Skadden

UK Employment Flash

Insights into the latest employment news

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The Employment Rights Act 2025 (ERA) passed into law on 18 December 2025, providing a wide range of reforms that will reshape the landscape of UK employment law over the coming years. In February 2026, the UK government published an updated timeline setting out the key dates for the changes introduced by the ERA, which are scheduled to take effect in stages from 2026 through 2027. In this *Employment Flash*, we recap the most significant changes and consider other key developments on the horizon.

February 2026 – Reforms to Industrial Action and Trade Union Law

Significant reforms to industrial action and trade union law came into effect in February 2026. These reforms are designed to simplify procedures for unions, strengthen employee protections and repeal restrictions introduced by the previous government under the Trade Union Act 2016.

The following union-related changes came into force on 18 February 2026:

- **Removal of the 50% turnout threshold for strike action.** A simple majority of favourable votes is now sufficient for lawful industrial action.
- **Shorter notice for industrial action.** The minimum notice period unions must give for industrial action is reduced from 14 to 10 days.
- **Simplified ballot and notice requirements.** Ballot papers and notices no longer need to specify the number of affected workers or detailed dispute information. Unions can simply ask members what type of action they wish to take (*i.e.*, strike action or action short of a strike).
- **Longer mandate period.** The period during which unions can lawfully take industrial action following a valid ballot has increased from six to 12 months.
- **Stronger protection against dismissal.** Employees dismissed for participating in protected industrial action are now automatically unfairly dismissed with no time limit on protection, including after the industrial action has ended. This provision removes the previous 12-week cap on the period for which an employee was protected.

The changes will collectively make it easier for unions to organise and sustain industrial action. In addition, starting in August 2026, industrial action and union election ballots can include electronic balloting alongside postal ballots to increase employee voting participation.

April 2026 – Updates to Family Leave and Statutory Sick Pay and Establishment of the Fair Work Agency

6 April 2026 marks a major milestone in the phased implementation of the ERA, including expanded eligibility for Statutory Sick Pay, "day 1" paternity leave rights, new bereaved partner leave and higher penalties for failures in collective redundancy consultation. The UK government will establish the Fair Work Agency on 7 April 2026 to centralise and strengthen enforcement of employment rights.

- **Statutory Sick Pay (SSP):** SSP will be available from the first day of sickness absence for all employees, with no lower earnings limit or waiting period. SSP will be paid at the lower of the statutory rate (£123.25 starting on 6 April 2026) or 80% of normal weekly earnings.
- **Paternity leave:** Paternity leave becomes a day-one right for employees, though Statutory Paternity Pay will still require 26 weeks of service. Employees may take paternity leave after a period of shared parental leave, instead of being required to use paternity leave first.
- **Bereaved partner's paternity leave:** If a mother or primary adopter dies within the child's first year, the surviving partner will be entitled to up to 52 weeks of unpaid leave, regardless of service. The leave must be taken as a single, continuous period. If the child also dies or is returned after adoption, up to 8 weeks' leave will be available.
- **Parental leave:** Unpaid parental leave will become a day-one right, removing the previous requirement for one year's service.
- **Increased protective awards:** The maximum protective award for failure to comply with collective redundancy consultation obligations will double from 90 to 180 days' pay per affected employee.
- **Whistleblowing:** Sexual harassment will be added as a protected disclosure category.
- **Changes to the threshold for union recognition:** Unions will only need a simple majority of those voting in a recognition ballot, rather than 40% support from the bargaining unit. The membership threshold for applying for recognition will be reduced to 10%, with the government able to reduce this to as little as 2% by regulations in the future.

Employers should update their family-leave, sickness absence, whistleblowing and anti-harassment policies to reflect these changes. The significant increase in the maximum protective award is likely to increase emphasis on compliance, lengthening redundancy processes and increasing settlement costs.

On 7 April 2026, the UK government will establish the Fair Work Agency (FWA) to oversee employment compliance, initially covering agency worker protection and minimum wage, and later expand the agency's remit to include enforcement of holiday pay and SSP. The FWA will have wide-ranging powers, including undertaking workplace inspections, requiring employers to produce evidence of compliance, bringing proceedings on behalf of workers, issuing enforcement orders and recovering costs from noncompliant employers. The UK government has not yet confirmed the start date for these enforcement powers. Employers already following best practice should see little impact, but should **pay close attention to holiday pay calculations, which are a common issue for employers and are expected to be a future enforcement focus.**

October 2026 – Extended Windows for Tribunal Claims and Increased Management of Harassment Risks

Extended time limits for bringing tribunal claims, strengthened union access rights, and duties to take "all" reasonable steps to prevent sexual harassment and third-party harassment will commence in October 2026.

