

EMPLOYMENT BULLETIN

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EMPLOYMENT RIGHTS ACT 2025: UPDATED TIMELINE AND CONSULTATIONS

Earlier this month, the Government published a [Timeline update](#) on [implementation of the Employment Rights Act 2025](#) (ERA 2025). The most notable update is that the “fire and rehire” protections, under which dismissals to implement changes to certain core terms in the employment contract will be automatically unfair, unless the employer can satisfy a very narrowly drawn financial distress exception, will now take effect in January 2027 rather than October this year as originally scheduled.

The new timeline also confirms that the reduction of the unfair dismissal qualifying period to six months will take effect for dismissals from 1 January 2027, along with the removal of the compensation cap. The Government’s [Factsheet on unfair dismissal](#) says that, from 1 January 2027, protection against ordinary unfair dismissal will be extended immediately to employees who already have six months’ service or more, with other employees gaining protection once they reach six months’ service.

Meanwhile, the first substantive changes under ERA 2025, relating to trade unions, became law on 18 February. In summary, industrial action has become easier to call, may last for longer, and will attract additional employee protections. Employers will receive less notice and information ahead of strike action, while burdens on trade unions are reduced. For a detailed look at the changes, please see our recent Briefing: [From roadmap to reality: the ERA 2025 trade union measures](#), part of our [ERA 2025 hub](#).

Much of the detail of ERA 2025 will be revealed in regulations. The Government has issued a set of [consultation papers](#), providing an insight into how some of the regulations are likely to be drafted. [Fire and rehire - changes to expenses, benefits and shift patterns](#), which is open until 1 April 2026, is about the core terms (“restricted variations”) protected by the fire and rehire provisions. These include changes to payments in connection with employment, pensions, hours, leave entitlement and shift patterns, as well as contractual amendments to enable any of these changes to be made unilaterally. The Government is looking to limit the scope of the restricted variations in two areas:

- Expenses and benefits. Recognising that employers may need to make operational adjustments (for example because continued provision of the benefit is not feasible), the proposal is for all employment expenses and benefits in kind to be excluded from the list of restricted variations, so that dismissals related to those changes would not be automatically unfair. However, the consultation paper also discusses an alternative approach, under which all expenses and benefits in kind would be excluded apart from some entitlements to share schemes included in the employment contract (which would be unusual), plus certain travel and accommodation expenses.
- Shift patterns: the Government suggests that only changes between day and night working, or weekday and weekend working, should be restricted variations.

The consultation paper confirms that dismissals related to changes in non-core terms, such as location or job role, will not be automatically unfair, although they will be subject to separate enhanced protections in terms of mandatory factors that must be considered by an

employment tribunal to determine if a dismissal is unfair. The consultation paper also confirms that the fire and rehire provisions do not affect contract changes which are covered by existing valid variation clauses, or made via collective bargaining.

The [Improving access to flexible working](#) consultation runs until 30 April 2026. ERA 2025 retains the current model, under which the employer can refuse a flexible working request provided it considers the request reasonably and relies on one of the eight prescribed statutory reasons for refusal, but makes one change (with effect from 2027): the employer must act reasonably in determining its reason for refusal and communicate this rationale to the employee. The consultation asks about approaches to handling flexible working requests, in preparation for statutory guidance on the upcoming change and regulations specifying the steps an employer refusing a request must take to comply with the existing duty to consult with the employee.

Two further consultations close on 1 April:

- [Revised Code of Practice on Access and Unfair Practices and Unfair Practices in Electronic Ballots](#), to reflect legislative amendments made by ERA 2025.
- [Make Work Pay: strengthening the law on tipping](#), asking for views on the new requirements (from October 2026) for employers to consult with workers when developing or reviewing tipping policies, as well as on the existing code of practice and guidance.

