

TORQUE  **LAW**

for



BHP

Charity Conference 2025

Employment Rights Bill Update

Tiggy Clifford

12 November 2025

Today's content

- Employment Rights Bill
 - Latest updates
 - Key proposals
- Other significant developments
 - Duty to prevent sexual harassment
 - *For Women Scotland* decision - EHRC Guidance and practical implications

Note: content up to date as at 7 November 2025

Employment Rights Bill

Where are we now?



vs



Lots more detail
to come ...

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- **28 October 2025:**
 - House of Lords refused to agree to some outstanding points re:
 - Day 1 unfair dismissal rights
 - Guaranteed hours rights for workers on zero hours contracts
 - Allowing workers to opt out
 - Special consideration for seasonal work
 - 50% turnout requirement for industrial action ballots
 - **5 November 2025:**
 - House of Commons rejected House of Lords outstanding points
 - **17 November 2025:**
 - House of Lords due to consider again

April 2026

- Doubling of collective redundancy protective award
- Day 1 paternity and unpaid parental leave
- Fair Work Agency established
- SSP changes
- Simplification of TU recognition and balloting
- Gender pay action plans (voluntary)
- Disclosure of sexual harassment to be explicitly included in list of qualifying whistleblowing disclosure

October 2026

- Effective ban on fire and re-hire
- Fair pay body: adult social care
- Prevention of sexual harassment
 - All reasonable steps
 - 3rd party harassment
- Increase in ET limitation periods
- Other TU enhancements
 - Duty to inform workers of right to join TU
 - Right of access
 - Additional protection from detriment for TU reps and members
- Protections for employees outsourced from public sector

2027 onwards

- Day 1 unfair dismissal and statutory probationary periods
- Pregnant worker rights
- Regulations re “reasonable” steps by employers for prevention of sexual harassment
- Bereavement leave
- Collective redundancy thresholds
- Zero hour contract changes
- Gender pay action plans (compulsory)