- **Extension of time limits:** The period for bringing most employment tribunal claims — including discrimination and unfair dismissal — will increase from three to six months. This does not currently apply to breach of contract claims, though future amendments may address that.
- **Stronger duty to prevent harassment:** Employers' obligations will include taking "all reasonable steps" (rather than merely the formerly required "reasonable steps") to prevent sexual harassment at work. Employers may also be liable for harassment of their employees by third parties (such as customers or clients), unless the employer can show it took all reasonable steps to prevent the harassment. Note that this second duty covers all forms of harassment, not just sexual harassment.
- **Trade union access rights:** Trade union officials will have statutory rights to access workplaces (including digital and virtual access) for recruitment, organising and collective bargaining. Employers must negotiate access agreements or risk the Central Arbitration Committee imposing default arrangements and financial penalties for noncompliance. Further legislation will clarify the statutory process for requesting and refusing access.
- **Obligation to notify workers of right to join union:** The ERA provisions will require employers to provide workers with a written statement explicitly informing them of their right to join a union. Secondary legislation will set out details regarding the content and timing of this notification.

- **New protections for union members and representatives:** The new provisions will protect workers from detriments short of dismissal for participating in protected industrial action, closing a gap in current law.

Before October 2026, employers should update their anti-harassment policies to reflect the new duties, train managers to respond appropriately to issues and conduct thorough risk assessments to identify and address harassment risks in the workplace. Employers should also update contracts with third-party suppliers and service providers to incorporate anti-harassment standards and provisions to remove personnel who engage in inappropriate behaviour.

2027 – Dismissal Rights That Increase Employers' Potential Liability

1 January 2027 will be the most significant date in the implementation of the ERA: This is when the cap on unfair dismissal compensation will be removed and the qualifying period for unfair dismissal protection will be reduced to six months. Other key changes expected in 2027 include new restrictions on "firing and rehiring," a duty to offer guaranteed hours and a requirement for large employers to publish equality action plans.

- **Unfair dismissal protection:** The new rules will reduce the qualifying period for ordinary unfair dismissal rights from two years to six months of continuous service from 1 January 2027. This means that employees hired on 1 July 2026 will have unfair dismissal protection if still employed at the end of 2026. Currently, an employee acquires unfair dismissal protection one week before their two-year anniversary, due to the inclusion of their one-week statutory notice period. The same principle will apply to the new six-month qualifying period, so that protection will be acquired one week before an employee's six-month anniversary.
- **Removal of the cap on unfair dismissal compensation:** Also starting 1 January 2027, the statutory cap on compensation for ordinary unfair dismissal claims will be removed. Currently, financial losses for an ordinary unfair dismissal claim are capped at the lower of £118,223 or 52 weeks' gross pay. Under the new rules, tribunals can award full compensation for actual and future financial loss, aligning unfair dismissal awards with those for discrimination and whistleblowing. The UK government has confirmed that there will be no consultation on this point, which was a late addition to the ERA shortly before legislators passed the act.
- **"Fire and rehire" restrictions:** The new rules will curtail the scope for "firing and rehiring" as a way for employers to require employees to accept less generous contracts. The new legislation will deem dismissals for the purpose of making "restricted variations" to core terms automatically unfair, except where employers face financial difficulties threatening their ability to carry on business as a going concern. The UK government launched a consultation on 4 February 2026 to seek input on which types of expenses, benefits and shift changes to include in the ambit of the new rules. According to the updated timeline, these changes will now take effect in January 2027 (rather than the originally planned October 2026).
- **Guaranteed hours for zero-hours workers:** The ERA includes new rules governing the use of zero-hours contracts, which are contracts where there are no, or a very low number of, guaranteed working hours. Employers using zero-hours contracts must offer guaranteed hours at the end of each 12-week period, reflecting the hours the employee has worked (although this reference period is subject to final confirmation). The employee has no obligation to accept the offer of guaranteed hours. Employers will also have to give "reasonable" advance notice of shifts and cancellations, and may have to pay for shifts cancelled at short notice, with details to follow in regulations.
- **Expanded collective redundancy trigger:** In addition to the current rule (requiring consultation if 20 or more redundancies at one establishment within 90 days are proposed), a new threshold will apply across all sites of an employer. The government will consult on whether to make this a fixed number or a percentage of the workforce, with changes expected in 2027.
- **Right to bereavement leave:** Currently, only bereaved parents have a statutory right to bereavement leave. The ERA enables the introduction of a day-one right to at least one week of unpaid bereavement leave for all employees. Details will be set out in further regulations, expected to take effect in 2027.
- **Enhanced dismissal protections for pregnant women and new mothers:** On 6 April 2024, redundancy protections were extended to cover a period of 18 months from the date of a child's birth or placement for employees who are pregnant or returning from maternity, adoption or shared parental leave. During this period, these employees accept the right to be offered suitable alternative employment (if available) as a priority over other staff in the event of redundancy. The ERA allows the government to extend enhanced dismissal protections to cover dismissals beyond redundancies, so that women who are pregnant or on maternity leave can only be dismissed in specific circumstances. Further details on these potential changes are expected following a recent public consultation.

