Checklist

Employment Rights Act 2025
Preparing for the October 2026 changes

Several important ERA changes to employment law are expected in October 2026. This briefing summarises the key developments and practical steps employers can take now.

The briefing is split into three tables: Universal changes for all employers; Trade union changes for employers with recognised unions or likely union engagement; and Sector specific changes for employers affected by public sector outsourcing, and tips and gratuities rules.

If you would like to discuss these changes or how to prepare, please speak to your usual Mills & Reeve employment contact or David Mills. For more on the wider reforms, visit our ERA hub.

Universal changes

These changes are relevant to all employers. They cover tribunal time limits, harassment duties and trade union information/access requirements.

What is the change?	What should employers do now to prepare?
Third Party Harassment **Expected October 2026** • **Employees will be able to bring a standalone claim if they are harassed by a third party related to a relevant protected characteristic in the "course of employment" and the employer failed to take all reasonable steps to prevent it.** • **This will apply to all forms of harassment (e.g. disability, race, age).**	• Review harassment risk assessments, including third-party risks. • Put in place an action plan to reduce risk and keep it under review. • Train workers, and relevant contractor staff, on harassment and expected conduct. • Deal with complaints promptly and in line with relevant procedures. • Consider contractual obligations for third-party providers, while recognising that liability remains with the employer. Follow up with third-party providers to ensure they have implemented any steps they are obliged to take to reduce risk.
Sexual Harassment **Expected October 2026** • **The duty on employers to take reasonable steps to prevent sexual harassment of their workers in the course of employment (by colleagues and third parties) will be extended to all reasonable steps.** • **Compensation can be increased by up to 25% for breach of the duty.**	• Review sexual harassment risk assessments for colleague and third-party risks. • Implement any further reasonable steps identified, such as training, notices or safeguards around lone working or meetings. • Consider contractual obligations for third-party providers, while recognising that liability remains with the employer. Follow up with third-party providers to ensure they have implemented any steps they are obliged to take to reduce risk.

• **The EHRC has powers to investigate and take enforcement action for breach of the duty.**	• Investigate all allegations properly under the appropriate procedure. Since 6 April 2026, sexual harassment has been codified as a relevant failure under whistleblowing law. Consider investigating under whistleblowing policies where beneficial to the employee. • Regulations are expected in due course setting out steps employers can take to prevent the risk of sexual harassment. Monitor future regulations and EHRC guidance on specific preventative steps.
Extension of ET time limits **Expected 1 October 2026** • **Time limits for filing most employment tribunal claims will be extended from 3 months to 6 months.** • **Expected to apply to claims where the act or failure to act occurs on or after 1 October 2026.** • **This change will result in longer delays before cases are heard.**	• Train managers to keep accurate notes of meetings and hearings, and file key documents properly. • Review document retention policies against the longer time limits. • Capture witness evidence promptly when a claim is received or anticipated. • Retain contact details for leavers who may be needed as witnesses and consider claims assistance clauses that apply post-termination. • Take early advice on strategy where a claim is expected.
Trade union right of access **Expected October 2026** • **Trade unions will have a statutory right to access workplaces and meet workers for specified purposes (even where employers are not currently unionised).** • **Access requested is likely to be frequent (e.g. weekly) and on short notice, with limited grounds for refusal. Employers will be required to take reasonable steps to facilitate access.** • **Breaches of access agreements could trigger significant financial penalties.** • **Only businesses with fewer than 21 workers will be exempt.**	• The draft Code of Practice on trade union right of access provides practical guidance for employers and unions on how this right works in practice. Employers should familiarise themselves with the Code. This is subject to Parliamentary approval. • Consider whether voluntary access agreements (outside the statutory regime) can be agreed with unions likely to make access requests. • Decide who will manage access requests. Publish a specific email address for receipt of requests on your website. • Track deadlines. Employers will only have 15 working days to respond to an access request and 25 working days to negotiate with the union following the day the response notice is given. • Review “model terms” in the Code of Practice carefully. These terms are likely to reflect the access which many unions will request and consistent terms are likely to be acceptable to the CAC. The model terms include weekly access on two working days’ notice after the first instance of access. • Plan how access could work in practice, including digitally and in existing workspaces/ meeting rooms. • Consider how existing employee representative arrangements will sit alongside trade union access. • Brief managers on these changes and those who interact with union officials.

