



Employment Rights Act: Everything employers need to know



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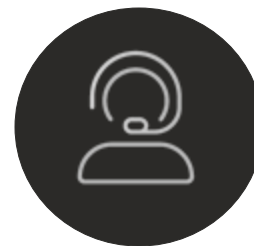
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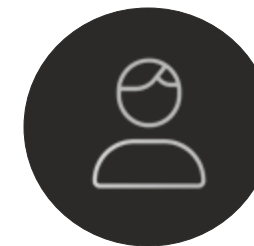
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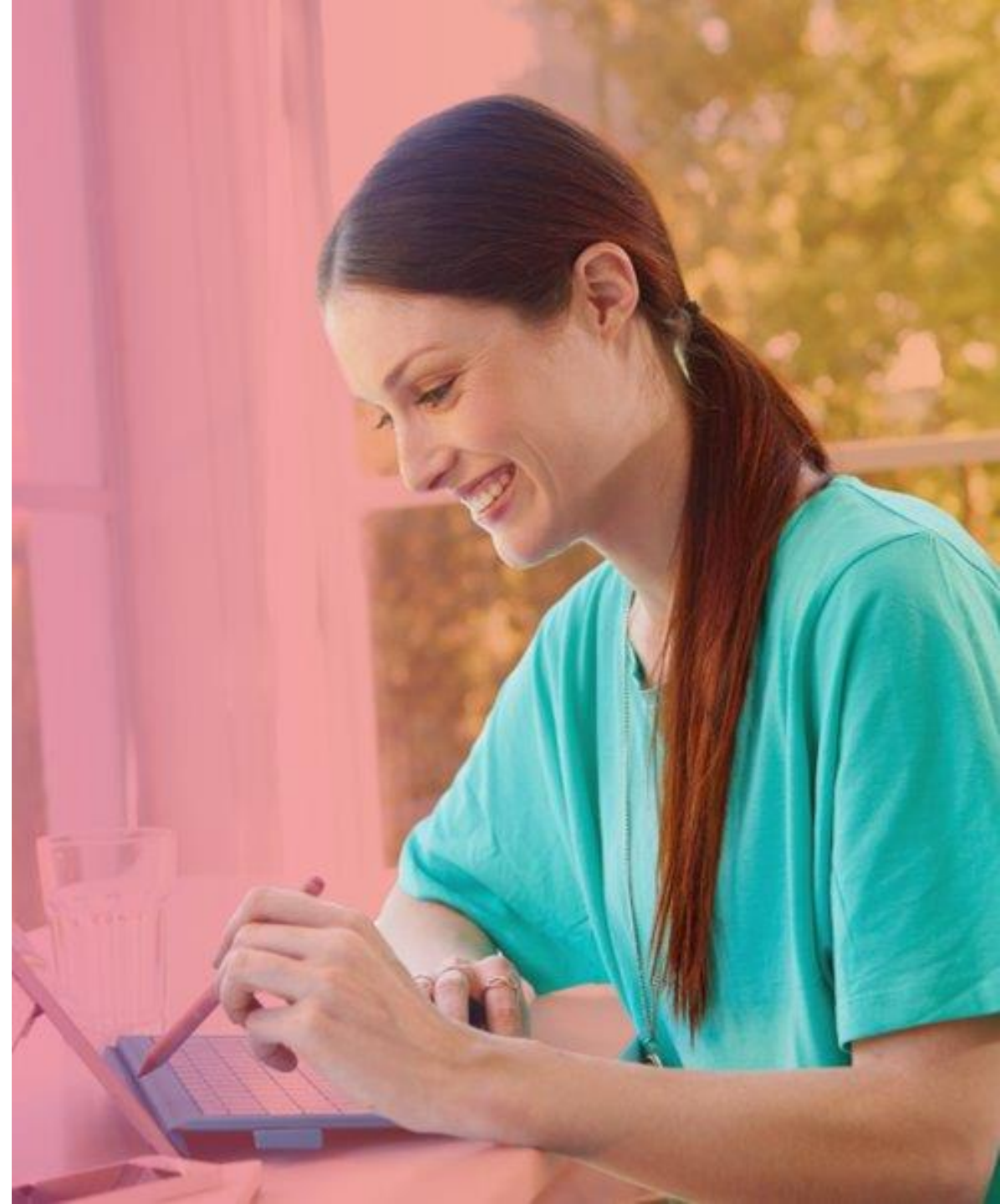
About today

