



UK Employment Rights Bill 2024 in review

KPMG Tax & Law

—

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Introduction






The long-awaited Employment Rights Bill 2024 was published on 10 October 2024 within the new Government's first 100 days, as promised. A long list of employment law reforms has been tabled; the Bill has certainly been worth the wait in terms of scale of change and provides a mix of some very detailed proposals and others that still need to be fleshed out. It has been described as a fundamental reset of employment law with aims to rebalance the rights between workers, business and trade unions. Such an exercise will take time to master.

In that context the Bill is a framework for change. With a few exceptions, these proposals will not take effect immediately and it is likely to be 2026 before substantive legislation comes into force. The more substantive changes will require engagement with business, unions and workers through detailed consultation throughout 2025. This will allow a lead in time to finesse the details of the proposals and for businesses to plan and prepare.



In summary

From a business perspective, the proposals are wide-ranging and are best considered under the following pillars. For each pillar we have summarised which changes sit where and then provided more details on the subsequent pages.

 Employment Rights	 Pay & Tax	 DE&I and Reporting	 Trade Unions	 Enforcement
<p>A. Individual Rights</p> <ul style="list-style-type: none"> • Day one unfair dismissal rights • Flexible working by default • Zero/low hours workers • Family related leave • Protection against dismissal for new mothers <p>B. Other protections and collective rights</p> <ul style="list-style-type: none"> • Collective redundancies • Reform of fire and rehire • Public Sector Outsourcing 	<ul style="list-style-type: none"> • Statutory Sick Pay • Tipping • National Minimum Wage (although not included in the Bill) 	<ul style="list-style-type: none"> • Gender pay gap reporting • Sexual harassment 	<ul style="list-style-type: none"> • Trade unions, recognition and industrial action • Negotiating bodies 	<ul style="list-style-type: none"> • Fair Pay Agency • Extension of time limits for claims

The detail



Employment Rights

A. Individual Rights

Subject	The what	The so what?
Day One unfair dismissal rights.	<ul style="list-style-type: none"> Removal of the requirement for two years' service for employees to be eligible to bring an unfair dismissal claim (and to request a written statement for reasons for dismissal where the dismissal occurs after a probationary period). The proposals provide for a statutory probation period, or 'initial period of employment'. We expect that to be a 9-month period during which a lighter touch dismissal process could be followed. Consultation will follow on this and on the appropriate compensation regime for dismissals during this probation period. 	<ul style="list-style-type: none"> Although these changes are not expected before Autumn 2026 employers would be prudent to start looking at their hiring/firing practices now. Day One unfair dismissal rights will reduce the flexibility currently available to employers to dismiss employees within the first two years of employment. Employers will need to manage employment and performance robustly from 'day one' and will not be able to rely on current abbreviated dismissal processes. Employers will also need to recognise that relying on a statutory probation period will not provide a complete defence against an unfair dismissal claim.
Flexible working	<ul style="list-style-type: none"> The Bill gives flexible working as the default from the first day of employment. Employers must now provide reasonable grounds for refusing a flexible working request and a written explanation. There are currently eight reasons which employers can rely on to refuse requests, and the Bill creates a power to add further grounds. The main difference is that reasonableness applies to how employers consider requests and the reasons for refusing a request, rather than just demonstrating reasonableness in how a request has been handled. This might seem like a nuance, but it is substantive. 	<ul style="list-style-type: none"> More work will be needed from employers when considering requests, including being very clear on the rationale applied for, and reasonableness of, declining any requests. Employers will need to give advance thought to what types of flexible arrangements work (or not) for their business and what justifications might be applicable. Given the overlap with the hybrid working debate, employers would be wise to get ahead in their thinking by looking at their strategy regarding flexible working arrangements holistically.
Zero/low hours workers	<ul style="list-style-type: none"> The Bill introduces a new right to guaranteed hours for zero/low hours workers based on hours worked during a reference period (to be specified in regulations but expected to be 12 weeks). Regulations will also set out the number of and regularity with which hours (over and above contractual hours) must be worked for the right to be triggered. The guaranteed hours can be offered in a new contract or by varying the existing terms, either of which a worker can reject or accept. An employer can limit the offer of guaranteed hours to a limited period if it can show it is reasonable to do so e.g. where there is a temporary need for work. A worker can make a complaint to an employment tribunal for failure to make an offer. Separately, reasonable notice will be required from an employer for any changes to shifts or working time, with proportionate compensation to be paid for any shifts cancelled or curtailed at short notice. Future regulations will define the meaning of 'reasonable notice' and 'short' notice. 	<ul style="list-style-type: none"> These very detailed provisions are being proposed as part of the Government's flagship policy to ban exploitative zero hours contracts and ensure that all jobs provide a baseline of security and predictability for workers. The changes aim to give workers greater ability to plan their lives and finances but also gives them the opportunity to choose to remain on a flexible zero or low hours contract if they wish. Much of the detail included in this legislation is still to be consulted on such as how the new rules can apply to agency workers. Employers will be anxious for clarity on the detail to determine the impact on their business operations and how much flexibility they will retain going forward, as this will inform their strategy on the use of casual workers in the future.



