




THE EMPLOYMENT RIGHTS BILL

Assessing the new regulations and the impact upon employers

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INTRODUCTION TO THE EMPLOYMENT RIGHTS BILL

WHAT IS THE EMPLOYMENT RIGHTS BILL AND WHEN IS IT EXPECTED TO TAKE EFFECT?

A core part of the Government's drive for productivity is The Plan to Make Work Pay. The plan is designed to help support workers; their productivity and their work-life balance, as well as improve wages and living standards. A large function of this plan is the new Employment Rights Bill.

The Employment Rights Bill will address the treatment of workers and the obligations of employers. The Bill aims to address the flexibility of jobs, provide more job-security for workers and help to improve health and wellbeing. The Bill also intends to modernise legislation and create fairer opportunities.

Employers will be required to understand and implement the many changes introduced by the Employment Rights Bill. There are 9 key areas which will need to be addressed. These span from parental leave to dismissal. Employers need to understand their obligations and be careful not to unduly act in a way which could be observed as discrimination.

These changes will affect businesses of all shapes and sizes; and could have disproportionate effects on smaller businesses without a dedicated HR function. The complexities of the legislation mean it will be easy for organisations to unintentionally

fall foul and be at risk of employee claims or even prosecution.

When will the Employment Rights Bill reforms be introduced?

The Employment Rights Bill was introduced into Parliament in October 2024, many of the changes are still being discussed and are yet to be passed; but are expected to be made into law in 2026 and 2027.

When will employers be required to make changes to their practices in order to remain compliant?

The Bill is currently undergoing its final readings and is working towards Royal Assent, at which point the law will come into force. As with most new legislation, it is expected that there will be an implementation period, meaning the law will not be actioned until approximately 2026/2027. However, businesses should not be complacent and delay their preparations.

Comprehensive HR audits and understanding how the changes will impact an organisation can take time, and there is likely to be a scramble towards the end. We recommend engaging an HR specialist early, so you are able to get ahead of the changes and protect your business.



THE 9 MOST IMPORTANT CHANGES IN THE NEW ERB LEGISLATION

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ZERO HOUR CONTRACTS

Importantly, zero hour contracts will see a swathe of changes to help improve the security and predictability of jobs for workers. The government effectively wants to end zero hour contracts which they see as exploitative and inflexible. This change is predicted to come into force in 2027, so employers have time to restructure and adjust their worker's contacts.

There are many benefits afforded to workers through the change to zero hours contracts. As zero hour contracts offer no guarantee of future work, employers are able to change or cancel shifts last minute, with this uncertainty potentially affecting employee wellbeing. Better clarification of hours and shift patterns will allow workers more organisation around transport, care responsibilities and family commitments. Conversely employers should be better organised and improve standards.

There are approximately 1.03 million zero hour workers, and 34% of UK workers are living pay-check to pay-check. These changes to zero hour contracts should help out the thousand of workers who would prefer to be guaranteed hours and yet remain flexible around their children and care commitments. However, the Government understands the necessity of zero hour contracts for certain individuals, and therefore have permitted them to remain if the employee wishes to decline guaranteed hours.

What are the current rules around zero hour contracts?

A zero hour contracts allows the business to determine the number of hours they want to offer the worker, with no obligation to increase the hours. Neither are employees required to take on more hours. Zero hours contracts are useful where work demands are irregular or where there is not a constant demand for staff. Seasonal work, sickness leave and cover, tests or events are great examples of where zero hours contracts are ideal.

Zero hour workers are entitled to statutory employment rights; these being minimum wage, annual leave and regular breaks. Contracts should be clear and transparent and should not be used by businesses as an alternative to proper business planning or commitments. Those who take up work on a zero hour contract are often students, retirees or carers.

THE KEY CHANGES TO ZERO HOUR CONTRACT RIGHTS

Guaranteed Hours

As the Bill currently stands, employers will be obliged to offer guaranteed hours to zero hour workers.. The guaranteed number of hours must be the same as the regular number of hours they work over a set period - the predicted period is 12 weeks. Workers would be able to reject the offer of guaranteed hours if they so wish, and choose to remain on zero hours contracts.

Shift Notice

Employers must give workers reasonable notice prior to their shifts. What is and what isn't reasonable notice will be determined by upcoming Government regulation and an employment tribunal were the employee to make a claim.