- An overview of what's in the Act
- How and when will it be implemented
- A closer look at:
 - Unfair Dismissal changes and its repercussions for probation periods
 - Statutory Sick Pay
 - Fair Work Agency
 - Third party harassment obligations
 - Zero-hours changes



Implementation

- The Act is a 'patchwork quilt' of changes.
- More than 30 employment law reforms over 330 pages of complex legislation.
- Now it is law, the various reforms are splintering off into separate consultations and/or regulations.
- Implementation plan published in July 2025 and revised in February 2026. The new rules will be rolled out in stages:
 - 9 changes in April 2026
 - 7 changes in October 2026
 - 12 changes in 2027





Unfair dismissal - what is changing?

- Service requirement is being reduced from 2 years to 6 months from **1 January 2027**.
- It takes effect **immediately** so for dismissals from 1 January 2027, the employee just needs to show they have 6 months' service.
- From 1 January 2027, the cap on compensation for ordinary unfair dismissal will be removed (currently the lesser of £118,223 or 52 weeks' gross pay).





Why this matters now

Probation periods of 6 months will be much higher risk

Example 1:

John has a 6-month probation and starts his employment on 7 July 2026. He will have 6 months' service on 6 January 2027. He is dismissed and paid in lieu of notice on 2 January 2027. Can he claim unfair dismissal?



Yes, you add statutory notice (one week) which means it takes John passed the 6-month deadline.

Example 2:

Janet's 6-month probation ends on 14th January 2027; her probationary review meeting is set for 2 January 2027. She calls in sick on the 2 January and on 9 January she produces a 1-week fit note. Probation is extended to the end of January, and she is dismissed on 18 January at the rescheduled hearing. Can she claim unfair dismissal?



Yes, although probation extended, her unfair dismissal rights kicked in when she acquired 6 months service - 13 January.



Probation periods

- Review probation periods - what is an appropriate time period? Maybe 4 months more suitable?
- Balance between risk and having a period which allows you to genuinely assess their ability and suitability to do the role.
- Balance unfair dismissal risks with the risk of day one claims if you rush to dismiss without an audit trail.





What you can do to prepare

- You can start to get ready by **reviewing**:
 - Recruitment practices
 - Induction processes
 - Probation processes
- Train managers on the processes - have a consistent approach.
- Set clear performance expectations from the start.
- Consider your retention strategy.





Implementation plan

6 April 2026

- Statutory Sick Pay - removing waiting days and the Lower Earnings Limit requirement
- Fair Work Agency established (7 April)
- 'Day 1' Paternity Leave and Unpaid Parental Leave
- Regulations to establish the Adult Social Care Negotiating Body in England.
- Annual leave records - keep records of entitlement/paid holiday taken and payments in lieu of holiday (on termination)
- Collective redundancy protective award - doubling the maximum period of the protective award
- Whistleblowing protections for disclosures on sexual harassment
- Simplifying trade union recognition process
- Voluntary Equality Action Plans for large employers (250 plus employees) setting out gender pay gap measures and menopause support



Changes to SSP

From 6 April 2026, the Employment Rights Act:

- Abolishes the requirement that earnings should be above the Lower Earnings Limit (£125), meaning that **all** employees will be entitled to SSP, regardless of their earnings.
- Those on lower pay will receive the lesser of **80%** of their average weekly earnings or SSP (£123.25 from 6 April 2026).
- Removes the 3-day waiting period, making SSP payable from the first day of sickness absence.
- Payable for 'qualifying day' - if on variable hours, then depends when contract states can be asked to work.