Employment Rights (cont.)

A. Individual Rights		
Subject	The what	The so what?
Family related leave	<ul style="list-style-type: none"> The Bill makes parental, paternity and adoption leave a Day One right; It also allows for paternity leave to be taken following shared parental leave. Currently, paternity leave is lost if taken after shared parental leave. The right to bereavement leave is also extended, going beyond the current entitlement relating to the death of a child. 	<ul style="list-style-type: none"> The amendments give employees greater flexibility and security when changing jobs. It is likely these changes will have a larger impact on smaller businesses in terms of costs and resourcing. Many larger businesses already have policies that already reflect the proposed changes. It will be interesting to see how the Government defines the relationships that will qualify for bereavement leave. Will it be limited to spouses, children and parents or extended further?
Enhanced protection for pregnant workers	<ul style="list-style-type: none"> The Bill introduces a new power to give enhanced protections regarding dismissal during and after a protected period of statutory family related leave for pregnant women and new mothers. 	<ul style="list-style-type: none"> These changes will sit alongside the expanded statutory leave and pay rights (Day One rights for statutory unpaid parental leave and paternity leave). Employers should start to consider their existing family-related leave policies and their interactions with other entitlements at an early stage. They will need to ensure in future that their HR data is up to date and comprehensive. This will enable them to understand which employees benefit from enhanced protection, particularly, for example, in the context of a redundancy exercise.
B. Other protections and collective rights		
Subject	The what	The so what?
Fire and rehire	<ul style="list-style-type: none"> The Bill introduces a new protection from unfair dismissal (it would be automatically unfair) for a failure to agree to a variation of contract (e.g. to protect against fire and rehire practices). The protection would only not apply if an employer can show that the reason for the variation of terms and conditions was to eliminate, prevent, reduce or mitigate financial difficulties that might impact the ability of the business to carry on as a going concern and the employer could not have reasonably avoided the need to make the change. 	<ul style="list-style-type: none"> The language used in the Bill suggests a high threshold for avoiding an unfair dismissal finding. Deploying fire and rehire practices in situations founded on costs savings or aligning/harmonising terms and conditions will fall short of the exception relating to 'financial difficulties as a going concern'. The proposal is a significant change in the law and would be a material restriction on flexibility of employers to restructure terms and conditions, benefits and their workforce for business related reasons (in the absence of the financial difficulties).
Collective consultation on redundancies	<ul style="list-style-type: none"> By removing the words 'at one establishment' from S188 of TULRCA, the Bill changes how to calculate if the threshold number of dismissals is reached and so when employers must undertake collective consultation. This is a significant change. Aggregating the trigger threshold across a whole business will greatly increase the chances of, and circumstances when, collective consultation is required. 	<ul style="list-style-type: none"> Employers will need a very firm grip of redundancies across their whole business to avoid accidentally failing to collectively consult (note that employers must inform the Government via form HR1 when it triggers the threshold and it is a criminal offence to fail to do so). Employers with lots of small sites (e.g. in retail) will be particularly impacted. Employers who operate via relatively autonomous divisions will also be impacted. There are also practical difficulties: if small pockets of redundancies are made over the statutory (and relatively long) 90-day period, how will collective consultation be relevant to all or practically achieved?



