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CLIENT BRIEFING

FEBRUARY 2026

FROM ROADMAP TO REALITY: THE ERA 2025 TRADE UNION MEASURES TAKING EFFECT THIS FEBRUARY

QUICK LINKS

When the Employment Rights Act 2025 (ERA 2025) received Royal Assent on 18 December 2025, the government reaffirmed its commitment to the roadmap for implementation. Fast forward two months, and the first substantive set of reforms are now about to take effect. 18 February 2026 sees a wave of trade union-related changes, which will be of most interest to employers who are already unionised, and who will need to start refreshing their processes and relationships with their unions in response.

In summary, the changes mean that industrial action will 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. These changes collectively enable unions to mobilise more efficiently and maintain industrial pressure over longer periods. There will be a perceptible shift in the balance of power between employers and unions – unlikely to be felt by those with good union relationships, but potentially significant for others.

INDUSTRIAL ACTION: SUPPORT AND TURNOUT THRESHOLDS

The support threshold for industrial action ballots in important public services (whereby at least 40% of those entitled to vote must vote in favour of strike action) will no longer need to be met for ballots opening on, or after, 18 February 2026.

The 50% turnout threshold for all strike action is also set to be repealed by the ERA 2025, meaning that a simple majority of however many employees participate in a ballot will be all that is required. However, it is not yet clear when this reform will come into force. The government is bound by the ERA 2025 to consider the impact of electronic and workplace balloting (which the ERA 2025 will introduce in April 2026) before repealing the turnout threshold.

INDUSTRIAL ACTION: LONGER MANDATES, SHORTER NOTICES, AND NO PICKET SUPERVISORS

The mandate period for industrial action is increased from six to 12 months, reducing the frequency of ballots needed for strike action. However, six-month mandates obtained under ballots opened before 18 February 2026 will not be automatically extended to 12 months – unions would need to re-ballot to secure a 12-month mandate.

The amount of notice of industrial action given by a trade union to the employer is reduced from 14 to 10 days. The information required on the notice is also simplified, to remove the requirement to specify the number of affected workers in each category listed (and consequently, the duty to provide an explanation of how this figure was determined). This gives unions greater flexibility in responding to disputes.

Picket supervisors will also be abolished, simplifying the organisation of picketing activities.

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INDUSTRIAL ACTION: PROTECTIONS AGAINST DISMISSAL - AND DETRIMENT?

Dismissal for taking part in lawful industrial action which starts on or after 18 February 2026 will be automatically unfair, regardless of when the dismissal takes place. Currently, protection only applies if the dismissal takes place during the 'protected period', usually within twelve weeks after the start of industrial action.

The change will require employers to exercise caution when dismissing participating employees during or following strikes, and ensure there is an unrelated reason for the dismissal.

The ERA 25 also introduces a new statutory right not to be subjected to any detrimental treatment for the purpose of preventing or deterring the worker from taking protected industrial action. The government has committed to consult on this measure, which means the regulations required to implement this protection may not be in force until after 18 February 2026. In fact, this protection is in the government's implementation roadmap for October 2026.

INDUSTRIAL ACTION: SIMPLIFICATION OF EMPLOYER NOTICES AND BALLOT PAPERS

Unions will no longer be required to notify to employers:

- the number of workers in each of the categories of workers being balloted;
- the number of workers concerned at each workplace; or
- an explanation of how these figures were arrived at.

Unions will still be required to provide employers with the categories of workers concerned, their workplaces, and the total number of workers to be balloted.

Ballot papers are also simplified, with unions no longer required to give employees a summary of the matter(s) in issue in the trade dispute, an indication of the time period for the industrial action, or the types of action (short of a strike) under consideration.

OTHER CHANGES

The ERA also removes the restrictions on use of check-off to deduct union subscriptions at source, changes the automatic opt-out from political funding contributions to an automatic opt-in, simplifies trade union reporting obligations, lifts restrictions on facility time in the public sector, and removes a number of key powers of the Certification Officer.

NEW GUIDANCE AND CODES OF PRACTICE

The government has issued a revised version of the statutory Code of practice: Industrial action ballots and notice to employers and the Code of practice: picketing (which will apply from 18 February 2026).

It has also issued new guidance on these February changes: Trade union law: transition to Employment Rights Act 2025 - GOV.UK

WHAT COMES NEXT?

April 2026 will see another wave of trade union reforms (alongside changes in other areas) which will have an impact on unionised and non-unionised employers. There will be simplification of the trade union recognition process, and the introduction of electronic and workplace balloting.

In October 2026 we anticipate the introduction of the new right of access for trade unions, as well as the new duty on employers to inform workers of their right to join a trade union. This may also be when the provisions governing the right not to be subjected to prescribed detriments relating to industrial action come into force.

Looking further ahead into 2027, blacklisting restrictions will be strengthened. It will be unlawful not only to *compile* lists of trade union members, but also to *use* any such lists (which may have been compiled for lawful purposes), for the purposes of discrimination.

Regardless of their current relationship with a trade union (or lack thereof), employers need to be aware of these changes and the impact they may have on their business.

If you would like to discuss any of these issues further, please speak to your usual Slaughter and May contact.

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