FAILURE TO HARMONISE PAY TERMS FOLLOWING INSOURCING WAS INDIRECT DISCRIMINATION

Summary: The Employment Appeal Tribunal (EAT) held that a group of cleaners, who had previously worked at a hospital for a contractor but were then transferred to the NHS Trust when the services were brought in-house under a TUPE transfer, could not bring indirect discrimination claims about their contractual pay terms against the Trust in relation to the pre-transfer period. However, they were discriminated against in relation to the post-transfer period because their pay terms were indirectly discriminatory when compared to other cleaners employed by the Trust and the Trust had failed to move them onto those more favourable terms (*Anne v Great Ormond Street Hospital for Children NHS Foundation Trust*).

Key practice point: The finding that there should have been immediate post-transfer harmonisation of terms illustrates the importance of detailed due diligence where there is a service provision change under TUPE, to identify whether workforce pay differentials may result in indirect discrimination.

Facts: The claimants, a group of cleaners of BAME background, worked at a hospital for a contractor until cleaning services were brought in-house and they transferred to the Trust responsible for the hospital. They alleged indirect race discrimination by the Trust for failing to provide NHS pay terms both before and after the transfer. The Employment Tribunal dismissed their claims, essentially because of a lack of evidence about the racial composition and contractual terms of the Trust's other contractors. Both the claimants and the Trust appealed.

Decision: The EAT dismissed the discrimination claim in relation to the pre-transfer period. The EAT was bound by the decision in *Boohene v Royal Parks Ltd*, where the Court of Appeal found that a discrimination claim could not be brought by a contract worker against an end-user if it related to the remuneration payable under the contract of employment with the contractor. However, the discrimination claim for the post-transfer period succeeded. The Tribunal should have compared the claimants with other Trust workers, not with workers of the Trust's other contractors. The claimants had established that there was indirect race discrimination (78% of the cleaners were of BAME background as compared with 51% of Trust staff) and the Trust had not objectively justified the difference in treatment.

A key point was that the claimants' contract of employment with the contractor, which the Trust took over on the TUPE transfer, contained an express contractual variation provision. The Trust should have exercised this power from the date of, or shortly after, the transfer, in order to put the claimants onto NHS pay terms.

Comment: The Government has previously said that its Equality (Race and Disability) Bill will ensure that outsourcing of services can no longer be used by employers to avoid paying equal pay, although there is no mention of this in the Government's updated implementation timeline.

COT3 SETTLEMENT PREVENTED SUBSEQUENT WHISTLEBLOWING DETRIMENT CLAIM

Summary: The Employment Appeal Tribunal (EAT) confirmed that a COT3 agreement which settled a whistleblowing detriment claim prevented a later detriment claim which related to same allegations that protected disclosures had been made (*Darlington v London Borough of Islington*).

Key practice point: Although this is a helpful (for employers) decision on the difficult question of whether settlement agreements can cover future claims, it is important to note that it concerned a COT3 agreement negotiated through ACAS. A COT3 can cover claims relating to any matters over which ACAS can conciliate. Settlement agreements are subject to greater statutory restrictions; they must relate to the “particular proceedings” and are likely to be more strictly construed. A reference in the settlement agreement to claims arising directly or indirectly out of employment, and whether or not the circumstances which might give rise to a claim are known to the parties, may provide extra protection for employers.

Facts: The claimant was employed at a school operated by Islington Borough. She raised a safeguarding issue and complained to Ofsted. After she left employment, and following a negative reference, she alleged she had been subjected to detriment on the ground of having made a protected whistleblowing disclosure. The claimant, her employer (Islington Borough) and the School entered into a COT3 settlement in full and final settlement of “*all and any claims which the Employee has or may have in the future against the School, the Employer or any of its governors, officers or employees whether arising from the employment with the Employer, its termination or from events occurring after this agreement has been entered into including, but not limited to, claims under ... the Employment Rights Act 1996*”.

Meanwhile, the claimant applied for a job with a different school operated by Islington. Her application was unsuccessful and she brought a new whistleblowing detriment claim against Islington on the grounds of the same disclosures that had formed the basis of the claim settled by the COT3. The Employment Tribunal decided that the COT3 barred her from bringing a claim. The claimant appealed.

