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2025

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HR Network: Navigating Change – The Employment Rights Bill and Share Option Trends

The Employment Rights Bill

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What is the Employment Rights Bill?

- 4 July 2024 – Labour government elected in UK
- ‘Labour’s Plan to Make Work Pay: Delivering A New Deal for Working People’
 - Core part of its election manifesto
 - Pledge to **introduce legislation within 100 days** of being in office
 - **Subject to prior consultation** with businesses, workers and the wider public (and the legislative process)
- The Employment Rights Bill (ERB) was published on 10 October 2024
 - Introduced 28 significant reforms
 - UK government released a ‘Next Steps to Make Work Pay’ document outlining plans for future reform

Current status

- On 1 July 2025, the UK government published a roadmap for the delivery of the ERB
- Roadmap outlines upcoming consultations and the phases when different measures are anticipated to take effect, starting with those taking effect at Royal Assent and continuing through to 2027
- Amendments to the ERB have been made during its progress through Parliament
- Timeline:
 - Expected that the ERB will be passed into law in autumn 2025
 - Some ERB provisions will come into force immediately, other changes are expected to come into force in 2026 or 2027
 - Most 'delayed' provisions will follow a period of consultation and further regulation
- **Sweeping changes will reshape the landscape of UK employment law!**

Unfair dismissal

Current position

- Employees in the UK must have **two years of qualifying service** to bring an unfair dismissal claim (though certain exceptions, such as whistleblowing)
- Fair dismissal means:
 - Reason for dismissal was one of the five potentially fair reasons (e.g. conduct, redundancy, etc.)
 - Employer acted reasonably in treating that reason as a sufficient reason for dismissal

What is changing?

- Two-year qualifying service requirement to be removed – **unfair dismissal a day 1 right**, even during probation
- Government to introduce regulations to provide for a ‘lighter touch’ fair process during initial period of employment – lower bar for fair dismissal during that period?
- Length of ‘initial period of employment’ is TBC
- Lighter touch process will apply to all fair reasons, except for redundancy
- Timeline: expected 2027

What could this mean?

- Risk of unfair dismissal claims in significantly more termination scenarios
- Need for:
 - Greater focus on probationary periods and assessment of employee suitability for role
 - Greater care over dismissal procedures for shorter service employees
- Potentially more negotiated exits, severance payments and settlement agreements!

Harassment

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Current position

- The Worker Protection (Amendment of Equality Act 2010) Act 2023 came into force on 26 October 2024. It introduced:
 - A new **positive** duty on employers to take ‘reasonable steps’ to prevent the sexual harassment of employees in the course of their employment
- No separate liability for harassment by third party (original liability in EQA 2010 repealed in 2013)
- Sexual harassment not specifically identified as a relevant failure for the purposes of a qualifying disclosure under whistleblowing law

What is changing?

1. Employers required to take **all** reasonable steps to prevent sexual harassment of their employees
2. Introducing protection from third-party harassment
3. Reporting sexual harassment will be a qualifying disclosure under whistleblowing law

(1) **All** reasonable steps

- The existing duty to take reasonable steps will become a duty on employers to take **‘all’ reasonable steps** to prevent sexual harassment
- ‘All’ reasonable steps/stronger anticipatory duty. What does this mean?
- Impact: TBC – **further regulations** will specify what steps employers should take to be regarded as ‘reasonable’
- Consultation: Call for evidence launched in April 2025 (now closed)
- Timeline: October 2026

(2) Third-party harassment

- Employers will be liable for harassment (of any kind, not just sexual) of their employees by third parties (e.g. such as clients or suppliers) **unless they take ‘all reasonable steps’ to prevent it**
- Impact: All employers with staff who work with third parties will be impacted
- Provisions seeking to introduce third-party harassment were dropped under the previous Conservative government given some of the practical difficulties that this could have for employers
- Timeline: October 2026

(3) Whistleblowing/sexual harassment

- A complaint of sexual harassment at work will be a **qualifying disclosure under whistleblowing law**
- For there to be a qualifying disclosure, the employee or worker must have made a **disclosure of information**, which in their **reasonable belief**:
 - Relates to one of the specified relevant failures
 - Is in the **public interest**
- Concerns could be raised directly with the Equality and Human Rights Commission (EHRC)
- Impact: More likely that individuals reporting sexual harassment will be considered whistleblowers and therefore subject to whistleblowing protections
- Timeline: April 2026

What can you do to prepare?

