Clifford Chance

BRIEFING

Employment Rights Act 2025: an update

April 2026

The Employment Rights Act 2025 (the Act) establishes the framework for a multitude of employment law reforms that will be phased in over the next two years.

Much of the detail will be contained in secondary legislation in relation to which a comprehensive Government consultation programme is underway. Following a number of consultations a fuller picture is beginning to emerge on the substance and implementation timeframe.

In the context of the emerging clarity this briefing examines the implications of, and preparatory steps that can be taken in relation to some of the key employment law reforms featured in the Act.

Key issues

Unfair dismissal

What: The qualifying period for unfair dismissal protection will be reduced to 6 months from 2 years. The cap on unfair dismissal compensation will be removed in its entirety. This will have a significant impact on employers of highly paid employees. While it will remove the current incentive for claimants to make ill-founded (but uncapped) whistleblowing or discrimination claims, it will significantly increase the risk profile of unfair dismissal claims by high earners. If, for example, employees can bring uncapped compensation claims for failure to conduct a full performance management process, that would have a significant impact on how such situations are currently managed in practice. It will also impact the approach to settling statutory claims for PLC directors and impact on the directors' remuneration policy.

When: 1 January 2027.

Employment tribunal claims

What: The time limit for all Employment Tribunal claims (other than breach of contract claims) will be increased from three to six months.

When: October 2026. It is understood that the new limits will not apply retrospectively so that some time barred claims could be revived.

Fire and rehire

What: The Act imposes significant restrictions on an employer's ability to impose changes to key contractual terms (such as pay, hours, pensions, shift patterns, time-off rights, and certain benefits) (so called 'restricted variations') by means of 'fire and rehire'. It will be automatically unfair to dismiss an employee because they have refused to agree to a 'restricted variation' of their contract, or if the dismissal is to enable the employer to re-engage the employee or another individual on different terms to perform substantially the same duties. It will also be automatically unfair to dismiss in order to replace the employee with a non-employee such as an agency worker, to perform substantially the same duties.

The Government consultation on **Fire and rehire – changes to expenses, benefits, and shift patterns** favours excluding all expenses and benefits in kind from the list of restricted variations, allowing employers to use fire and rehire to change these terms, subject to ordinary unfair dismissal protections. It also favours protecting as 'restricted variations' shift changes from day to night (or vice versa) and weekday to weekend (or vice versa). Dismissals to effect other shift changes would be subject to ordinary unfair dismissal protections.

A narrow financial difficulty exception applies. It is intended that it should only apply for restructuring where there is genuinely no choice for the employer, not simply where an employer wants to achieve efficiencies or remove outdated terms and conditions.

When: The Government's consultation closed on **1 April 2026**; the responses will inform secondary legislation and updates to the Code of Practice on dismissal and re-engagement, with the fire/rehire restrictions coming into effect in October 2026.

Trade unions: industrial action /recognition/access/information/protections

What:

(a) Removal of requirement for minimum 50% trade union members turnout to vote in ballot for industrial actions ('turnout threshold'); and

(b) A simple majority voting in favour of the strike will be sufficient ('support threshold').

When: The new ballot turnout threshold has been delayed until the new electronic balloting measures apply; this is not expected to be before August 2026. The support threshold has applied with effect from 18 February 2026.

What: The Act makes the statutory trade union recognition process easier by:

(a) Removing the requirement at the application stage for a union to demonstrate that there is likely to be majority support for trade union recognition;

(b) Removing the 40% support threshold at the recognition ballot stage;

(c) Reducing the 10% application threshold (to as an as yet undetermined percentage) before the Central Arbitration Committee (CAC) will accept a recognition case.

When: Came into effect 6 April 2026. An updated Code of Practice on trade union recognition is expected to come into force in October 2026.

What: Trade unions will have the right to access workplaces both physically and digitally to meet, represent, recruit, or organise workers (whether or not they are members of a trade union) and to facilitate collective bargaining but not to organise industrial action.

The 'access regime' will require unions to submit written access requests specifying the group of workers, purpose, and type of access sought, with employers obliged to respond within 15 working days. Where agreement is not reached, a 25-working day negotiation period will follow, after which either party may refer the matter to the CAC for determination. The CAC will also oversee enforcement, including the imposition of fines: up to £75,000 for a first penalty; up to £150,000 for a second penalty, and; up to £500,000 fine for the third breach and each subsequent non-compliance. When determining the access agreement application, the CAC will be guided by principles designed to balance union access with the need to avoid unreasonable business disruption.