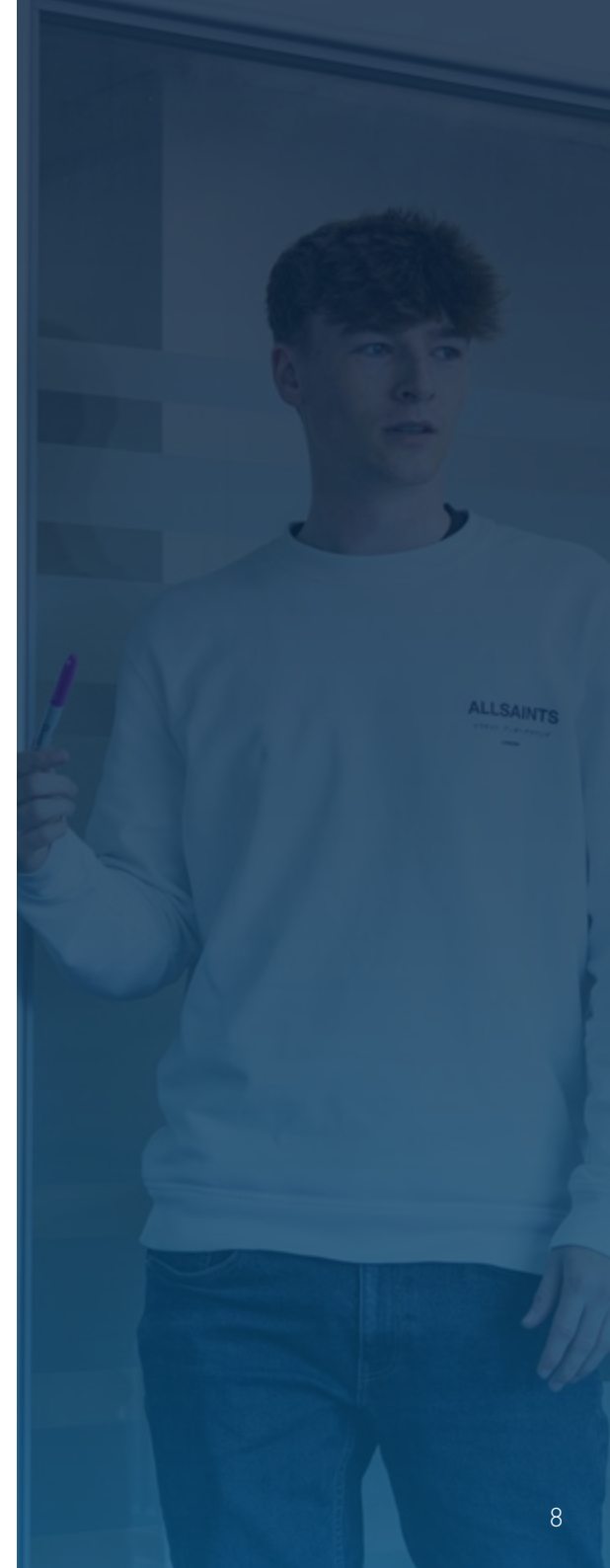
An employee may be able to make a claim against their employers if shifts have been scheduled at late notice and they deem it unreasonable.

Compensation payments

The Bill introduces a proposed new right that employers will need to be acutely aware of. Employees will now have a right to claim payment for any shifts or work that has been cancelled or rescheduled at extreme last minute. Therefore, if employers curtail a worker's shift, they may still have to pay the worker for that shift.

Application for Agencies

There are many different circumstances which will need to be considered including the role of agencies. The agency and the hirer will be responsible for providing work for the employee. The agency will have to pay the employee a short notice payment if work is cancelled or changed at short notice – they will then need to take it upon themselves to recoup the costs from the business/hirer.



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HOW THE EMPLOYMENT RIGHTS BILL IMPACTS UNFAIR DISMISSAL

The proposed changes around the law of unfair dismissal has come under significant scrutiny. Job security should not be a luxury for a privileged few, but should be a right for all employees.

The changes to unfair dismissal will affect future generations of employees, as well as employees who are currently within the first two years of their employment. Amendments need to be fully understood by employers and HR departments, as falling foul of dismissal protocol can lead to significant financial cost/compensation and reputational damage.

Around 9 million employees have been working for their employer for less than two years, that's 31% of the British workforce. This large proportion of the workforce will soon be better protected against unfair dismissals.

What is the current law around unfair dismissal?

Under the current law, employees must have worked for their employer for a minimum of two years in order to be eligible to claim unfair dismissal. This affords businesses time to assess the suitability of new hires. Employees also, after 2 years' continuous service, have a statutory right to written reasons for their dismissal upon request.

WHAT ARE THE CHANGES TO THE RULES AROUND UNFAIR DISMISSAL?

