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A Guide to Understanding the Employment Rights Act

Moving forward
together >



The Employment Rights Act is set to bring about a significant overhaul of workers' rights, which will begin taking effect in 2026.

As such, it is imperative that all businesses that hire employees become familiar with the contents of the Act and begin updating their policies and procedures accordingly.

Our expert team is on hand to help you manage your new obligations in accordance with the Act so that you are not caught out when the time comes.

We have also put together this helpful guide that breaks down each section of the Employment Rights Act and highlights how you can stay compliant.

This guide is provided for general informational purposes only. It is not intended to constitute legal advice, nor should it be relied upon as such. Employment law is complex and fact-specific and the application of the law may vary depending on individual circumstances.

You should not act or refrain from acting based on the content of this guide without seeking appropriate legal advice on your particular situation. While every effort has been made to ensure the information is accurate at the time of publication, no guarantee is given that it remains current or complete.



An end to zero-hours contracts?

In an attempt to create a more secure working environment for workers, the Employment Rights Act is set to tackle what is known as one-sided flexibility.

This is when employers hold the power to alter the working hours of an employee with little or no notice.

The embodiment of this imbalance is zero-hours contracts. Long viewed by many workers' rights advocates as a way of employers keeping employment costs down by leaving workers uncertain, so-called exploitative zero-hours contracts will be limited.

It will no longer be possible to keep employees on zero-hour contracts indefinitely, as they will need to be offered a fixed-hour contract following the end of every reference period, if they do not accept the fixed-hour contract when offered.

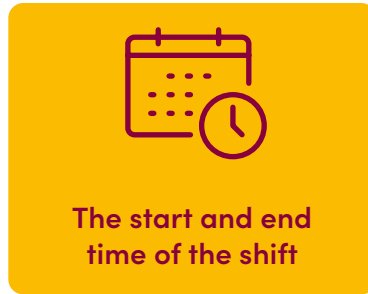
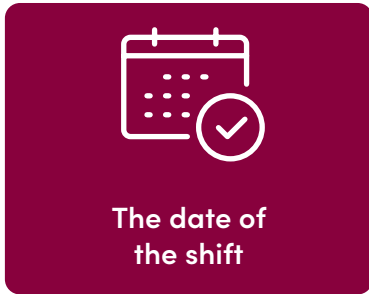
This will also apply to those working under low-hours contracts if they work more than the minimum number of hours provided for under the contract during the reference period.

Later regulations will determine the exact span for the reference period, but it is currently expected to be 12 weeks.



This is also being paired with the need for employers to provide reasonable notice of any changes to shifts for zero-hours workers.

The notice will need to include:



It is not yet known the exact length of time that is going to be considered reasonable as it will be subject to consultation, but the Government has indicated that, depending on the circumstances, there is a possibility that very short notice may be reasonable.

This means that employers will need to give reasonable notice (to be specified by regulations but not exceeding seven days) before they change an employee's shift.

If shifts are changed or cancelled on short notice, it will be necessary for employers to compensate the worker.

While the compensation will not be expected to exceed the amount that would have been earned had the shift taken place, it will still be a notable expense for an employer to bear.

This is particularly the case if the reason for the cancellation was a downturn in business or a cancelled booking.

How do businesses adapt to losing zero-hour contract flexibility?

Operational costs are a challenging burden for many businesses and employee expenses can play a part in that.

Losing the flexibility afforded by zero-hour contracts means that businesses may now have to shoulder more costs than previously.

It will be necessary to budget effectively as shouldering additional costs will be a common refrain throughout the implementation of the Employment Rights Act.

Effectively, the biggest change will be with regards to better planning. It will still be possible to alter shifts when essential, but that will soon carry a cost.

The cost is likely to be cheaper than letting someone work a shift unnecessarily, although there is a suggestion the cost may increase the shorter the notice and if very short notice is given, the full amount the employee would have received if the shift had been worked may be payable. Determining how best to handle that situation is vital for maintaining rapport and staying compliant.

Agency workers will also be afforded the same rights, so this cannot be used to circumvent the changes.



Protection from unfair dismissal

Originally stated to be part of the bundle of day one rights that the Employment Rights Act is set to introduce, employees will now be protected from unfair dismissal after six months of continuous employment.

This means that, while there is not technically a formal probationary period introduced by the Act, employers should view the first few months as a critical time when employee suitability is accurately assessed.

Traditionally, it has been possible to extend probation periods as required beyond six months given that there was previously a two-year buffer.

