

## **Employment Rights Bill 2024**

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#### **1. What is the background to the Employment Rights Bill?**

The government's stated aims around the Bill are ambitious. According to the government, by raising the minimum floor of employment rights, the Bill will give the public the prosperity, security and dignity that everyone in Britain needs and deserves at work. The government also states that the Bill will support the government's mission to increase productivity, create the right conditions for economic growth and help raise living standards.

Those in the business community may well regard these lofty ambitions with some scepticism. A number of employers groups argue that increased workplace regulation and the threat of more Employment Tribunal litigation may have the effect of increasing costs, reducing investment by employers and discouraging recruitment.

#### **2. Why is Labour so keen to bring this in?**

The clue is in the name – we now have a Labour government.

The Labour Party was formed out of the trade union movement to give working people their own political voice, and the party receives substantial funding from trade unions.

A succession of Conservative governments, who were more traditionally aligned with the business community, enacted restrictions on, for example, the rights of trade unions and the ability of workers to make Employment Tribunal claims. As a result it is hardly surprising that the new Labour government is keen to redress the balance and increase workplace rights.

### **3. What are the timelines - consultation becoming law etc?**

The draft Bill was published on 10 October 2024, following the government's pledge to introduce such legislation within 100 days of taking office.

Consultations on the Bill are currently underway, with most of the reforms not taking effect until 2026.

### **4. What are its guiding principles?**

Fundamentally the Bill is about increasing or strengthening the rights of workers and addressing a number of perceived concerns about unfair practices by employers.

For example the Bill aims to end 'exploitative' zero hours contracts, to ban the practice of 'fire and rehire' and to reverse a number of restrictions on the right to strike, introduced by previous Conservative governments.

### **5. Is it as big an issue as is being made out and if so why?**

The government's own description of the Bill is 'the biggest upgrade in employment rights for a generation', so the authors of the legislation are certainly not under selling it.

The Bill introduces wide ranging changes to employment law including proposed changes to statutory sick pay, maternity and 'family friendly' rights, zero hours contracts, trade union rights and a new 'day one' right for employee's to claim unfair dismissal.

In practice the widening of unfair dismissal rights is likely to have the most immediate effect on employers because it will inevitably impact on recruitment practices, employers' appetite to recruit new staff and their approach to probationary periods. Although a new 'light touch' procedure will be introduced to enable the dismissal of employees who are in the first 9 months of their employment, the procedure will not apply to redundancy situations. Therefore the ability to claim unfair dismissal following a redundancy situation will become a day one right and employers would be well advised to review their redundancy policies and processes ahead of the new legislation taking effect.

### **6. What are the important changes contained with the Bill - not just the obvious ones - and what are the potential implications for businesses?**

The most important proposals in the Bill include the following:



- that workers are entitled to statutory sick pay from their first day of sickness absence (i.e. abolishing the current 3 unpaid ‘waiting days’)
- making parental leave and protection from unfair dismissal available from day one on the job for all workers;
- abolishing the practice of ‘fire and rehire’ unless there is genuinely no alternative;
- more protection for workers around collective redundancy consultation;
- making flexible working the default from day-one for all workers;
- additional protection from redundancy for pregnant workers or those on (or returning from) maternity leave;
- day one rights to paid bereavement leave;
- banning ‘exploitative’ zero-hour contracts, by creating a right to right to guaranteed hours for zero hours workers, and others with no or low guaranteed hours of work;
- extension of the time limit for bringing an Employment Tribunal claim from three months to six; and
- changes to trade union law, including easing restrictions on taking industrial action.

The impact of the new rights on employers may depend to a certain extent on the nature of their business – for example a company that is heavily reliant on zero hours workers will need to understand the proposed (and very complex) right to guaranteed hours, which has been introduced with the aim of banning ‘exploitative’ zero hours contracts. Similarly workforces with trade union representation may be impacted by the new right of Trade Union access, reforms to statutory union recognition and the repeal of almost all of the restrictions on calling strike action introduced by Conservative-led governments since 2010.

However, the new day one right to claim unfair dismissal will affect all employers irrespective of all size and sector. The right may well dissuade companies from recruiting staff, unless there is a compelling need to do so, and may have a number of unintended consequences, such as making employers more cautious in recruitment decisions, fearing that taking a chance on a less than perfect candidate may result in litigation. This caution may, in turn, impact on equality and diversity if employers are



reluctant to hire candidates who they may perceive to present a possible risk (for example ex-offenders or employees with disabilities).

**7. Assuming our managing director is forward looking and pro-active, what steps should they be taking now and in the near future to prepare?**

The MD would be well advised to prepare, in particular, for employees new right to claim unfair dismissal from day one. Businesses will need to ensure that their approach to recruitment is fit for purpose and (insofar as is possible) identifies candidates that are the best fit for the vacant role. The MD may also want to consider bringing recruitment decisions forward and for example hiring staff now, whilst the two-year qualifying period for unfair dismissal subsists, rather than waiting until 2026 when the new day one right takes effect.

The MD should also prepare for the new law by reviewing practices around probationary periods. All too often probationary review dates can slip, probation meetings can be undocumented and probationary periods extended too late. With the introduction of a new Code of Practice around the 'initial period of employment' (as probationary periods are described in the Bill), employers will need to train managers to ensure that these procedural slips do not occur and that processes around probationary periods are consistent across the business.

It will important for the MD to be satisfied that those with responsibility for reviewing probationary periods are aware of the new Code of Practice, clearly record any concerns around the performance or conduct of new recruits, hold probationary review meetings in a timely manner, and ensure that such meetings are well documented. The MD may also want to consider aligning the Company's current probationary periods with the new initial period of employment which is likely to be 9 months.

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If the MD's business hires workers on zero hours contracts then the MD will need to understand new rights introduced by the Bill which give zero hours workers (and others with limited guarantees around working hours) the right to be offered contracts



with guaranteed hours. The right applies to workers whose working pattern over a specified reference period (not yet defined) reaches a particular threshold (also not yet defined). Expert legal advice will be required by the employers of zero hours workers to understand these eye-wateringly complicated provisions.

**8. Any other issues.**

The increase in employment rights set out in the Bill, together with the extension of the time limit for bringing an Employment Tribunal claim from three months to six, will inevitably mean an increase in employment-related claims. This is likely to put additional strain on an already over burdened Tribunal system.