Employers with fewer than 21 workers will be exempt, and access will be refused if it would present a genuine risk to national security or prejudice the investigation or detection of offences. The CAC *may* refuse access where a recognised union is already present or where facilitating access would impose disproportionate resource burdens.

Access agreements will have a maximum duration of two years, after which they must be renewed or revised, and the government will prescribe 'model' terms (including weekly access and minimum 2 days' notice for access events) to guide the CAC's decision-making and invariably will become the base line of any negotiations.

When: The Government published for consultation (alongside its Response to its consultation on the Right of Access) a draft code of practice on the right of access. The consultation closes on 20 May 2026.

The implementing legislation is expected to come into force in October 2026.

***What*:** Employer requirement to inform all new workers in a 'statement of trade union rights' of their right to join a trade union and to regularly inform workers of this right. The content, format, delivery method, and frequency of the required statement was subject to a consultation. The Government's preference is for a standardised statement that would outline trade union functions, relevant statutory rights, any recognised unions in the workplace and signpost workers to a GOV.UK page listing trade unions.

Failure to comply with the new information obligations will not give rise to a freestanding employment tribunal claim; however, such a claim can be bolted on to other employment tribunal claims and a tribunal will be able to award compensation of 2 or 4 weeks' pay in the event of breach.

When: The consultation closed on 18 December 2025 with the new information obligation expected to come into effect in October 2026.

What: Employees who take part in lawful industrial action were protected from dismissal for 12 weeks after the start of the strike. The Act removed this 12-week limit, meaning employees will have ongoing protection from dismissal for the entire duration of any lawful industrial action.

When: The extended protections came into effect 18 December 2025.

Collective redundancy consultation

What: Currently, employers must carry out collective consultation if proposing 20 or more redundancies at a single establishment within 90 days, with failure exposing them to protective awards of up to 90 days' pay. The Act introduces a second threshold test so that collective consultation will also be required where redundancies reach a prescribed level across the business, not just at one site. This new test will be set by regulations. The Government consultation favours a single, fixed number of redundancies triggering the consultation obligations, regardless of employer size (likely between 250 and 1000). It could, however, be based on a percentage of the workforce or a higher fixed number (e.g., the lower of 10% or 100 employees or a fixed number tiered according to size of the employer or some other combination. Employers will not need to consult all representatives together or aim for a single agreement.

The Act has also increased the maximum protective award from 90 to 180 days' pay with effect from 6 April 2026.

When: The Government consultation closes on 21 May 2026. The new threshold test will take effect in 2027, while the increased protective award cap applies to dismissals on/after 6 April 2026.

Zero-hours contracts and guaranteed hours

What: Employers will be required to offer contracts (a 'GHO') that reflect regular hours worked over a reference period (expected to be every 12 weeks) to workers on zero-hours contracts, agency workers and workers with a 'low' number of guaranteed hours, who regularly work more than

these hours. There will be a seasonal/temporary worker exception to this GHO obligation.

Employers will also be required to give reasonable notice of any changes in shifts and to pay compensation for any shifts moved, cancelled, or curtailed. The agency and hirer will be jointly responsible for reasonable notice of changes to shifts to agency workers. However, the agency will be responsible for short notice shift cancellation or curtailment payments, but the parties can agree to apportion liability for such compensation. The agency will have the right to recoup a proportion of any compensation payments *reflecting the hirer's responsibility* where there is a pre-existing arrangement with the hirer before the date of Royal Assent +2 months.

Secondary legislation will determine the mechanics of the new obligation addressing amongst other things the timing, content, form and manner of the GHO and worker response, the relevant reference period, the detail of any exceptions and so on.

When: Consultation on the detail of the requirement to offer guaranteed hours is expected shortly. The GHO requirement is expected to come into force in 2027.

Family leave and enhanced dismissal protections

What - Dismissal protections for pregnant employees and new mothers: the Government has consulted on how to define the specific circumstances in which it would be lawful to dismiss pregnant employees and new mothers. The two options explored are: 1. a new general test of fairness. This might preclude fair dismissals except in circumstances where dismissal is necessary due to serious business harm, health and safety risks, or significant negative impact on others; or 2. narrowing and/or removing some of the existing fair dismissal grounds (such as limiting conduct dismissals to gross misconduct scenarios and removing capability as a fair reason, so that poor performance dismissals would no longer be permitted).

