

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or cafe at night. They are looking at laptops and talking. The scene is lit with warm indoor lights and the glow of city lights outside. The 'geldards' logo is in the top right corner.

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Public Sector Webinar The Employment Rights Bill

4 December 2024

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Agenda

- Key changes under the Employment Rights Bill
- Timetable for changes
- Public sector specific changes
- Preparation
- Questions

“The biggest upgrade of
workers’ rights in a
generation”

Employment Rights Bill - Timetable

- First reading 10 October 2024
- Second reading 21 October 2024
- Detail through regulations
- Consultation has commenced on four aspects
 - Fire and rehire, protective award, zero hours and SSP
- Consultation on remainder in 2025
- Majority of reforms will not take effect until 2026

Dismissal



Unfair Dismissal - Current Position

- Employees need to work for 2 years continuously before they have the right not to be unfairly dismissed;
- No rules about probationary periods;
- Employers must give written reasons for dismissal to employees with 2 years' service on request.

Unfair Dismissal - New Proposals

- **When?** Expected to come into force in Autumn 2026
- **What is proposed?**
 - Employees will have a day one right to protection from unfair dismissal.
 - Lighter-touch dismissal process during the 'initial period'/probation period.
 - Process likely to include a meeting with the employee to explain concerns (at which employee could be accompanied)
 - Initial period to be determined, possibly 9 months

Unfair dismissal - Consultation

- Length of initial period
- Lighter touch process
- Interaction with ACAS Code
- Compensation for dismissals during probation

Increase to Time Limit for Claims – New Proposals

- What is proposed?
- Time limit to all types of employment tribunal claims will increase from 3 months to 6 months
- When?
- Not known

Dismissal & Re-engagement – Current Position

- Potentially fair reason of SOSR available
- The Code of Practice on fire and rehire was put in place in July 2024
 - Employers' responsibilities when seeking to change contractual terms and conditions of employment
 - Dismissal and re-engagement is only used as a last resort
- Uplift of 25% of an employee's compensation if an employer unreasonably fails to comply with the code where it applies

Dismissal & Re-engagement - New Proposals

- **When?** Possibly 2026
- **What is proposed?**
- Dismissal automatically unfair where:
 - The reason is that the employee did not agree to the employer's attempt to vary their terms and conditions of employment; or
 - Because the employer intended to employ another person on varied terms to carry out substantially the same role
- Limited exception for employers where:
 1. Reason for variation was to eliminate, prevent, significantly reduce or significantly mitigate the effects of financial difficulties which, at the time of the dismissal, were affecting the employer's ability to carry on:
 - the business as a going concern; OR
 - (for those not operating on 'going concern' basis) activities constituting the business, AND
 2. Could not reasonably have avoided the need to make the variation

Collective Consultation for Redundancy - Current Position

- Employers proposing 20+ redundancies “at one establishment” within a period of 90 days must go through a process of collective consultation before making any redundancies.
- If employers don't comply, employees can claim a protective award of up to 90 days' pay.
- Minimum consultation period when proposing to dismiss:
 - 20 – 99 employees – 30 days
 - 100+ employees - 45 days

Collective Consultation for Redundancy - New Proposals

- **When?** – Possibly 2026
- **What is proposed?**
- Reference to "at one establishment" removed meaning that employers would need to count redundancies across all sites/workplaces
- No change to number of redundancies that trigger collective consultation

HS0

Slide 13

HS0

I thought this was also part of the proposals?

Helen Snow, 2024-12-02T16:12:29.804

Collective Consultation for Redundancy – New Proposals

- Increasing protective award to 180 days' pay or uncapped amount
- Allowing interim relief (i.e. preserving pay until tribunal hearing)
- Doubling consultation period when proposing to dismiss 100 or more employees from 45 to 90 days.

