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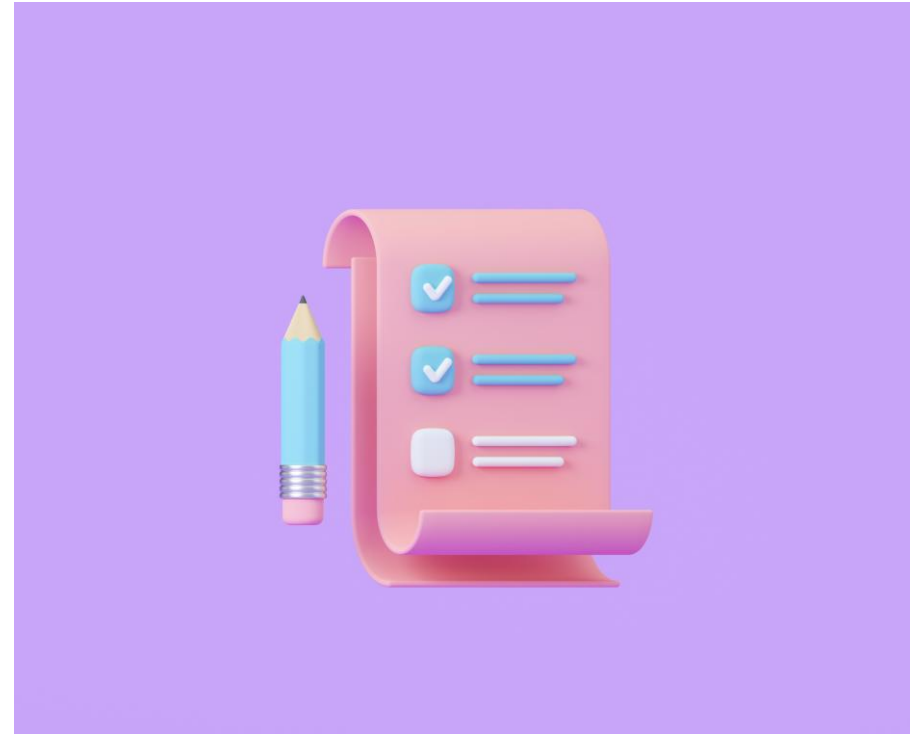
Agenda

1 **Employment Rights Act 2025**

2 **Summary of legislative changes**

3 **Case Law Development**

4 **New statutory rates**



The Employment Rights Bill

The Employment Rights ~~Bill~~ Act 2025

ERB becomes ERA

Section 1 - The Employment Rights Act 2025



Timeline

- **Statutory Sick Pay – April 2026**
- **Fair work agency – April 2026**
- **Collective redundancies – protective award doubles (April 2026), consultation thresholds (2027)**
- **Family Friendly –day 1 paternity and parental leave - April 2026**
- **Whistleblowing – April 2026**
- **Fire and rehire – October 2026**
- **Prevention of sexual harassment - October 2026**
- **Third party harassment – October 2026**
- **Extension of tribunal time limits – October 2026**
- **Tips – October 2026**

Timeline

- **Unfair dismissal – 1 January 2027**
- **Protection for pregnant workers and those returning from statutory leave - 2027**
- **Bereavement leave 2027**
- **Zero hours contracts - 2027**
- **Flexible working - 2027**
- **Equality Action Plans – 2027**
- **Holiday & Annual Leave Records – unknown**
- **NDA's – unknown**

Poll 1

How much do you know about the Employment Rights Act?

- a) Nothing**
- b) A little**
- c) I am totally clued up**

April 2026



ERA - statutory sick pay changes

- **SSP will become payable from day 1 of sickness**
- **Payable for the first 3 Qualifying Days of sickness and will remove the current three-day waiting period**
- **Lower earnings limit will be removed, meaning that all eligible employees, regardless of earnings, will be entitled to lesser of 80% of normal weekly earnings and SSP**



ERA - Fair Work Agency

- To require individuals to attend meetings, answer questions and provide information or documents, and for enforcement officers to enter premises to inspect documents or access computers or other equipment
- To bring any Employment Tribunal claims on behalf of workers
- To offer legal advice and representation for employment cases (and the ability to claw back costs)
- To pursue employers for NMW, holiday pay and sick pay, and impose financial penalties on top

ERA – collective redundancies

2027:

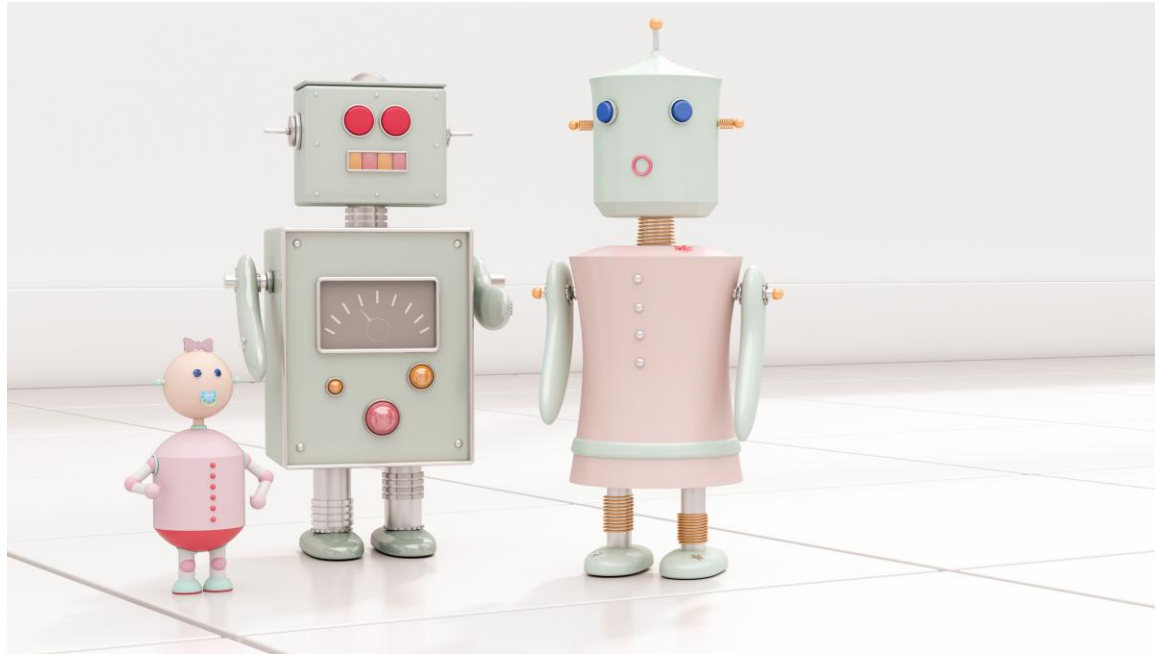
- Where redundancies are proposed across multiple sites ('establishments'), collective consultation (and duty to notify Gov via HR1Form) will be triggered when:
- 20 or more employees affected at one establishment; or
- At least the “threshold number of employees” is reached
- Threshold number of employees not yet defined – may be either specified number, a number defined as a percentage of employees or determined some other way

April 2026

- Protective award for failure to collectively consult doubles from 90 days to 180 days per affected employee

ERA – family rights

- Day 1 parental leave entitlement
- Day 1 paternity leave entitlement



ERA - Whistleblowing

Reports of sexual harassments to be included as an example of a type of protected disclosure



October 2026



ERA - fire and rehire/replace

- The term refers to changing terms and conditions by way of dismissal and offer of re-engagement on new terms or replacing staff
- Currently lawful - provided fair procedure followed, valid business case and dismissal 'within range of reasonable responses'
- In July 2024, New Code of Practice was introduced to govern practice and encourage employers to act fairly. Should only be 'last resort'. Failure to follow can lead to increase in damages by up to 25%
- ERA will make practice unlawful except in limited circumstances

ERA – dismissal and re-engagement (continued)

What does the new law provide?

If an employer makes a change classed as a ‘restricted variation’ without the employee’s agreement and they are subsequently dismissed, it will automatically be classed as unfair dismissal

ERA – dismissal and re-engagement (continued)

A “restricted variation” means a variation relating to:

- **Pay and performance**
 - Reduction or removal of entitlement or sum payable in connection with employment
 - Bonus and commission schemes
 - Any term or condition relating to pensions or pension schemes
- **Working time and time off**
 - Hours of work
 - Timing or duration of shift
 - Reduction in amount of time off which an employee is entitled to take
- **Variation clauses**
- **Any variation of a description specified in regulations made by the Secretary of State**

ERA – dismissal and re-engagement (continued)

