


Significant amendments to the Employment Rights Bill unveiled

10 July 2025  Claire Rosney and Lee Ashwood

Last week, we updated you on the status of the Employment Rights Bill (the Bill), including the provisions most likely of interest to employers and when they're likely to be brought into force. Following this, a list of significant amendments to the Bill has been published, including provisions on our watchlist.

Fire and rehire

As previously drafted, the Bill would make it automatically unfair to dismiss someone for either refusing to agree a variation in their contract of employment or to replace them with someone on varied terms and conditions but doing essentially the same work.

Under the proposed amendments:

- The ban on fire and rehire will now only cover “restricted variations” relating to reduced pay or holiday entitlement, changes to hours and changes to pensions (although there is scope for the Secretary of State to specify anything else in associated regulations).
- A change in work location will not now be covered, meaning termination and re-engagement will still potentially be fair (subject to the ordinary rules on unfair dismissal) where an employer wishes to relocate a workplace.
- Employers will not be able to bypass the restricted variation provisions by including a general variation clause, although existing variation clauses will continue to be valid.
- New provisions have been added which an employment tribunal must consider when assessing the fairness of a non-restricted variation. However, these broadly reflect the existing test of reasonableness that a Tribunal would be obliged to consider.
- It will be automatically unfair for an employer to dismiss employees if the reason for the dismissal was to enable the employer to replace the employee, on a broadly like-for-like basis, with someone who is not employed but is, for example, an agency worker or a self-employed contractor. There is an exception in circumstances where the reason for the replacement is to address financial difficulties of the employer and the employer could not reasonably have avoided the need to replace the employee.
- The financial difficulties exception will no longer apply to public sector employers and instead two new tests have been inserted, namely “the financial sustainability of carrying out the employer’s statutory functions” (applicable to public sector bodies generally) and “the financial sustainability of carrying out the employer’s statutory functions” (applicable to local authorities).

Although the provisions on fire and rehire have been considerably diluted, they still represent a significant change to the current law and restrict an employer’s ability to terminate and re-engage employees in order to affect changes in terms and conditions of employment.

The government has committed to consulting in the autumn and therefore this remains one to watch.

Zero/low hours contracts

Several amendments have been proposed to the already complex provisions relating to zero/low hours contracts. These include:

- Removing the current automatic employer duty to offer guaranteed hours and instead workers will have the right to request such hours.

- Employers will only be under a duty to consider the request, as opposed to accepting it (like the right to request flexible working).
- The right to request guaranteed hours will only apply to workers who work an average of eight hours per week in a rolling 26-week period.
- Workers will not be entitled to a short notice cancellation payment if a shift is withdrawn at least 48 hours before it starts.
- A pay-parity test will be applied in respect of guaranteed hours offers to agency workers.

These amendments are also complex and if adopted are likely to prove extremely difficult for employers to navigate in practice.

Confidentiality/Non-disclosure agreements

A completely new amendment concerning the use of non-disclosure agreements (NDAs) has been added to the Bill. In short:

- NDAs which cover harassment and discrimination at work will be banned in employment agreements.
- The ban will not apply to allegations of a failure to make a reasonable adjustment.
- There will be exceptions for an 'excepted agreement' where certain condition specified in regulations are met (details yet to be provided).
- The protection will apply to both current and former employees.
- There is provision for it to be extended to cover individuals such as contractors, trainees and work-experience placements.

If passed, this will be a massive change for employers as it will severely restrict the use of confidentiality agreements covering harassment and discrimination in settlement agreements, contracts of employment and other agreements which seek to prevent a worker from discussing allegations of harassment or discrimination. We'll be adding this topic to our watchlist and keeping you updated.

Bereavement leave

Bereavement leave in respect of pre-24 week baby loss has also been added to the Bill. This is less of a surprise as the government had previously confirmed its intention to amend the provisions of the Bill to extend bereavement leave to stillbirth or loss of a child in the first 24 weeks of pregnancy (previously bereavement leave only covered loss after the 24th week of pregnancy).

Whistleblowing

Major changes to whistleblowing laws have also been proposed, including a requirement that the disclosure must actually be "in the public interest" (rather than the worker reasonably believing it to be in the public interest) and the creation of a new 'Office of the Whistleblower'.

These are non-government backed amendments so are unlikely to become law. However, the government has previously expressed an appetite for reviewing whistleblowing protections, so the debate on this issue may give a good insight into the future direction of travel.

Monitoring developments to the Bill

All of these recent announcements of possible amendments demonstrate that there is still work to be done on the Bill and a lot could still change before the Bill becomes law. We'll continue to monitor developments and update you in due course

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