Employment Rights (cont.)

B. Other protections and collective rights

Subject	The what	The so what?
Public Sector Outsourcing	<ul style="list-style-type: none"> The Bill allows the Secretary of State to introduce regulations and codes of practice requiring the workers of suppliers and public bodies awarding contracts to such suppliers, to be treated 'no less favourably' than the other. Without detail it is unclear exactly what this means. The wording is very general but could become very specific in regulatory/code of practice form. For example, will there be a specific requirement to 'level up' terms and conditions of employment? This should address Trade Union concerns that outsourcing results in two tier workforces. The Government's accompanying 'next steps' document also makes it clear that these measures are aimed at ensuring equal pay in outsourced workforces as part of Government's equality measures. 	<ul style="list-style-type: none"> Any business that contracts in the public sector (e.g. facilities management, back-office service centers) will have to keep a very close eye on how this develops. It is likely to greatly impact the financial case for outsourcing with consequences for both service providers and Government. Employers should review any equal pay audits they undertake to ensure they are not relying on any justifications that may soon be unavailable.



Pay and Tax

Subject	The what	The so what?
Statutory Sick Pay ('SSP')	<ul style="list-style-type: none"> A new Day One right has been introduced for SSP, removing the three-day wait period before entitlement to receive SSP commences. The Lower Earnings Limit 'LEL' (currently £123) for all workers has been removed. There will be an adjustment to the percentage rate of SSP for those earning below the LEL. A new body (the Fair Pay Agency) will be set up to enforce SSP (in addition to National Minimum Wage, holiday pay etc.) 	<ul style="list-style-type: none"> This is good news for workers, who will be entitled to SSP from day one of illness although we await the announcement on what the adjustment percentage will be for those who earn below the LEL (which could be across several separate employments). For those workers previously earning below the LEL, there was no entitlement to SSP so this change aims to improve earnings for working people. There will be a consultation (expected in 2025) on what the percentage replacement rate for those earning below the LEL should be.
Tipping	<ul style="list-style-type: none"> The Bill proposes introducing specific obligations that employers caught by the (very new) tipping legislation will need to comply with. These are to: <ul style="list-style-type: none"> consult trade union/employee representatives about their tipping policy; review (and consult on) such policies at least every three years; and make available an anonymised summary of comments provided as part of the above consultation to all employees at the same place of work. 	<ul style="list-style-type: none"> These proposed changes underline the importance of the new tipping legislation which may have gone unnoticed by many. 'They add to the obligations on employers caught by the legislation. Failing to consult would not just be about a potential uplift in award for failure to follow statutory guidance, but would be a breach of the legislation in itself. The obligation to review policies is also a clear indication that employers cannot sit on their laurels once a policy is in place.
National Minimum Wage	<ul style="list-style-type: none"> While not included in the Bill, the government has pledged to boost the National Minimum Wage, to help bring about a "genuine living wage" for all ages. To achieve this, the government first plans to introduce the cost of living when determining the rate of NMW together with other measures to follow. 	<ul style="list-style-type: none"> NMW enforcement will transfer from HMRC to the Fair Pay Agency. To bolster any future changes to the NMW, the government has also said it will expand the evaluation capabilities of the Low Pay Commission when it makes its recommendations on NMW and RLW rates. This will be a topic to keep under review.