Short - term sickness - key elements of a robust absence management process

Clear reporting process

Accurate records - days and reason for absence -self-certificates

Return to work interviews

Creating the right culture for open conversations about health issues

Consistent and risk assessed approach to escalation



Advantages of trigger systems

Gives managers a clear framework for action

Helps to achieve a consistent approach across teams as managers have one set of rules to follow

Gives a greater sense of fairness

Encourages early intervention



Risks with trigger systems

- Temptation is for managers to blindly follow the policy without assessing each case on its merits.
- Conversations around health may become very process focussed and undermine efforts to really understand underlying issues and focus on support.
- Applying a policy to everyone in the same way can seem 'fair' but tribunals don't want all cases to be treated the same, but rather like cases treated alike.
- Very high risk of discrimination, particularly where absences are pregnancy or disability related.



Fair Work Agency - a new era of employment law enforcement

In **April 2026** the government will launch a new agency responsible for employment law enforcement in Great Britain with a broader remit and new powers.

On top of enforcement in areas such as employment agencies and NMW, the new agency will be tasked with enforcing **SSP** and **holiday leave and pay rights**.

The Act contains powers to add to this list.



“For years inside and outside Government I argued that employers and workers need a single enforcement body for employment rights. It is an honour to be asked to be the first Chair of the Fair Work Agency, the body that will meet that need.”

Matthew Taylor, Fair Work Agency



Power to issue demands for payment, penalties and costs

- The agency will be able to issue Notices of Underpayment (payable in 28 days) for National Minimum Wage, Statutory Sick Pay and Holiday Pay.
- The Notice of Underpayment **must** also impose a penalty of **200%** of the sum due, (capped at **£20,000 per worker**) payable to the Secretary of State.
- They can also recover enforcement costs from employers who are not complying with the law by requiring them to pay a charge (requires further regulations).





Additional powers and actions

- Provide legal assistance to workers in bringing a tribunal claim.
- Power to bring a tribunal claim even if the employee does not want to bring a claim (any type of claim).
- Power to enter premises and seize documents.





New criminal offences

The Act also creates the following new criminal offences:

- Failing to keep holiday records.
- Knowingly or recklessly produce false documents and information.
- Intentionally obstruct enforcement action by the FWA.
- Failing to comply with an enforcement requirement without reasonable excuse.

Penalty is a fine, imprisonment for up to 51 weeks (in England and Wales), or both.





Changes to Parental and Paternity leave

Parental Leave will become a day one right (currently need to have one year's service).

6 April 2026

Paternity Leave will become a day one right (currently available to employees with 26 weeks' service by the qualifying week [the 15th week before the baby is due]). But Statutory Paternity Pay will remain the same.

6 April 2026

In rare circumstances where the mother or primary adopter dies within the first year of the child's life, bereaved father/partner can take up to 52 weeks of (unpaid) 'Bereaved Partner's Paternity Leave'. Length depends on when bereavement occurs. Day one right.

6 April 2026



ASCNB

- It is expected the Adult Social Care Negotiating Body (ASCNB) will be established in **October 2026**, but the power to make the relevant regulations is now going to be in force from **6 April 2026**.
- The ASCNB must include trade union representatives and employer representatives, as well as other sector representatives.
- The ASCNB will be empowered to negotiate **Fair Pay Agreements** and will have a remit to negotiate pay and employment terms and conditions for English adult social care workers.
- Once the government has ratified an agreement, social care employers will need to ensure that workers' T&Cs are at least as good as those set out in the agreement.
- Consultation on the ASCNB closed in January 2026 and we are waiting for further Regulations with the details of how this will work in practice.
- It is expected that the ASCNB's first negotiated Fair Pay Agreement will apply in **2028-29**.



Implementation plan

October 2026

- Requiring employers to take “all reasonable steps” to prevent sexual harassment of their employees or face 25% uplift in damages.
- Introducing an obligation on employers to prevent the harassment of their employees by third parties.
- Extending tribunal time limits to 6 months.

