Client checklist

Employment Rights Act 2025

Five upcoming changes: actions to take now

The Employment Rights Act 2025 will make significant changes to English employment law in October 2026 and January 2027. We have picked five of the key changes which employers should prepare for now and suggested some actions they may wish to take.

If you wish to discuss the below or require advice on how to prepare for the upcoming changes, please speak to your usual Mills & Reeve employment contact or David Mills. Please visit our dedicated ERA hub for further information on the changes being made by the Employment Rights Act 2025.

What is the change?	What should employers do now to prepare?
Harassment **Expected October 2026** • **Employers will be liable for third party harassment where they have failed to take all reasonable steps to prevent it. This will apply to all the protected characteristics.** • **The duty on employers to take "reasonable steps" to prevent sexual harassment of their workers will be extended to "all reasonable steps." Future regulations on "reasonable steps" employers could take are expected in 2027/2028 but these are unlikely to be exhaustive.**	Assess the risks of all types of harassment to workers in the course of their employment, including by third parties. Create, and implement, an action plan to reduce the risk of harassment. Steps which should be taken will vary on a case-by-case basis. Employers should keep this under regular review. Although last updated in September 2024 (so it doesn't take account of ERA changes), the EHRC Technical Guidance may still provide a helpful starting point. Ensure appropriate training is provided to workers, and third parties engaging with workers, on harassment and appropriate conduct standards. Ensure any allegations or complaints are dealt with appropriately and in a timely manner, in accordance with relevant procedures.
Trade union right of access **Expected October 2026** • **Trade unions will have a right to access the workplace and meet with workers under a statutory "access agreement" for specified purposes (which doesn't include organising industrial action).**	Employers should consider how they will address any requests from a trade union for access. Once the provisions are in force and a statutory request is received, the employer will only have 15 working days to respond and 25 working days to negotiate and agree the terms of access with the union. If not agreed during this timescale, the union can apply to the CAC who can impose onerous model terms of access.

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• **Frequent access (e.g. weekly) on short notice is expected. Employers will be required to facilitate access.** • **There are limited grounds for refusing access. There will be a structured process for requesting and negotiating access agreements, with relatively tight timescales. Unions will be able to apply to the CAC if agreement cannot be reached within the timescales.** • **Significant financial penalties could be triggered for breaches of statutory access agreements (up to £500,000 for repeated breaches).**	For employers anticipating a request from a particular union, consider proactively agreeing access arrangements now to avoid engaging the strict timescales and penalties under the statutory scheme. The draft Code encourages voluntary agreement. Review existing arrangements for employee representation and consider how these changes may affect longer-term industrial relations strategy. Employers may wish to: • Identify who in the organisation will receive and manage requests. • Decide how the statutory deadlines will be tracked. • Consider if there are areas of the organisation that are likely to receive requests. • Consider how access could be accommodated in practice, particularly in relation to health and safety, security and data protection. • Train relevant staff on the statutory process, templates and record-keeping requirements. Keep an eye on further developments, including publication of the final Code of Practice and associated regulations, expected later this year.
Extension of ET time limits **Expected no earlier than October 2026** • **Time limits for filing most employment tribunal claims will be extended from 3 months to 6 months.** • **This change will lead to longer gaps before a case is heard, particularly given that ACAS early conciliation can now last a maximum of 12 weeks and the Tribunal backlog.**	As recollections fade over time, employers should remind managers of the importance of keeping comprehensive and accurate notes of meetings and hearings. Review document retention and destruction policies to ensure these account for the revised time limits. Consider instructing lawyers as soon as a claim is received to ensure witnesses' recollection of events is captured in a timely manner. Ensure contact details are retained for all exiting employees in case they are required to give evidence in future ET claims. Consider including post-termination obligations in employment contracts and settlement agreements regarding assistance with future ET claims.
Unfair dismissal **Expected to apply where dismissal takes place on or after 1 January 2027** • **Qualifying period of service for unfair dismissal claims will reduce to six months.**	Employers should consider reviewing the length of probationary periods for new recruits. If they wish to mitigate unfair dismissal risk and probationary periods are currently six months, employers should consider reducing the length. Alternatively, employers could follow a fair dismissal process for all employees, including for those with less than six months' service.

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Expected 1 January 2027 • **Statutory cap on the unfair dismissal compensatory award will be removed.**	Employers should remind managers of the importance of following an appropriate, robust and timely probationary process.
	If no notice is given or a PILON is paid: • The date of termination, for the purposes of calculating qualifying service, will be extended by the statutory minimum notice the employee is entitled to. If they have less than 2 years' service, this will extend the date of termination by one week. • Line managers should be briefed and advised to factor this into any dismissal process, bearing in mind that those with six months' service will have unfair dismissal rights if the dismissal takes place on or after 1 January 2027.
Fire and rehire **Expected January 2027** • **Any dismissal will be automatically unfair where the employee was dismissed because:** ○ **They refused to agree to a "restricted variation" of contract; or** ○ **The employer wishes to engage a "non-employee" to carry out the employee's duties.** • **"Restricted variations" include most changes employers would wish to make to pay, incentives, pension or hours of work. It will also include the introduction of, or changes to, variation or flexibility clauses.** • **There are limited exceptions for employers in "financial difficulties." This is set out in the legislation, with additional considerations for public sector employers and local authorities.**	Employers should review their template contracts and assess what flexibility provisions are in place for each template.
	Consider whether flexibility provisions offer sufficient protection or whether future changes could amount to "restricted variations" and trigger the new fire and rehire rules from January 2027.
	Employers should brief line managers on this change . Once the fire and rehire rules are in force, dismissal and re-engagement will not be an option for restricted variations without the employer incurring significant legal risk.
	Factor into any long-term outsourcing strategy that replacing an employee with a non-employee may amount to an automatic unfair dismissal under the new rules. Take legal advice if you are planning a project during or post 2027 where you propose to transfer employee duties to non-employees.

We have not covered all the changes being made by the Employment Rights Act 2025 and our suggested actions are not exhaustive. They may not all be appropriate for your organisation. Likewise, there may be other steps you need to take depending upon your organisational structure, practices and policies. Please seek specific legal advice if you are unsure how to prepare for the upcoming changes.