It may soon be advisable to do a strict midpoint probationary review at three months into the employment, where the current performance is assessed.



Try to engage with the employee as best as possible at this juncture and let them know how they can change their approach to work if it is looking like they are struggling to fit the role.

As the protection for unfair dismissal does not take effect until six months, employers should decide whether to retain the new starter prior to five months service.

Letting the probation spill out beyond this runs the risk of crossing the threshold and losing the ability to terminate employment without fear of reproach subject to the claims for automatic unfair dismissal which do not require six months continuous service.

In a similar vein, it will no longer be possible to engage in fire and rehire practices.

If changes to contracts cannot be agreed upon and the employee is dismissed as a result, this will count as an unfair firing and you could face consequences as a result.



Expansion of day one rights

Rather than having a range of qualifying periods that can make it challenging to keep track of which employees are entitled to which rights and protections, the Employment Rights Act will make most rights applicable from day one.

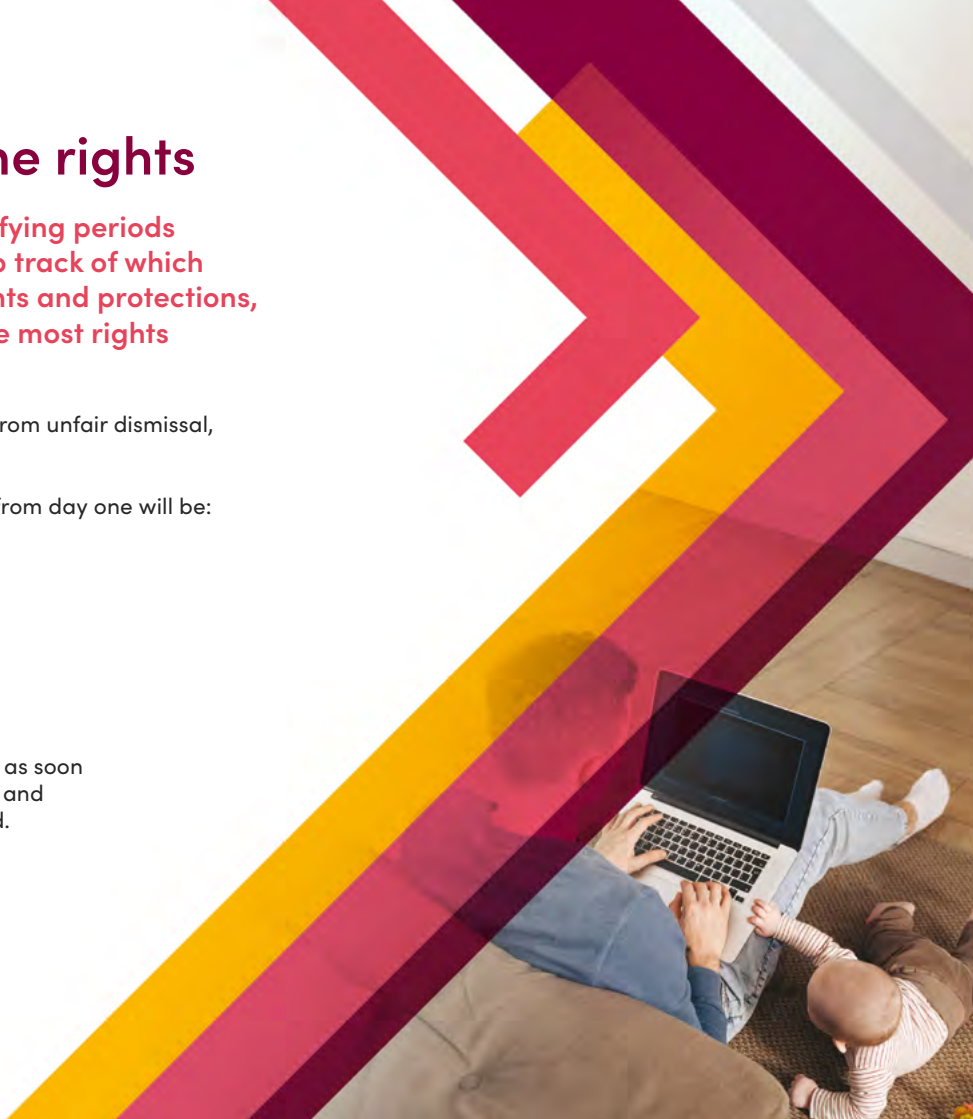
The notable exception to this is the protection from unfair dismissal, which is detailed in the previous section.

