



The Employment Rights Bill – a shake up of employment rights

The Employment Rights Bill "will update and modernise the legislative framework in relation to employment rights", according to the Government.

Whatever your thoughts are on the new Employment Rights Bill, do not panic!

The Government have confirmed that many of the policies in the Bill will be provided through regulations after the Bill receives Royal Assent.

Consultations will commence in 2025, and the majority of the provisions will take effect no earlier than 2026.

Following its publication on 10 October 2024, I summarise the key provisions here.

• Dismissal

Employees will be given the right not to be unfairly dismissed from their first day of employment.

• Fire and rehire

Dismissal and re-engagement on new terms

or replacing existing workers with new workers on new terms will be allowed only as part of restructuring for a business to remain viable and must be a last resort. It will be automatically unfair to dismiss an employee for refusing a contract variation.

• Flexible working to be the default

Refusal of a flexible working request on one of the current prescribed grounds must be reasonable. Employers must explain in writing their grounds for refusing the request and why their refusal is reasonable.

• Protection against dismissal for pregnant employees and those on or returning from statutory family leave

Employees are protected from dismissal during pregnancy, while on maternity leave or statutory family leave, and during the six-month return to work period, other than in specified circumstances.

There needs to be a balance between providing reasonable flexibility for employers with fair treatment, access to opportunities and security for individuals. Many SMEs feel these proposed provisions in the Bill tip this balance, and not in their favour! This month I focus on the new Bill. As well as answering your top HR questions.



You can request an initial free 30-minute consultation to see if I can help you.

Please contact me using any of the methods listed below. I would love to hear from you!

hr2go Consultancy is here to support you with any of your HR issues or concerns

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- **Protection from harassment**

Employers will be fully liable for third party harassment. Employers are required to take "all" reasonable steps to prevent sexual harassment. Regulations may specify steps to be regarded as "reasonable" to prevent sexual harassment. Allegations of sexual harassment will be disclosures qualifying for protection under the whistleblowing provisions.

- **Statutory sick pay reforms**

Removal of the waiting period so that statutory sick pay is paid from day one of sickness and removing the lower earnings limit to qualify for sick pay.

- **TUPE/Outsourcing**

Strengthening protections of transferring workers in public sector outsourcing contracts.

- **Zero-hours contracts**

Workers will have the right to:

- guaranteed hours if they work regular hours over a defined period;
- reasonable notice of a shift;
- reasonable notice of cancellation of, or change to a shift; and
- payment for cancelled, moved or curtailed shifts.

- **Bereavement leave**

"Parental" is removed from bereavement leave and "bereaved parent" is changed to "bereaved person". This extends the right to bereavement leave as it is no longer limited to parents who have lost a child.

- **Parental/paternity leave**

Removal of the qualifying period of employment to make paternity and parental leave a day one right.

- **Collective redundancy**

Collective consultation requirements will be triggered if redundancies reach a defined threshold across the business rather than within each site/workplace.

- **Trade union rights**

- Trade unions will be able to access workplaces in a regulated and responsible manner, on appropriate notice, to meet, represent, recruit or organise workers and to facilitate collective bargaining.
- Employers must give workers a written statement that they have the right to join a trade union at the same time as a s.1 statement.
- The Bill repeals the minimum services legislation and some elements of the Trade Union Act 2016.
- Union recognition will be made easier. Industrial action ballots will be simplified.
- Workers will be protected against detriment for taking industrial action.

- **Repeal of minimum service levels during strikes**

The minimum services legislation, which provides for minimum service levels to be in place during any period of strike action in certain services, is repealed.

- **Equality action plans**

Large employers (with 250 or more employees) must publish action plans showing steps taken to:

- address the gender pay gap; and
- to support employees through the menopause.

There is much detail still to be worked through so watch this space for future developments!

Your top HR questions answered!

If a third party harasses an employee, will the employer be liable for the third party's actions under the Equality Act 2010?

An employer will not currently be liable under the Equality Act 2010 for harassment of its employees by a third party (for example, a client or supplier). A positive duty on employers to take reasonable steps to prevent sexual harassment of their employees in the course of their employment applies from 26 October 2024. This includes prevention of sexual harassment by third parties. While an employee cannot bring a standalone claim in relation to third-party harassment, and the employer will not be directly liable, the Equality and Human Rights Commission will be able to take enforcement action against the employer in relation to the new duty.

The Employment Rights Bill, published on 10 October 2024, includes provisions to introduce employer liability for harassment of employees by third parties, where the employer has failed to take all reasonable steps to prevent the harassment. It is not yet known when this will come into effect.

As the law currently stands, if an employer fails to take action in response to complaints about a third party, the employer itself could be found to have harassed the employee if the failure to act was because of a protected characteristic. For example, trivialising a female employee's complaints about third-party sexual harassment and taking no action to prevent it could in itself amount to harassment. Employees who have been subjected to harassment by a third party may be able to bring a constructive dismissal claim against their employer, if they resign and claim that the employer's failure to protect them amounts to a breach of contract. An employer could also be liable for negligence if the employee suffered mental and/or physical injury because of harassment by a third party that the employer could reasonably have foreseen and prevented or reduced.

Employers should ensure that they continue to take all reasonably practicable steps to prevent any harassment of employees.

What is the difference between sex-based harassment and sexual harassment?

Sex-based harassment and sexual harassment are identified as discrete forms of unlawful discrimination in the Equality Act 2010. Both types of harassment involve conduct that is unwanted from the perspective of the person on the receiving end and has the purpose or effect either of violating the person's dignity or of creating an environment that they find intimidating, hostile, degrading, humiliating or offensive.

Sex-based harassment means unwanted conduct that is related to an individual's sex or the sex of another person, while sexual harassment is defined as "unwanted conduct of a sexual nature". Sex-based harassment will not, therefore, be sexual in nature but will be behaviour that is linked in some way to gender and causes offence to an individual. An example could be where an employee is constantly telling derogatory or demeaning jokes about women generally and a particular individual finds this unwelcome and offensive. Sexual harassment on the other hand is behaviour that has a sexual content or sexual connotation. Examples could include unwelcome physical touching, making sexual remarks to or about a person, telling jokes with a sexual content or displaying sexually explicit images on a computer screen.

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