- **Stronger rights to flexible working:** The rule updates will require employers to state the reasons for refusing a statutory flexible working request and to demonstrate that the refusal is reasonable. The government is running a consultation until 30 April 2026 on a proposed process for employers to follow when they are considering rejecting a request.
- **Equality Action Plans:** New provisions will require employers with 250 or more employees to publish equality action plans that detail the actions the employer is taking to improve gender equality among their employees. The government has not yet published regulations setting out what particular issues these action plans will need to cover, but has said that it will include issues relating to the gender pay gap and support during menopause. Equality action plans will be introduced on a voluntary basis on 6 April 2026, before becoming mandatory in 2027.

The changes to unfair dismissal rights will significantly increase employers' potential liability when considering dismissal. Statutory protection against unfair dismissal will cover a much larger proportion of the workforce, including many new hires and potentially those still in probationary periods. Employers will be incentivised to ensure that dismissals after six months' service are conducted in accordance with fair procedures, as the risk of unfair dismissal claims will rise both in volume and value. The removal of the compensation cap means that successful claims — especially from senior or highly paid employees — could result in substantial awards for lost salary, bonuses and equity incentives over several years. **Settlement negotiations are likely to become more protracted and costly as a result.**

Government guidance indicates that if an employee's "effective date of termination" falls on or after 1 January 2027, and they have six months of service, they will have the right to claim unfair dismissal. Under current law, the "effective date of termination" includes statutory notice, meaning dismissals as early as 25 December 2026 could fall under the new rules. This point remains unclear and may be clarified further in due course. **Employers should make definitive retention decisions before 25 December 2026 (if statutory notice needs to be taken into account) and take immediate steps to strengthen hiring processes and initial performance management during the period before employees reach the qualifying threshold.**

There is also uncertainty regarding the timing of dismissals and the inclusion of statutory notice. For example, if an employee is dismissed in late 2026 but their statutory notice period (which can be up to 12 weeks for those with 12 years' service) extends their effective date of termination into 2027, they may seek to claim under the new, uncapped regime. Although this may not be the intended effect of the changes, current guidance and legislation do not clarify whether the new rules will cover such cases.

Horizon Scanning – Ethnicity and Disability Pay Gap Reporting, NDAs and Proposed Noncompete Reforms

In addition to the scheduled reforms, a number of further changes remain under consideration, with their timing yet to be confirmed. These include proposals for mandatory ethnicity and disability pay gap reporting, new restrictions on NDAs and potential reforms to noncompete clauses in employment contracts.

Ethnicity and Disability Pay Gap Reporting

We are still awaiting the government's response to the consultation that closed in June 2025 on the introduction of mandatory ethnicity and disability pay gap reporting for employers with 250 or more employees. This topic was covered in our October 2025 *Employment Flash*. A draft bill is anticipated in early 2026.

Nondisclosure Agreements (NDAs)

The ERA introduces a new provision that will render void any clause in an agreement between an employer and a worker that seeks to prevent the worker from disclosing information about harassment or discrimination, including details of how the employer responded to such allegations. This restriction will not apply to "excepted agreements," and the government plans to consult on the criteria for these exceptions. The measure will apply only to agreements entered into after the relevant regulations come into force and will not have retrospective effect. The timing of these changes remains uncertain.

Noncompete Reforms

In November 2025, the government published a working paper seeking views on several potential reforms to noncompete clauses in employment contracts, including:

- **Introducing a statutory cap on the length of noncompete provisions.** The government sought views on an appropriate statutory cap, and whether the cap should vary according to employer size.
- **Banning noncompete provisions in employment contracts.** This would make noncompete provisions in employment contracts unenforceable, similar to the approach taken in certain U.S. states such as California.
- **Banning noncompete provisions in employment contracts below a salary threshold.** The aim is to protect lower-paid workers, who may lack the resources to challenge such restrictions, by prohibiting noncompete clauses for employees earning below a specified salary.

- **Combining a ban below a salary threshold with a statutory limit.** This approach would ban noncompete provisions for lower-paid workers while imposing a statutory cap on the duration of noncompete arrangements for higher earners.

Notably, current proposals appear to have dropped the proposal to require payment for the duration of a noncompete period, which was considered in the UK government's 2021 consultation.

Each of these proposals presents significant practical challenges and could generate substantial litigation regarding the interpretation of any new restrictions. The question of whether an employer has a legitimate interest to protect does not fit neatly into these threshold-based approaches, and, as established by case law, a "one size fits all" solution is not appropriate in this area. At this stage, the UK government has not indicated a timeline for these additional reforms. Because the reforms would require primary legislation, and given the government's current focus on the ERA, any actual changes regarding noncompete provisions are likely some way off.

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