A Day-One Right

As the Bill stands, the two-year qualifying period is to be abolished. Employees will be eligible to claim unfair dismissal from the first day of employment, equalising rights for all staff.

Initial Period of Employment

The Bill introduces the concept of an 'initial period of employment'. This is expected to refer to the first nine months of employment, but will not be confirmed until 2026. This should be understood as a modified version of the previous two-year grace period.

There shall soon be a standard of 'reasonableness' related to dismissals within this nine month initial period of employment. Employers will be able to dismiss employees,

but must show dismissal is related to conduct, capability or another specified reason.

This however excludes redundancy, meaning unfair redundancy dismissal claims will be a day one right. If the dismissal is not reasonable within the initial period of employment, an employment tribunal will be able to award compensation. The maximum compensation award for unfair dismissal may be capped during the initial period of employment, with the expectation that it will be lower than the current cap.

Employers must provide written reasoning or dismissals

The right to request written reasons for dismissal will be available to employees who have completed their initial period of employment. Previously, the employee required 2 years' service to qualify for the right of written reasons.

Employees can claim unfair dismissal before even starting work

There are a few instances where the dismissal would be deemed to be unfair, even if the employee has not started work. This includes if the employee is pregnant or plans to take

family leave. Political opinions or affiliations are also protected. Also, spent convictions should no lead to a dismissal once the employee has entered into an employment contract.

Redundancy Payments

There are no planned changes to statutory redundancy payments. Employees will need to have worked two years to be eligible for statutory redundancy payments.

Probation periods

Probation periods should be separate and defined within the employment contract. These can be any length, and employers can decide which non-statutory entitlements and benefits employees have access to.

Most probation periods are shorter than 6 months; however some are over 9 months long, which would negate the new understanding of the initial period of employment.

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THIRD PARTY HARASSMENT LIABILITY CHANGES

A large change which employers must understand involves the raised standards for preventing third party harassment. Employers have a duty to take reasonable steps to best prevent against the harassment of employees.

The aim of the Government in including this obligation is to tackle the prevalence of sexual harassment in the workplace, and to benefit women's equality. Data published by the Office for National Statistics shows that over 10% of adults are likely to have experienced abuse, assault or stalking in years prior to 2025.

This statistic is however far more skewed towards women than for men; with one in 8 women experiencing these forms of harassment.

Previous obligations of an employer concerning sexual harassment

The Equality Act 2010 made employers liable for third party harassments, meaning if their employees are subject to harassment while at work, the business can be liable for a breach of duty.

Consequently, employers are obligated to take reasonable steps to safeguard employees/workers against harassment.

WHAT ARE THE LIABILITY CHANGES UNDER THE EMPLOYMENT RIGHTS BILL

Employers must take “all reasonable steps” to prevent harassment of employees at work by either colleagues or third parties.

Determining what is ‘reasonable’ will be subjective to each business; however it does include a non-exhaustive list of obligations. Every possible step must be taken in order for employers to show they are truly committed to preventing harassment, otherwise they are opening themselves up to liability.

Some key requirements, among others, include:

