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The Employment Rights Bill 2024

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Introduction

Promising to reform employment law within their first 100 days in power, the new Labour government plan to implement a [new Employment Rights Bill](#). Introduced on the last available Parliamentary day to meet this self-imposed deadline, the Bill is unlikely to enter UK law until summer 2025 – and much of it will likely change as it moves through the Commons and House of Lords. The proposed changes represent maybe the most significant and far-reaching changes to employment law for many years.

Reforming aspects of [employment law](#) such as unfair dismissal, zero-hour contracts, parental leave and statutory sick pay, the proposed Bill has a few standout changes to the current legislation.

Whether the employment tribunals can manage the inevitable additional cases arising from the new legislation is a separate consideration. The current backlog is well known and getting worse, and the Government has not provided any proposals on how it intends to address this problem.

Highlights of the Employment Rights Bill 2024

- Day one right for unfair dismissal, flexible working requests and parental leave.
- Statutory Sick Pay paid from first day of sickness absence rather than current fourth day.
- Zero hour and low-hour contracts given more protection, with employer's having to offer workers guaranteed hours over a given reference period.
- More protections for workers who are fired and rehired due to a change in terms and conditions of their contract.
- Employers must give reasonable notice to workers regarding shift changes and cancellations (minimum periods to be decided in secondary legislation).
- Reform to Trade Union regulations that significantly strengthen their power, including the right to access workplaces for the purposes of meeting, recruiting or organising workers or facilitating collective bargaining.
- Secretary of State given the duty to enforce a range of labour market legislation, including matters such as minimum wage, tribunal penalty and modern slavery legislation.

Dismissal

Unfair Dismissal

The Bill aims to give employees the right to bring a claim of **unfair dismissal from day one of their employment**. To enact this, section 108 of the [Employment Rights Act 1996 \(ERA\)](#) will be repealed, removing the need for employees to have at least two years' continuous service at a company before claiming 'ordinary' unfair dismissal.

However, the introduction of the concept of an 'initial period of employment' during which dismissals may not be subject to the requirements of procedural and substantive fairness under section 98(4) ERA (covering familiar categories such as capability, conduct, or other substantial reasons) makes it **unclear what rights an employee will have from day one**. Current reports seem to suggest that this 'initial period of employment' will be set between six and nine months.

What the Bill does make clear is that the right to claim unfair dismissal will not ordinarily apply to employees who are yet to start work (with some exceptions).

Fire and Rehire

A key part of this bill is **reformation that helps to combat the practice of firing and rehiring employees** who refuse to accept a change to the terms and conditions of their employment contract. Workers can claim unfair dismissal if the reason for their contract termination was due to the employer seeking to change the contract of employment, to which the employee refused. The dismissal can also be claimed as unfair if the employer replaces the employee with another person who accepted the new terms of the contract and carries out substantially the same duties as the dismissed employee.

The employer would have to prove that the reason for the contract variation was to avert, significantly reduce or mitigate 'financial difficulties which at the time of dismissal were affecting, or were likely in the immediate future to affect, the employer's ability to carry on the business as a **going concern** or otherwise carry on the activities constituting the business'. The inclusion of **the words 'going concern' seem to indicate a high threshold**, such as insolvency procedures or being close to liquidation.

The Bill **dramatically limits an employer's ability to force changes to the terms and conditions of their employees**.

Collective Redundancies

Current legislation dictates that representatives must be consulted, and the Secretary of State notified regarding collective redundancies within a company when a certain number of redundancies happen at one establishment. The **new Bill will remove the reference to a 'single establishment'**, meaning redundancies held simultaneously across different locations within the same company can be caught by the collective

Equality

Harassment

The Bill increases the duty of employers to take **'all reasonable steps'** to prevent the sexual harassment of their employees (previously only 'reasonable steps'). This extends to a duty of care to ensure employees are not harassed by a third party during the course of their employment.

Equality Audits

Also envisioned (but not required) by the Bill is the passing of regulations that oblige employers to develop and publish **equality action plans**. Plans would show the effective steps taken by the employer to address gender equality, including mitigating the gender pay gap and supporting employees going through the menopause.

Businesses with fewer than 250 employees and public authorities will be excluded from this requirement, and affected employers will not be required to publish this information more than once a year.

Guaranteed Hours and Other Terms and Conditions of Work

Zero-hour Contracts and Guaranteed Hours

The government's stated **aim is to end 'exploitative zero hours contracts'**, looking to achieve this by inserting complex statutory provisions into Part 2A of the ERA. This will require employers of workers on zero-hours and low-hours contracts to **offer those workers a contract that guarantees them a minimum number of hours** reflecting the amount of work they have carried out in any given reference period (initially set as 12 weeks). Workers will then be entitled to accept or refuse this offer. If rejected, the **employer must then make a fresh offer** at the end of every reference period.

These proposed changes allow a zero or low-hour employee to "lock in" the greatest number of hours worked in each reference period, **turning them into a guaranteed entitlement**. This right is only triggered when the hours worked in the reference period satisfy certain conditions relating to 'number, regularity or otherwise'.

Employers will be able to limit the offer of guaranteed hours to a certain period by demonstrating that the worker:

- a) Is only needed to perform a specific task
- b) Is only needed until a particular event
- c) Is only needed temporarily

If the employer does not adhere to the offer of guaranteed hours, **employees can escalate a claim to an Employment Tribunal**. Remedies include a declaration and compensation (capped to a certain number of weeks' pay that has yet to be decided), however, employers will not be forced to offer guaranteed hours as a remedy.