The enhanced dismissal protection period will end either 6 months after the employee's return from maternity leave, or 18 months after the birth (the latter would align with the current redundancy protections to offer suitable alternative employment). The commencement of the protection period is yet to be determined but options include from the date the employee is aware that she is pregnant or the date that she notifies her employer.

The introduction of such enhanced dismissal protection is also being considered in relation to employees on other types of family leave including shared parental leave.

When: the consultation closed on 15 January; it is anticipated that any new enhanced protections will come into force in 2027.

What - Bereavement leave: A day-one right to unpaid bereavement leave (including following pregnancy loss before 24 weeks) will be introduced in 2027. The Government has consulted on the implementation mechanics to shape the final details of this new right. It seeks views on eligibility (potentially including non-traditional family members and various forms of pregnancy loss) as well as the timing, duration, flexibility, notice and evidence requirements for taking leave.

Carers' leave: The existing right to 1 week's unpaid carers' leave will be reviewed, with consideration given to introducing paid leave. No timeframe or details have yet been provided.

Paternity and Unpaid Parental Leave: Became day-one rights from 6 April 2026.

Sexual harassment

What: Since October 2024 employers have been under a statutory duty to take 'reasonable steps' to prevent sexual harassment at work. The Act will strengthen this duty by requiring employers to take 'all' reasonable steps, with regulations defining what this means. Employers will also become liable for harassment by third parties (such as customers or clients) unless they have taken all reasonable steps to prevent it.

The Act will make it explicit that disclosures of sexual harassment qualify for whistleblowing protection against unfair dismissal and detrimental treatment.

When: Whistleblowing protections for sexual harassment disclosures came into effect on 6 April 2026. The strengthened duty to prevent sexual harassment and third-party liability provisions are scheduled to take effect in October 2026. Regulations setting out what all reasonable steps comprise are expected in 2027.

Confidentiality and non-disclosure agreements (NDAs)

What: The Act introduces renders void a ban on non-disclosure agreements (NDAs) that prevent workers from making allegations or disclosures about relevant harassment or discrimination or the employer's response to the relevant harassment or discrimination or the making of an allegation of relevant harassment or discrimination unless the agreement meets specific conditions for an "excepted agreement" that will be set out in regulations.

The scope of the ban includes harassment or discrimination (of any nature not just sexual harassment) by the employer or colleagues and appears broad enough to cover third-party harassment.

The consultation on excepted agreements, aka as permitted NDAs, proposes that: workers must receive independent written advice from a qualified adviser on the NDA's terms and limitations, and must provide written, informed consent after receiving such advice. In addition, the worker must be given a 14-day cooling-off period to withdraw from the NDA without penalty, with the scope of withdrawal currently under consultation. NDAs may only address specific, already-occurred incidents; pre-dispute NDAs and confidentiality clauses in employment contracts will not qualify, although existing clauses will not be voided. Even with a permitted NDA, workers will retain the right to disclose information to specified parties, including law enforcement, legal advisers, regulators, support services, and close family members, with potential for further additions. The Consultation also considers time limits for NDAs and possible future extension of these rules to agency workers, secondees, work experience placements, and the self-employed.

When: The Government consultation on the specific conditions for an "excepted agreement" closes on 8 July 2026 with the new regime coming into effect in 2027 on a date to be determined. The new NDA restrictions

will not apply retrospectively; only settlement agreements/NDAs made after the legislation comes into force will be affected. Confidentiality provisions in pre-existing employment contracts and NDA's will not be rendered void by the new regime.

Equality action plans: pay gaps/menopause

What: Currently, employers with 250+ employees must publish annual gender pay gap reports, but action plans are voluntary. The Act will require employers to publish 'equality action plans' to close gender pay gaps and to support employees going through the menopause, with penalties for non-compliance. These plans must be updated at least every 12 months. Details about the service providers contracted with for outsourced services will need to be included in gender pay gap reports, although their pay data will not be included.

When: In scope employers are being encouraged to produce and publish a voluntary action plan alongside their gender pay gap data for the 2026 to 2027 reporting year, i.e. by 4 April 2027. Mandatory compliance will be required from the 2027 reporting year with action plans published by 4 April 2028.

To help employers take effective action, the Government has provided a list of recommended, evidence-informed actions that employers can include in their plans and guidance on creating an action plan addressing the phases of the employment cycle.