This means that the rights that are applicable from day one will be:

- Parental leave
- Paternity leave
- Bereavement leave

Parental/Paternity leave

This move will see expectant parents protected as soon as they begin employment, although maternity and paternity pay are not currently set to be revised.



Bereavement leave

This will be applicable based on the following:

- Employees can take one week's bereavement leave for the death of an eligible relative this will include pregnancy loss before 24 weeks
- If multiple bereavements occur, employees will be entitled to separate leave for each loss

Regulations will define which relatives qualify for bereavement leave, although it is currently believed that close relatives will be considered eligible, while those more distant may fall outside of the scope.

Flexible working

It will only be possible for employers to reject requests for flexible working if the employer believes that there are specified business grounds for doing so and if it is reasonable for the employer to refuse the request on that basis.

The best way to tackle this change will be to be transparent during recruitment about the extent to which flexible working is permissible and ensure it is codified in contracts.



Fair pay protections and enhanced worker wellbeing

The Employment Rights Act also seeks to tackle issues with fair pay that are still prevalent in many workplaces.

Chief among these is the reform to Statutory Sick Pay (SSP). SSP will now be payable for the first day of sickness and the lower earnings limit is set to be removed.

There will also be an increased need for employers to review their pay practices to ensure they are not contributing to the Gender Pay Gap.

This should be part of broader measures to tackle gender inequality through measures like menopause support. Employers with at least 250 employees will be required to develop and publish equality action plans.

Alongside this, better protections against sexual harassment will need to be implemented.

It is hoped that this will see a reduction in the number of businesses that are content to place their staff in front of a training video and consider the matter resolved. This is unlikely to be sufficient to meet the employer's obligations.

Employers will need to take all reasonable steps to prevent sexual harassment and establish protections for whistleblowers who notice problems.

Combatting sexual harassment will also include taking all reasonable steps to prevent it at any work-related event, such as a party or conference. Employers will also need to protect employees from harassment by third parties. This is likely to be particularly difficult for those employers whose staff frequently come into contact with third parties e.g. in hospitality and retail for example.

Establishment of the Fair Work Agency

In order to better streamline the implementation of workers' rights and hold businesses accountable, a new Fair Work Agency (FWA) will be established.

The FWA seeks to specifically work to bring together the enforcement functions of:

- HMRC relating to The National Minimum Wage
- The Employment Agency Standards Inspectorate
- The Gangmasters and Labour Abuse Authority

Over time, it is intended that the FWA will take on enforcement of a wider range of employment rights including statutory sick pay and holiday pay. There is also flexibility for the enforcement of additional rights to be added.

As a business, it will be important to understand that much of the compliance oversight will be handled by the FWA going forward.

We will seek to support you in understanding the role of the FWA, but do not be surprised if you begin to receive correspondence from them on occasion.

If a worker does seek to take you to the employment tribunal, they may do so through the FWA.

This will be aided by the loosening of the deadline for tribunal claims from three months to six months.

Knowing your rights and responsibilities should make tribunal cases rare and defensible as we can help you show that you adhered to regulations.



Expansion of trade union access

Given its history as the party of trade unions, it is little wonder that the Labour Government are overseeing an Act that gives unions more power.

The new Act has seen the Strikes (Minimum Service Levels) Act 2023 repealed meaning that workers will have a greater ability to take strike action when dissatisfied in the work place.

This is coupled with granting trade unions a greater right to access the workplace including providing for digital access.

If your workplace currently does not have a trade union presence, this may change in the near future.

As further legal rights and protections are granted to trade union representatives, you can expect to see them making more of a concerted effort to establish a presence in the work place.



You will also be made to make employees aware of their right to join a trade union at specified intervals and this may happen in tandem with the trade unions making themselves known to your workers.

You will likely not be able to block employee access to trade unions and may need additional support in managing the impact that unions have in your workplace.

This is where seeking professional legal support can be vital, as you can determine the scope of the powers that unions have and ensure they do not overstep their boundaries.

As unions are likely to empower employees to be more forthcoming with strike action and tribunal cases, you should also familiarise yourself with best practice for managing these eventualities so you can preserve your reputation at all times.



What are the key dates for the Employment Rights Act?

It is anticipated that, the Government are working to implement different aspects across three main periods of time (although these are subject to change).