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Policy and
process
overhaul

Training and
risk
assessments

Incident
response and
investigation

Documentation
and evidence

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Confidentiality/NDAs

Confidentiality/nondisclosure agreements (NDAs)

- **Late addition** – introduced on 7 July 2025
- **Confidentiality provisions will be void** in so far as they seek to prevent employees from:
 - **Alleging or disclosing information of discrimination or harassment**
 - **An employer's response**
- **Exception: Will not apply to 'excepted agreements'** (yet to be defined, possibly when NDA requested by worker)
- **Timeline: TBC**

Family rights

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Protection for pregnant employees/maternity leave employees and returners

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Current position

- Right to be offered **suitable alternative employment in redundancy situations** during **protected period** (pregnancy and maternity leave to the end of AML or return to work if earlier)
- Regulations expected to increase protected period to six months after return from maternity leave

What's changing

- Government will have power to make regulations regarding dismissal of pregnant employees/maternity leave employees **for other reasons**
- Likely to include same protected period as redundancy (including the additional six months) and requirement to offer alternative employment

Timeline

Subject to further consultation in autumn 2025; measures to **take effect in 2027**

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Day 1 paternity leave

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Current
position

Eligibility for statutory paternity leave requires employees to have been employed for 26 weeks, assessed 15 weeks before the expected birth week

What's
changing

Removal of 26 weeks' service requirement – **eligible from day one** of employment

Timeline

April 2026

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Day 1 parental leave

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Current
position

Employees need to be employed for a minimum of one year at the time leave is to be taken to be eligible for unpaid parental leave

What's
changing

Removal of one-year length of service requirement – **eligible from day 1** of employment

Timeline

April 2026

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Right to bereavement leave

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Current position

Two weeks' parental bereavement leave following death of child under 18 or stillbirth after 24 weeks of pregnancy and statutory pay if employee has 26 weeks' service

What's changing

- Broader right to bereavement leave in respect of **wider group** – TBC in regulations
- Where person who dies is not a child, **minimum leave will be one week** of unpaid leave
- **Right not to suffer detriment** and for **dismissal** for reasons relating to bereavement leave to be treated as **unfair**

Timeline

Subject to further consultation in autumn 2025; measures to **take effect in 2027**

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Bereavement leave for pregnancy loss

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Current
position

No entitlement to leave for pregnancy loss that takes place before 24 weeks

What's
changing

Inclusion of pregnancy loss that occurs before 24 weeks of pregnancy within bereavement entitlement – mothers and their partners entitled to one week of unpaid leave

Timeline

Subject to further consultation in autumn 2025; measures to **take effect in 2027**

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Future changes ...

- Government conducting a full-scale review of the current parental leave system:
 - ‘... the review will consider how the parental leave and pay system could be improved to better support working families and meet the needs of the modern economy’
- Paid carers’ leave
- Menopause action plans
 - 250+ employees

Flexible working

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Flexible working rights

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Current
position

Employees have a day 1 right to request flexible working. Employers can refuse based on one or more of eight business reasons. Penalty for breach capped at £5,600.

What's
changing

Employer must explain in writing the grounds for refusal stating why refusal is considered reasonable. Eight business reasons will remain unchanged.

Timeline

Subject to further consultation in autumn 2025; measures to take effect in 2027



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What can you do to prepare?

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Policy and
process
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Training

Impact
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Collective redundancies

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Current position

- Collective consultation required where employer proposes redundancies of **20 or more** employees at one **establishment** within a period of **90 days or fewer**
- Protective award for failure to collectively consult – maximum of 90 days' pay

What is changing?

- Collective consultation required where employer proposes redundancies of 20 or more employees at one establishment **or at least the ‘threshold number of employees’** within a period of 90 days or fewer
- Threshold number to be confirmed by separate regulations, though not lower than 20, as new limb will apply more broadly than establishments
- Total number of employees it is proposed to dismiss and details of the establishments must be provided
- **Protective award** for failure to collectively consult – maximum of **180 days’ pay**
- Timeline:
 - New threshold limb – 2027
 - Increase in protective award – April 2026

Enforcement

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Employment tribunal time limits

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- Current: Primary time limit to bring all types of claims is three months
- Change: **Primary time limit** to bring all types of claims (except breach of contract arising or outstanding on termination) **will be six months**
- Timeline: October 2026
- Government will consider whether ACAS early conciliation should also be extended

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Fair Work Agency

- Current: Certain employment law **enforcement functions split** across HMRC, the Employment Agency Standards Inspectorate (EASI) and the Gangmasters and Labour Abuse Authority (GLAA)
- Change: A new **Fair Work Agency (FWA)** to bring together these **enforcement functions**
- Timeline: April 2026 for FWA to be established

What will the FWA do?

