reporting to ethnicity and disability (will affect large companies only), and establishes an enforcement unit to monitor equal pay.
- Additional protections for the self-employed: extending blacklisting and H&S protections, ensuring all self-employed contractors are given a written contract.
- Extending the deadline to make Employment Tribunal claims: likely be extended to 6 months (current deadline is 3 months).
- Ban on unpaid internships.
- Right to paid travel time for workers with multiple working sites (likely to affect home care workers and social workers, but other industries may also be included).
- Full review of all parental and carer's leave legislation. This will be in addition to the changes to family leave already mentioned in previous sections.
- New right for groups of workers to raise collective grievance to ACAS
- Review of TUPE & H&S legislation to ensure they are fit for the modern workforce.
- New / additional guidance for employers on worker health & wellbeing, including support & protection for terminally ill workers.

- Extending Freedom of Information Act obligations to private companies holding public contracts and publicly funded employers.
- Additional public sector procurement policies and introduction of a new socio-economic duty on public authorities

Actions for you to take:

- The change to a single status of “worker” for employment rights purposes will have a major impact on recruitment agencies. Make sure you get involved at consultation stage, while you still have a say in the matter.
- Keep a watching brief on the other measures, both in terms of those which will affect your temporary workers, and those which will affect your internal employees. Failure to comply just because you didn’t know about new laws / regulations will not be a defence!

Finally, all these new measures and rights and protections will be costly (to you and to the government!). We can expect to see increases in employer NI contributions in the near future. If you’re on fixed charge rates with clients and/or don’t have the right to increase charge rates when your statutory costs increase, start negotiating the increased charge rates with those clients as soon as you know the new NI rates.

The full Bill is available [here](#), with supplementary notes [here](#). The government’s “Next Steps” document, summarising what new laws they want to implement as part of their “Make Work Pay” pledge, and when/how those laws will be implemented, is [here](#). The Next Steps document is much more reader-friendly than the first 2 documents but contains less detail.

As always, feel free to contact me on bernie@labvolution.com if you would like any additional information or support on any of the areas covered in this update.