

EMPLOYMENT LAW UPDATE:

**Reps' Summit
11 November 2025**

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ABOUT US

- **Our firm was established in 1882, and we've worked with trade unions and associations for over 70 years**
- **We act for 37 trade unions and associations**
- **We act for people, not companies**



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SERVICES

- **Employment**
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- **Dispute resolution — private and commercial**
- **Wills, probate and lasting power of attorney**
- **Residential property**
- **Family law**
- **Professional negligence**
- **Criminal defence, regulatory and road traffic**



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Agenda

- **The Employment Rights Bill**
- **Case Update**



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The ERB changes — an A-Z summary

- **Collective redundancies**
- **Protective Award Updated (90 to 180 days)**
- **Discrimination — sexual harassment and third-party harassment**
- **Dismissal and re-engagement — “fire and rehire”**
- **Families and pregnancy**
- **Fair Work Agency**
- **Flexible working**
- **Public sector — outsourcing and collective bargaining**



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The ERB changes — an A-Z summary

- By far the biggest single tranche of employment law changes – ever in the UK
- Statutory Sick Pay (SSP)
- Trade unions
- Tribunal time limits
- Unfair dismissal
- Working time records
- Zero hours, low hours and agency worker contracts



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Collective redundancies

- **Government pledged to strengthen redundancy rights and protections**
- **As originally published, the right to redundancy consultation was to be determined by the number of people impacted across the business, rather than in one establishment**
- **ERB was also set to amend s.188 TULRCA 1992 by omitting the words “at one establishment”**
- **However, this won't now happen**

Collective consultation – latest developments

- On 5 March 2025, amendments tabled show the government has abandoned its initial plan to remove the “one establishment” wording from sections 188, 193 and 198A TULRCA
- Instead under new clause 27 ERB, collective consultation under section 188 of TULRCA 1992 will be required where an employer is proposing to dismiss as redundant within a period of 90 days or less either:
 - 20 or more employees at one establishment; or
 - At least the “threshold number” of employees (to be specified in regulations)
 - Threshold number may be a number, a % of employees, or determined otherwise. However, it can't be less than 20



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Collective consultation — latest developments

- **On 4 March 2025, the government confirmed:**
 - **Maximum protective award increased from 90 days to 180 days (Clause 28 ERB). The ET still has discretion to vary on a just and equitable basis. This is scheduled to take effect from April 2026**
 - **Government committed to producing guidance on compliance with collective consultation obligations**



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Discrimination — sexual harassment

- **On 26 October 2024, s.40A Equality Act 2010, introduced by the Worker Protection (Amendment of Equality Act 2010) Act 2023 (Worker Protection Act)**
- **Employers required to take reasonable steps to prevent sexual harassment**
- **Breach — ETs can uplift compensation by up to 25%**
- **EHRC have power to investigate and take enforcement action**
- **Clause 19 ERB — amend s.40A to ALL reasonable steps to prevent sexual harassment**
- **Clause 20 ERB — reintroduce employer liability for third party harassment re: ALL relevant protected characteristics**
- **Clause 22 ERB — sexual harassment will be a protected disclosure**

Fire and rehire — proposed legislation

Automatic unfair dismissal: restricted variations

New s104I(1) and (2) ERA 1996

Employee will be automatically unfairly dismissed where the reason, or principal reason, for their dismissal is either of the following:

- The employer sought to make a "restricted variation" and the employee did not agree to it.**
- The employer sought to make more than one variation and the employee did not agree to several variations that included the restricted variation.**

Restricted variations include pay and performance, working time and time off and variation clauses.



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Automatic unfair dismissal: rehire or replace

- **New s104I(3), ERA 1996**
- **Employee will be automatically unfairly dismissed where the reason, or principal reason, for their dismissal is to employ another person, or to re-engage the employee, under a varied contract of employment to carry out the same duties, or substantially the same duties, as were carried out before dismissal**
- **A "varied contract of employment" = terms are not the same and one or more of the differences between them constitute a restricted variation**
- **Also new s104K ERA 1996 to address replacing employees with non-employees. Automatic unfair dismissal will arise where the reason (or principal reason) for the employee's dismissal was to enable the employer to replace the employee with an individual who is not an employee of the employer and there is no redundancy situation**



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Financial difficulties exception

Dismissal is not automatically unfair if the employer shows both of the following:

- The reason for the restricted variation or replacement was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties which, at the time of the dismissal, were affecting, or were likely in the immediate future to affect:
 - the employer's ability to carry on the business as a going concern; or
 - where the employer is a public sector employer (other than a local authority), the financial sustainability of carrying out the employer's statutory functions

AND

- In all the circumstances, the employer could not reasonably have avoided the need to make the variation or replace the employee

If the financial difficulties exception applies, dismissal won't be automatically unfair, however, an ET will need to determine if dismissal was "ordinarily" unfair



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Families and pregnancy

- **Unlawful to dismiss employees who have been pregnant within six months of their return to work, save for specific circumstances**
- **ERA 1996 statutory family leave amended — dismissal after a period of leave to be covered as opposed to just during the leave, applies to:**
 - **Maternity leave**
 - **Adoption leave**
 - **Shared parental leave**
 - **Extended paternity leave — bereaved parents (not yet in force)**
 - **Neonatal care leave (came into force on 6 April 2025)**