Duty to provide statement on right to join trade union **Expected October 2026** • **Employers will need to give workers a statement confirming their right to join a trade union. This will apply to both unionised and non-unionised employers.** • **Regulations are expected to set out the required form and content of the statement, and when this should be provided to workers.**	• Keep an eye out for the regulations specifying timing, form and content of the statement. • Update new hire documentation if needed. • Put in place a process to send the statement to new hires and existing staff as and when required. • Keep a record of when statements were sent. Failure to provide the statement may lead to an award or increase in compensation at tribunal.

Trade union changes

These changes are most relevant to employers with recognised unions, union representatives or increased union engagement.

What is the change?	What should employers do now to prepare?
New rights for trade union reps and equality reps **Expected October 2026** • **Trade union equality representatives will be entitled to time off during working hours for certain duties. Union equality representatives will be required to undertake certain training.** • **Employers must provide reasonable accommodation and facilities for union reps, union learning reps and equality reps.** • **ACAS has updated its Code of Practice on time off for trade union duties and activities and the draft Code has been presented to Parliament.** • **Employees may bring tribunal claims if time off, accommodation or facilities are not provided.**	• Employers should familiarise themselves with the revised draft ACAS Code to understand the new obligations. This is subject to Parliamentary approval. • Identify representatives and create a process so that time off and facilities requests are dealt with quickly and consistently. • Brief managers and consider a central contact for representative requests.
Protection against detriment for taking industrial action **Expected 30 October 2026** • **Workers will be protected from detriment for taking protected industrial action.**	• Brief managers and those dealing with union officials. • Keep communications about industrial action consistent and carefully managed. • Handle complaints about actual or perceived detriment related to industrial action promptly, carefully and appropriately.

• **Regulations will prohibit all detriments intended to prevent or deter, or to penalise someone for taking, protected industrial action.** • **Workers will be able to bring tribunal claims for detriment short of dismissal.**	
Access and unfair practices in statutory recognition and de-recognition process **Expected October 2026** • **Several changes will be made to the statutory recognition and de-recognition processes to help prevent delay, improve efficiency and prevent unfair practices. This includes restricting practices that could improperly influence workers' support for recognition or participation in the process.** • **A draft revised Code of Practice has been laid before Parliament. This may be amended further following the Government's response on electronic balloting in recognition and de-recognition ballots.**	• Familiarise yourself with revised draft Code of Practice. This is subject to Parliamentary approval. • Review how managers and HR communicate with workers about union recognition and de-recognition. • Ensure messaging is factual, consistent and not intimidating, misleading or otherwise inappropriate. • Identify who will manage any recognition request and ensure they understand the statutory process. • Keep records of communications and decisions, and take early advice if a recognition request is received or anticipated. • Monitor regulations, guidance and any CAC procedure updates.

Sector specific changes

These changes only apply to particular sectors or specific working arrangements.

What is the change?	What should employers do now to prepare?
Procurement/Outsourcings **Expected October 2026** • **On public sector outsourcings, provider staff and incoming ex-public sector staff working on the same contract must not be treated less favourably than each other.** • **The change is intended to reflect the principles of the revoked Two-Tier Code.** • **Regulations and a statutory Code of Practice are expected, including provisions public authorities must take reasonable steps to include in relevant contracts (potentially with model terms for particular types of contract/ sectors).**	• Keep an eye out for regulations and the final Code of Practice. Further detail is required on how "less favourable" treatment should be interpreted – e.g. does this extend to non-contractual benefits? • Factor potential increased costs into procurement and contract negotiations. • Public authorities should plan monitoring processes to ensure suppliers comply; suppliers should prepare compliance systems to ensure equal treatment is maintained. • Train managers involved in outsourcing or working on public contracts on this change.
Tips and gratuities **Expected October 2026**	• Review the draft Code of Practice on fair and transparent distribution of tips to familiarise yourself with the new obligations. This is subject to Parliamentary approval.

• **Employers will need a written tips policy and must consult union or worker representatives before first publication.** • **The policy must be reviewed every three years, with further consultation required at that stage.** • **Employers must publish an anonymised summary of consultation views.**	• Brief managers, payroll or those responsible for allocation of tips and gratuities on this change. • Review current tipping arrangements and prepare a draft policy for consultation.

This briefing does not cover every Employment Rights Act 2025 change (in October 2026 or otherwise), and the suggested actions are not exhaustive. The right approach will depend on your organisation's structure, practices and policies. Please seek specific legal advice if you are unsure how to prepare.