The provisions within this framework **could make zero-hour and low-hour contracts unattractive to businesses**, with any temporary increase in working hours for these contracts risking an employer having to offer more guaranteed hours to their employees than they would necessarily want to.

Reasonable Notice of Shifts

The Bill proposes to require employers to provide reasonable notice of shifts and shift changes/cancellations to their workers on irregular shift patterns or on zero-hour contracts.

Where shifts are cancelled, moved or reduced at short notice, employers will be obliged to pay a specific amount in relation to affected shifts.

Secondary legislation is due to set out minimum periods below which notice will be presumed to be unreasonable, as well as the amount of compensation workers would be entitled to.

Flexible Working

An employee's right to request flexible working will be enhanced to trigger from day one of employment. Employers will only be able to refuse a request on specific grounds and a refusal must also be reasonable.

An employer who refuses a flexible working request must do both of the following:

- a) State the specific grounds covered by legislation in which they are refusing the application.
- b) Explain why it considers the refusal to be reasonable based on these grounds.

Contemporaneous Justification Notices

This requirement places the onus on employers to **provide contemporaneous explanations as to why a worker's request is refused, or an employer is seeking to rely on exceptions to legislation.** This prevents the employer from later justifying their actions by presenting aims and arguments they did not initially have in their mind at the time of making the initial decision.

It is unclear whether the aim of these notices is to bind the employer to a certain line of defence from the outset of an issue.

Employers will need further guidance on the status of these notices.

Bereavement Leave

Existing Parental Bereavement Leave legislation is set to be **converted to cover general Bereavement Leave entitlement**.

Entitlement for leave related to a deceased child remains at two weeks, with all other cases limited to one week of leave.

Where more than one person has died, secondary legislation will determine that bereaved employees are entitled to 'leave in respect of each person'.

Parental Leave

The Bill will make **Parental Leave and Paternity Leave a day one right**. Paternity Leave will also be able to be taken in addition to Shared Parental Leave and can be taken at the end of any Shared Parental Leave.

Tips

The [Employment \(Allocation of Tips\) Act 2023](#) already requires that employers take steps to ensure tips are fairly allocated between staff members. The Bill expands the employer's duty by creating an **obligation to consult trade union or other worker representatives before a written policy regarding tips is produced**.

The policy must then be **reviewed at least every three years**, with a consultation period included as part of the review. The written policy, plus a summary of the consultation, must be made available to all workers.

There are **currently no exceptions for small organisations** or a threshold for the minimum number of workers affected, but this could be introduced later in the Bill's cycle.

Statutory Sick Pay

Statutory Sick Pay (SSP) will be updated **to be paid from the first day of sickness absence**, instead of the current entitlement from day four of sickness.

The Bill also **removes the minimum earnings threshold** to become eligible for SSP.

SSP will be set at which ever is lower, the current full amount (£116.75) or a specified percentage of a worker's weekly earnings (which will be determined by secondary legislation).

Industrial Relations and the Labour Market

Trade Union Reform

One of the biggest changes introduced by the Bill is the **significant strengthening of trade union powers**.

Unions will gain **the right to access to workplaces** for the purposes of meeting, recruiting or organising workers, or facilitating collective bargaining. However, this right **will not extend to organising industrial action**. Employers will have a duty to take reasonable steps to facilitate access.

Existing statutory rights to time off in regard to trade union activities will be further backed by a duty for employers to provide 'such accommodation or facilities as are reasonable in the circumstances'.

Thresholds for trade union recognition and voting have also been lowered, including:

1. Granting the Secretary of State the power to lower the threshold for compulsory trade union recognition applications from 10% of the workforce to anywhere between 2 – 10%
2. Removing the stipulation that a recognition ballot must have a turnout of at least 40% of the relevant bargaining unit to be valid
3. Changing the ballot requirements for industrial action to a simple majority of those who vote

If industrial action is taken, a trade union's freedom of actions has been increased, with the previous government's **Minimum Service Levels legislation set to be repealed**.

Unions will **no longer be required to supervise pickets** to avoid liability in tort.

Workers will gain **statutory protection from detriment or dismissal** for taking industrial action.

Trade unions will switch from an "opt in" system to "opt out" regarding political fund contributions, only having to inform members of this right whenever they pass a "political resolution".

Restrictions on the deduction of union subscriptions from wages of public sector workers are also set to be revoked.

Sectoral Bargaining

Sectoral pay bargaining will make a return with the restoration of the 'School Support Staff Negotiating Body' and the power to create an 'Adult Social Care Negotiating Body'.

These bodies will have **the power to negotiate the terms and conditions and pay** of workers across their sector. Any outcomes from these negotiations can then be incorporated into workers' contracts of employment via powers held by the Secretary of State.

Labour Market Enforcement

The Bill will abolish the 'Gangmasters and Labour Abuse Authority' and the 'Director of Labour Market Enforcement'.

Instead, **the Secretary of State will gain the duty to enforce a range of labour market legislation**, including matters pertaining to minimum wage, tribunal penalties and modern slavery.

The government will be held under a statutory duty to provide labour market enforcement strategies, including annual reports.

This will **include various investigative and enforcement powers**, including the power to enter premises, obtain documents and compel employers to answer questions.

Failure to comply with such orders will be **an offence punishable by up to 2 years in prison**.

The government will also create the 'Fair Work Agency', which they hope will become a **one-stop shop for enforcement of labour market legislation**.



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