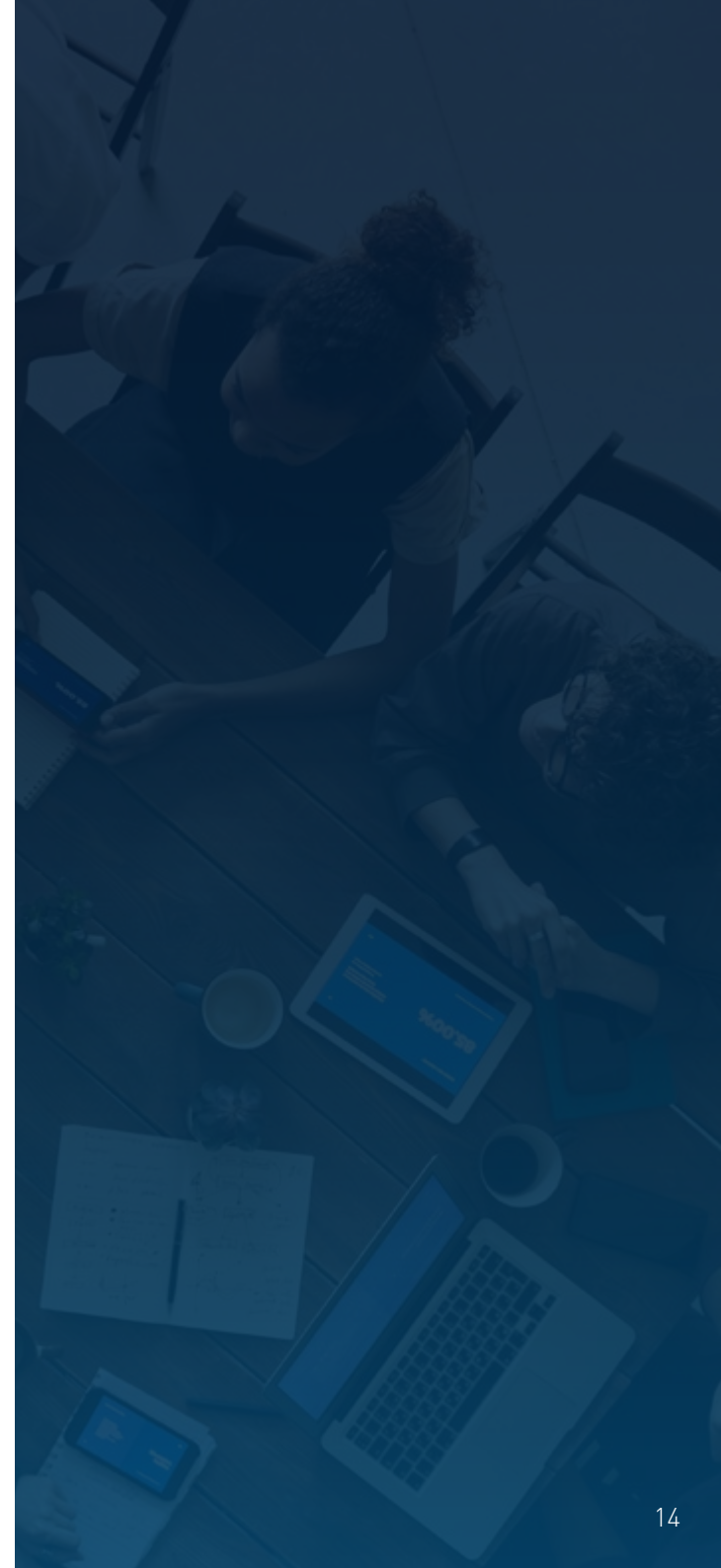
- Assessments conducted.
- Plans and policies in place.
- Training & educating managers/ staff
- A process for the reporting of sexual harassment.
- A process for handling complaints.

An employer will be found to have permitted harassment if:

- Harassment of an employee takes place over the course of their employment; and
- The employer has failed to take all reasonable steps to prevent harassment to the employee during employment.

Employers will not be penalised for failing to anticipate the unforeseeable, or for failing to take unworkable or impractical steps.

Employers will need to review their existing harassment prevention measures and documentation, and most likely update it. Contractors should consider indemnity clauses, and public facing businesses should invest in signage and increase security. Any measure to manage a risk should be considered, reviewed and if practicable, implemented.



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PROTECTION AGAINST REDUNDANCY FOR PREGNANT WOMEN

The Bill provides improved protections for new mothers and pregnant women against redundancy dismissal. These protections apply for the full pregnancy period, including time spent on Maternity Leave and a return-to-work period post-pregnancy. A dismissal during this period because of a pregnancy is automatically unfair. However, where there is a risk of dismissal due to redundancy (a potentially fair reason for dismissal), pregnant women/new mothers should be prioritised for redeployment over other employees at risk of redundancy.

The Government's aim is to improve the job security of pregnant women and guard against discrimination. Future applications of the Employment Rights Bill will include an additional layer of protection – it will be unlawful to dismiss pregnant women or mother's still within the six-month return-to-work period.

What are the current rules around pregnancy and redundancy?

The Employment Rights Act 1996 provides Pregnant employees with special protections in a redundancy situation. . The same protections also apply to those on maternity leave, adoption leave, parental leave and neonatal care. The protection went as far as, if an employee is still in their redundancy protection period, then other candidates should be selected for redundancy first, or that these employees should be prioritised for alternative vacancies.

The redundancy protection period begins from the moment the pregnant party notify their employer of their pregnancy, to 18 months from the day their baby is born. If an employer does not follow procedure of considering the employee for alternative vacancy, or discussing their decision with the employee, then this is automatically unfair dismissal. It could also be classed as maternity discrimination.

WHAT WILL BE THE NEW RULES FOR PREGNANCY REDUNDANCY UNDER THE EMPLOYMENT RIGHTS BILL?

The redundancy protection period will also be extended to a wider set of circumstances, including adoption and shared parental leave. Families experiencing miscarriages and stillbirths will also gain extended protections.