April 2026 will see:

- Day one paternity leave and unpaid parental leave rights
- Whistleblowing protections relating to sexual harassment
- SSP reforms
- Voluntary creation of gender pay gap and menopause action plans
- The FWA established
- Simplification of the trade union recognition process

October 2026 will see:

- Requirement for all reasonable steps to be taken to prevent sexual harassment
- Protection from sexual harassment by third parties
- Duty to inform workers of their right to join a trade union
- Strengthening of trade unions' rights of access
- No earlier than October 2026
 - extending time limits for tribunal claims

2027 will see:

- Unfair dismissal protection after six months and removal of the cap on unfair dismissal compensatory awards
- Ban on fire and rehire
- Mandatory gender pay gap and menopause action plans
- Zero-hours contract reforms

What does the future hold for employment rights?

With the Employment Rights Act now law, the changes it introduces will need to be planned for immediately.

Even the changes that are not due to take effect until 2027 will need careful planning to ensure that your business can handle any additional administrative or financial burdens.

We can help you understand your rights and responsibilities so that you know what needs to change and the steps you can take to stay compliant.

Speak to our expert team to discover more about the impact of the Employment Rights Act or for legal advice on your role as an employer.



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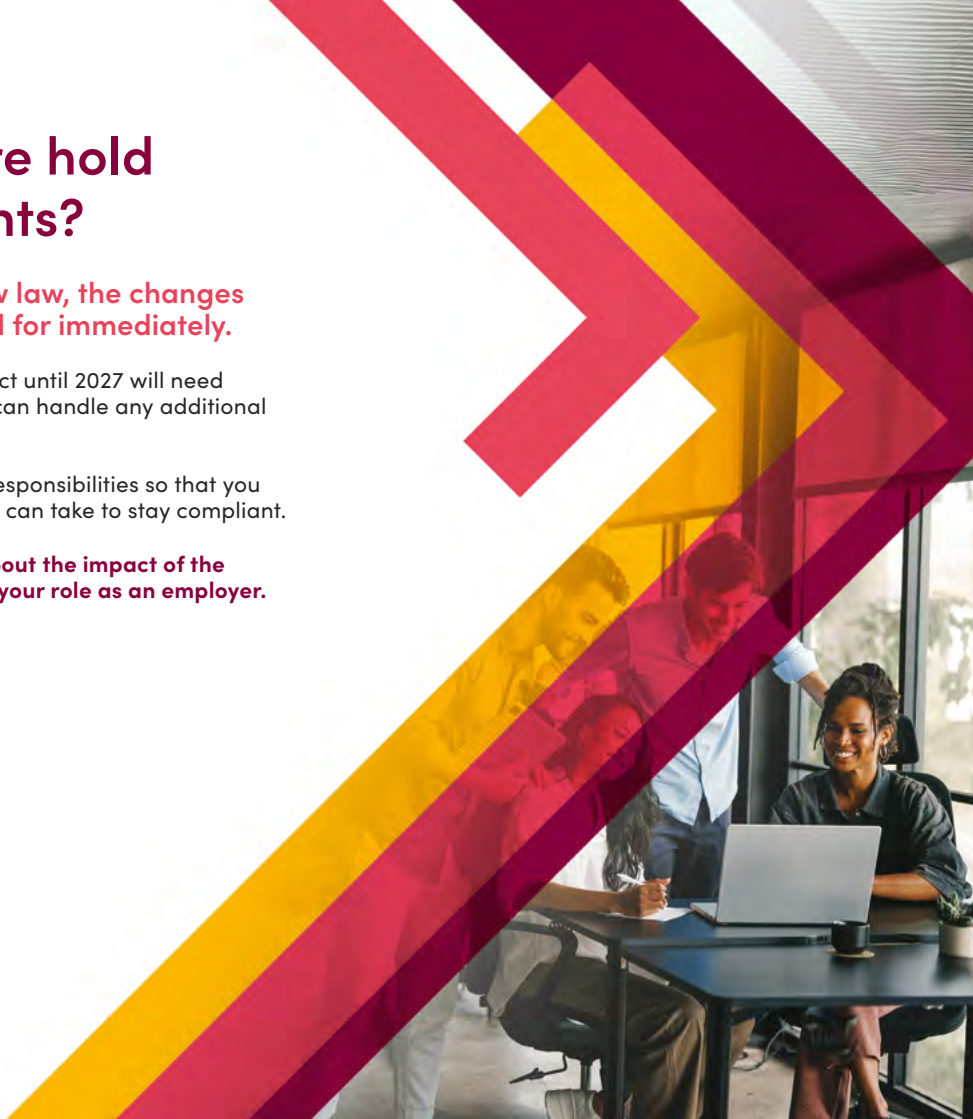


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