

EMPLOYMENT RIGHTS ACT 2025 BRIEFING

FEBRUARY 2026 ISSUE



The Employment Rights Act ('ERA') received Royal Assent on 18 December 2025.

The ERA contains several areas of reform to employment law in the UK, with most planned to take effect in 2026 and 2027.

Below is an updated summary (as of February 2026), of the key changes and expected implementation dates.

PROPOSED IMPLEMENTATION DATE	SUBJECT	CHANGES	DETAILS	COMMENT & ACTION
DECEMBER 2025	INDUSTRIAL ACTION	Repeal of the provisions introduced by the Strikes (Minimum Service Levels) Act 2023	<p>The 2023 Act has been repealed with immediate effect.</p> <p>As a result, the government cannot impose minimum service levels (in key sectors), while strikes occur.</p> <p>This means 'work notices' cannot be issued by employers, to require certain staff to continue working while industrial action takes place.</p>	<p>This change will make it easier for trade unions to implement strikes and may lead to an increase the number of attendees.</p> <p>As employers cannot compel staff to work, it would be advisable to negotiate with trade unions. This may promote the resolution of disputes and encourage employees to voluntarily maintain a minimum level of service.</p>
18 FEBRUARY 2026		Ballot changes	<p>The 10-year ballot requirements for political funds are going to be removed.</p> <p>Notices for industrial action and ballots will be simplified.</p>	<p>Although the responsibility of employers in relation to any changes to balloting will be limited, they will need to monitor the development of the code of practice to ensure they have an understanding of what is expected.</p>
		Repeal of parts of the Trade Union Act 2016, such as notice requirements	<p>This change mainly relates to reversing the limitations that had been imposed on strikes and picketing by the 2016 Act. For example, longer notice periods for strikes are no longer required and industrial action mandates will not automatically expire after six months. Instead, mandates will last for 12 months.</p>	<p>Employers should be aware that there may be greater uncertainty about strikes taking place. For example, strikes may last for a longer duration, and employers may not receive as much warning in advance.</p>
		Protection against dismissal for participating in industrial action	<p>The 12-week cap on protection against unfair dismissal, has been removed. This means employees can participate in official and lawful industrial action, without the fear of facing unfair dismissal.</p>	<p>Employers can expect more employees to participate in industrial action, as they are now protected from dismissal for the full duration of industrial action.</p> <p>Employers should not dismiss employees as a result of participating in industrial action.</p>

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6 APRIL 2026	FAMILY RIGHTS	Paternity Leave	<p>Paternity leave will be available to employees from the first day of their employment, as the ERA will remove the current 26-week qualifying period.</p> <p>Paternity leave can be taken after shared parental leave has been taken (rather than requiring an employee to take it first/before).</p>	<p>Employers should update their policies to reflect that an employee is entitled to paternity leave from day 1 of their employment.</p> <p>HR and managers should be made aware of these changes.</p>
		Parental Leave	<p>Unpaid parental leave will be available to employees from the first day of their employment, as the Act will remove the 1-year qualifying period.</p>	<p>Please see our comments above.</p>
		Bereaved Partners' Paternity Leave	<p>When a child's primary carer has died within 52 weeks of the child's birth or adoption, the eligible employee will be able to take off 52 weeks (maximum) of unpaid leave.</p>	<p>Employers should update their policies to reflect their employee's entitlement as a result of this change.</p>
	STATUTORY SICK PAY	Day 1 Right	<p>Statutory sick pay (SSP) will become a day 1 right (SSP will be payable on the first day of sickness), rather than employees having to wait 3 days to become eligible and receiving payment on the fourth day.</p>	<p>Employers should amend their policies and employment contracts to reflect this change and ensure their teams are aware that all employees, regardless of earnings, are entitled to SSP from the first day of sickness. This will help to minimise disputes around sick pay entitlement.</p>
		Removal of the lower earnings limit	<p>The "lower earnings limit" which is currently needed before an individual is entitled to SSP will be removed.</p> <p>SSP for an individual, will be equivalent to the value of 80% of their average weekly earnings, or the flat rate (£123.25 a week) - whichever is lower.</p>	<p>Although this change will encourage healthier attendance at work, there will inevitably be increased costs when it comes to SSP, for employers.</p> <p>Employers should ensure their employees are informed about their entitlements and employers should update their HR policies to reflect the changes around eligibility and payment rates.</p> <p>Employers should also ensure their payroll systems are updated ahead of April 2026.</p>