Redundancy protection does not mean that it is impossible for the protected employee to be made redundant. If the business is going through a restructure, is lacking sustainable finances or has run out of suitable work, then a redundancy can be proposed with reasonable evidence and notice. However protection means this employee should be prioritised, and offered any suitable and available vacancies.



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HOW THE EMPLOYMENT RIGHTS BILL IMPACTS STATUTORY SICK PAY

One important change employers must understand is the alteration to Statutory Sick Pay (SSP).

The changes to SSP will affect over 1 million people in the UK, as well as very many companies. Amendments are part of the government's 'Make Work Pay' promise, hoping to spur economic growth and generate more money for working people.

What is the current law around SSP?

SSP is payable from the fourth day of a sickness absence. Employees need to earn above the Lower Earning Limit, which is now £125 per week.

WHAT ARE THE CHANGES TO STATUTORY SICK PAY?

SSP now starts from Day 1

The amendment does away with the three-day waiting period. So instead of employees waiting until the fourth day of an illness or injury before they receive statutory sick pay, they will be eligible from their first full day of sickness.

A removal of the Lower Earning Limit

No longer will low paid and part time workers be exempt from receiving sick pay. The current minimum pay of £125 per week will be scrapped.

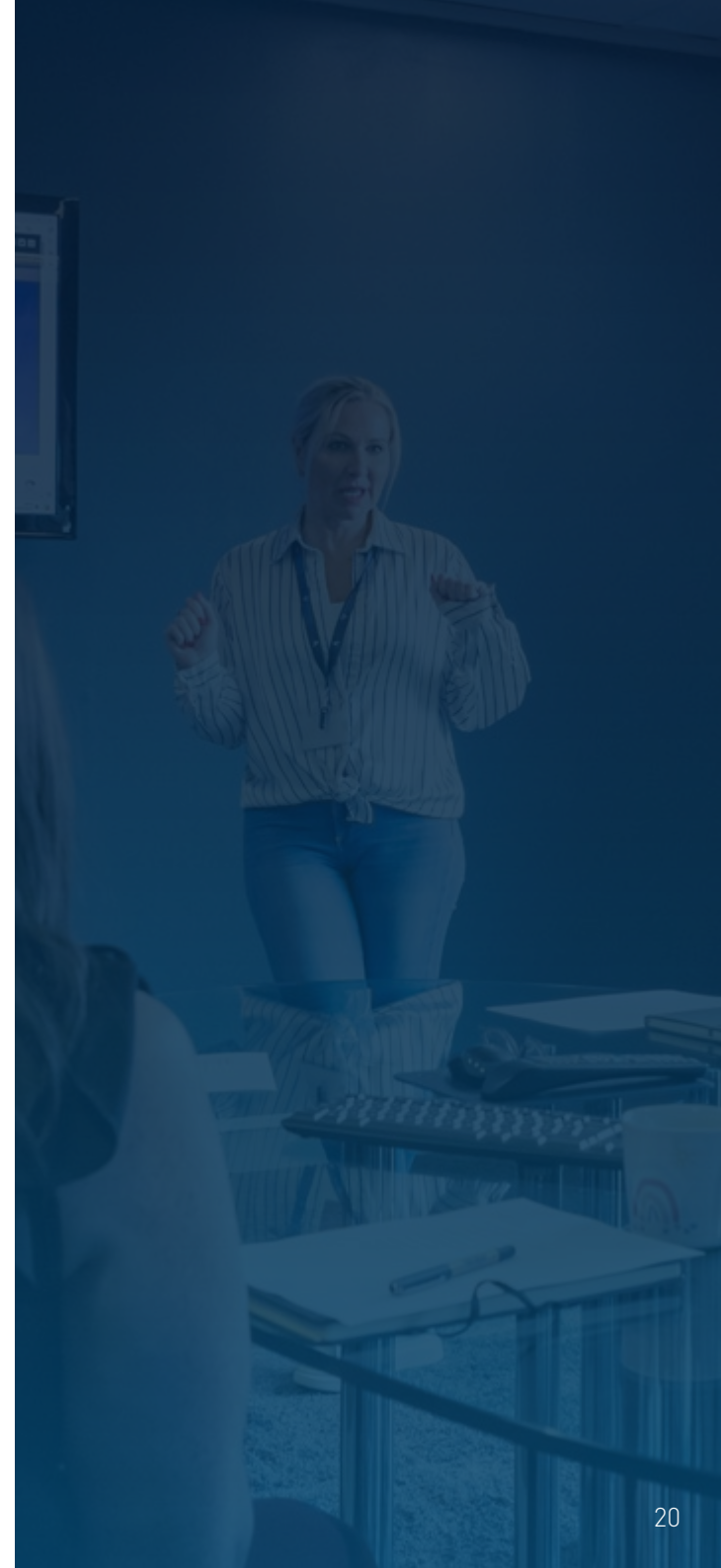
A right for every worker

The key change is that every worker now has the right to SSP. Every employee, no matter how many hours they work, will qualify, with payments calculated to 80% of their wage, but up to a cap of £118.75 per week.

