

Employment Rights Act - Update – December 2025

The Employment Rights Bill received Royal Assent on 18th December, meaning it is officially “law” (and referred to as the Employment Rights Act 2025 or ERA going forward). However, most of the provisions will take effect using a phased approach, and some still need additional, secondary legislation to be enacted.

There have been a few changes to the wording of the legislation during the parliamentary process, so do read the below provisions carefully. Notably there are changes to **unfair dismissal**, **“fire-and-rehire”** and **guaranteed hours** provisions. I’ve used bold font or highlights to show the changes between the original Bill and the final Act.

Phase 1: Immediate

- Repeal of the Strikes (Minimum Service Levels) Act 2023. This Act allowed the government to introduce minimum staffing levels during strikes in specific sectors (health, education, emergency services etc). Its repeal has already taken effect, meaning that the government can no longer intervene in strike action to require a certain minimum cover.

Phase 2: February 2026

- Repeal of (most of) the Trade Union Act 2016. This Act curtailed trade union powers and imposed restrictions and hurdles when considering industrial action. The repeal (of most of the Act) will allow for increased trade union activity and reduce barriers to industrial action.
- New protection for employees against dismissal for participating in industrial action.
- Other trade union-related measures: reducing the time needed to give notice of industrial action to 10 days (from 14); unions will only need a simple majority to vote for industrial action; picket supervisors will no longer be required; industrial action mandates will last for 12 months (from 6 months).

Phase 3: 6th April 2026:

- Umbrella company non-compliance: while not part of the ERA, 6th April 2026 is the go-live date for changes to the law relating to PAYE liability when companies engage temporary workers via an umbrella company. If you engage any temporary workers through umbrella companies, without a recruitment agency in the supply chain, you should be taking action now to mitigate your risks.
- Statutory Sick Pay:

- SSP becomes payable from the first day of sickness absence (not from day 4).
- Those earning under the Lower Earnings Limit will become entitled to receive SSP
- SSP will be calculated as the lower of: 80% of regular earnings, or the flat rate (currently £118.75 per week but expected to increase to £123.25 for 2026).
- Paternity Leave:
 - Becomes a Day 1 right (no qualifying period)
 - Entitlement to Statutory Paternity Pay will still require a 26 week qualifying period
 - Fathers will be able to take Paternity Leave after shared parental leave.
- Parental Leave (unpaid):
 - Becomes a Day 1 right (no qualifying period)
 - Parental leave (not to be confused with “shared parental leave”) entitles each parent to take 18 weeks’ unpaid leave per child (up to 18 years of age).
- Fair Work Agency established to monitor and enforce all types of employment rights such as Minimum Wage and holiday pay. During the parliamentary process, the **FWA’s remit has been expanded**, allowing enforcement officers to enter premises (including homes), enforce failure to make statutory payments and significant powers to impose penalties.
- Whistleblowing protections extended to those reporting sexual harassment.
- Holiday Pay: obligation to retain holiday pay records for at least 6 years. You must keep records of: total annual leave entitlement; leave accrued, taken, and remaining; pay calculations, showing any added elements (overtime, commission), payslips showing separate rolled-up holiday pay (if you use this option with any of your staff).
- Collective redundancy protective award to be increased. Employers who fail to comply with their legal obligations to consult on collective redundancies can be “fined”, by way of having to pay additional compensation, up to a maximum of 180 days of gross pay per affected employee.
- Additional trade union measures including simplifying trade union recognition process and electronic and workplace balloting.

Phase 4: 1st October 2026:

- “Fire & Re-Hire” / “Fire & Replace”:
 - Dismissal of employees if they do not agree to a variation of **certain terms** in their employment contract will become automatically unfair (original drafting made any “fire and rehire” provisions unfair)
 - Those terms are: **pay; working hours; pension contributions; shift times and length; time off**. Other terms may also be added via secondary legislation in the future.
 - Dismissal may be allowed if the employer faces serious financial hardship

- **NEW “Fire & Replace” provisions** were added during the parliamentary process, preventing employers from replacing employees who are refusing changes to their employment contract with agency workers or contractors, if the replacement will be doing substantially the same work.
- Harassment laws: (1) Employers will be required to take “all reasonable steps” to prevent sexual harassment of their employees; and (2) Employers must not permit any type of harassment of their employees by third parties, and/or in any work environment.
- Employment tribunals: Time limit for bringing a claim to increases to 6 months (currently 3 months).
- Other provisions: (1) Establishment of the Fair Pay Agreement Adult Social Care Negotiating Body; (2) Establishment of School Support Staff Negotiating Body (SSSNB); (3) Tipping: employers must consult with workers when changing their tipping policies and update their tipping policies every 3 years; (4) Outsourced public contracts: ensuring employees transferred from public sector to private sector are treated no less favourably than their public sector counterparts.
- Additional trade union measures including a duty on employers to inform employees and workers of their right to join a union; new rights and protections for trade union reps; extending protections against detriments for taking industrial action; strengthening trade unions’ right of access.

Phase 5: December 2026 and January 2027

- Seafarer’s Charter: There will be a new mandatory charter for seafarers, with higher standards around health and safety, pay, job security and rest breaks. This will take effect from December 2026

- Unfair dismissal: Takes effect from 1st January 2027.
Protection from unfair dismissal will take effect from 6 months of employment (original drafting allowed employees to claim for unfair dismissal from Day 1 of employment). Additionally, the ERA **removes the compensation cap on unfair dismissal claims.** Currently, compensation is capped at the lower of: 52 weeks’ gross salary or £118,223. Removal of the cap could substantially increase the cost of dismissals which are deemed unfair, especially in respect of high earners.

Phase 6: rest of 2027 (no specific dates / months released yet)

- Zero-hour contracts: Legal obligation to offer employees and temporary workers a guaranteed number of hours after a certain period (expected to be 12 weeks). Employers will also be obliged to give a certain period of notice for shift changes, and to pay workers

compensation for changed or cancelled shifts. **Changes to the wording of the legislation have made this measure even more complex** and I will be issuing a briefing update on the specifics during 2026. If you have employees employed on zero hours contracts, or you use temporary workers supplied via an agency, these changes will affect you.

- Enhanced protections for pregnant women and new mothers to apply to all types of dismissal (not just redundancy). Rights will apply during pregnancy, maternity leave and a subsequent "protected period" – which is not yet finalised, but will last at least 6 months after they return to work.
- Extending blacklisting protections to self-employed contractors.
- Further harassment protections and guidance to be issued.
- Gender pay gap and menopause action plans to become mandatory for large employers with 250+ employees (voluntary from April 2026).
- Introduction of statutory bereavement leave. More details to follow after consultation feedback, but **will include leave for pregnancy loss before 24 weeks** (loss after 24 weeks already covered in existing laws).
- Improved access to flexible working arrangements, with an obligation on employers to provide a detailed justification for refusal.
- Non-disclosure agreements (NDAs). **New provisions will void clauses that would prevent workers from alleging or disclosing work-related harassment or discrimination.**
- Changes to the collective redundancy threshold.
- More trade union rights and reforms to be introduced.

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.