Annual implementation dates

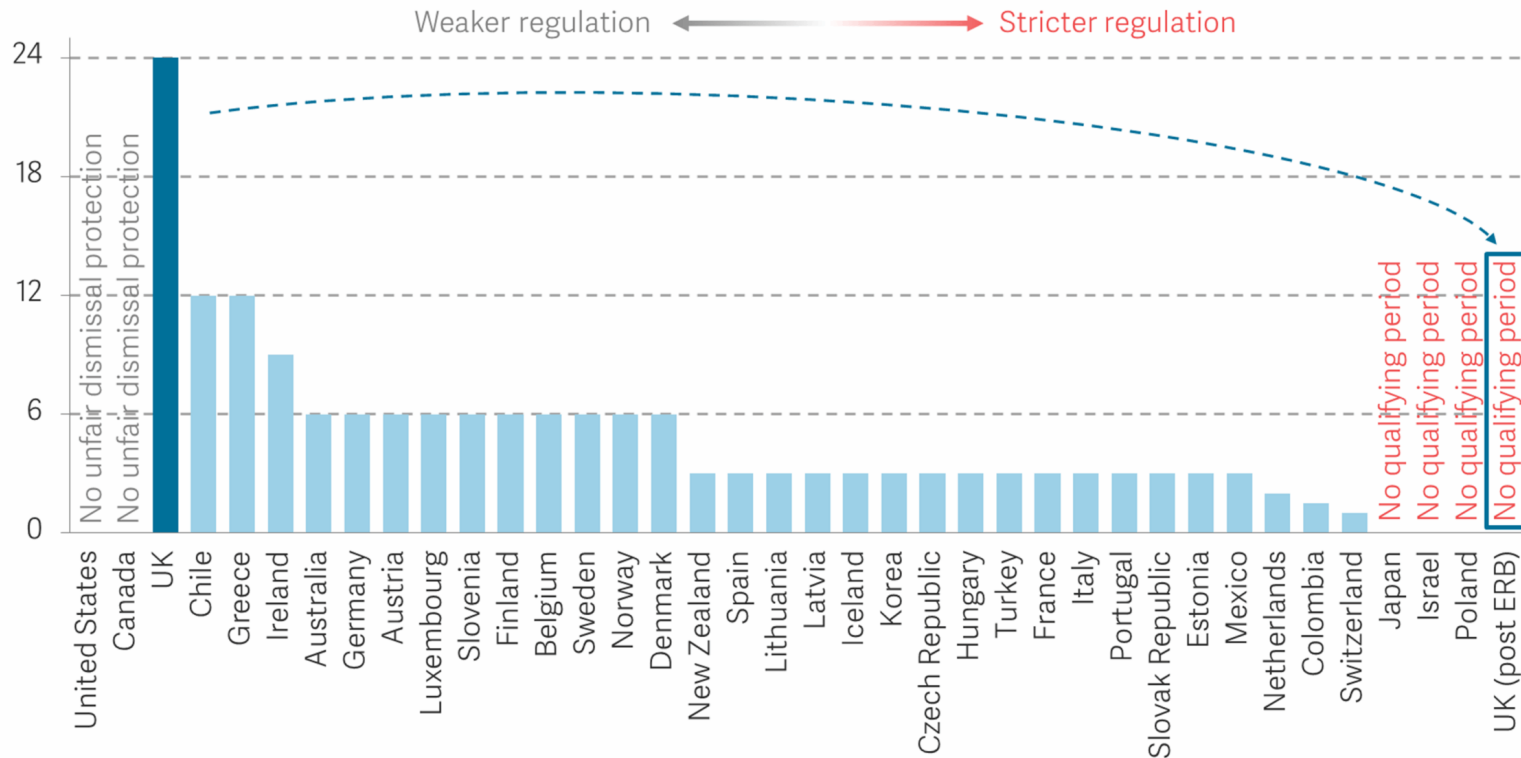
- 6 April
- 1 October

- **Government headline:**
 - Basic individual rights from day 1 of their employment - giving all workers unfair dismissal protection
- **Current government proposals:**
 - From 2027:
 - No qualifying period of service for *employees*
 - Some modification where the “dismissal” takes place during the “statutory probationary period”, provided:
 - Reason is capability, conduct, SOSR or illegality
 - Lighter touch process must still be followed
 - Right to be accompanied will apply
 - Government proposing 9-month statutory probationary period
 - Special compensation regime to apply

- **House of Lords proposed amendments:**
 - 6 month qualifying period to apply
 - Instead of the statutory probationary period
- Simpler, relies on established concepts of ‘qualifying period’
- Debate referred to recent report by the Resolution Foundation

- Resolution Foundation: Unfair dismissal: Day one frights

Length of 'qualifying period' (months) before unfair dismissal protection applies: OECD countries, 2019



Notes: Most month values are estimated based on lookup table provided in OECD employment protection methodology. Month values below three independently checked. Greece changed to 12 months; Belgium changed to 6 months based on cross checking against Cambridge Business School's Labour Rights Index and internet search. Source: OECD, Employment Protection Indicators.

- **What's next:**
 - Await outcome of Parliamentary process
 - Detailed consultation expected
 - Length of initial period
 - Compensation regime
 - Dismissal process
 - Interaction with ACAS Code
- **What to do now:**
 - Tighten recruitment practices
 - Get used to carefully managing probationary periods
 - Consider length and format

- **Government headline:**
 - End “one sided flexibility” and abuse of fire and re-hire
- **Original proposals:**
 - Restriction on any enforced change to employee’s contractual terms
 - Very limited exceptions:
 - Financial constraints necessitate the variation and the employer could not reasonably avoid the change
 - Local authority under “relevant intervention direction” and could not reasonably avoid the change

- **Current proposals:**
 - From October 2026:
 - Limited right for employers to embark on a ‘fire and rehire’ and ‘fire and replace’ exercises
 - Dismissals will be automatically unfair where the reason for the dismissal is that the employee did not agree to certain contractual changes
 - Pay, working hours and times, pension, rights to time off
 - Other changes TBC in regulations
 - Imposed flexibility clauses
 - Strengthened Code of Practice
 - Limited exceptions continue to apply
- **To do now:**
 - Consider making changes whilst have opportunity to do so

