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The Employment Rights Act 2025 – Checklist for October 2026

Below, we set out brief details of the key ERA 2025 changes that will be coming into force in October 2026 and the practical steps that employers should be taking now to prepare for them.

Topic	Change	Key Steps Employers Should Take to Prepare
New obligation on employers in relation to sexual harassment in the workplace and harassment by third parties	The current mandatory duty on employers to take reasonable steps to prevent sexual harassment in the workplace will be amended to require employers to take "all" reasonable steps, a much more onerous duty. The government has provided very little indication of what employers will be expected to do to comply with the new expanded duty. While the power for the government to make regulations specifying the steps that employers will need to take will come into force in October 2026, it is not anticipated that the regulations themselves will come into force until 2027/28 (likely following consultation), i.e. at least a year later. A new statutory obligation on employers to take "all reasonable steps" to prevent harassment of employees (whether sexual or related to any other protected characteristics) by third parties will also be introduced.	**Sexual Harassment** • As a first step, we recommend that employers review the steps they are taking to comply with the current mandatory duty to take reasonable steps to prevent sexual harassment and consider whether there are any other things they could be doing, or be doing better or more often, that may further reduce the risk of sexual harassment in the workplace. We stress "may" – there is no obligation to take only those steps that can be guaranteed to make any difference. If the measure might conceivably influence a would-be harasser's behaviour, almost however marginally, it should probably be taken. **Harassment by Third Parties** • To the extent they are not doing so (employers should already be factoring into any sexual harassment risk assessment the types of third parties that staff might come into contact with), employers should consider any steps they could be taking to prevent harassment by third parties. Risk assessments are key. We recommend employers look at any risks that may arise for their staff due to interactions of any kind with third parties (e.g. customers, clients and suppliers). See our recent "Relatively Informal Guide on the New Duty for Employers to Take All Reasonable Steps to Prevent Harassment at Work", which provides further guidance on how employers can prepare for these new obligations. Further restrictions on the use of nondisclosure agreements in relation to harassment and discrimination allegations will also be introduced in 2027. The government has issued a consultation seeking views on its proposals. The consultation closes on 8 July 2026.
The duty to inform workers of their right to join a trade union	Employers will be required to give workers a written statement that they have a right to join a trade union. The initial information must be given at the same time as the s.1 statement under the Employment Rights Act (ERA) 1996, with regular reminders after that. Further details on this new right will be set out in separate regulations (which have not yet been issued), including the information that must be included in such a statement. If this information is not provided and the worker is successful in a separate employment tribunal claim, they will also be able to receive compensation of between two and four weeks' pay (subject to the statutory cap) – in the same way a worker can currently do this in relation to any other failure to comply with the information requirements in s.1 of the ERA 1996. On 23 October 2025, the government published a consultation in relation to these proposals. The consultation closed on 18 December 2025 and we are waiting for the government's response.	• Employers will need to ensure any contracts, s.1 statements and alternative documentation for new starters are updated accordingly. • We will provide further details once we have seen the government's response to the consultation and its final policy position.

The right of trade unions to access the workplace	Trade union officials will have a new statutory right to physically access workplaces or communicate with workers (or both) under "access agreements" entered between employers and "qualifying trade unions", namely those with a certificate of independence. Such agreements will give them rights to meet, support, represent, recruit or organise workers (whether or not they are members of a trade union) and to facilitate collective bargaining. These new rights will not cover organising industrial action.	• Employers currently in non-unionised workplaces should consider reviewing their current arrangements/practices, e.g. employee forums. If employees feel they have a voice in the business, they are less likely to be interested in trade unions representing them. • Employers with an existing trade union presence should consider entering into a voluntary arrangement with the relevant trade union(s) to try to avoid requests being triggered under the statutory framework. • Employers should put in place a process/protocol for handling such requests to ensure they comply with the relevant timelines/are clear on who has authority to agree to such requests and ensure that managers and other relevant individuals in the business are aware of this new statutory right. • Review existing arrangements for visitors to the workplace to ensure they are robust. • In light of this new right and the new obligation on employers to inform workers of their right to join a trade union (see above), employers may need to update any existing policies governing dealings with trade unions or consider introducing such policies. • See our FAQs, which set out the typical questions employers may have about this new right, and our outline answers.
Additional trade union changes	There will be new rights and protections for certain trade union representatives, as well as new protection against detriment for taking industrial action. There will be changes in relation to unfair practices in the trade union recognition process.	• No immediate action required – employers should, however, ensure that relevant managers are aware of these new rights and protections so as not to breach them. • Employers should also ensure they are familiar with the updated Acas Code of Practice on Time Off for Trade Union Duties and Activities and the revised Code of Practice on Access and Unfair Practices During the Recognition and Derecognition Process, once they have been updated. To prepare, we recommend that employers, whether unionised or not, read our separate briefing note setting out the key trade union changes in the ERA 2025 in more detail.