Families and pregnancy

- **Day one rights to family leave**
 - **Paternity leave — clause 16 ERB — currently requires 26 weeks' service**
 - **Unpaid parental leave — clause 15 ERB — currently requires one year's service**
 - **Bereavement leave (not just parental bereavement leave but more general) — clause 18 ERB**
 - **Regulations will specify qualifying criteria for bereavement leave**
 - **Government confirmed in September 2025 that day one rights for all family leave will be extended once ERB comes into force, removing previous qualifying service requirements.**



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Fair Work Agency

- **Single enforcement body — brings together:**
 - **Enforcement functions of HMRC — national minimum wage (NMW)**
 - **Employment Agency Standards Inspectorate (EASI)**
 - **Gangmasters and Labour Abuse Authority (GLAA)**
- **Enforcing:**
 - **Payment of SSP**
 - **Financial penalty for failure to pay ET Judgment or COT3**
 - **NMW**
 - **Holiday pay and rolled up holiday pay**

Trade unions

- **Government committed to repealing Strikes (Minimum Service Levels) Act 2023**
- **Statement of trade union rights**
- **Trade unions to access workplaces**
- **Simplification of the rules re trade union recognition**
- **Trade union officials and learning representatives will have rights to facilities and time off**
- **Strengthened protection from blacklisting**
- **Introduction of protection from detriment on grounds of industrial action**
- **Increased protection from dismissal when participating in protected industrial action**

Trade unions – industrial action

- **Protection from detriment short of dismissal for taking IA – will soon be provided (Mercer v Alternative Future Group decision rectified)**
- **Dismissal for taking industrial action – removes 12-week protected period**
- **Full protection for duration of strike and after it has concluded where the reason or principal reason for dismissal is that the employee took protected IA**



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Trade unions – updates

- **Government confirmed that the repeal of the Strikes (Minimum Service Levels) Act 2023 will take effect from April 2026**
- **E-Ballot working group to report by mid-2026, with implementation of new e-balloting rules expected late 2026**
- **CAC powers will be extended to enforce access agreements and new facility/time-off provisions from April 2026**



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Tribunal time limits

- Time limits increased from three to six months, except for breach of contract claims arising or outstanding on termination
- Unclear if the breach of contract claim exception was intentional
- Government confirmed that the six-month time limit increase will take effect from April 2026
- Guidance on calculation of time limits, including exclusions for breach of contract claims, will be issued by the Ministry of Justice

Unfair dismissal

- **Currently, employees must have two years' qualifying service to claim unfair dismissal and it does not apply to workers. ERB repeals qualifying period.**
- **Exceptions – automatic unfair dismissal**
- **Day one right subject to a modified “light-touch” dismissal procedure applicable during an initial period of employment**
- **New s.108A ERA 1996 to ensure employees who have not started work do not gain unfair dismissal protection**
- **The Next Steps Paper**
 - **Does not take effect until Autumn 2026 at earliest and subject to full consultation**
 - **“Statutory probation period” – nine months?**
 - **Lords proposed a six-month qualifying period for unfair dismissal claims – this was rejected by MPs (day one right remains)**



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Unfair dismissal

- **Government confirmed that the modified unfair dismissal provisions, including the six-month qualifying period, will come into effect from Autumn 2026, following consultation**
- **Guidance on implementing the “light-touch” dismissal procedure during the initial employment period will be issued prior to commencement**



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Case Update

Leicester City Council v Parmar [2025] EWCA Civ 952

- Mrs Parmar had faced a disciplinary investigation with vague allegations
- She claimed her treatment differed from that of her white colleagues in similar situations who were not investigated
- ET and EAT agreed that the facts raised an inference of discrimination
- Council failed to show a non-discriminatory reason for the treatment
- Council appealed. CA dismissed the appeal:
 - Circumstances of comparators sufficiently similar
 - ET entitled to draw adverse inferences from failure to disclose.
 - Council's explanations were not credible — if not credible could not displace an inference of discrimination

For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16

- **Facts: For Women Scotland (a campaigning group for the rights of women in Scotland) contended that the definition of “woman” in the Equality Act should reference a biological woman**
- **Supreme Court held:**
 - **Parliament intended that the words “man”, “woman” and “sex” in the Equality Act refer to biological sex**
 - **Therefore, trans woman holding a GRC were excluded from the definition of woman under the Equality Act**
 - **Statutory guidance issued by the Scottish government stating that trans women holding a GRC could be included was incorrect**

For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16

- **Appears to be the correct interpretation of the Equality Act and meaning of “woman” and “sex”**
- **Trans people are still protected from direct discrimination, indirect discrimination and harassment under the Equality Act**
- **Has caused a host of issues including whether employer’s policies align with the Judgment, i.e.**
 - **Single sex policies regarding changing rooms and toilet facilities**
 - **Policies relating to pregnancy, maternity, family leave, gender identity and menopause**



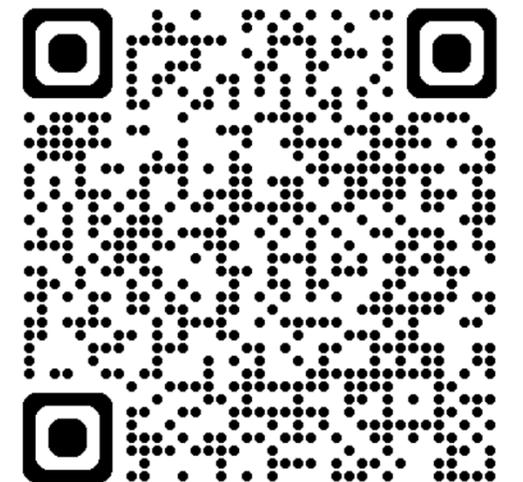
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ANY QUESTIONS?

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