A new body established

The Fair Work Agency is a newly established single enforcement body which monitors the inclusion of statutory sick pay, as well as the disputes process.

The law change aims to improve fairness and the overall welfare of employees. More people will now be eligible for SSP, benefiting low-income and part-time workers. This is expected to improve employee productivity and reduce people attending work while sick, spreading illness, which has an even greater impact on business performance.



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NEW RIGHTS AFFORDED TO EMPLOYEES CONCERNING FLEXIBLE WORKING ARRANGEMENTS

New measures included in the Employment Rights Bill aims to support access to flexible working.

The Government recognise the positive impact flexible working has had on the working population. Productive employees are happy and healthy, hence flexible working is likely to be net positive for employers and businesses. By introducing a more well-defined legal framework for flexible working, the intention is that this form of employment becomes more popular and is easier to access for employees.

Are there any laws around flexible working currently?

Employees are permitted to make a flexible working request up to twice a year but as of 2023, employees are not required to explain the impact their request would have on the business.

Employers are mandated to consider any request for flexible working and to consult/meet with employees before refusing any requests. The employer has a two month window to reply. When a request is rejected, employers should expect or allow for an appeals process. There is however no requirement for employers to formally explain their decision.

What are the current types of flexible working arrangements?

Staggered Hours – operating at different start and finish times to other employees. Such as an hour earlier or later.

Remote working – working away from the office, such as in hireable work spaces. It most often concerns working from home.

Hybrid Working – Mixing working remotely and working in the workspace

Part-time Hours – Some employees may request to work part-time, reducing their hours to better suit their lifestyle.

Flexitime – Flexible start and finish times, that would need to be within agreed limits and within calculated timescales.

WHAT ARE THE NEW CHANGES TO EMPLOYER OBLIGATIONS AROUND FLEXIBLE WORKING?

The new changes revolve around day-one requests; meaning employees will be able to ask their employer for a flexible working arrangement from their first day of employment. Also employers must give a formal reason if the flexible working request is rejected – drawing on one of the eight legitimate business reasons, listed below.

The legitimate business reasons why a flexible working request can be rejected include:

1. The business incurring extra costs as a result that could harm the business.
2. Losing work which can't be reorganised or reassigned.
3. No one is available to cover the time lost.
4. Evidence that a flexible working arrangement would negatively affect quality or standards.
5. Evidence that a flexible working arrangement would negatively affect performance or productivity.
6. Detrimental affect on the ability to meet customer demand.
7. Unbalanced workload, such as a lack of work during requested flexible hours.
8. Structural changes, such as if the business is going through a restructure.

Employers must consult with employees, following a specific process. Employers will be expected to accept any flexible working request which is feasible and reasonable.

However there are many reasons that a business may use as a reason to reject a proposal which would not be considered legitimate. The following reasons have previously been deemed 'unreasonable'.

- Management's personal opinions on flexible working.
- It's not in the business's culture or it's new to the business.
- Any reason related to protected characteristics, as this could be found to be discrimination.

The employer's reason for any rejection must be formally submitted after a meeting with the employee. The decision may be open to challenge either internally as part of an appeal process, or externally before the Employment Tribunal.

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FIRE AND REHIRE LEGISLATION CHANGES

Amendments have focussed upon the practice of fire and rehiring – this is where employers dismiss employees and then re-engage them in a similar role in order to enact contractual changes.

Fire and rehire practices have been under scrutiny as early as 2021, when a supermarket proposed to fire distribution centre staff and rehire them on lower wages. The case was complex, involving relocation and lump sums, as well as a promise of increased pay. Ultimately the union won in the Scottish courts, but this decision was subsequently overturned, which is where the supreme court stepped in, ultimately ruling the supermarket's actions as unfair.

Many companies who lost revenue over COVID needed to fire and rehire staff in order to change contracts to survive. Prior to this upcoming amendment, businesses are able to fire staff members who had been with the company for less than 2 years without necessary evidence or reasoning.

What are the current laws around fire and rehire?