Tipping – new requirements on tipping policies	Any business in the hospitality, leisure or services sector will be aware of the obligations regarding tips and gratuities that came into force on 1 October 2024. Alongside an obligation to ensure that any tips, gratuities and service charges paid by customers are allocated to workers on a "fair and transparent" basis, if tips are paid on more than an occasional and exceptional basis, employers must have a written policy in place setting out how they ensure that all tips are dealt with in accordance with these obligations, including how they allocate tips between workers at the place of business. The ERA 2025 introduces a new obligation on employers to consult "before producing the first version of a written policy". Consultation must take place either with trade union representatives, elected employee representatives or the workers themselves. Employers must also review such policies at least once every three years and such representatives must be consulted as part of every review of the policy. Furthermore, employers will have to prepare a summary of the views expressed in the consultation available in anonymised form to all workers of the employer at the place of business. On 5 February 2026, the government issued a consultation on the new requirements and potential changes to the statutory code of practice on the fair and transparent distribution of tips. The consultation closed on 1 April 2026 and we are waiting for the government's response.	• Affected employers should review their current practices and consider what changes may be necessary to comply with the new consultation obligations. As most affected employers should already have such a policy in place, the first action point is likely to be consulting with workers' representatives when the policy next comes up for review – which may not be until 2027, assuming the policy was introduced in 2024. • Employers should also keep an eye out for the government's response to the consultation and any changes to the statutory code of practice, once these are issued.
Procurement – two-tier code	One of the lesser reported provisions in the ERA 2025 amends the Procurement Act 2023 to essentially reintroduce similar provisions to the previous "two-tier code" to avoid (as the name suggests) a "two-tier workforce", where one group of workers is treated less favourably than another working on the same contract. Further details of the changes can be found in the government's factsheet. New regulations and a statutory Code of Practice are expected, but have not yet been published.	There has been very little information from the government in relation to what could potentially be a significant change for some employers, namely those that contract with the public sector. At this stage, affected employers should monitor developments and keep an eye out for the draft code and regulations, which should provide specific details on the new regime that is going to be introduced.
Extension of employment tribunal time limits	The ERA 2025 will extend various employment tribunal time limits from three to six months. **According to the government's implementation timeline, this change will be introduced "no earlier than October 2026", so it is still possible that this date might be pushed back.	• Employers should prepare themselves for the fact there will be an even greater time lag between, for example, a dismissal taking place and a claim form landing on their desk. If we couple these changes with the recent extension of the Acas Early Conciliation period from six to 12 weeks, this will mean that claimants will soon have almost 10 months to bring a claim. Employment tribunal delays may mean that the employer is unaware that a claim has been brought against it for up to a year after the event. • These changes will make it even more important that employers have appropriate documentation in place recording employment decisions in case any claims are brought, and that this and other potentially relevant evidence is retained long enough to cater for this possible delay.

Additional issues to consider – Looking beyond October 2026, two key changes will be coming into force in January 2027, namely the changes to the unfair dismissal regime (the reduction in the qualifying period from two years to six months and the removal of the statutory compensation cap) and the new restrictions on employers' ability to make changes to terms and conditions of employment via the "dismissal and re-engagement" route. To be in the best possible position, businesses should also be preparing for these changes now.

We are currently working with employers to prepare for implementation of these changes. If you would like to discuss the implications of these changes for your business, please speak to your usual contact at the firm or one of our partners in the first instance.

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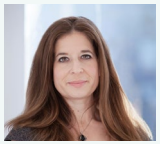

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This note sets out the position in England.

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