

UK Employment Flash

Insights into the latest employment news

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The UK Employment Rights Bill

On 10 October 2024, the UK government published its Employment Rights Bill. This bill includes many of the measures previously set out in the Labour Party's "Plan to Make Work Pay" and the King's Speech. See our July 2024 [UK Employment Flash article](#). The government has described the bill as taking a "pro-business, pro-worker" approach.

The bill, which will now progress through the UK Parliament and may be amended as part of that process, includes wide-ranging proposed changes in 28 different areas which will affect employers, including:

Unfair Dismissal Protection From Day 1

The removal of the two-year qualifying period before an employee can claim unfair dismissal means that the dismissal of any employee (regardless of their length of service) will require an employer to have a fair reason to dismiss the employee and follow a fair process in relation to that dismissal. The government has confirmed that it will consult on the length of a new, statutory probation period (and the government has expressed a preference for this period being nine months) during which a "lighter-touch" dismissal process will be accepted as "fair". The government has said that it is committed to consulting fully on these proposals and there will be no reforms to the current unfair dismissal regime until at least Autumn 2026.

Right to Guaranteed Hours for Those on Zero Hours Contracts

For workers with no or a low number of guaranteed hours, employers will be required to periodically make an offer of guaranteed hours. These guaranteed hours must reflect the days and times or working patterns that the employee has worked over a previous period (the precise duration of which is still to be determined) on terms that are no less favourable on the whole than the terms on which the employee was previously employed. The offer should not be for fixed term unless it is reasonable for that to be the case, such as if the worker's existing contract was to terminate on occurrence of a fixed event or the end of completion of a task. An employee is then free to accept or decline the guaranteed hours. As a result, employers will need to consider the structure of their workforce and where the use of flexible labour is appropriate on a case-by-case basis.

Strengthened Sick Pay, Parental and Leave Rights

The bill removes the waiting period for statutory sick pay and the lower earnings limit, meaning that employees can claim statutory sick pay from day 1 of their sickness absence. The bill also removes the qualifying period for parental leave and paternity leave, so that these can be taken by employees from day 1 of employment.

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In addition, the bill broadens the right of employees to take bereavement leave in relation to other individuals (to be determined) in addition to the employee's children. The bill also looks to extend existing protections during pregnancy, with further details to be provided in implementing regulations. It is expected that protection from dismissal will be extended for up to six months following the end of maternity leave.

Collective Redundancy

Currently, there must be a proposal to dismiss as redundant 20 or more employees at "one establishment" to trigger collective consultation and notification to the Secretary of State of the proposed redundancies. The bill removes the requirement that the redundancies be at one establishment, meaning that any redundancy situation where 20 or more employees are dismissed within a period of 90 days will trigger collective consultation and notification to the Secretary of State. Employers will need to consider the structure of their redundancy processes in light of this and adjust timelines as appropriate.

Gender Equality Reporting

The bill includes a new provision which will require organisations with 250 or more employees to publish an equality action plan every 12 months. The plan should include steps that the employer is taking to advance equality and opportunity between male and female employees, including how the employer is addressing the gender pay gap and how the employer is supporting employees going through menopause. Employers should start considering the steps that they are taking in this area before these disclosure obligations come into force.

Trade Union Recognition

Currently, a trade union needs to demonstrate that it has membership of at least 10% of its proposed bargaining unit before making a formal request for recognition to the Central Arbitration Committee (CAC). The bill gives power to the Secretary of State to vary this percentage to any number between 2% and 10%. The bill also removes the requirement that a trade union demonstrate to the CAC that it is likely to achieve majority support on a recognition ballot, meaning that the only requirement on application to the CAC is for the required membership percentage to have been met.

Additionally, the bill removes the requirement for a trade union ballot of members to have the support of at least 40% of the bargaining unit, instead just retaining the requirement for the

ballot to pass on a simple majority of those voting. Similar changes to the thresholds for industrial action ballots are also included in the bill. Employers that have non-binding recognition agreements with trade unions or other informal employee representative bodies should be aware that these changes may mean that trade unions will seek formal recognition in the future and it will be easier for them to do so.

Enforcement

The bill lays the groundwork for a new "Fair Work Agency", which is intended to bring together existing functions relating to the enforcement of employment agency rules, the National Minimum Wage, statutory sick pay, and also the enforcement of other employment rights such as holiday pay.

Other Provisions

The bill includes a number of other provisions, including:

- A ban on fire and rehire: A dismissal on the basis that an employee refused a variation to their employment contract is automatically unfair in almost all circumstances.
- An obligation on employers to take all reasonable steps to prevent sexual harassment — a change from the duty which came into force on 1 October 2024, which required employers to take "reasonable steps", not "all reasonable steps".
- A broad duty for employers to take all reasonable steps to prevent harassment of employees by third parties.
- Sweeping changes to the rules relating to the operation of trade unions in workplaces.
- The right to request flexible working, although employers can refuse this request on certain specified grounds if it is reasonable to do so.

The government has also confirmed a number of other steps in relation to employment rights that will be progressed alongside the bill. These include a full review of the parental leave system and considering paid carer's leave as well as consultations on a single worker status, the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and allowing employees to raise collective grievances.

The bill will now progress through the UK Parliament in the usual way and may be amended during this process. While the commencement date is not yet clear, the government has committed to a period for employers to adapt once the detail of the legislation is finalised before it is brought into force.