

## **Employment Rights Bill - Update – March 2025**

The government has been consulting on key areas of reform proposed in the Employment Rights Bill (ERB). Last week the government responded to those consultations. This update is designed to explain the government's position and next steps.

None of the areas discussed below will have an immediate impact as the ERB is still working its way through Parliament. Even once the ERB becomes "law", certain provisions won't be effective immediately as they require secondary legislation or further guidance to be issued.

### **1. Zero hours contracts applying to agency workers**

The government has confirmed that agency workers **will** be included in new laws requiring guaranteed hours to be offered to zero hours workers and employees. These changes are not expected to take effect until 2026.

This right will only apply to agency workers, ie individuals engaged directly by a recruitment agency on a PAYE basis, or individuals employed by a PAYE umbrella company. This right will not be applied to self-employed contractors (sole traders, PSCs / limited company contractors).

End clients will be legally required to offer a direct contract to the worker which guarantees a minimum number of hours work, based on a (expected) 12-week reference period. There may be exceptions to this general rule in certain industries or sectors, but we have no detail on what they might entail (yet), and an agency may choose to engage a worker on a guaranteed hours contract even where the legal liability sits with the client. The response implies that the client should permanently employ the worker (whether on a fixed or indefinite term contract), but does state that "where work is genuinely temporary, employers / hirers will be able to offer temporary contracts".

Where the client engages or employs a worker directly, agencies will still be entitled to charge a transfer fee or offer an extended period of hire (providing the transfer takes place within the relevant period set out in the contract between the agency and the client). Workers will be able to refuse the offer of guaranteed hours if they choose to, which means the assignment will continue as normal.

Agency workers will also have the right to receive notice of changes or cancellation of shifts, with appropriate compensation paid where less or no notice is provided. We do not have specifics on the likely notice periods. Both the agency and the client will be required to comply with this obligation (until the end client offers the worker a direct contract), but it is the agency who pays any compensation to the worker. Agencies will have the legal right to recover those amounts from the client where the change or cancellation is caused by the client, but only for contracts that pre-date the ERB.

Actions for you to take: no immediate actions, but we should all prepare for clients finding weird and wonderful ways to avoid their legal obligation to offer workers a direct contract. Much will depend on the anti-avoidance measures (if any) that will apply to this measure. Certainly we can expect some clients to limit all assignment lengths to less than 12 weeks (or whatever the reference period is once the legislation is finalised), and/or to contractually require that the agency (not the client) offers the guaranteed hours, and/or to seek indemnities from their agencies for all the additional costs they will need to take on. This is going to get messy. You will need updates to your standard terms of business – with clients, PAYE workers and PAYE umbrella companies – to ensure that the new measures (and costs) are properly reflected in your contracts, and you will need to be very wary of clients issuing their own terms of business to you. You will also need new processes for tracking (and adding reminders for) the timescales for clients to offer contracts directly to workers, offboarding workers, and notice periods for changes to shifts etc.

## **2. Statutory Sick Pay (SSP)**

All employees and agency workers will become entitled to SSP from Day 1 of sickness absence (not Day 4), and SSP will become payable even for those earning under the Lower Earnings Limit. Once enacted, the law will require employers to pay SSP at the amount set by law, or 80% of the worker's regular earnings, whichever is lower. Details of what constitutes "Day 1" and "regular earnings" in relation to agency workers still needs to be clarified. This provision will only apply to direct PAYE workers and PAYE umbrella company workers (and employees).

We do not know when this change will take effect, but it may be as soon as the ERB receives Royal Assent (expected Autumn 2025).

Actions for you to take: keep a close eye on timescales for implementation and update your contracts with your employees, PAYE workers and umbrella companies prior to go-live. Most agencies' terms of business with clients don't allow recharges for SSP, but if you do have that option in your contracts with clients, you may need to make updates accordingly.

## **3. Umbrella companies to be re-classified under the Conduct Regulations**

The government has re-visited the responses to an old consultation on umbrella companies, issued under the previous Conservative government in 2023. As part of that consultation, it was decided that recruitment agencies (or end clients, if there is no agency in the chain) would become primarily liable for the tax non-compliance of umbrella companies. This measure is still going ahead and takes effect from 6<sup>th</sup> April 2026, with draft legislation being released later this year (more details in a previous update available [here](#)).

However, the current government has decided to take additional steps – to regulate umbrella companies for employment rights as well as tax compliance. As a result, umbrella companies will be defined in law (finally!) and will be re-classified as (or very similar to) an "employment business" under the Conduct Regulations. At the moment, umbrella companies are actually classified as a "work-seeker" under the Regulations, meaning they benefit from the protections, but aren't required to comply with them. Furthermore, umbrella companies will be subject to

enforcement by EASI (Employment Agency Standards Inspectorate), and later the Fair Work Agency once it's operational. More details of the expected changes are [here](#), but the wording of the consultation seems to indicate that umbrella companies may be re-defined to fall within scope of the Conduct Regulations as soon as the ERB receives Royal Assent (expected Autumn 2025).

Actions for you to take: no action until we know the specifics of how umbrellas will be required to comply with the Conduct Regulations. Once we have that detail, you may need to issue updated terms of business to your umbrella companies. In relation to the transfer of the PAYE responsibility coming into effect in 2026, now may be the time to consider implementing (or expanding) your in-house PAYE functionality and/or considering what additional due diligence checks you might implement to reassure yourselves that the umbrella is compliant. Some umbrella companies are considering a PAYE insurance option; this may be worth discussing with your umbrella companies.

#### **4. Collective redundancies and “fire and re-hire”**

Applies to employees only. The government has confirmed it will increase the protective award (the compensation payable to employees where an employer fails to comply with collective consultation obligations) to 180 days, and give tribunals discretion to vary the length according to the circumstances. It will also issue additional guidance for employers on collective redundancies, and firing and re-hiring practices, and will “gain further views” on these areas during 2025. More information is available [here](#), but the response confirms that the government is going ahead with plans to make a dismissal automatically unfair if an employee refuses to agree a contract variation, unless the employer can demonstrate it is experiencing substantial financial difficulties and that the change in contract terms was unavoidable. Timescales for these changes are still to be confirmed.

#### **5. Changes to trade union rights and protections**

The government has announced over 20 changes to existing trade union-related legislation. Full details of the consultation and next steps are outlined [here](#). It appears some measures will go live as soon as, or very soon after, Royal Assent; others need additional consultation and/or secondary regulations so the timescales for implementation will be longer.

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