Decision: The EAT rejected the appeal. Viewed objectively, the words “*whether arising from the employment with the Employer, its termination or from events occurring after this agreement*” were clearly intended to settle all existing and potential future claims against Islington and others arising from the allegation that she had been subject to detriment because of protected disclosures. The EAT rejected the argument that the COT3 was limited to claims against Islington only as operator of the School where she had been employed. The EAT also agreed that in any event the claim “arose out of” her employment at the School because the matters settled by the COT3 included the issue of whether she had made protected disclosures at all.

HORIZON SCANNING

What key developments in employment should be on your radar?

Effective Date	Developments
18 February 2026	ERA 2025: certain trade union provisions in force, including enhanced protection against dismissal for taking part in industrial action; removal of some industrial action support and turnout thresholds; notice periods for industrial action reduced from 14 to 10 days; validity of strike ballots extended from six to 12 months; changes to political fund reporting
6 April 2026	ERA 2025: further provisions in force, including increase in maximum collective redundancy protective award; day-one paternity leave and unpaid parental leave; Statutory Sick Pay (removal of Lower Earnings Limit and waiting period); establishment of Fair Work Agency (7 April); sexual harassment whistleblowing protections; menopause guidance
19 June 2026	Data (Use and Access) Act 2025: organisations required to have complaints procedure for data subjects
August 2026	ERA 2025: electronic and workplace balloting (trade union ballots) in force
October 2026	ERA 2025: further provisions in force, including employers required to take all reasonable steps to prevent sexual harassment of employees and employer liability for third party harassment; enhanced protections against industrial action detriment; further trade union measures (strengthening rights of access, employer duty to inform workers of right to join, enhanced protections for reps)
No earlier than October 2026	ERA 2025: increase in employment tribunal time limits from three to six months
January 2027	ERA 2025: reduction of unfair dismissal qualifying period to six months for dismissals from 1 January 2027 and removal of compensation cap; fire and rehire protections
2027	ERA 2025: further provisions in force, including new collective redundancy consultation threshold; right to guaranteed hours for zero hours workers; gender pay gap and menopause action plans; enhanced dismissal protections for pregnant women/new mothers; bereavement leave; changes to flexible working requests; electronic and workplace balloting (recognition and derecognition)
2027 or before	ERA 2025: NDAs to be unenforceable to the extent they prevent workers from making allegations or disclosures about workplace harassment or discrimination

Uncertain

Publication of the Equality (Race and Disability) Bill, extending pay gap reporting to ethnicity and disability for employers with 250+ staff, extending equal pay rights to race and disability, and preventing outsourcing from being used to avoid equal pay

Extension of employer right to work checks to working arrangements other than under a contract of employment

We are also expecting important case law developments in the following key areas during the coming months:

Discrimination / equal pay: *Randall v Trent College Ltd* (EAT: whether worker's treatment was belief discrimination or was treatment because of objectionable manifestation of belief); *University of Bristol v Miller* (EAT: whether anti-Zionist beliefs were protected philosophical beliefs and summary dismissal was discriminatory); *Dobson v North Cumbria Integrated Care NHS Foundation Trust (No 2)* (EAT: whether dismissal for refusal to work at weekends because of childcare responsibilities was objectively justified and not discriminatory); *Corby v Acas* (EAT: whether opposition to critical race theory was a protected belief); *Legge v Environment Agency* (EAT: whether employee discriminated against for not holding feminist belief); *Thandi v Next Retail Ltd* (EAT: whether there was a general material factor defence to an equal pay claim by shop floor sales staff seeking to compare themselves with warehouse staff); *Augustine v Data Cars Ltd* (Supreme Court: whether part-time status must be the sole reason for less favourable treatment)

Industrial relations: *Jiwanji v East Coast Main Line Company Ltd* (EAT: whether a pay offer directly to staff during collective negotiations was an unlawful inducement)

Unfair dismissal: *Stobart v Zen Internet Ltd* (Court of Appeal: whether capability dismissal of senior executive was unfair; *Polkey* assessment of compensation)

Whistleblowing: *Wicked Vision v Rice* (Supreme Court: whether employer could be vicariously liable for whistleblowing dismissal detriment); *Argence-Lafon v Ark Syndicate Management Ltd* (Court of Appeal: whether employee was dismissed for making protected disclosures or because of subsequent behaviour).

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