- **Government headline:**
 - Ban on 'exploitative' ZHCs
- **Current proposals:**
 - From 2027:
 - Workers with fewer than a set up number of hours will have right to receive a Guaranteed Hours Offer
 - Offer based on work done in reference period (12 weeks?) and based upon:
 - Days of the week and hours; or
 - Working pattern
 - Failure to make offer: result in a claim to ET for compensation only (subject to duty to mitigate)
- **House of Lords issues:**
 - Workers who want to stay on ZHC should be able to opt out of guaranteed hours
 - Account should be taken of seasonal work

- **What else we know now:**
 - Reasonable notice must be given to workers of
 - Shift times
 - Changes to or cancellation of a shift
 - Payments to be made in event of cancelled, curtailed or moved shifts with short notice
 - Regulations will set out the minimum period of notice and the payment arrangements

- **What to do now:**
 - Critically assess use of ZHCs, consider whether regular hours or fixed-term contracts could be used
 - Decide what may be reasonable based on industry/work patterns
 - Review current internal practices around the provision of notice to shift workers

- **Government headline:**
 - Strengthening of collective redundancy protections
- **Current proposals**
 - From April 2026: protective awards increased
 - Doubled from 90 to 180 days maximum award
 - Potential 25% uplift
 - From 2027: regulations will apply where employer is proposing to dismiss as redundant:
 - 20 or more employees at one establishmentOR
 - > “threshold number of employees” across organisation
 - ‘In due course’: guidance to be provided on collective consultation compliance

- **Government headline:**
 - Strengthened statutory sick pay (SSP)
- **Current proposals:**
 - From April 2026:
 - SSP to be paid from the first day of sickness absence, rather than 4th day (days 1 to 3 will no longer be waiting days)
 - Minimum earnings threshold (£123/week) removed
 - SSP to be set at lower of statutory rate or 80% of employee earnings
- **What to do now:**
 - Cost out any impact re low paid staff
 - Carefully manage absences and trigger points for formal review

- **Government headline:**
 - Review of existing parental leave system to give working parents better support
- **Current proposals:**
 - From April 2026:
 - Day 1 right to paternity leave (but not pay)
 - Day 1 right to unpaid parental leave
 - Paternity leave and pay will be permitted after shared parental leave and pay
 - From 2027:
 - Wider right to one week's bereavement leave (beyond current 2 weeks' parental bereavement leave)
 - Bereavement leave to be unpaid (unlike current parental bereavement leave)
 - Scope of connection to be defined, but likely to include pre-24 week pregnancy loss

- **Government headline:**
 - Enhanced protection from dismissal following maternity leave
- **Current proposals:**
 - From 2027:
 - Current protections re redundancy during or after a protected period of pregnancy will be widened to cover dismissal for any other reason in the protected period
 - Will also apply to other forms of family leave
 - Failure to comply will result in automatically unfair dismissal

- **Government headline:**
 - Make flexible working the default from day one unless “not reasonably feasible”
- **Current proposals:**
 - From 2027 flexible working requests must be granted unless:
 - Employer can refuse on one or more of the statutory grounds; and
 - Employer’s refusal is reasonable
 - Remains a ‘right to request’ not a ‘right to flexibility’
 - Statutory format for refusals
 - Compensation remains limited to 8 weeks’ pay
- **What to do now:**
 - Start adopting a ‘why not’ approach
 - Start responding using the statutory format

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- **Government headlines:**
 - Simplified TU recognition process
 - Remove unnecessary red tape from TU activity
 - Greater TU access to staff and workplaces
 - **Key proposals:**
 - Lower thresholds required for TU recognition and balloting
 - Strike minimum service levels removed
 - Compulsory notification of right to join a TU
 - TU rights to request access to workplaces
 - **House of Lords issues:**
 - Want to retain the current 50% turnout requirement for industrial action ballots