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6 APRIL 2026	COLLECTIVE REDUNDANCY CONSULTATION	Maximum protective award for failure to consult will double	<p>Collective consultation will still be required in circumstances where an employer proposes to make 20 or more employees redundant, within a 90-day period, at one site or establishment.</p> <p>However, if an employer fails to follow the follow the collective consultation requirements, the protective award will double from 90 days' pay to 180 days' pay, per affected employee.</p>	<p>Costs could quickly rack up if an employer fails to properly inform and consult.</p> <p>This change will significantly increase the cost to employers for non-compliance with the obligation to consult collectively.</p> <p>Employers should ensure that they understand their obligations to avoid breaches and should also remember that failing to comply with the obligation to file a HR1 notice in respect of collective redundancies is already a criminal offence.</p>
	WHISTLEBLOWING	Inclusion of sexual harassment	Sexual harassment will be added as a 'qualifying disclosure'. These changes build on the Worker Protection Act 2023 which seeks to give employees more confidence to report incidents of sexual harassment and to hold employers accountable.	If it meets the other statutory requirements, disclosing sexual harassment could amount to a protected act (whistleblowing). Other requirements, such as 'reasonable belief' and that 'the disclosure was made in the public interest', will still be needed as per the Public Interest Disclosure Act 1998.
	TRADE UNIONS	Recognition of Trade Unions	The process of recognising a trade union will be simplified and the threshold for statutory union recognition will be as low as 2% membership within the relevant work force.	Employers can expect that the number of trade unions and employees who are members of trade unions to potentially increase and trade unions will gain recognition more easily.
7 APRIL 2026	ENFORCEMENT	Fair Work Agency	<p>The Fair Work Agency ('FWA') will be established to help enforce workers' rights including sick pay, holiday pay, national minimum wage and Employment Tribunal awards that have not been paid. It will also enforce duties on employers.</p> <p>The FWA will be able to ask for information, issue penalties, bring claims on workers' behalf and go onto employers' premises.</p>	<p>Although the FWA is expected to be established on 7 April 2026, it is unclear when the enforcement powers of the FWA will come into force.</p> <p>Employers should be auditing their practices in respect of minimum wage, sick and holiday pay and taking all necessary steps to ensure compliance.</p>

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AUGUST 2026	TRADE UNIONS	Balloting	Electronic balloting will be introduced (except for ballots relating to recognition and derecognition which will potentially be introduced in 2027). Once implemented, this should encourage a method of more fair and secure voting, which will enhance integrity.	Employers should not seek to identify whether employees have used their workplace’s resources (e.g. the internet or devices) to participate in voting.
OCTOBER 2026	EMPLOYMENT TRIBUNAL TIME LIMITS	Extension to the time limit to bring an ET claim	The limitation period to bring a claim in the Employment Tribunal will increase from three to six months from the dismissal or act complained of.	<p>This extension will apply to all types of claims, including unfair dismissal and discrimination. Employers may expect to see an increase in employees bringing claims that are better prepared, as they will have a longer lapse of time before they need to approach the Employment Tribunal.</p> <p>There may also be an increased time delay in employers being notified of claims being issued at the Employment Tribunal as this is likely to increase current backlogs and delays already faced by the Tribunal and ACAS.</p> <p>Employers should ensure processes are in place for preserving (and retaining for longer) documents and taking contemporaneous statements from witnesses, rather than waiting for Tribunal imposed deadlines.</p>
	TIPPING	Increase in duty	<p>Employers will be required to update their tipping policy, every three years.</p> <p>Workers (or their representatives) should be consulted, before an employer creates a policy.</p> <p>This change links to the Government’s plan to encourage greater transparency around tipping. For example, as of October 2025, employers are required to pass on 100% of worker’s tips. This has been brought into force by the Employment (Allocation of Tips) Act 2025.</p>	Employers, as good practice, may already review their tipping policies regularly but this will now become a statutory requirement.

