The Employment Rights Act 2025

Your Questions Answered

Unfair Dismissal

Does the 6 months' qualifying period apply in the probation period?

The 6 months' qualifying period shall apply regardless of any probation period, it is simply based on length of service from the commencement of employment. Even if a probation period is extended due to sickness absence or performance reasons, the 6 months trigger point will still apply even if the employee is still in their probation period.

Zero Hour Contracts

What is meant by "reasonable notice" of shift changes?

There is currently no definition on what hours or days may be deemed "reasonable notice" as this is currently being consulted on. We will find out more later this year or next year. We think it is likely that it will vary depending on the circumstances, sector, shift length, commitments, etc.

Zero Hour Contracts

Where an employee has to be offered a guaranteed hours contract, can they refuse? What happens if they refuse?

Yes, absolutely, as certain individuals may not wish to be employed on a guaranteed hours contract and therefore if they refuse, this is acceptable, so long as there has not been any pressure on them to decline the contract. However, it may still be necessary to continue to re-offer guaranteed hours at the end of each reference period, regardless of whether the individual declines every time.

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Zero Hour Contracts

Will bank workers in charity social care be included in the new rules for zero hour contracts?

As it stands, bank workers will be included if they are working zero hours or ‘low hours’ and if they are doing this regularly as opposed to genuinely working on an ‘as and when’ ad hoc basis over the reference period. Whilst it has been confirmed that there will be “exceptions”, these exceptions will be confirmed in regulations.

Collective Redundancy

Does this cover redundancies if an organisation closes down with all staff being made redundant?

The collective consultation reforms do not alter the current reporting requirements. Therefore, they will apply to organisations that are closing down as closure is not an exemption from the collective redundancy consultation obligations.

Collective Redundancy

If there were different legal entities, either within or at other sites, would they be considered separately?

Separate employing entities shall remain separate and would not be merged to create a group wide obligation. The duty to consult would continue to sit with the individual legal employer.

Collective Redundancy

What about if you use a third party office?

Using a third party office does not remove the collective redundancy consultation obligations. It is the number of proposed employees within the 90 day period by the same legal employer that triggers the collective consultation obligations.

Sexual Harassment

Would employers be responsible for sexual harassment if the harassment happens in another country?

Yes, we believe this will still be regarded as being "in the course of employment" if, for example, it happens on a work trip or individuals are working in another office or remotely. If English and Welsh law applies to the contract of employment, the employer will be liable to take all reasonable steps to prevent sexual harassment in line with the legal requirements.

Sexual Harassment

Would sexual harassment responsibility and liability also be the organisation's responsibility if it is against a contractor or consultant working for us?

The ERA 2025 states that employers have a legal obligation to prevent sexual harassment of their workers and it covers worker-on-worker harassment. If a contractor working for the Company has harassed a third party, who is not a worker of the Company, the Company could potentially still be liable under civil or criminal law to that third party.

Sexual Harassment

Would employers be responsible for sexual harassment if it happened to a client of the company?

The duty to prevent sexual harassment applies to the harassment of the organisation's employees and workers, including by third parties. If the client has been harassed by an employee, while employment law provisions do not cover the client, the organisation may owe the client a duty of care and general legal duties in relation to a commercial contract and/or harassment, which can be a civil or criminal matter.

Flexible Working

Do we have any guidance around what "reasonable" is?

Currently, all employees have a statutory right to request flexible working from day 1 of employment. From 2027, the ERA 2025 will introduce a new requirement for employers to justify why any refusal of a flexible working request is "reasonable". Employees will be able to challenge an unreasonable refusal. What will be "reasonable" is not yet clarified - the Government is expected to revise its Code to include specific guidance and there will likely be a consultation on this. How the reasonableness test will be applied in practice will be critical to the impact of the ERA reforms. We are hoping there will be clarity in future guidance issued this year. We will update you when we have that information.

Flexible Working

Would a "reasonable" reason for declining flexible working be "following internal policy"? For example, when working from home, if the company policy is 2 days WFH per week, but an employee put in flexible request to work 3 days from home, could we decline based on policy?

This is likely to be subject to consultation and to Government guidance on what is reasonable. We will update you when we have that information.

Trade Unions

If we don't currently recognise a trade union and traditionally are not a unionised sector, how will these changes impact us, especially written notice of the right to join a trade union?

From October 2026, employers will be legally required to provide workers with a written statement informing them of their right to join a trade union. A consultation closed in January 2026 covering what form the statement should take, what content should be included, the manner in which the statement must be delivered and the frequency with which the statement must be reissued after the beginning of employment. The statement may need to confirm which trade unions the employer recognises, if any. It is also proposed that the statement could include a signpost to a GOV.UK page with a list of current trade unions. We will update you when we have more information.

Record Keeping

How long should information about an employee who has left be kept for?

HR records retention is regulated by data protection law, primarily the Data Protection Act 2018. This requires employers to keep personal data only as long as necessary. However there are a variety of other statutory provisions related to tax, medical/health and safety, and other regulatory requirements that require minimum retention periods for specific documents. It is recommended that basic employment documents are retained for six or seven years after employment ends, reflecting the six year limitation period for breach of contract claims. You should seek advice on other types of data.

Menopause

Re the menopause action plan, is this only if you have 250+ employees or all personnel?

The action plan only applies to employers with 250 or more "employees", though this may be clarified further in due course.

Process

With some things still not set in stone, what are the actions we can take now without risking rework in the future?

You should review your recruitment and onboarding processes, renew your probationary periods, and start to audit your policies and procedures to flag up those that require updating. You can and should be taking steps to prevent sexual harassment now, and carry out a risk assessment.

If you have a question about the ERA, please get in touch with our team of expert solicitors and HR consultants who will be happy to help.

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