- FWA responsible for enforcing (among others):
 - Requirements regarding national minimum wage
 - Payment of statutory sick pay
 - Payment of holiday pay and rolled-up holiday pay
 - Laws applicable to agencies and recruiters
- Powers to obtain documents/information, enter premises, labour market enforcement undertakings, labour market enforcement orders via appropriate courts
- Timeline for powers to come into force: unknown

Other changes/looking ahead

Other changes

- Fire/rehire
 - Except where employer is in 'financial difficulties', automatic unfair dismissal where reason for dismissal is refusal to agree to a 'restricted variation' to employment agreement
- Zero hours and agency contracts
 - Duty to offer guaranteed hours, provide reasonable notice of shifts, pay compensation for shifts cancelled or moved at short notice
- Statutory sick pay
 - Payable from first day of sickness instead of fourth

Looking ahead

- Employment status
 - Consultation expected by end of 2025
 - Potential for ‘worker’ status to be abolished?
- Equal pay protection on grounds of disability and ethnicity
 - Draft bill expected to provide for mandatory disability and ethnicity pay gap reporting
- All parental leave and pay rights
 - Review by government currently underway
- Noncompete clauses?

What's new and trending in the world of UK share options?

2025 trends

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- **Higher tax rates:** UK tax advantaged options now even more valuable
- **Extended time to exit:** Participation in secondary sales still common – PISCES is coming!
- **Granting globally:** Tax complications and decisions around terms

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Higher UK taxes: Tax-favoured options

Tax changes announced October 2024

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- Employer National Insurance Contributions (NICs): Increased from 13.8% to 15% from April 2025
- Capital gains tax (CGT): Increased immediately from 20% to 24%
- Business asset disposal relief (BADR): Increased from 10% to 14% effective April 2025, and will rise to 18% effective April 2026

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Enterprise management incentive (EMI): Tax position for UK employees

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- £250,000 individual limit
- No income tax on exercise if exercise price set at actual market value (AMV)
- Capital gains tax (CGT) payable on sale of shares
- BADR may be available if two years between grant of EMI option and sale of shares acquired on exercise

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Company share option plan (CSOP): Tax position for UK employees

- £60,000 individual limit
- No income tax on exercise at least three years from grant
- For exercises within three years of grant, no income tax on exercise **only** for specified “good leaver” reasons or in certain M&A scenarios
- CGT payable on sale of shares

Tax-favoured options: Takeaways

- Savings for both employees and employers
- Come with additional administration
- Remember, they come with no guarantee!

Extended time to exit: Secondary sales

Participation in secondary sales

Feel like a cash windfall so super popular with employees, **but ...**

- Be mindful of the economics if fees and taxes payable
- Be alert to unexpected tax consequences
 - **Unapproved options:** Pay as you earn (PAYE) taxes, including employer NICs
 - **EMI/CSOP:** If creating new right of exercise, options become unapproved
 - **International option holders:** Need to understand tax position

Granting globally: Taxes and terms

Granting globally: Tax complications

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- **Using employers of record (EORs):** Check what support they offer around taxation of equity
- **Any US taxpayers:** Grant options with 409A exercise price even if working outside the US
- **Any internationally mobile employees:** Keep records and seek expert advice

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Granting globally: Every country is different

- **Do you:**
 - Keep terms consistent?
 - Use a single option exercise price for all?
- **Or do you:**
 - Meet local market expectations?
 - Commit to adopting tax-efficient plans?

Either way, always aim to future proof!

Thank you!

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Ann's two key and complementary practice areas, employment and privacy, focus on helping companies manage two of their most important business assets – their employees and their data.

Ann's employment practice covers all aspects, both contentious and noncontentious, of employment law and employment-related matters. On the noncontentious side, she focuses on counselling clients throughout the employment life cycle, from the cradle (hiring) to the grave (firing). Ann also advises clients on employment issues arising out of international reorganisations, outsourcings, insolvencies, and mergers and acquisitions. Her contentious work includes the enforcement of restrictive covenants and handling claims arising during and on termination of employment.

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Chris has an extensive employment practice, advising businesses on all aspects of UK employment law and global workforce issues. He partners with clients to understand their culture, values and priorities and is experienced in helping companies navigate the legal and cultural differences arising from different jurisdictions' employment law regimes.

Chris's contentious practice involves the management and resolution of a broad range of employment-related litigation, including complex, sensitive and high-value discrimination and whistleblowing claims, as well as disputes involving business protection matters relating to restrictive covenants and the protection of confidential information. His noncontentious work includes advising on the employment aspects of international M&A, restructurings and outsourcings.

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Paula has more than 20 years' experience of executive compensation and equity incentives in the UK, the US and internationally. Companies turn to Paula for advice and transactional support throughout their life cycle as they build their businesses, expand internationally and plan their exits. Paula is skilled in advising multinationals, both public and private, on the incentive aspects of their most strategic transactions including M&As, with a focus on private equity, IPOs and SPACs. She also assists remuneration committees in their determinations relating to retention and incentive arrangements for board members and senior management.

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