Citation

The Employment Rights Bill

Preparing for change and how you can futureproof your care business

Executive summary

The Employment Law landscape for care businesses is characterised by significant challenges and constant evolution. The industry needs to manage workforce dynamics, comply with strict regulations and balance financial pressures all while dealing with high staff turnover, burnout and the complexities of staffing issues. Against this, a series of upcoming legal changes means a proactive approach is needed to make sure compliance is still a priority, but also so your business can thrive.

Key reforms set out in the Employment Rights Bill, published in October 2024, include new measures to prevent all types of harassment, changes to zero-hours contracts and updates to Statutory Sick Pay. With the Worker Protection Act now in force, care businesses have more responsibilities when it comes to preventing sexual harassment, including obligations to tackle risks from third parties, which does include service users and visitors. The government has said that its proposed amendments to zero-hours contracts will put an end to 'one-sided flexibility', posing both compliance and retention opportunities. The SSP overhaul will remove eligibility restrictions and waiting periods, becoming a more supportive approach to employee wellbeing – but at the same time introducing financial and logistical challenges.

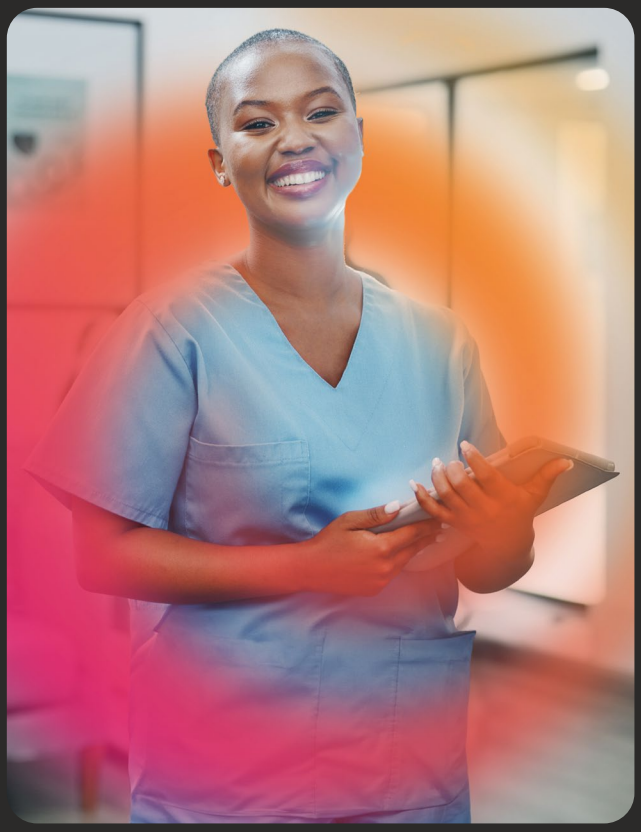
The creation of the Fair Work Agency means closer scrutiny of employment practices, especially in sectors like care where compliance has always been more complicated. To adapt to all these changes, it's crucial that care providers take immediate steps to strengthen their HR strategies, including updating employment contracts, making sure workforce structures align with new duties and investing in training programmes that address workplace protections.

Creating an open, supportive workplace that prioritises transparency and employee engagement is essential to manage these transitions smoothly and stay ahead – as well as proactive legislation monitoring and partnerships with HR and Employment Law specialists.

What does the Employment Law landscape look like for care businesses?

The Employment Law landscape for care businesses is complicated, shaped by unique challenges such as managing workforce dynamics, adhering to regulations and staying compliant while working with sometimes tight budgets. Care providers face big responsibilities, including fair wages, anti-discrimination measures and working-time directives, all while dealing with high staff turnover, increasing burnout rates and the difficulties that come with a reliance on part-time or agency staff.

The increased protection against sexual harassment, national minimum wage increases, and proposed changes to union rules and changes to zero-hours contracts mean that in such a highly regulated environment, it's vital for care businesses to stay ahead. It isn't just a matter of compliance; it's a critical factor in recruitment, retention and operational success.



Key changes facing care businesses

Changes to zero-hours contracts

The Labour government has committed to ending what it calls 'one-sided flexibility', and making sure that all jobs provide a baseline level of security and predictability. This is particularly important for care, as around a quarter of the adult social care workforce were on zero-hours contracts in 2023/24.

These proposals will apply to workers on a zero hours contract or whose contract only guarantees them below a certain number of hours – although this amount is not yet known, but it will probably be very minimal hours. Under these proposals, employers must offer these workers a 'guaranteed hours' contract once they've completed a certain amount of work (again as yet unknown) over a specified period – which will probably be 12 weeks.