Flexible working

What: The right to request flexible working is an existing day one right for all workers. The employer can reasonably refuse a request on one or more of statutory grounds. This will remain unchanged, but the employer will have to state the ground upon which the refusal is made and why it considers that it is reasonable to do so and follow a more prescriptive process. Secondary legislation will specify additional steps that an employer will be required to take in the context of a flexible working request. There is no change to the maximum 8 weeks' pay available by way of remedy for breach.

When: The consultation on the detail of the revised flexible working request regime closes on 29 April 2026. Changes to flexible working are then expected to take effect in 2027.

Other employment law reforms

Single employment status: The Government will consult on moving to a single status of 'worker' for all but the genuinely self-employed in the medium to longer term.

Non-compete covenants: the Government has published a Working Paper seeking views on reforming non-compete clauses in employment contracts. It is considering four main policy options: (i) introducing statutory limits on the length of non-compete clauses or introducing statutory limits on the length of non-compete clauses according to company size. Different limits could apply based on company size, e.g., 3 months for companies with more than 250 employees, 6 months for smaller companies, (ii) banning non-compete clauses outright, (iii) banning non-compete clauses below a salary threshold, and (iv)

combining a ban below a salary threshold with a statutory limit for higher earners.

The Working Paper hints that safeguarding measures may be required to prevent the circumvention of any restrictions on the use of non-competes. This might impact on the use of other forms of restrictive covenant, confidentiality clauses and possibly the conditions precedent to good leaver status in variable remuneration arrangements. In addition, although the Working Paper relates to non-compete clauses in employment contracts it remains to be seen whether the use of non-compete covenants in LLP or other partnership agreements and sale and purchase agreement will be impacted in any way.

The Working Paper is silent on what is proposed by way of transitional arrangement (if any) in relation to pre-existing non-compete clauses.

Responses to the Working Paper were required by 18 February 2026. Otherwise, there is no indicative timeframe for any consultation or target implementation date.

Right to Switch Off: it is currently unclear whether the Government will introduce a statutory Code of Practice on the 'right for workers to switch off'.

Internships: the Government has stated it will not proceed with a ban on unpaid internships .

Holiday pay: with effect from 6 April 2026 employers have been subject to a new obligation to keep records for six years in relation to holiday pay, payments in lieu of holiday and holiday taken. Failure to comply will be an offence punishable by a fine. The Fair Work Agency will become responsible for enforcement of this obligation in due course (possibly in 2027).

Ethnicity and disability pay gap reporting: in March 2026 the Government published its Response to its consultation on ethnicity and disability pay gap reporting. It confirmed that it will be introduced for large employers (250 or more employees) mirroring gender pay gap reporting requirements. In addition, employers will have to report the ethnic and disability composition of their workforce and the percentage of employees who did not declare their status to contextualize their pay gap data and highlight data reliability. They will also be required to publish action plans addressing identified pay gaps. No specific timeframe for implementation has been indicated. Employers are unlikely to be subject to these new reporting obligations before 2027 (and likely H2 at the earliest) considering the legislative process.

Use of surveillance technologies in the workplace: in 2026 it is anticipated that the Government will consult on proposals to strengthen transparency and worker engagement regarding the use of surveillance technologies.

Key employment law reforms timeframe

Implementation date	Employment law reform
On Royal Assent	• Removal of 12-week cap on protection against unfair dismissal for taking lawful industrial action.
April 2026	• Collective redundancy max. protective award: doubles to 180 days' pay (uncapped). • 'Day 1' Paternity Leave and Unpaid Parental Leave. • Sexual harassment whistleblowing protections. • Statutory Sick Pay: removal of Lower Earnings Limit and waiting period. • Simplification of trade union recognition process. • Industrial action ballots: simple majority voting in favour will be permitted. • New holiday record keeping obligations
August 2026	• Introduction of trade union e-balloting for industrial action? • Removal of 50% turnout threshold for industrial action ballots?
October 2026	• Fire and rehire restrictions. • Duty to inform workers of right to join a trade union. • Trade unions' right of access. • Employers to take 'all reasonable steps' to prevent sexual harassment. • Liability for employee harassment by third parties. • New rights and protections for trade union reps. • Employment tribunal time limits (other than breach of contract claims) increase to 6 months. • Protections against detriment for taking industrial action.
2027	• New collective redundancy consultation trigger threshold. • Flexible working request procedural requirements. • Bereavement leave.

