

The Employment Rights Act (ERA) 2025

Latest developments

29 October 2026

October has been a busy month on the employment law front. The government has published further consultations and issued responses to a number of outstanding consultation exercises – the pace of employment law reform shows no sign of slowing!

To help you stay up to date with the latest developments, we provide a brief roundup below of the key announcements made this month. We have also updated our [“ERA 2025 implementation roadmap”](#) to reflect several important changes to the government’s reform timetable. Key dates to note are:

- March 2027 – The new “fire and rehire” provisions are now scheduled to come into force in March 2027, and not January 2027 as previously indicated.
- April 2027 – The new “organisation-wide” threshold for collective redundancy consultation will be introduced.
- October 2027 – Enhanced dismissal protections for pregnant women and new mothers are expected to take effect.

Interestingly, the zero-hour reforms have disappeared from the implementation timetable altogether. The government’s latest timeline states that the timings of these changes “will be updated following the consultation process”, suggesting that the implementation date remains uncertain. Whether this is a product of the largely incoherent nature of the relevant provisions in the ERA 2025 is a matter for conjecture.

“Fire and rehire”: Changes to expenses, benefits and shift patterns

The ERA 2025 places strict limitations on the ability of employers to make changes to terms and conditions of employment via the dismissal and reengagement (or “fire and rehire”) route. Under the Act, employers will only be able to make changes to core terms and conditions in this manner (so-called “restricted variations”) if they can demonstrate serious financial difficulties such that the need to make the changes in contractual terms was unavoidable. The government sadly did not heed any of the questions arising from this last requirement, in particular as to why an otherwise successful business has to run itself down to the point of threatening its viability as a going concern before it is allowed to make the changes needed to keep it successful.

Restricted variations are defined in the ERA 2025 and cover various changes to core terms and conditions, including reductions to pay, a variation in hours of work and changes to certain shift patterns.

Earlier this year, the government issued a consultation on (i) which expenses and benefits in kind should be excluded from the scope of the restricted variation of reductions to pay; and (ii) which types of changes to shift patterns should be protected as a restricted variation. It has now issued its [response to the consultation](#) and confirmed that some expenses and benefits in kind will come within the scope of restricted variations, namely certain types of travel expenses (including mileage), accommodation expenses and accommodation as a benefit in kind.

In other words, employers will not be able to make changes to these terms and conditions via the dismissal and reengagement route, unless they satisfy the financial difficulties test. However, it will remain the case that if a contract of employment already gives an employer the ability to make changes to expenses and benefits in kind, this flexibility will not be impacted by these changes. These new provisions will only apply to the extent such expenses/benefits are contractual and the employer opts to go down the dismissal and reengagement route – not something that an employer will undertake lightly in any event (and even less so going forward!).

Now would be a good time, if they have not done so already, for employers to review their template contracts of employment to see what flexibility they offer to make changes, and whether this needs to be amended. As an aside, the consultation response also expressly confirmed that changes to share schemes will not be in scope of the restricted variation on pay.

In terms of changes to shift patterns, only a narrow category of shift changes (changes between day and night working or weekday and weekend working (or vice versa)) will be restricted variations. This allows employers the flexibility to make the majority of shift pattern changes through dismissal and reengagement where this becomes necessary. For the purposes of these provisions, nighttime will be defined as the period from 11 p.m. to 6 a.m. (in line with the definition in the Working Time Regulations 1998). The government will not include “availability windows” in scope of the restricted variation for shift pattern changes; the restricted variation will be limited to changes to the period when employees are actually scheduled to work in a contract.

The government is also [consulting](#) on its updated “Code of Practice on Dismissal and Re-engagement” that will reflect the ERA 2025 changes and set out best practice requirements where an employer is still considering dismissal and reengagement. The revised code will have the same consequences as the existing code – employment tribunals will be able to apply an uplift of up to 25% to an employee’s compensation if an employer unreasonably fails to comply with the code where it applies. For reasons unknown, the government is revoking the existing code in March 2027 (to coincide with the ERA 2025 changes coming into force), but the updated code is not due to come into force until summer 2027.

