

EMPLOYMENT LAW UPDATE

NOVEMBER 2024

“

The Employment Rights Bill (Plan to Make Work Pay)

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

28 employment measures, 150 pages

Consultation on most of it to start in 2025

“DAY ONE RIGHTS”: UNFAIR DISMISSAL (2026)

Current: Two years' service eligibility (NB discrimination)
No process?
No legislation on probation periods

Changes: Day one right
Statutory prob period (9 months “IPE” + 3 months?)
Prescribed dismissal reasons which must be notified
Prescribed “lighter touch” process
Not applicable to redundancy or reorganisation
Lower compensation for dismissal during IPE

NB: no change to 2 year period for redundancy payments

TOP TIPS: PREPARATION AND RECRUITMENT

- Ensure managers are managing new hires to spot underperformers now
- Train managers to deliver consistent rules on reviews and dismissals now so that good practice is embedded
- Adopt more thorough pre-employment screening e.g. gaps in CVs/ references
- Update policies on performance, conduct and sickness absences to nip poor behaviour in the bud
- Develop recruitment and selection processes in terms of application, interview structure and questions and appointment documentation
- Clear induction process, expected values, behaviours and triggers
- Explain the probationary review process
- Specific compliance training to be completed e.g. H&S, Cyber

TOP TIPS: PROBATION PERIODS

- Clear probationary review process in place e.g. 4 / 8 / 12 weeks/ 6 and 9 months?)
- Detailed form to capture evidence
- Managers trained to deliver consistent rules on reviews and dismissals
- Mgrs. trained to understand triggers where employee could “fail” their probationary review
- Mgrs. trained to understand steps to be taken to exit an employee post a failed probationary review (fair process)
- Consider reduced salaries during prob period with a bonus and pay rise on successful completion

TOP TIPS: PERFORMANCE MANAGEMENT

- Review your performance management system or develop one if it doesn't exist (would be seen as a fair process when Day 1 Rights Kick In)
- Train the managers - Upskill them on how to manage underperformance
- Ensure employee documentation on understanding the Performance Management Process is developed and communicated

“DAY ONE RIGHTS”: SSP (April 2024)

Current position: SSP payable from day four of sickness
Earnings qualification minimum of £123 p/w
£116.75 p/w, payable up to 28 weeks

Changes: SSP payable from day one
Lower earnings limit removed
SSP the lower of a defined percentage of weekly
pay or £116.75 p/w
Lower rate of SSP for some workers

“DAY ONE RIGHTS”: PARENTAL LEAVE, PATERNITY AND MATERNITY

Current position: Certain rights only apply after 26/52 weeks
Only parents can take bereavement leave

Changes: These will become day one rights:

- Paternity leave
- Unpaid parental leave
- Unpaid bereavement leave for all (1 or 2 weeks)

New protections for maternity returners: right not to be dismissed for six months after return, on top of the new rights of redundancy protection

“DAY ONE RIGHTS”: FLEXIBLE WORKING

Current position: A day one right for employees
Can make two requests a year
Eight statutory reasons for refusal e.g.
cost/impact on quality
Compensation: up to 8 weeks' pay

Changes: New focus on refusal - must allow unless
it's reasonable to refuse
Must explain the reason and why it is reasonable
Includes the right to request compressed hours

Still “just” a right to request but the shift in focus may be significant

FLEXIBLE WORKING: TOP TIPS

- ❖ Eight statutory reasons remain but consider what your justifications for refusal might be
- ❖ Draft letters carefully, to include the specific ground for refusal and to explain why you think it is reasonable to refuse
- ❖ Consider what might work for your organization in terms of operational flexibility and how to justify future decisions
- ❖ Carry out an audit of FWR practices to help you with the above
- ❖ Consider your recruitment processes to reflect earlier conversations about flexible working
- ❖ Consider long term real estate needs

“FIRE AND REHIRE”

Current: Fair dismissal where employers dismiss for refusing a contract change and then offer new contracts where there is a legitimate business reason and a consultation process
Statutory Code of Practice

Changes: Automatically unfair to dismiss where the reason is (a) refusal to agree a change OR (b) to enable a dismissal and reengagement of someone else to carry out the same role (unless this is to reduce severe financial difficulties)

A high bar - so employers can only fire and rehire where there is genuinely no alternative. Impact on contract changes.

