

What does the Employment Rights Bill mean for employment practices liability insurance?

28 October 2024

The biggest shake up of employment rights in a generation is on its way, with the [Employment Rights Bill 2024-25](#) (the Bill) being introduced to Parliament on 10 October 2024.

In this article we consider some of the Bill's key provisions. This only applies to England, Scotland and Wales. Employment law in Northern Ireland is a devolved matter.

Unfair dismissal

The Bill includes the right for employees to claim unfair dismissal against employers from day one of their employment. Currently there is a two year qualifying period. It also lifts the cap on unfair dismissal compensation and simplifies the process for bringing claims. Currently the maximum basic award for unfair dismissal is £21,000 and the maximum compensatory award for unfair dismissal is £115,115 or a year's gross pay, whichever is lower.

A maximum probation period of nine months is proposed (there will be a consultation on the length of this), during which there will be a lighter touch process for dismissing employees. Currently there is no maximum probation length. However, contracts tend to provide for three- or six month probation periods with possible extension. A probation period of two years or longer would mean that an employee has enough qualifying experience to claim for unfair dismissal (pre-changes).

The government has suggested that to dismiss someone in their probation period (under the new regime) the process should include a meeting with the employee to explain concerns about their performance, at which the employee can choose to be accompanied by a trade union representative or colleague.

Protection against dismissal will also be strengthened for pregnant women and those returning from maternity leave. The intention is to make it unlawful to dismiss pregnant women within six months of their return to work except for in specific circumstances.

It's important to note that there is currently no qualifying service length for other types of employment claims, including discrimination.

Zero hours contracts

The Bill's provisions give 'zero hour' and 'low hours' workers a right to a guaranteed hours contract based on the hours worked over a reference period. However, employees who prefer having a zero hour contract can remain on those terms if they desire. Workers will be entitled to reasonable notice to changes to their working hours and compensation if shifts are cancelled or ended early.

Whilst zero hour contracts will not be banned, as the only employees on them will be the ones who want them, the number of zero hour contracts is likely to significantly reduce.

There will be a consultation on what should constitute 'low hours' and on ensuring that the zero hour contract provisions are effectively and appropriately applied to agency workers.

Flexible working

Employers will only be able to refuse requests for flexible working where it is reasonable to do so, based on one of the statutory grounds. These grounds include the burden of additional costs, detrimental impact on quality and detrimental effect on ability to meet customer demand. Requests can include things such as flexible start and finish times and working from home. Currently employers can refuse applications for flexible working if they have a good business reason for doing so. The Bill does not appear to represent a big change from the current position, as many of the reasons currently available to employers to refuse flexible working request are included as statutory grounds.

Sick pay

Currently, statutory sick pay is only available to employees who have been sick for four days in a row and who earn an average of at least £123 per week. The Bill makes statutory sick pay available from the first day of sickness rather than day four. It also removes the earnings cut off. However, there will be a lower level of sick pay for lower earners.

Parental leave, paternity leave and bereavement leave

The current position is that unpaid parental leave is available to employees who have one year's service with a company. This will become a day one employment right.

The current position is that paternity leave is available to employees with 26 weeks service with a company. This will become a day one employment right.

Similarly, unpaid bereavement will become a day one right. Bereavement leave provisions will also apply to the loss of a wider group of persons to be specified by regulations.

Fire and rehire

The Bill bans fire and rehire (where companies fire employees then rehire them on worse terms and conditions) practices in most circumstances. It makes it automatically unfair to dismiss an employee for refusing to agree to a change in their employment contract. However, companies could still use fire and rehire if at risk of becoming insolvent.

Sexual harassment

A new duty for employers to take reasonable steps to prevent sexual harassment in the workplace came into effect on 26 October 2024. This preventative duty extends to sexual harassment by third parties, although employers are not liable for third party harassment under the Equality Act 2010. The Bill provides even greater protection to employees, including an obligation to take all reasonable steps to prevent sexual harassment, liability for employers for third party harassment (in relation to all protected characteristics) and for sexual harassment to become a 'protected disclosure' in relation to whistleblowing.

Trade unions

Restrictions on union activity implemented under the Conservative government will be reversed. The government also intends to consult on further updates to legislation impacting trade unions in the future.

Gender equality

Employers with 250 or more employees will be required to produce action plans relating to gender equality matters, including addressing gender pay gaps and supporting employees through menopause.

What does this mean for insurers?

The government also published a policy paper on 10 October 2024 '[Next Steps to Make Work Pay](#)', which states that the majority of the reforms will not take place until 2026 and the unfair dismissal reforms will take effect no sooner than autumn 2026. This means that [insurers](#) have time to adjust. At this stage the final details of what will be enacted are not known. The Bill is only the start of the legislative process.

Notably some aspects of the plans Labour released in the run up to the election do not feature in the Bill. including a 'single status of worker' aimed at increasing protections for people who are classed as self-employed but who largely work for one employer. The

government is progressing wider employment law reforms outside the Bill including: banning unpaid internships, paid travel time, the 'right to switch off' (preventing employers from contacting staff out of hours) and removing national minimum wage age bands. The Equality (Race and Disability) Bill is due to be published during the current parliamentary session. Changes proposed by that Bill include extending pay gap reporting to ethnicity and disability for employers with more than 250 staff and extending equal pay rights to protect workers suffering discrimination on the basis of race or disability.

Employment practices liability (EPL) insurance provides cover to companies against claims arising from employment disputes - for legal defence costs and financial losses. Some of the proposals could cause an uptick in claims against employers. In particular:

- the shortening of the length of service required to bring unfair dismissal claims,
- the removal of quantum limits for unfair dismissal claims,
- the simplification of the claims process,
- the ban of fire and rehire practices, and
- the right to guaranteed working hours.

The transition to the new rules itself could also lead to an increase in claims, as smaller companies in particular may struggle to keep up to date with the changes.

The government intends to consult on the compensation regime for successful probation period claims – it seems likely that there will be restrictions on the level of compensation available in these circumstances.

The protections for unfair dismissal will only be available to employees and not to workers more broadly. However, a longer term aim may be to expand this given the preference for a 'single status of worker'. The Bill will significantly expand the number of people who can bring unfair dismissal claims, due to shortening the length of service requirements. If workers who are not currently classed as employees also become eligible to bring such claims, it would be a very sizable expansion.

The Bill, wider reforms and further proposals in the future are likely to cause significant changes to employment rights in the United Kingdom. This is an area which insurers will be watching closely. No doubt insurers will consider endorsing EPL policies and adapting wordings to changes in legislation. There is also likely to be an increase in interest from businesses in EPL policies.

Contents

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[Updates to the UK's Arbitration Bill](#)



[ICAEW: Changes to PII requirements](#)



[What does the Employment Rights Bill mean for employment practices liability insurance?](#)



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