Flexible Working



Flexible Working – Current Position

- Employees can request flexible working from their first day of employment
- 8 business reasons for refusal of request
- Acas Code of Practice
- Employers must deal with all requests “in a reasonable manner with focus on reasonableness of process

Flexible Working – What is proposed

- **When?** Unclear
- **What is proposed?**
 - Employer can only refuse a request if it is reasonable for them to do so
 - Employer must state the ground for refusal and explain why it is reasonable to refuse on those grounds
 - Regulations may set out steps when consulting with an employee before refusing a request

Flexible Working - Consultation

- Statutory Code of Practice on right to disconnect in 2025

Zero Hours Contracts



Zero Hours Contracts – Guaranteed Hours

- Duty on employers to offer a guaranteed hours contract that reflects the hours qualifying workers regularly
- Definition of **qualifying worker** - Regulations
- An employer will be required to make a guaranteed hours offer to a qualifying worker after the end of every reference period
- Reference period – **12 weeks?**

Zero Hours Contracts – Guaranteed Hours

- Employment Tribunal Claim
- Maximum award to be set out in Regulations
- Right not to be subject to a detriment
- Right not to be automatically unfairly dismissed

Zero Hours Contracts – Right to reasonable notice of shifts & payment for cancellation

- Reasonable notice of shifts
- Regulations to:
 - Set out reasonable notice
 - Factors to consider
- Right not to suffer a detriment
- Payment for change of shift or cancellation at short notice

Family related leave



Dismissal during pregnancy or during or after statutory family leave – Current Position

- Currently protections are in place preventing pregnant employees being dismissed or selected for redundancy on the basis of their pregnancy, or the fact that they have taken maternity leave.
- Also in a redundancy situation suitable alternative roles must be offered (where available) to anyone who's is legally classed as employee and is either:
 - pregnant
 - taking maternity leave
 - taking adoption leave
 - taking shared parental leave

Dismissal during pregnancy or during or after statutory family leave – Proposals

- Unlawful to dismiss employees, who have been pregnant, within **six months** of their return to work
- Save for in “**specific circumstances**”
- Also applies to other types of family leave

Bereavement leave – Proposals

- Day one right to protected time off for employees who lose a loved one
- Regulations will:
 - Specify relationship to which the leave applies
 - Minimum period of 1 week (save for the death of a child)
- No wider provision of Bereavement Pay (save for the death of a child)