With these changes not now coming into force until March 2027, we would encourage employers to take another look at their template contracts of employment as soon as possible to ensure they incorporate as much flexibility to make changes to terms and conditions as practicable.

Enhanced dismissal protections for pregnant women and new mothers

The ERA 2025 gives women greater protection against dismissal during or after a protected period of pregnancy. Earlier this year, the government issued a consultation seeking views on the circumstances in which it may be fair for employers to dismiss employees during this time. It has now issued its [consultation response](#) and confirmed that:

- It will be retaining the existing framework of five potentially fair reasons for dismissal, but (and it is a big but!) it will replace the current “band of reasonable responses” test with a new “proportionality test” for fairness, requiring employers to justify any dismissals during the protected period as “a proportionate means of achieving a legitimate aim”. If that wording seems familiar to you, it is because it is the test that is applied under the Equality Act 2010 to defend certain discrimination claims, commonly referred to as the “objective justification” test. This will be a higher threshold for employers to satisfy and will inevitably make it more difficult (as is the government’s intention) for employers to dismiss women during the protected period.
- Apparently, the government is not intending to specify how the test should operate in regulations, but there will be guidance setting out how to approach complying with the test in practice, including the expectation that employers will consider alternatives to dismissal where appropriate.
- These enhanced dismissal protections will apply as soon as an employee informs her employer that she is pregnant, throughout any maternity leave period and for six months following the end of such leave. In other words, if a woman only takes six months of maternity leave, this enhanced protection will apply for a further six months after she returns to work. For those women who take the full statutory maternity leave period, these enhanced dismissal protections will ultimately last for 18 months from birth, in line with the existing redundancy protections (which will still apply), which include an 18-month restricted period.
- This will be a “day-one” right, with no qualifying period of service required, thus aligning with the existing automatic unfair dismissal and pregnancy or maternity discrimination protections.
- These new rights will also apply to those taking adoption leave, as well as shared parental leave, neonatal care leave and bereaved paternity leave, where six or more continuous weeks of leave is taken.

These changes are expected to come into force in October 2027. We will be exploring these changes and how they are likely to work in practice in more detail in a future publication.

Employment status reform and protections for the self-employed

Various governments have talked about employment status reform over the years, but any attempts to do so have ended up in the “too difficult pile”. In its latest [consultation](#), the government says that it is prepared to “grasp the nettle” and create a system that is both fairer and more resilient. Its main concern is that the current framework “is leaving too many people in bogus self-employment without access to core rights like the National Minimum Wage”.

The government is seeking views on proposals to:

- Place less emphasis on personal service (one of the key tests to determine an individual’s employment status) so that when employment tribunals are deciding cases, the existence of a right of substitution does not outweigh all other factors that point to worker status. The government is concerned about businesses using broad substitution clauses in contracts that can make it difficult for individuals to meet the personal service test even where significant control is exercised over how they conduct their work. It says that the starting point should be that where significant control is being exercised over an individual, that person should not be denied access to core rights on the basis of failing to meet the test for personal service alone.
- Introduce a presumption of worker status so that the burden of proof is on the employer to demonstrate that the person they engage is not a worker and is, therefore, genuinely self-employed. This reversal of the burden of proof would only apply to the question of whether an individual was entitled to the right concerned, and not whether such a right had, in fact, been fulfilled. So, if we take holiday pay, for example, the starting-point assumption would be that the individual was a worker, but on the question of whether the correct amount of holiday pay had been paid, both the burden and the standard of proof would remain as they are currently.
- Amend the ERA 1996 to establish that repeated failures by an employer to recognise employment status would constitute an aggravating factor in any subsequent breach. The consultation gives the example of an employer that chooses to argue that someone does not have worker status despite a tribunal previously ruling that their colleagues (engaged on broadly similar terms) were indeed workers. In such a situation, a tribunal could order the payment of an additional penalty, currently between £100 and £20,000 per claim.
- Better enforce the current framework, including a new potential role for the Fair Work Agency. The government gives the example of using the new civil enforcement powers under the ERA 2025 to allow the Fair Work Agency to bring a case in place of an individual or a group of individuals to clarify their employment status.