Lifelines (of sorts!) for employers:

- A “restricted variation” will not trigger an automatically unfair dismissal where the change is minor, ‘routine and non-detrimental’, or in circumstances where the change relates to a place of work
- Financial difficulties exception: dismissal will not be classed as automatically unfair if employers can prove that the restricted variation was to reduce or eliminate risks which might have impacted the ability for the business to continue as a going concern, and that there was no reasonable way to avoid the need to make the contractual changes
- For changes that are not a ‘restricted variation’: No automatic unfair dismissal, but Tribunal must still consider how employer has gone about making the change (e.g. consultation, any ‘sweeteners’ etc.)
- Await future Regs on what a fair process will look like and an update to the Code of Practice

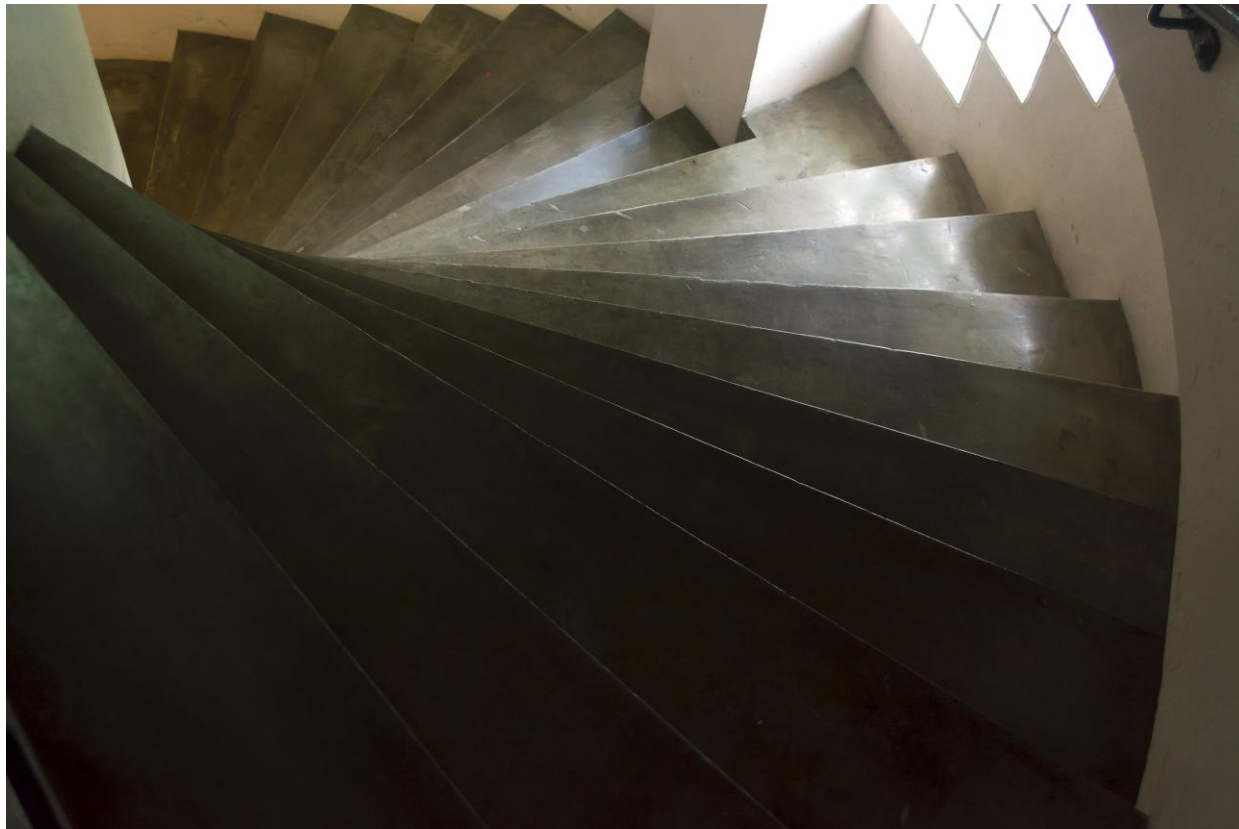
Poll 3

Under the ERA, which of the following variations will fall under the definition of ‘restricted variation’ (choose all that apply):

- a) A variation of the number of hours which an employee is required to work**
- b) Place of work**
- c) Job duties**
- d) Pay and performance**