DE&I and Reporting

Subject	The what	The so what?
Gender Pay Gap reporting	<ul style="list-style-type: none">• The Bill allows for regulations to be introduced via the Equality Act 2010 requiring employers reporting on their gender pay gap to also:<ul style="list-style-type: none">- Introduce Equality Action Plans showing the steps they are taking to both:<ul style="list-style-type: none">• address their gender pay gap; and• support female employees going through the menopause.- Publish the identity of any supplier contracted for outside services <p>The measures will be backed up with enforcement and the creation of offences for failure to comply.</p>	<ul style="list-style-type: none">• Many employers already produce actions plans and so will feel more prepared for these measures. However, the detail of the regulations will need to be understood properly before employers can feel truly confident.• The new enforcement powers could indirectly bolster the currently limited enforcement of pay gap reporting more generally, as employers will need to conduct detailed reporting to formulate their action plans.
Harassment	<ul style="list-style-type: none">• Employers must not merely take reasonable steps to prevent sexual harassment but all reasonable steps.• An employer must not permit a third party to harass their employees. It will be considered as permitting such harassment if the employer failed to take all reasonable steps to prevent it.• Regulations may set out the steps that are reasonable and these may include:<ul style="list-style-type: none">- carrying out assessments.- publishing plans or policies.- steps regarding the reporting of sexual harassment; and- steps regarding the handling of complaints.• A qualifying disclosure for whistleblowing purposes is to now include if sexual harassment has occurred, is occurring or is likely to occur.	<ul style="list-style-type: none">• As the government had previously indicated, the Bill inserts 'all' into the obligation to take reasonable steps to prevent sexual harassment, placing a higher burden on employees. It will be interesting to see the detail regarding what all such steps encompass.• Employers are likely to need to update their harassment policies and undertake risk assessments.• The introduction of sexual harassment as a specific protected disclosure for the purposes of whistleblower protection reinforces the importance of employers taking steps to have appropriate policies and procedures in place.



Trade Unions and collective bargaining

Subject	The what	The so what?
Trade unions, recognition and industrial action	<ul style="list-style-type: none"> The Bill reverses a number of changes made by the previous government and will make it simpler for unions to call protected industrial action. Key changes include: <ul style="list-style-type: none"> Reducing the minimum period to notify employers of strike action back down from 14 to 7 days; and Reducing the level of support required for a successful industrial action ballot to a simple majority of those voting. Workers will have the right not to be subjected to detriment for taking part in industrial action. This is relatively unsurprising in the context of recent case law and the existing protection from dismissal for taking part in industrial action will be strengthened by removing the current protected period, meaning employees will be protected for the duration of the industrial action. Unions will also be given greater scope to promote their services, with the potential aim of increasing unionisation and collective bargaining. The Bill also enables the government in future to further loosen the requirements for trade union recognition, allowing for the threshold percentage for seeking statutory recognition to be reduced in future from 10% currently, to just 2% of the relevant part of the workforce. The Bill also reduces the ballot recognition threshold to a simple majority of those voting, removing the requirement that the unions are supported by 40% of workers in the bargaining unit. 	<ul style="list-style-type: none"> For employers whose staff are currently being targeted by unions for recruitment with a view to recognition, these changes will provide particular food for thought. The right to request workplace access and have that right enforced will be a tool for unions to use to exert pressure. The potential for statutory recognition to be sought even where evidenced support is low will impact a large number of employers who currently have no or limited union engagement. All employers should treat this as an opportunity to plan for the changes by reviewing or putting into place a clear industrial/collective relations strategy. Pre-engagement with recognised unions ahead of the upcoming changes is likely to be sensible, as is considering how to frame internal procedures to deal with access agreements and requests for facilities and accommodation. Those employers who have to date had minimal union engagement would be wise to consider how they will respond if access is sought.
Negotiating Bodies in certain sectors	<ul style="list-style-type: none"> The Bill does two things: <ul style="list-style-type: none"> Reinstates the School Support Staff Negotiating Body (SSSNB); and Puts in place a mechanism for a similar Negotiating Body to create a Fair Pay Agreement for those in adult social care. These bodies would be made up of representatives from employers, unions and an independent chairperson. They would negotiate pay, terms and conditions, training and career progression of those within their scope. For schools this would take support staff away from National Joint Council terms (essentially those covering council workers) terms; for adult social care such an arrangement would be new. The Secretary of State would have significant powers in both cases where it disagrees with an agreement reached by the Body or where agreement cannot be reached. 	<ul style="list-style-type: none"> While the concept of the SSSNB is not new, the legislation would apply to Academies (who currently can choose whether to opt in to NJC terms) as well as local authority maintained schools. This will be a big change for Academies and may be subject to some challenge while the legislation passes through the legislative process. The introduction of an Adult Social Care Negotiating Body will also be a big change in the sector where employers have, so far, been able to set their own pay rates. This is one to watch for broader public/quasi-public sector businesses as success of a Fair Pay Agreement in Adult Social Care in particular could signal their introduction more broadly.