Implementation date	Employment law reform
	• New obligation to make guaranteed hours offer to employees on zero hours contracts and to agency workers. • 1 January - Unfair dismissal qualifying period reduces to 6 months, and compensation cap removed. • Enhanced dismissal protection regime for pregnant employees and new mothers. • Gender pay gap and menopause action plans (voluntary from April 2026). • Restrictions on the use of NDAs.
Unknown	• Code of Practice on the 'right to disconnect'. • Possible reforms to 'parental leave' regime. • Introduction of ethnicity and disability pay gap reporting obligations. • Consultation on introduction of single 'employment' status. • Consultation on reform of non-compete regime. • Consultation on the use of surveillance technologies by employers?

Preparatory steps	
Workforce Structure/ Composition	• Audit the current workforce to ascertain the makeup and ratio of current employees, workers (zero, low hours workers, agency workers) to determine the potential impact of the proposed changes including the guaranteed hours offer obligations and consider alternative staffing models.
Contracts, Policies and Procedures	• Audit current employment contracts, other contract arrangements (including outsourcing arrangements and settlement agreements), to address restrictions on the use of confidentiality clauses, non-compete clauses and the interaction of contractual probation periods with the reduced unfair dismissal qualifying period of 6 months. • Audit current outsourcing and agency staffing arrangements to assess what revisions will be required to address, cancellation/curtailment of shifts notifications requirements, the apportionment of penalty payments and the new guaranteed hours offer obligations in respect of agency workers. • Review HR processes (including pre-employment screening) and policies,

Preparatory steps	
	employee benefit schemes, risk, and compliance procedures, working arrangements, and any payroll arrangements to identify areas that may need revision, particularly in relation to: the new holiday pay record keeping requirements, the duty to notify workers of the right to join a trade union, the new requirement to provide reasonable notice of shift changes, the duty to take all reasonable steps to prevent sexual harassment, liability for third party harassment, the new paternity, parental and bereavement leave rights and any new dismissal protections applicable to pregnant employees and new mothers. • Data retention policies should be reviewed in light of the extension to tribunal limitation periods; where current retention policies are based on a 3-month limitation period some revision may be required.
Trade Unions	• Consider how the duty to notify workers of the right to join a trade union will be met. • Prepare for the possibility of increased union presence and activity within the workplace as well as industrial action. • Consider negotiating position for access agreement ahead of October 2026 . Set up access request response protocols to meet the statutory timeframes. • Consider how trade union access can work in practice; what operational and logistical adjustments may be necessary to achieve physical and digital access, appropriate notice periods, and security arrangements. • Train HR and managers on new statutory duties (access/notice of right to join a trade union and the revised protections available to employees that participate in lawful industrial action), the CAC processes, and compliance documentation. • Where a recognised union is already present, employers may need to manage requests from additional unions and the potential for workplace disruption or competing representation claims and should ensure equal opportunities to avoid unfair advantage or inducement complaints.
Training	• Consider what training will be required in due course on the implications of the new rights and protections, including the strengthened protections against dismissing pregnant employees and new mothers,

Preparatory steps	
	sexual harassment, and restrictions on the use of NDAs.
Flexible working	• HR/manager (refresher) training and education on grounds/process for declining a FWR, the need for objective justification and clear documentation of decision making and the discrimination risks that may arise.
Unfair dismissal protection after 6 months	• Tackle any serious performance issues before the unfair dismissal qualifying period reduces to 6 months on 1 January 2027. Review recruitment processes and due diligence to improve selection processes and move away from reliance on probationary periods. Move towards properly managed probationary periods for new recruits (and review approach to extension of probation periods); conduct thorough termination procedures supported by a clear document trail. Audit contracts terms to assess whether revisions to probationary terms are required. Consider whether revisions to exit processes and costings are required in light of removal of unfair dismissal compensation cap.
Redundancy/ termination exercises	• Assess what internal changes are required to ensure awareness around when the collective redundancy trigger threshold is reached across the entire business in 2027. Consider whether education on the definition of 'redundancy' and which terminations may be in scope (expiry of FTC's, fire and rehire, other) and raise awareness of the increase in the maximum protective award.
Equality Action Plans	• Consider what approach will be taken re objectives, milestones etc, internal and external comms and what implications there are in relation to jurisdictions such as the US where the lawfulness of DEI initiatives could be challenged.

Right of trade unions to access workplaces

Restrictions on non-disclosure agreements: government consultation provides some clarity

For an overview of employment law in a large range of key jurisdictions see our easy-to-use digital guide:
Clifford Chance Employment Law Guide App
Access the web version or download from the App store / Google play.

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