ERA – prevention of sexual harassment

Employers will be required to take “ALL reasonable steps” to prevent sexual harassment



ERA – third party harassment

- Reintroduce employer liability for third-party harassment in relation to all relevant protected characteristics
- In addition to an employer being responsible for preventing harassment by their own employees, they must also prevent third parties from harassing their employees
- An employer will be liable if both of the following apply:
 - The third party harasses the employee in the course of their employment with the employer
 - The employer failed to take all reasonable steps to prevent the third party from harassing the employee in the course of their employment

ERA - extension of tribunal time limits

- Most Employment Tribunal claims must be brought within 3 months of the act complained of
- ERA will extend time limits to 6 months, including claims for unfair dismissal and discrimination
- Increase will lead to additional claims which will inevitably place additional strain on an already struggling tribunal system
- Consider retention periods



Poll 4

When do you think the London and the South-East employment tribunal are listing final hearings for?

- a) End of 2026**
- b) Middle of 2027**
- c) 2029**

ERA – Tips

- Before producing the first version of a written tips policy, the employer will be required to consult about the policy with recognised trade union representatives or workers' representatives of workers likely to be affected by the policy
- Employers will also be required to review the tips policy at least once every three years and at the same time consult with trade union or workers' representatives, or the workers directly if there are no such representatives
- Employers will be required to make an anonymised summary of the views expressed in the consultation available to all workers of the employer at the place of business where the tips policy applies

2027



ERA – changes to unfair dismissal

- Labour's original manifesto - Unfair dismissal to become Day 1 right, removing 2-year qualifying period
- Amendment by the House of Lords now means there is a 6-month qualifying period
- To come into force on 1 January 2027
- Compensation cap to be lifted – still unknown when this will come into force

Poll 2

Do you think the new provisions for unfair dismissal rights are a good thing?

- a) Yes**
- b) No**
- c) Don't know**

ERA – family rights

- Increased protection for pregnant employees and those returning from statutory family leave
- Almost a complete ban on dismissals of women who are pregnant, have given birth or those on statutory family leave, and during a six month return to work period, except in specific circumstances



ERA – family rights

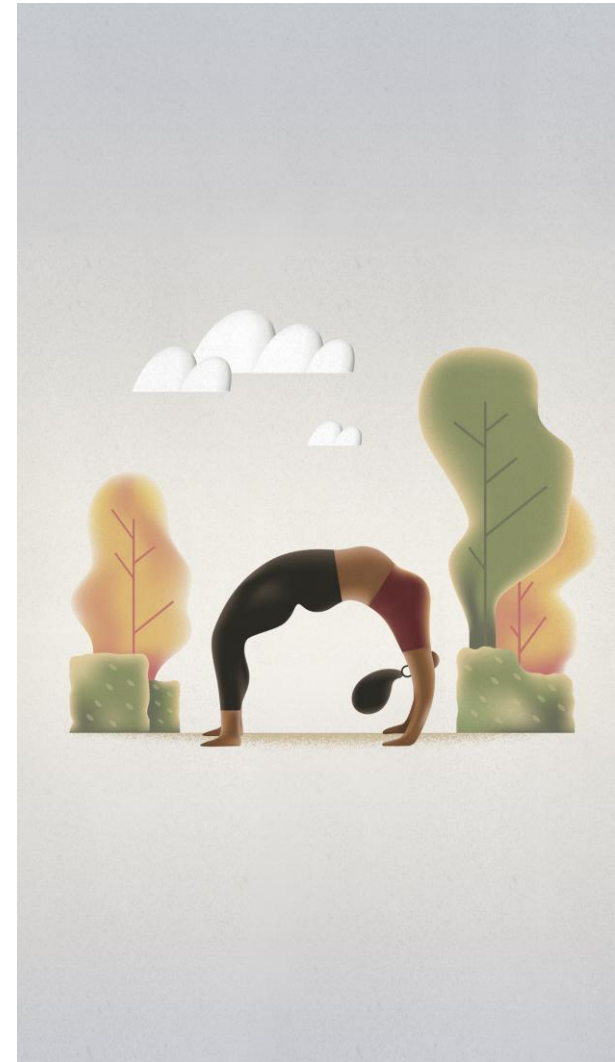
- **Right to bereavement leave (including pregnancy loss) – day 1 right to at least 1 weeks' leave**
- **Cover both the death of a “loved one” and pregnancy loss before 24 weeks**
- **Consultation paper has been published, regulations and guidance will follow after this**