The Bill also introduces a duty on employers to give reasonable notice of a shift if the worker is under either a zero-hours contract, or a variable hours contact where the shift falls outside of the potential hours set out in the contract. This notice will have to confirm the number of hours and the day/ time of the shift. Reasonable notice is not yet defined, but it will not be longer than 7 days.

The Bill also introduces a right to reasonable notice of cancelled, moved or shortened agreed qualifying shifts. The same definition of 'reasonable notice' will apply (as yet unknown, but no more than 7 days). If the employer fails to give 'reasonable notice', they will have to pay the worker compensation. This compensation amount will be set out in future regulations, but it will not be more than the wages the worker would have earned during the shift (or part of it that is no longer to be worked).

Part of complying with this new duty will be understanding how you're structuring your workforce – you might have people on zero- hours contracts but if they are consistently working a certain number of hours every week then it's worth thinking about putting them onto fixed hours contracts now. This change gives you the chance to see how guaranteeing secure hours will go as it will aid with retention. You should also think about how you give notice of working a shift or cancelling a shift and whether there's anything you can put in place now to help lengthen this notice period.

More protections around sexual harassment

After the Worker Protection Act came into force in October 2024, employers now have a new proactive duty to take reasonable steps to prevent sexual harassment of their employees. Further, the Equality and Human Right Commission (EHRC), which can enforce this legislation, states in its guidance that this includes taking reasonable steps to prevent sexual harassment by third parties.

The Employment Rights Bill goes further, as this expands the duty to taking all reasonable steps to prevent sexual harassment. It also extends the legal definition of all types of harassment to include harassment by third parties.

The EHRC have stipulated that you have to carry out a risk assessment as part of your new duty under the October 2024 changes, but there are a few considerations specifically for care businesses. Firstly, your service users and visitors will be included as a 'third-party', so there might be extra steps you need to take in your sexual harassment risk assessment. This might include making sure your staff aren't working alone or doing extra training with your staff so they know firstly that you're there to support them but also so they know how to spot and report sexual harassment if they witness it, or if it happens to them.

Another consideration to make is that this Act is only focused on sexual harassment, and it's really important that you're not ignoring other forms of harassment too. The danger will be that if someone is harassed in another way, for example racially, you could be leaving yourself open to different forms of claims if you haven't taken the steps to tackle them.

Changes to Statutory Sick Pay

The proposed changes to Statutory Sick Pay (SSP) mark another big shift in how businesses will need to manage employee absence. The proposal will remove the lower earnings limit to make SSP available to all workers, and will remove the current three-day waiting period, meaning SSP will be payable from the first day of sickness absence. However, part of the consultation will look at whether a lower percentage rate of SSP should be paid where the employee earns around the lower earnings limit or indeed, less than the SSP rate.

For care businesses, these changes could introduce some new financial pressures. Many workers in the care sector are on lower incomes, so extending SSP eligibility to include workers will widen the pool of employees for whom businesses need to provide paid sick leave. These changes also demand a more robust absence management system – but absences are already an issue, as care businesses rely heavily on their workforce being present and fully capable. When team members are off sick, others need to fill in which creates a knock-on effect on schedules, shift planning and workloads.

On the flipside, however, these proposed changes show workers that their wellbeing matters – and for care workers, who play really vital roles in the lives of service users and their families, this updated approach could really improve employee morale. Given the ongoing challenges in recruitment and retention, this more supportive absence policy can foster trust and reduce anxiety about taking time off when unwell .

The Fair Work Agency

The introduction of the Fair Work Agency could be a significant development for the care industry. It's aimed at ensuring fairer employment practices and improving regulatory compliance. This new body will have a mandate to monitor workplace standards, investigate breaches of Employment Law and provide support to both employers and employees when it comes to navigating more complicated workplace problems. In an industry where staffing challenges and compliance demands are already high, the Fair Work Agency adds another level of scrutiny to management.

As mentioned, the care sector is known for high turnover, flexible contracts and a reliance on part-time or agency workers, so you might face closer monitoring under the Agency's remit. Areas such as minimum wage rules, working hours regulations and having the right contracts for staff are likely to get more attention – and while this could bring increased transparency and consistency to your employees, it also means you'll need to make sure your HR practices are robust and everything is documented properly to show compliance if any issues do arise.

All this being said, the Fair Work Agency may prove to be a valuable resource to care providers – it'll offer guidance on best practice for managing fair wages, protecting employee rights and improving working conditions. This could in turn support you in improving your reputation as an employer, which is vital when it comes to attracting and retaining talent.