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- **Government headline:**
 - Better enforcement of labour market legislation
 - **Current proposals:**
 - From April 2026:
 - FWA will be established (but enforcement date TBC)
 - FWA will bring together current labour market enforcement agencies and will take on enforcement of SSP, NMW, holiday pay and records, ET awards and settlements
 - Broad range of new powers
 - Ability to issue financial penalties as well as compensation
 - **What to do now:**
 - For areas which will be covered by the FWA, ensure that record keeping systems are collating accurate records

- **Government headline:**
 - Extension of time limit to bring Tribunal claims to allow more time for the parties to conciliate or reach agreement
- **Just announced:**
 - From 1 December 2025 ACAS Early Conciliation extended to 12 weeks
- **Current proposal:**
 - From October 2026 time limit for bringing most claims extended from 3 to 6 months
- **What to do now:**
 - Consider alternative dispute resolution mechanisms e.g. mediation
 - Implement litigation plans for contentious cases
 - Review retention periods

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- New employee rights when outsourcing public services
 - Review of TUPE
 - Equal pay changes
 - Mandatory employer reporting
 - Fair pay bodies for school support staff and adult social care
 - Requirement to publish gender pay gap action plans (employers with 250+ employees)
 - Disclosure of sexual harassment to be explicitly included in list of qualifying whistleblowing disclosures
 - NDAs to be void if they prevent disclosures of harassment or discrimination
 - Wholescale review of parental leave and pay entitlements

Equality (Race & Disability) Bill: anticipated provisions

- Dual discrimination claims to be permitted
- Expansion of equal pay rights to:
 - Ethnicity
 - Disability
- Introduction of pay gap reporting for:
 - Ethnicity
 - Disability
- New Equal Pay Regulatory & Enforcement Unit

- Right to switch off
- Single employment status
 - No distinction between employees and workers
- Framework for collective grievances

Duty to prevent sexual harassment

s26(2) Equality Act 2010:

“unwanted conduct of a sexual nature which has the purpose or effect of

- *violating an individual’s dignity; or*
- *creating an intimidating, hostile, degrading, humiliating or offensive environment “*

s40A Equality Act 2010:

(1) An employer (A) must take reasonable steps to prevent sexual harassment of employees of A in the course of their employment.

(2) Sexual harassment in subsection (1) means harassment or the kind described in section 26(2) EqA (unwanted conduct of a sexual nature)

Applied from **26th October 2024**

- **Government headline:**
 - Extension of new duty to prevent sexual harassment in the workplace to cover all reasonable steps and third party harassment
- **Current position:**
 - Changes anticipated from October 2026
 - New category of protected disclosure re sexual harassment under the Equality Act 2010
 - Employers liable for harassment of employees by third parties unless they've taken all reasonable steps to prevent
 - Regulations (not due until 2027) will specify the 'all reasonable steps' expected from employers
- **What to do now:**
 - Carefully comply with new duties to prevent sexual harassment and consider what else you could do

Guidance following Supreme Court decision in *For Women Scotland*

Summary

- Supreme Court decision ruled in April 2025 that under Equality Act 2010:
 - A ‘woman’ is a biological woman/girl
 - A ‘man’ is a biological man/boy
 - This is not changed if someone identifies as trans or has a Gender Recognition Certificate (GRC), therefore:
 - A trans woman is a biological man
 - A trans man is a biological woman

April 2025

- EHRC publishes interim guidance and launches further consultation

30 June 2025

- EHRC consultation closes

5 September 2025

- EHRC provides draft updated code of practice to Minister for Women and Equalities

15 October 2025

- EHRC writes to government re delay in implementation
- Removes interim guidance from website
- Requests revocation of previous code

EHRC current position:

- Those who have duties affected by this decision should:
 - Take specialist legal advice on their obligations; and
 - Use the new Code of Practice when it is approved by Parliament

Our next updates

TORQUELAW



11 December: Festive case round up (virtual, free)

14 January: Employment Law Update with networking breakfast (York, £60 + VAT)

17 March: Managers' Essential Employment Law course

Throughout 2026: Employment Rights Act topic specific events, webinars and blogs

Full details at torquelaw.co.uk

Register for updates by emailing info@torquelaw.co.uk

Thanks for listening



Torque Law

01904 437680

info@torquelaw.co.uk

www.torquelaw.co.uk