ERA – zero-hours contracts

- Not outright ban, but significantly curtails ‘one-sided’ zero-hours (and ‘low hours’) contracts
- Reforms provide:
 - Employers must make an offer of guaranteed hours reflecting hours regularly worked (likely to be 12-week reference period)
 - Right to reasonable notice of shifts AND changes in or cancellation of shifts
 - Right to payment for any shifts cancelled or curtailed
 - Right not to suffer detriment if refuse shift where notice not given
- Applies to agency workers

ERA – flexible working

- Will strengthen the right to request flexible working to ensure flexibility is genuinely the default from day one, except where it is not reasonably feasible
- Details are unclear, but this could involve limiting the discretion for refusing flexibility and/or increasing tribunal powers to review employer decisions



ERA – Equality Action Plans

- Requires employers with 250 employees or more to develop and publish annually equality action plans showing what steps they are taking in relation to prescribed matters related to gender equality and to publish prescribed information relating to their plans
- Matters relating to gender equality will be those concerning the advancement of equality between male and female employees and will include addressing the gender pay gap and supporting employees going through menopause

...?



ERA - Holiday & Annual Leave Records

- **Obligation for employers to keep records related to holiday entitlement and pay**
- **Records must show how employers are meeting their obligations under the Working Time Regulations, including the amount of leave taken and the corresponding holiday pay received**
- **Retained for six years**
- **Fair Work Agency will be responsible for enforcing these new record-keeping requirements**
- **Failure to comply with the record-keeping obligations will be a criminal offence with potentially unlimited fine**

ERA – NDA's

Any provision in an NDA between an employer and a worker (such as an employment contract or settlement agreement) will be void in so far as it purports to preclude the worker from making an allegation of, or disclosure of information relating to relevant harassment or discrimination, or relating to the employer's response to the harassment or discrimination or the making of the allegation or disclosure

Section 2 – Summary of legislative changes



Acas early conciliation period extended

- From 4 November 2025, Acas early conciliation was extended from six to 12 weeks
- The regulations apply when a prospective claimant has contacted Acas on or after 1 December
- Time limit for presenting a claim is suspended during the ACAS Early Conciliation (EC) period
- If the time limit expires during or within one month after the EC period, it is extended to one month after the EC period ends

New HR1 Form

- Currently, employers who are proposing to dismiss 20 or more employees from one establishment have to complete an 'HR1' form
- From 30 November 2025 can only be completed digitally (not on paper)
- Certain changes to the form

Section 3 – Case Law Development



Sandie Peggie -v- Fife Health Board and another

- **Sandie Peggie (the Claimant), a nurse, raised concerns after encountering a transgender colleague, Dr Upton in the female changing room on several occasions in, saying she felt uncomfortable**
- **A confrontation on 24 December 2023 led to Dr Upton filing a complaint alleging bullying/harassment, after which NHS Fife suspended the Claimant and launched a lengthy internal investigation**
- **The Claimant was later cleared of gross misconduct, but she brought an employment tribunal claim alleging harassment, discrimination, and victimisation by NHS Fife and by Dr Upton personally**

Sandie Peggie -v- Fife Health Board and another

- **She claimed the harassment, discrimination, and victimisation were on the ground of her “protected belief”, being her gender-critical and sex-realist beliefs**
- **The tribunal found that Fife Health Board had harassed the Claimant but rejected all other claims**
- **Key reasons for the harassment finding included the Board taking an unreasonably long time to investigate the complaint**
- **The claims against Dr Upton personally were dismissed**
- **A separate hearing will now take place to decide on what remedy should be granted**

Sandie Peggie -v- Fife Health Board and another

- **Lessons for employers:**
 - **The Claimant was entitled to complain in a reasonable way when she found herself sharing a changing room with a transgender colleague**
 - **It was not necessarily instantly bigoted or a sacking offence, to speak out**
 - **The Claimant's suspension was unfair and unjust**

Section 4 – New statutory rates

	Old Rate	New Rate
Family statutory pay (maternity, paternity, shared parental, adoption, parental bereavement, neonatal care)	£187.18 per week	£194.32 per week
Statutory sick pay	£118.75 per week	£123.25 per week

Questions?



Thank you!

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