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OCTOBER 2026	SEXUAL HARRASSMENT	Increase in duty	<p>The duty to prevent sexual harassment will now be for employers to take all reasonable steps to prevent sexual harassment.</p> <p>This broadens the obligation on employers from taking 'reasonable steps' as per the Worker Protection (Amendment of Equality Act 2010) Act 2023 to 'all reasonable steps'.</p> <p>The regulations will have the power to specify the steps that an employer will have to follow to show they have been 'reasonable'.</p>	<p>Employers should turn to the regulations, when published, for guidance on how they can comply with this requirement. The regulations will outline the 'reasonable' steps and employers should consider if there are any additional actions that should be carried out (depending on their industry).</p> <p>Employers should ensure their policies are updated to reflect their increased duty and ensure a clear and confidential system is in place for employees to highlight and report concerns.</p>
	THIRD PARTY HARASSMENT		Employers will have to take all reasonable steps to prevent all types of harassment (extending beyond sexual harassment).	Please see our comments above. Employers should also take measures to be proactive and ensure there are risk assessments in place, have a clear system for reporting incidents, as well as offering managers and employees training.
	TRADE UNIONS	Access to workplace rights	Trade unions can ask employers for access to the workplace (both physical and digital), to speak to workers, recruit members and organise more efficiently.	Employers can propose reasonable limits, but the presumption is access should be allowed. If the employer refuses or fails to comply, the CAC (Central Arbitration Committee) will be able to step in, order access and even impose financial penalties.
		Enhanced protections	Trade union representatives, as well as learning and equality representatives will have their rights strengthened.	Employers will need to ensure that they accommodate these enhanced rights, for example, providing a meeting space and (perhaps) certain IT access if requested.
		Duties on employer	Employers will have a duty to inform their workers and employees that they have the right to join a trade union.	Employment contracts may need to be updated to reflect that employees are entitled to join a union.
		Recognition of Trade Unions	The process of recognising a trade union will be simplified and the threshold for statutory union recognition will be as low as 2% membership within the relevant work force.	Employers can expect that the number of trade unions and employees who are members of trade unions to potentially increase and trade unions will gain recognition more easily.

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1 JANUARY 2027	UNFAIR DISMISSAL	Cap on compensation award removal	<p>Compensatory awards for ordinary unfair dismissal are capped at the lower of one year's salary or the statutory cap (currently £118,223)</p> <p>However, the ERA will remove this cap entirely, as of January 2027.</p> <p>This means there will be no limit on the amount that can be awarded (as is the case for discrimination and whistleblowing claims).</p>	<p>This change may encourage higher earners to bring unfair dismissal claims, as their compensation award will no longer be limited.</p> <p>Claimants may rely solely on unfair dismissal claims which will be more valuable and easier to bring, instead of having to add on a discrimination or whistleblowing element to their claim to boost its value.</p> <p>Removal of the cap is likely to impact on settlement negotiations and the approach to senior executive exits, when it comes to high earners with valuable benefits and bonuses. Employers should expect to see an increase in the value of compensation requested by Claimants, and employers may have to rely more heavily on methods to reduce compensation payouts (e.g. Polkey reduction, failure to mitigate).</p> <p>Employers should review their dismissal processes, as errors in an employee's dismissal could be costly.</p>
		Service requirement reduced from 2 years to 6 months	<p>After six months of their employment commencing, an employee will have the right to claim unfair dismissal.</p> <p>Therefore, employees no longer have to wait until they have at least two years' service, before they can bring an unfair dismissal claim.</p> <p>The Government has indicated that employees who already have 6 months qualifying service as at 1 January 2027, will immediately have the right to bring an unfair dismissal claim.</p>	<p>Employers may need to tighten their recruitment and onboarding processes, as well as review how they deal with performance management.</p> <p>Employers should review/add probationary periods into new starters' employment contracts to ensure that the employee's performance is regularly reviewed.</p>

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2027	FIRE AND REHIRE	Further restrictions imposed on employers using this method	<p>As of January 2027, it will be automatically unfair to dismiss an employee who refuses to agree to changes to their contract of employment, where that change relates to time off, pay, hours of work or pension.</p> <p>If employers replace an employee by dismissing them and hiring someone else on varied terms for the same role, or hiring someone who is not an 'employee' as a replacement, this will also be an automatic unfair dismissal.</p>	<p>There is a limited exception to these restrictions.</p> <p>The only time these dismissals will be allowed, is when the dismissals are in response to financial difficulties likely to affect the ability of the business to continue as a going concern and that could not have been reasonably avoided by the employer.</p> <p>The ERA and subsequent secondary legislation may set out further clauses where dismissal for failure to agree will be automatically unfair.</p>
	REDUNDANCY	Changes to thresholds in collective redundancy consultations	<p>In addition to the collective consultation thresholds already in place, a new threshold, that takes into account the amount of redundancies across the entire employer (not just one establishment or single workplace), will be introduced.</p>	<p>Consultation on this change is taking place and regulations on the additional threshold will follow. However, aggregating dismissals across "establishments" could have a significant impact on large multi-site employers.</p>
	ZERO HOURS AND LOW HOURS CONTRACTS	Right to be offered a contract reflecting regular hours	<p>'Qualifying workers' will need to be offered a contract that guarantees minimum hours. This will be based on the work they have done in a 'reference period'. The worker can accept or decline. If declined, employers will need to keep offering the contract with guaranteed hours.</p>	<p>Employers should ensure they have systems in place to record hours of work over the reference period (which we believe will be 12 weeks) and reminders on when contracts should be offered to workers.</p>
		Right to notice of shifts and compensation for cancellation of shifts	<p>This will include when a shift starts and ends and notice of any change to a shift such as when that shift is, being cancelled or shortened.</p> <p>The amount of payment that an employer will have to make will depend on the circumstances – was the shift cancelled, moved or shortened?</p>	<p>Consultations on these changes are ongoing. Many key details are yet to be confirmed and will need to be set out in regulations. For example: the reference period, low hours threshold, the definition of reasonable and short notice.</p>