Sometimes if employers want to change the terms and conditions of contracts, they will fire and then rehire staff members. This happens most often when a company has not been able to vary the contract by agreement. There is no law against the practice of firing and rehiring, however it is only seen as acceptable as a last resort.

WHAT ARE THE CHANGES TO FIRE AND REHIRE?

By amending the law on unfair dismissal, fire and rehire practices will be restricted. A key change is that businesses must evidence why they are dismissing an employee, and therefore prove financial difficulties were a factor if they want to rehire employees on different terms.

Fire and rehire practices will now be automatically seen as unfair unless the business can prove the change was necessary and unavoidable. Employment tribunals will assess whether the employee was sufficiently consulted before agreeing, or was offered anything in return, and whether that promise was upheld. An employment tribunal will also be permitted to assess whether a restructure of the business was necessary, and that the scenario was fair.

Businesses may need to find alternative solutions to fire and rehire should they need

to restructure.

As an alternative solution, business leaders may need to think laterally and adopt transition periods. To save money or increase revenue, businesses may want to alter working patterns to adapt to seasonal changes. It's advised to slowly bring in changes rather than adopt fire and rehire.

Businesses must be careful that their proposal doesn't disadvantage a particular group. And also, if a business plans to dismiss more than 20 employees at once or within a 90 day period, they will need to understand their legal obligations as this would be deemed a collective redundancy.



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COLLECTIVE REDUNDANCY RIGHTS STRENGTHENED

The bill will strengthen the rights and protections of employees. Employers will need to follow consultation obligations if they intended to make a large number of workers redundant.

Data from the [Office of National Statistics](#) shows that the UK is currently experiencing a rise in redundancies. Redundancy rates increased to 4.3 per 1000 employees, up from 3.2.

The changes should benefit working people by helping to reduce, lessen or avoid redundancies. The Bill will aim to improve transparency between employers and employees; mandating clear communication between the two parties.

What are the current obligations of an employer concerning collective redundancies?

The Trade Union and Labour Relations Act 1992 first established employer obligations around collective redundancies. A collective redundancy is when an employer proposes 20 or more redundancies within a 90 day period. In this event, the employer must consult a representative of the group of employees; and consult for a minimum of 30 days (45 days if 100 or more employees are affected) Any employers who fail to consult for 30 days' (or 45 days) before the first dismissal, risks being liable for a Protective Award (up to 90 days' pay to each affected employee).

WHAT WILL CHANGE CONCERNING COLLECTIVE REDUNDANCIES?

Collective redundancy obligations will be triggered when 20 or more redundancies take place, or when a certain number of employees across an organisation are put at risk of redundancy, proportionate to the size of the business. The number of days between redundancies as to not be seen as collective will also be doubled to 180. This therefore increases the penalty for failing to collectively consult on redundancies. Non-compliance will become extremely expensive for employers.

Previously, companies could make multiple redundancies across different locations or workspaces, even if this equals thousands overall – whereas after the change, consultation obligations are extended and the rights of workers are strengthened and clarified. Larger multi-site businesses will need to implement a tracking system to track redundancy numbers.



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BEREAVEMENT AND PARENTAL LEAVE RIGHTS CHANGES

The Government feels that the present rules on bereavement and parental rights unfairly discriminate against employees who want to change jobs. Paternity, paid parental and bereavement leave rights are currently only afforded once an employee works for their employer for more than 26 weeks; and unpaid parental leave is only available if the employee has 12 months' service. Hence, employees new to roles are vulnerable if they find themselves in a situation where they need to take unpaid parental leave, paternity leave or paid parental bereavement leave.

These types of leave are widely known as compassionate leave, falling under a business's compassionate leave policy; the Government is looking to make paid compassionate leave a universal right for all workers. A survey conducted by Marie Curie found that one in five workers took unpaid bereavement leave, and over 50% of those were worried about their job security when taking the time off. 49% of respondents said they had to return to work before they were ready because they couldn't afford to stay off.

A change should help improve the recruitment pool for employers, as people are willing to switch without worry of the need to take leave. By removing restrictions on when employees have earned the right to take leave, flexibility and wellbeing should improve.

What is the current regulation surrounding bereavement leave?

Employees are entitled to two weeks paid leave following the death of a child or stillbirth. However there was no strict clear legislation around the death of a dependent. Dependents include husband, wife, civil partner, child, parent or person living in their household, or someone cared for.

WHAT ARE THE NEW REGULATIONS FOR BEREAVEMENT LEAVE?

