

# Employment Rights Bill – What Does it Mean for Employers?

**Abstract:** The Employment Rights Bill was published in October 2024. In this article, **Bob Cordran**, an Employment Partner at Memery Crystal, takes a look at the key reforms at the heart of it.

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## AT A GLANCE

The much-anticipated Employment Rights Bill was published on 10 October 2024. Described by the Government as the “biggest upgrade to rights at work for a generation”, it has already generated a great deal of interest, but are the changes that it brings in as seismic as suggested? Well, possibly, but in many cases any new law will not come into force until 2026, and a great deal of the detail is subject to consultation.

The Bill introduces 28 reforms to employment law, and we have picked out the key ones to be aware of so that you know what’s coming, even if in most cases actual change is some way off.

## DAY ONE RIGHTS

Some existing rights that currently have a qualifying period of service will become “day one” rights, so they will apply from the first day of employment. This includes paternity leave, parental leave (which is unpaid) and bereavement leave.

However, the big one is unfair dismissal. Currently, employees need to have two years’ service in order to be able to bring such a claim. Under the new rules, it will apply from day one. Much concern has been voiced about how this will affect probation periods, and this is acknowledged in the Bill, with provision for a statutory probation period, during which the normal rules on unfair dismissal may be varied.

What will this mean in practice? We don’t yet know – consultation will start in 2025, and no law is expected until late 2026. Consultation will include considering the length of the statutory probation period – the Government suggests nine months, the extent to which ‘normal’ unfair dismissal law will be departed from during the probation period, and the extent to which compensation may be restricted for dismissals during the probation period.

It must be likely that removing the qualifying period will mean an increase in claims, and so even more work

for the already overburdened Employment Tribunal system, and there will inevitably be some additional burden on employers, who currently have relatively few constraints in dealing with hires that don’t work out in the first two years, but the extent of this remains to be seen.

## ENHANCED MATERNITY PROTECTION

The Bill introduces enhanced protection against dismissals for employees returning from maternity leave and extends these protections to those returning from other statutory family leaves. Currently, mothers on and returning from maternity leave have limited protection from redundancy, but it appears that the new rules will go significantly further – the explanatory notes accompanying the Bill say that Regulations will be made to “ban dismissal of women who are pregnant, on maternity leave, and during a six-month return-to-work period – except in specific circumstances”. This is potentially a very big change, so watch this space.

## FLEXIBLE WORKING

The Bill strengthens the current right to request flexible working, introducing a new requirement that turning down a request must be reasonable and explained in writing.

These changes will follow “soon” (after relevant consultation).

## ZERO-HOUR CONTRACTS

The Bill introduces some complex changes regarding zero-hours contracts, in an attempt to ban “exploitative” zero-hours contracts, it introduces a right to guaranteed hours in certain circumstances as well as the right to be given reasonable notice of work schedules and proportionate compensation. Again, the detail is to follow. The protections may also be extended to agency workers.



*New job, new laws: the Employment Rights Bill is set to shake up the world of work*

## **HARASSMENT**

The duty to take “reasonable steps” to prevent workplace sexual harassment which came into force in October, will be extended to a duty to take “*all* reasonable steps” and employers will be liable for harassment on grounds of any relevant protected characteristic of employees by third parties.

Again, these changes will be implemented in new Regulations and are not likely to come into force until 2026. Although the detail is to be confirmed, it is still a good time for employers to review their harassment policies, given that the duty to take reasonable steps to prevent workplace sexual harassment is already here.

## **FIRE AND REHIRE**

The circumstances in which employers can dismiss and re-engage employees in order to impose a change in terms and conditions are to be strictly limited, by making such dismissals automatically unfair, save where there is severe financial hardship. Outside the few high-profile cases we have seen in recent years, fire and rehire is rare, so whilst headline-grabbing, this measure is perhaps unlikely to make a big impact overall. Again, details are to follow in Regulations, following consultation which is unlikely to start until next year.

## **COLLECTIVE REDUNDANCY**

Surprisingly little coverage has focussed on the change to collective redundancy law. Currently, the obligation to inform and consult with employees on collective redundancy applies where 20 or more employees are proposed to be

dismissed as redundant “at one establishment” within 90 days. The Bill removes the requirement for the redundancies to be “at one establishment”. This means that large employers with multiple sites will need to be careful to not inadvertently trigger the collective consultation obligation, e.g. where several small-scale redundancy processes are carried out at different sites within 90 days. Collective consultation, which is conducted through recognised unions or elected representatives takes at least 30 days and failure to do it properly can lead to “protective awards” of up to 90 days’ uncapped pay for each affected employee, so it can be costly.

The Government will also consult on removing the 90-day cap on protective awards, which would increase the potential costs very significantly.

Again, these changes will likely not come in until 2026 and some aspects are subject to consultation, but these could be amongst the most impactful of the changes in the long term.

## **STATUTORY SICK PAY**

The three-day waiting period and lower earnings limit for statutory sick pay will be removed.

## **MORE CHANGES TO COME**

Forthcoming changes are not confined to the Employment Rights Bill. The Government’s “Next Steps” document highlights its commitment to reviewing the law on employment status, parental leave and the TUPE Regulations (Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended), amongst other things. The Government also

intends to make it mandatory for large employers to report ethnicity and disability pay gaps, so there will be a lot for employers to deal with over the next couple of years.

### **WHAT NOW?**

Most of the reforms in the Employment Rights Bill are not expected to take effect until 2026, with the unfair

dismissal changes not taking effect until that autumn, so there is some breathing space while consultation is carried out and Regulations are drafted. In the meantime, although it is being modified by the Bill, the duty to take reasonable steps to prevent workplace sexual harassment came into force in October, and employers would be well-advised, if they haven't done so already, to address their policies and procedures in that regard.

### **Biography**

**Bob Cordran** is an Employment Partner at international law firm Memery Crystal.