Enhanced Trade Union rights

- Duty to inform workers of their right to join a trade union.
- Strengthen trade unions' right of access.
- New rights and protections for trade union reps.
- Extending protections against detriments for taking industrial action.

- Further regulations for the ASCNB



Harassment in the Employment Rights Act

- Extends the current law concerning all types of harassment to include harassment by **third parties**.
- Raises employers' obligations under the Workers Protection Act 2023 from taking "reasonable steps" to taking "**all** reasonable steps" to proactively prevent sexual harassment or face a 25% increase in damages.





Actions - check your foundations for establishing an 'all reasonable steps' defence

Policies

Training

Appropriate and consistent enforcement

Risk assessment and appropriate control measures



Training

- Needs to be done regularly - otherwise it may be viewed as 'stale'.
- Needs to be reflective of its audience - e.g. important to have tailored training for managers including how to respond to incidents, and separately for employees.
- Update training records.
- Remind about training learnings in e.g. team meetings.





Implementation plan

2027

- Right to claim unfair dismissal with 6 months' service
- Zero-hours contract reforms and application of these measures to agency workers
- Flexible working changes
- Fire and rehire restrictions
- Gender pay gap and menopause action plans (introduced on a voluntary basis in April 2026)
- Enhances protections for pregnant workers
- Introducing a power to make regulations to specify steps which would be considered "reasonable" steps to prevent sexual harassment.
- Blacklisting provisions
- Industrial relations framework
- Regulation of umbrella companies
- Collective redundancy - changes to the collective consultation threshold
- Bereavement leave extension



Zero hours contracts

Key changes:

- Right to a contract giving guaranteed hours
- Right to reasonable notice of shifts
- Right to reasonable notice of cancelled, moved and shortened shifts

Collective agreement exceptions if incorporated into the contract.





Right to guaranteed hours

- Employers **MUST** offer a 'guaranteed hours' contract to workers reflecting the hours they regularly work over a reference period (the government says this should be 12 weeks).
- It will apply to those working under a zero-hours contract or under a contract which gives them less hours than the specified maximum.
- It can be rejected if the worker wants to stay on the existing terms (but obligation will arise again).
- The right will also apply to agency workers and usually the hirer must make the offer.
- Can be excluded by a Collective Agreement.





Right to reasonable notice of shifts

- The Act introduces a duty on employers to give **reasonable notice of a shift**, including number of hours and/ or the day/ time of the shift.
- Reasonable notice is not defined but will not be longer than 7 days. Regulations and guidance will say what is "presumed reasonable" but there will be guidance on other considerations - e.g. employee off sick.
- For agency workers, it will be the joint responsibility of the hirer and the agency to provide reasonable notice (can agree how this will work).
- Can amend by a Collective Agreement but not exclude.



Right to reasonable notice for cancelled, moved and shortened shifts

- Introduces a **right to reasonable notice** of cancelled, moved or shortened agreed qualifying shift.
- If the employer fails to give reasonable notice in these circumstances, they will have to pay compensation.
- There will be exceptions.
- Will not be more than would have earned during all or part of shift and tribunals will have discretion on how much to award.
- Again, can amend by a Collective Agreement, but not exclude.





Right to reasonable notice for cancelled, moved and shortened shifts

- Introduces a **right to reasonable notice** of cancelled, moved or shortened agreed qualifying shift. This could be very short in some circumstances (subject to consultation).
- If the employer fails to give reasonable notice in these circumstances, they will have to pay compensation.
- Will not be more than they would have earned during all or part of shift and tribunals will have discretion on how much to award.
- Again, can amend by a Collective Agreement, but not exclude.





Flexible working

An employer should only refuse a request if:

1. They believe it should be refused on one of the 8 statutory grounds **and**
2. It is reasonable for them to refuse it on those grounds.

When refusing a request, the employer must state the grounds for refusal explaining why it is reasonable to refuse the application.



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