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2027	FLEXIBLE WORKING	Flexible working requests	<p>Employers must be reasonable when refusing a flexible working request and provide the employee with an explanation.</p> <p>Ahead of refusing a request, the employer must consult with the employee. Consultation will become a legal requirement for employers, although some employers may already be implementing now as evidence of good practice.</p>	<p>Employers should formulate a clear strategy as to how they manage flexible working requests and document their reasons for refusal if a request has been denied.</p> <p>Employer policies should be reviewed and updated to reflect these upcoming changes around flexible working.</p>
	MATERNITY	Employees returning from maternity leave will have enhanced protections	<p>Further protections from dismissal for pregnant women and new mothers will be introduced, prohibiting dismissal up to six months after their return to work, except in specific circumstances.</p>	<p>Employers' policies and processes will need to reflect the enhanced protection that has been afforded by the ERA.</p>
	FAMILY RIGHTS	Right to family bereavement leave	<p>Employees will be entitled to at least one week of bereavement leave, after the death of a family member. This extends beyond parental bereavement leave, which was introduced in 2021, and it will also now cover circumstances such as pregnancy loss before 24 weeks.</p> <p>Further details about which family members this change relates to will be specified in the Regulations.</p> <p>It is unclear as to whether this will be paid or unpaid.</p>	<p>Employers should introduce policies (or update their existing policies) to account for this change.</p> <p>Training may also be required, to ensure employers do not unlawfully dismiss employees who are on (or have recently returned from) family leave.</p>

PROPOSED IMPLEMENTATION DATE	SUBJECT	CHANGES	DETAILS	COMMENT & ACTION
2027	INDUSTRIAL ACTION	Protection from Blacklisting	Workers will receive increased protection if they do choose to participate in industrial action.	Employers will need to be aware that any dismissal connected to such industrial action or “blacklisting” is much more likely to be automatically unfair.
		Industrial Relations Framework	More information to follow.	More information to follow.
	UMBRELLA COMPANIES	To become regulated	Umbrella companies will now fall within the scope of the Conduct Regulations, which closes the loophole for low regulation. Umbrella companies will fall under the category of ‘employment businesses’ and become regulated by the Fair Work Agency (when the Agency becomes active).	Agencies will become more accountable. For example, they will be jointly liable for unpaid tax.
	PAY GAP REPORTING AND MENOPAUSE ACTION PLANS	Gender Pay Gaps and Menopause	Employers with at least 250 employees will be required to create and publish ‘equality action plans’ to include addressing the gender pay gap and supporting employees going through menopause.	Employers will need to be more transparent about existing pay gaps in their workplace and demonstrate meaningful ways they are aiming to reduce this gap. Reporting will be voluntary from April 2026, and will become mandatory by 2027. The Government is intending to provide employers with information and guidance about evidence based actions and support.

PROPOSED IMPLEMENTATION DATE	SUBJECT	CHANGES	DETAILS	COMMENT & ACTION
UNSPECIFIED DATE	NON-DISCLOSURE AGREEMENTS (NDAS)	Allegations of harassment and discrimination	<p>This change will render NDA clauses void if employees are prevented from disclosing harassment or discrimination that they have faced at work.</p> <p>This will not apply to certain 'excepted agreements', however we believe Settlement Agreements will not be classified as 'excepted'.</p>	<p>This change links to the Victims and Prisoners Act 2025, where NDAs are also void if they prevent a victim of crime from disclosing information to certain people for certain purposes.</p> <p>The implementation date for this change will be provided in the due course, and employers should anticipate this change for the near future.</p> <p>As the scope of this change is vague, it may be subject to further consultation.</p>

What can employers do to prepare?

To prepare for the upcoming changes, employers should as a starting point:

- Review their employment contracts, to ascertain which clauses will need updating.
- Review probationary periods and how they are handled and documented.
- Review policies to ascertain those that will need updating and when.
- Review HR systems and procedures to ensure they robustly handle the changes associated with the Employment Rights Act 2025 being implemented.
- Ensure you have a clear system of storing documentation and emails if they are required.

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