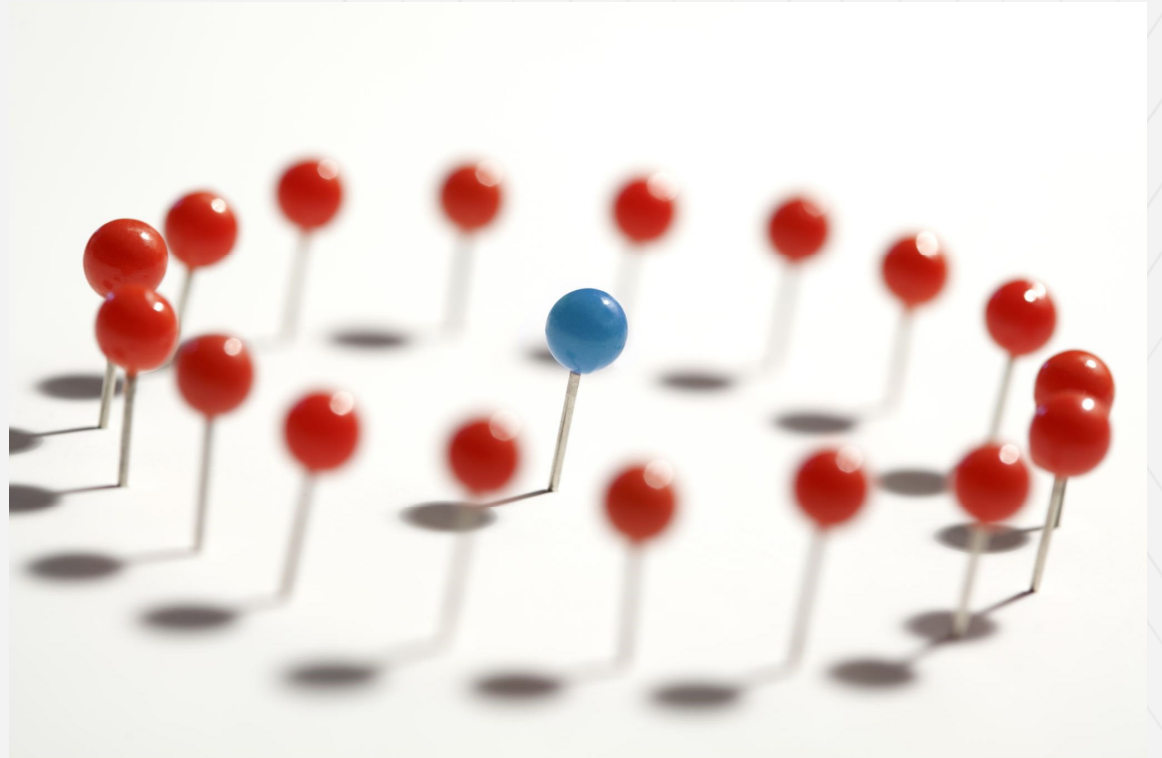
Statutory Sick Pay



Sick pay as a day one right

- No Lower Earnings Limit
- No waiting days - first full day of sickness absence not fourth

Sexual Harassment



Discrimination – Sexual Harassment

- Current position
 - Section 40A Equality Act 2010 came into force
 - Reasonable steps to prevent sexual harassment of employee during the course of employment
 - 25% Uplift
 - EHRC Technical Guidance

Discrimination – Sexual Harassment Proposals

- Amend section 40A of the Equality Act 2010
 - “all reasonable steps”
- Reintroduce employer liability for third party harassment in relation to **all relevant protected characteristics**
- Regulations will specify what are to be regarded as reasonable steps
 - **Action plan published through gender pay gap reporting portal**

Discrimination – Sexual Harassment Proposals

- Reporting sexual harassment will be a protected disclosure
 - Protection from detriment and dismissal
 - Excluded from confidentiality provisions in Employment Contract, Settlement Agreements and Non-Disclosure Agreements

Fair Work Agency



Fair Work Agency

- SSP
- NMW/NLW
- Holiday and rolled-up holiday pay
- Modern Slavery
- Zero Hours?
- Unpaid wages?

Public Sector Specific Changes



Outsourcing

- Reintroduce the Code of Practice on Workforce Matters (“Two-tier workforce Code”)
- Protects transferring workers on outsourcing contracts and “new joiners”
- Revoked in England in 2011
- Social Partnership and Public Procurement Act 2023 – Wales
- Provision of equality information in relation to outsourced workers

Collective Bargaining

- Adult Social Care Negotiating Body
 - Fair Pay Agreement process
- School Support Staff Negotiating Body

Trade Union Proposed Changes



Trade Union Proposed Changes

- Repeal
 - **Strikes (Minimum Service Levels) Act 2023**
 - Minimum service levels under regulations within certain sectors during strike action
 - **Trade Union Act 2016 (not entirely)**
 - Retaining the 6-month ballot mandate expiration date
 - Simple majority of members who respond to an industrial action ballot to vote in favour of industrial action
 - Not be required to secure 40% support in strike ballots for six important public services

Trade Union Changes

- Paid facility time
- New rights for trade union equality representatives
 - Subject to notification requirements
- Protection against detriment for taking industrial action
- Protection against dismissal for taking industrial action
 - Removal of the 12-week cap
- Request for access
- Legal duty on employers to inform their employees about their right to trade union membership
- Simplified recognition process

How can you prepare for this?

- Review pre-employment screening processes & how employees are managed during probation period
- Systems in place to track redundancies
- Policies up to date (flexible working, sexual harassment, family leave)
- Training
- Audit workforce for zero hours contracts
- Managing practicalities of guaranteed hours offers

Questions?

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Thank You

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