ZERO HOURS CONTRACTS

Current: Ad hoc hours contracts permitted
Exclusivity clauses banned
Regarded as “exploitative”

Changes: Not to be banned BUT
Employers must offer guaranteed hours reflecting hours regularly worked over a reference period (12 weeks?)
Employers must give reasonable notice of shifts, cancellations or shift changes
Capped compensation for short notice, cancellations or changes

“Where work is genuinely temporary, there will be no expectation on employers to offer permanent contracts”

“Workers who wish to remain on zero hours contracts will be able to do so”

ZERO HOURS CONTRACTS: TOP TIPS

- ❖ Consider whether these contracts are suitable for your needs now and if so, monitor the number of hours each worker works, to be prepared
- ❖ Model what a new contract looks like, reflecting hours that are regularly worked (as judged against a 12-week reference period)
- ❖ Consider operationally what right to reasonable notice of work schedules and wages for shifts cancelled at short notice could look like for your business
- ❖ Consider whether your technological/scheduling platforms are fit for purpose
- ❖ Review how to manage seasonal fluctuations either through hiring temps or offering overtime to regular employees

SEXUAL HARASSMENT

Current: Employers must take “reasonable” steps to prevent harassment by other employees
No liability for third party harassment

Changes: Must take “all reasonable” steps....
Liability for third party harassment
Disclosure about harassment will become whistleblowing disclosure

The Government will publish regs specifying what steps to take e.g. reporting channels, complaints procedures, risk assessments, comms to third parties etc

SEXUAL HARASSMENT: TOP TIPS

- ❖ Read the EHRC Employer 8 Step Guide to preventing Sexual Harassment at Work
<https://www.equalityhumanrights.com/employer-8-step-guide-preventing-sexual-harassment-work>
- ❖ Complete a Sexual Harassment Risk Assessment
- ❖ Deliver Sexual Harassment training to all managers and to all employees
- ❖ Identify ways employees can disclose harassment and review whistleblowing processes
- ❖ Identify “champions” within the business
- ❖ Start to consider how to prevent harassment by third parties e.g. customers/contractors

NATIONAL MINIMUM WAGE

Current: Rates differ for under 18/s, 18-20 and 21 and over

Changes: Low Pay Commission will take into account cost of living when setting rates for NLW and NMW
Age bands will be removed so the same rate applies to all workers aged 18 or above

NATIONAL MINIMUM WAGE: TOP TIPS

The NMW rose by over £1 to £11.44 in 2024 and with the Budget, the Chancellor announced that NMW will rise to £12.21 in April 2025 (6.7%) and specifically that the 18-20 year old rate will go up by 16.3%, from £8.60 to £10.00.

- ❖ Reforecast your salary bill for April 2025 onwards, with the new NMW in place
- ❖ Evaluate your Employee Benefits and Total Reward Strategy
- ❖ Review all other people related cost lines on the P&L

NOT IN THE BILL, BUT ON THE HORIZON...

- ❖ Taking forward the Right to Switch Off through a statutory Code of Practice
- ❖ Extending equal pay rights and pay gap reporting to ethnic and disabled employees
- ❖ A full review of the parental leave system and of carer's leave
- ❖ Consultation with employees and TUs on implementation of surveillance technologies
- ❖ Consultation on a simpler framework for employment status, including moving to a single "worker" status which is differentiated from the genuinely self-employed
- ❖ Examination of issues relating to TUPE regulations
- ❖ Reviewing and modernising H&S guidance
- ❖ Consultation with ACAS on enabling employees to collectively raise grievances
- ❖ Tightening the ban on unpaid internships