At the same time, the government says that more needs to be done to support the genuinely self-employed. It is considering introducing a new right to a written statement of the key terms of engagement, toughening laws on late payments and an extension of health and safety protections.

Most of these proposals will be of particular interest/concern to businesses in the gig economy, as this is clearly the sector that the government has in mind when drafting these proposals.

In some good news, the government has confirmed there is no current proposal to create a single status of worker – this is something that will be considered “as a longer-term goal”.

The consultation closes on 8 January 2027. Gig economy businesses are encouraged to make their voices heard.

Whistleblowing

The government is [consulting](#) on possible reforms to the whistleblowing framework. Key changes include:

- **Financial incentives for whistleblowers** – A new Serious Fraud Office scheme to financially reward whistleblowers who report economic crimes. For further details on this aspect of the reforms, see our [recent blog](#).
- **Scope of protection** – The government is considering whether whistleblowing protections should be extended to groups currently outside the regime, including charity trustees, nonexecutive directors, volunteers, job applicants (outside the NHS) and some self-employed individuals.
- **The public interest test** – The consultation asks if the test for whether a disclosure has been made in the public interest remains appropriate or should be amended.
- **Types of wrongdoing that qualify for protection** – The government is seeking views on whether the existing categories of wrongdoing covered by the whistleblowing regime remain fit for purpose, and whether further clarification or guidance is needed.
- **Reporting routes** – The consultation considers whether the current rules governing disclosures to regulators and other prescribed persons are unnecessarily complex, and whether additional reporting channels should be introduced.
- **Workplace whistleblowing procedures** – The government is exploring whether employers should remain guided by nonstatutory guidance, or whether mandatory whistleblowing procedures should be introduced, including possible obligations around confidentiality, investigations and communication with whistleblowers (perhaps following the model of Ireland's implementation of the EU Whistleblowing Directive).
- **Interim relief** – The consultation seeks views on extending the time limit for applying for interim relief in whistleblowing dismissal cases from seven to 14 days. The government notes potential benefits for access to justice, but also concerns around employer cost, tribunal workload and the increasing volume of applications (potentially due to the rise in AI-drafted claims).
- **Simplifying the regime** – The consultation also seeks views on whether the overall statutory framework is too difficult for workers and employers to navigate, particularly where the individual wishes to report wrongdoing to a regulator or other "prescribed person". Options include developing an AI-assisted tool to help workers identify the correct prescribed person, or whether a new Office of the Whistleblower should be introduced to act as a triage service.

The consultation closes on 8 January 2027.



Restrictive covenants

If you missed it, the UK's prime minister recently announced that the government will also be legislating to reform the use of noncompetition clauses. In a speech delivered at the Innovation Nation Summit on 9 October, Prime Minister Andy Burnham said that some businesses have gone too far in their use of restrictive covenants such as noncompetition clauses. He suggested the reforms be called "the Bosman ruling for the innovation sector" – football fans will remember that this landmark European Court of Justice decision gave footballers greater flexibility to move clubs.

No further details of the changes were provided during the speech, but presumably these will be set out in the government's response to its [working paper](#) on options for reforming noncompetition clauses, as and when it is published. Options being considered there included introducing statutory limits on the length of noncompetition clauses, banning such clauses in employment contracts, banning them below a certain salary threshold or combining a ban below a statutory threshold with a statutory limit. This is not a new thought. The issue was floated as long ago as 2016, resurfaced inconclusively in 2020 and clearly still has some adherents in government, even though none of the serious challenges to such limits have yet been adequately addressed. See our faintly tetchy commentary in our previous blogs [here](#) and [here](#).

Latest news: In the Budget on Wednesday, the Chancellor said that further details of the government's legislative proposals will be published in early 2027, with a wider review of restrictive practices also expected.

The right of trade unions to access workplaces

As per our [October checklist](#), as of 30 October 2026, trade union officials will have a statutory right to physically access workplaces or communicate with workers (or both) under "access agreements" entered into between employers and trade unions. A code of practice has been published providing guidance on this new right and the Central Arbitration Committee ("CAC") has recently released [template access request and response forms](#) in relation to this new right, together with a form for notifying the CAC of an agreed access agreement.

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