With the introduction of the Employment Rights Bill, all employees will gain the statutory right of paid bereavement leave for the death of a dependent. No matter how long an employee has worked for their employer, everyone will receive bereavement leave as a day one right. Furthermore, unpaid parental leave, including paternity leave, will be a day one right.

Employees will therefore gain the right to notify their employer of their intent to take parental leave from the first day of work. The new regulations will also allow for the continuity of different leave types. Paternity leave can follow shared parental leave similar to maternity leave and adoption leave.

The Government is looking at providing a baseline for employers, including minimum length of obligatory leave depending on the employee's relation to the deceased, and how the leave is taken. This is part of the Government's intention to make working life more stable for families. The new addition of one-week unpaid leave guaranteed, offers a clear minimum standard for employers to uphold and build upon





WHAT SHOULD BUSINESSES DO TO REMAIN COMPLIANT?

With the risk of unfair dismissal, discrimination and employment claims, employers need to be knowledgeable of their obligations and the lawful responsibilities they have toward their employees. The impact of the Bill will require changes to policies, procedures and documentation. Employers may need to begin transitional periods now where they can adopt new procedures and implement training.

Next steps for employers will be essential to ensure accordance with legislation. Most reforms will take time and not take effect earlier than 2026/2027 but employers should look for immediate advice on policy wording and stay up to date on legislative changes.

Have clear and informed policies and procedures

To avoid falling foul of obligations, businesses need to have clear and informed policies in place. Without robust policies, employers risk inconsistencies, discrimination, reputational damage and an unproductive demoralised workforce.

Businesses should review their policies, including compassionate and bereavement leave, statutory sick pay and flexible working arrangements. Assess the procedures of your teams and offer management training on what could be interpreted as discrimination or unreasonable dismissal.

Update your Knowledge

Employers need to update their knowledge of redundancy regulations. [Official government information](#) is available, but it is recommended that guidance from HR experts such as [Sentient](#) is sought to help navigate this complex HR environment.

Sentient is an HR and Health & Safety outsourcing partner who can act as your HR department, or support your existing HR team,

as well as providing training and guidance around employment law. For any questions on dismissals or redundancies or parental leave, Sentient will advise on the correct procedures and template emails and contracts and can even act on your behalf in any disputes or mediation to ensure you remain totally compliant with this complex new legislation.

Manager Training

Ensure managers understand their obligations, particularly in relation to the changes made in the Employment Rights Bill. Providing training can increase their awareness of the rules and laws so they understand how to effectively manage their team. HR and health and safety training is available from the team at [Sentient](#).

Conduct a HR Health Check

Expert HR auditors will determine the suitability of your strategies and procedures to ensure you're compliant with the Employment Rights Bill, or to help you get there. Sentient's HR health checks will review and inform you of your legal requirements and obligations, and offer guidance covering changes you should make, alongside the greatest risks to your business if no improvements are implemented.

THE BENEFITS OF A HR HEALTH CHECK

HR can be complex, particularly as your employee numbers grow. With a plethora of legislation, guidance and requirements, there are a lot of elements to take into consideration, and numerous areas in which you could fall down and make an inadvertent mistake.

A business is only as strong as it's people. At the heart of a successful business, is a robust Human Resources strategy. HR teams need to understand employment law updates and implement actions correctly, or appoint a trusted HR adviser to do it for them.

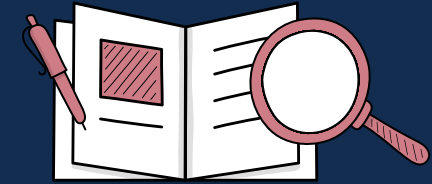
Employment Law is a constantly evolving landscape, that's why Sentient's HR Health Check will help benchmark what your business is doing well, and where you could make improvements.

How does the HR Health Check work?

This free health check will grade your current practices with a traffic light system, showing how robust your HR procedures are. Sentient will provide recommendations graded from 'nice-to-have' suggestions which could help you improve morale and productivity, through to critical changes which could help protect you from legal or employee relations claims.



Take the HR health-check, and the Sentient team will come back to you within 5 working days with a detailed overview of how you can improve your HR function and support your team.



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by Romero

Providing HR and Employment Law services for corporations and small businesses. Either outsource your human resources or bolster your HR team with additional support and gain valuable health and safety guidance. Sentient conducts reviews and workplace assessments to safeguard businesses, as well as staff training toward certifications.

Sentient is here for any business of any size who wants to update their policies and procedures in time for employment law regulation changes.

Contact Sentient today to begin a comprehensive review of your HR policies or take the HR Health Check.