The Adult Social Care Negotiating Body

The Bill will also create a new Adult Social Care Negotiating Body (ASCNB) which will oversee pay and terms and conditions for social care workers in England and Wales. The ASCNB members will be made up of employer and trade union representatives and will reach an agreement, which they will then submit back to the government. If the government isn't satisfied with the agreement, they can refer it back to the ASCNB for further consideration. If they're happy with it, the government can issue regulations implementing the terms agreed, which will then amend the pay or contractual terms of all social care workers covered by it.

How can care businesses adapt to the proposed reforms?

The proposed changes to Employment Law present care businesses with some big challenges, but also some opportunities to reform their practices and futureproof their businesses. After all, the emphasis on fairness, employee welfare and compliance all result in success in the long-term.

A critical first step in managing Employment Law reforms is developing a proactive approach to managing HR in your business. These changes could require a fundamental shift in the way you manage your business, so now's the time to review your employment practices, contracts and workforce structures to pick out any areas that might need updates. This could mean looking at patterns in how staff are scheduled to see where you could improve, making sure contracts and working conditions properly reflect an employee's contribution and hours. You could look at implementing more streamlined planning tools to help optimise staffing and remain flexible, so you can meet new legal requirements and maintain high-quality services.

Your commitment to training and development is also vital at this stage. Reforms like this often mean you'll need to educate employees and any managers or supervisors on their new rights or new responsibilities. It's worth looking at investing in comprehensive training programmes to make sure your teams understand and adhere to updated procedures. Topics like workplace protections, harassment policies and absence management are all important to cover in clear and consistent training sessions, and programmes like this also show staff that their wellbeing and professional growth are valued, which can improve engagement and retention.

Fostering a supportive and transparent workplace culture is another fundamental step in adapting to Employment Law reforms. Open communication with employees about changing policies and their implications can build trust and reduce uncertainty. You could look at hosting regular staff feedback sessions or consultations during periods of change, so you get insights into employee needs. Supporting and including your employees will help them stay engaged during challenging transitions.

Continuous evaluation and a future-looking mindset will be essential when you're navigating these reforms – and regularly keeping up to date with legislation and industry trends will put you in the best position to prepare for any changes. Partnering with HR and Employment Law experts could be beneficial as they can offer valuable guidance and help you develop robust strategies for compliance and growth without compromising on delivery of services.

What does 'good, better, best' look like in care HR?

HR compliance is tricky in the care industry, with so many moving parts and potentially difficult situations to handle – so let's take a tiered approach.

Good: meeting baseline compliance requirements

- **Compliance basics –** making sure all employees have contracts with clear terms, accurate pay processing and keeping within statutory obligations like minimum wage, the Working Time Regulations and Statutory Sick Pay
- **Policies in place –** maintaining up to date policies including for equality, diversity, bullying and harassment, disciplinary, grievance, Health & Safety and safeguarding
- **Record-keeping –** having accurate records of working hours, holidays and sickness to meet regulatory standards
- **Training –** offering basic employee training in Health & Safety, role-specific skills and safeguarding

Better: proactive compliance and workforce management

- **Improved systems –** you could implement HR software to manage payroll, absences and employee records efficiently, reducing errors and administrative tasks
- **Proactive training –** regularly update staff training in line with new regulations like the harassment laws or care standards, including mental health support and leadership development
- **Employee engagement –** introduce structured feedback procedures, like regular one-on-ones, surveys or focus groups to identify areas that might need improvement
- **Health and wellbeing –** put initiatives in place to reduce absenteeism and improve morale, or consider an Employee Assistance Programme (EAP)
- **Consistent review structures –** it's important that you have processes in place to keep on top of these legal developments and to review your HR policies and procedures regularly, to make sure you're not only compliant but up to date with industry best practices

Best: leadership in compliance and culture

- **Tailored policies –** go above and beyond minimum compliance with customised contracts, flexible work arrangements and benefits tailored to the needs of care staff
- **Recognition and retention –** develop a robust reward and recognition programme that improves staff retention and puts you on top as an employer
- **Legal expertise –** partner with specialist HR and Employment Law advisors to make sure you're compliant in all areas, including trickier areas like redundancy, disputes or TUPE transfers
- **Cultural excellence –** create a workplace culture that champions employee rights, equity and career development.

How can Citation help you achieve this?

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"Citation has an incredibly broad suite of services that are available to the care sector, but what they also have is unparalleled knowledge of the care sector and the care businesses. So what they're able to do is provide the right information, but in an accessible form in a way that other providers don't."

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