Enforcement

Subject	The what	The so what?
Enforcement Agency	<ul style="list-style-type: none"> A new body (the Fair Pay Agency) will be set up to enforce NMW (taking over from HMRC), holiday pay, statutory sick pay, Gangmasters Licensing and modern slavery. It will have extensive powers to request information from employers, backed up by Labour Market Enforcement Orders and criminal sanctions for non-compliance (based on the enforcement model developed in relation to immigration offences). There will be a new Advisory Board with representation from trade unions, employers and experts to advise Secretary of State, who is required to set out the enforcement strategy every three years and report annually on progress against that strategy. 	<ul style="list-style-type: none"> The enforcement powers go further than the equivalent power of HMRC to demand information to enforce the payment of tax. A demand for information in this context is not subject to appeal to an independent tribunal and non-compliance would seem to attract criminal sanction rather than a civil penalty. The requirement for annual reporting is likely to mean significant resources being allocated to the new agency and stringent enforcement (potentially in line with or going even further than the existing NMW enforcement approach) to ensure that action and progress can be demonstrated. The nature of the rights being enforced will involve looking at historical data, so (although it may take some time for the Fair Pay Agency to be active) employers need to act now to ensure they are compliant.
Time Limits	<ul style="list-style-type: none"> While not proposed in the Bill at this stage, measures will be added during the Bill's passage through Parliament relating to Government's proposal to increase time limits for Employment Tribunal claims to six months for all claims (compared to the current three months which applies to most claims). 	<ul style="list-style-type: none"> While this will create more flexibility and time for employees to submit a claim, it will create more uncertainty for employers and may impact the availability of evidence and witnesses.

Next steps

Policy Paper	The what	So what?
Government's 'Next Steps to Make Work Pay' policy paper and other proposals	<ul style="list-style-type: none"> The government's policy paper adds commentary on some parts of the Bill, as well as expectations as to time frames. It also: <ul style="list-style-type: none"> sets out details of non-legislative measures to be introduced (e.g. The Right to Switch Off); gives some detail of measures which will be introduced via other legislation (e.g. implementing the NMW changes); and starts to give details of longer-term measures to be consulted on (e.g. Worker Statutes, TUPE review). The government has previously indicated its desire to move to a Single 'Worker' Status (SWS), revising the legal definition of what a worker is, with a view to increasing their employment protections and removing the distinction between workers and employees. The Bill itself falls short of including further details on SWS. However, the policy paper outlines there will be a consultation around a simplified framework to differentiate between workers and genuine self-employment, seeking to ensure workers know their rights. The Government will also look at strengthening protection for the self-employed, for example via rights for a written contract, health and safety and blacklisting protection. The government has pledged to boost the NMW, to help bring about a "genuine living wage" for all ages. To achieve this, the government first plans to introduce the cost of living when determining the rate of NMW together with other measures although these will be dealt with separately to the Bill. 	<ul style="list-style-type: none"> There is a lot in this document about the medium-term agenda which businesses relying on contingent or irregular workers needs to stay on top of but which is not included in the Bill. All employers will need to watch and plan for the extension of Pay Gap and Equal Pay legislation to Ethnicity and Disability. It is not surprising that we will need to watch this space and await the consultation process relating to protections for the self-employed and SWS, given the complexities of these matters. Challenges are somewhat echoed in the tax arena when considering the thorny issue of establishing employment status in the context of the modern workforce.

What should businesses do now?

The devil will be in the detail for each of these proposed reforms and each topic warrants its own more detailed analysis and commentary.

We will produce further commentary on each proposal or group of proposals through a schedule of webinars, insights articles and other events to explore the proposals and their impacts in more detail.

In the meantime, employers would be wise to undertake some strategic planning including:

1. Undertaking an impact assessment to understand how the proposals will impact their business (including systems and ways of working).
2. Prioritising collation of metrics to understand and assess impacts on their workforce, cost to the business, and the level of business change required to implement and run new BAU processes and to comply.
3. Considering any 'no regrets' actions that their business can take now to get them ahead of the curve.
4. Starting to engage key business stakeholders to understand and start to plan for the level of change required.
5. Monitoring progress of the proposals as further information becomes available and consider actively participating in relevant consultation processes.

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