

# The Employment Rights Bill and the Government's employment law reforms agenda

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# King's Speech

- Employment Rights Bill
    - Linked to Labour's New Deal for Working People which set out plans e.g. to extend day-one rights
    - Notes sets out a list of reforms
    - Bill “will deliver on policies [in New Deal] that require primary legislation to implement”
    - Timing: introduced within first 100 days
  - Equality (Race and Disability) Bill
  - Duty of candour legislation
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# SSSNB

- School Support Staff Negotiation Body (SSSNB) will be reinstated
    - Manifesto commitment
  - Previous SSSNB
    - Repealed in 2010
    - Applied to support staff in local authority maintained schools
  - Reinstated SSSNB: reference in New Deal to “entire” school workforce
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# SSSNB

- Establish “a national terms and conditions handbook, training, career progression routes, and fair pay rates for support staff”
  - Equal pay issues around treating staff in the same employer differently where work rated as equivalent prior to the re-introduction  
SSSNB
  - Now easier to use comparator elsewhere in employer
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# Fair Pay Agreements: social care

- “We will start by establishing a new Fair Pay Agreement in the adult social care sector, empowering workers and the trade unions that represent them to negotiate fair pay and conditions, including staff benefits, terms and training, underpinned by rights for trade unions to access workplaces, in a regulated and responsible manner, for recruitment and organising purposes.”
  - Manifesto: “...consult widely on design...”
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# Day one rights

- Unfair dismissal
    - “This will not prevent fair dismissal, which includes dismissal for reasons of capability, conduct or redundancy, or probationary periods with fair and transparent rules and processes. We will ensure employers can operate probationary periods to assess new hires. However, the changes will help to ensure that newly hired workers are not fired without reason or cause and will help drive up standards in workplaces.”
  - Parental leave (currently one year)
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# Day one rights

- Make “flexible working the default from day one for all workers, except where it is not reasonably feasible”
    - Differs from existing day one right (introduced 6 April 2024) which applies to employees only and is subject to wider ‘reasonableness’ test rather than present narrower ‘business grounds’ test
  - Sick pay (remove SSP 3-day waiting period)
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# Fire and re-hire

- Commitment to end the ‘scourges’ of ‘fire and rehire’
  - New strengthened Code of Practice: existing one came into force 18 July 2024
  - Not an outright ban
  - Recognition that “businesses can restructure to remain viable, preserve their workforce and the company where there is genuinely no alternative”
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# Zero hours contracts

- Ban “exploitative zero hours contracts”
  - Right to a contract reflecting the hours regularly worked in 12-week reference period
    - When is that reference period?
  - Workers to get right to reasonable notice of change of shifts or working time
    - compensation proportionate to notice given of cancellation or change
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# Post-maternity leave protections

- It will be unlawful to dismiss a woman who has taken maternity for six months after her return, except in specific circumstances
  - Goes further than 6 April 2024 changes: extended redundancy protections to 18 months after birth
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# Trade Union Law

- King's Speech notes to Employment Rights Bill: "updating trade union legislation so it is fit for a modern economy, including removing unnecessary restrictions on trade union activity...and ensuring industrial relations are based around good faith negotiation and bargaining."
  - Specific reference to removal of minimum service levels legislation (applies in education, fire and other sectors)
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# Trade Union Law: other

- Repeal Trade Union Act 2016
    - Industrial action ballot thresholds (50% or more turnout required, for important public services 40% of those entitled to vote must say ‘yes’)
    - Notice of action increased from 7 to 14 days
    - Six-month (nine if agreed) limit on ballot validity
  - Use of agency workers to remain prohibited
  - Right for TUs to access workplaces
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# Trade Union Law: other

- Union recognition: statutory scheme less onerous (reduce thresholds – at least 50% of workers in bargaining unit must vote and 40% support recognition)
  - Inform employee of right to join TU in contract
  - Sufficient facility time
  - New rights and protections for TU reps
  - Statutory right to have TU equality reps
  - Electronic balloting will be allowed
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# Single enforcement body

- Single enforcement body
    - With powers "to undertake targeted and proactive enforcement work and bring civil proceedings upholding employment rights"
    - Previous government's intention was to merge HMRC NMW Enforcement, the Gangmasters and Labour Abuse Authority and the Employment Agency Standards inspectorate
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# Equality (Race and Disability) Bill

- Enshrine in law the full right to equal pay for ethnic minorities and disabled people
    - mirror current equal pay regime
    - will reinforce use of robust JES
  - Introduce mandatory ethnicity and disability pay gap reporting for employers with 250 or more employees
    - Previous plans on ethnicity reporting highlighted issues with determining comparator groups
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# Duty of candour legislation

- The 'Hillsborough Law'
  - Intended to place a legal duty of candour on public servants and authorities
    - Improve transparency and accountability
    - Reduce culture of defensiveness in the public sector
    - Ensure no repeat of lack of candour uncovered in Hillsborough and Infected Blood enquiries
  - High level, overarching?
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# Other: TUPE and outsourcing

- Contracting out: subject to public interest test
    - vfm, impact on quality, economic and social value goals
  - Two-tier Code to be reinstated/strengthened
    - applied to local authority outsourcing: new employees hired by the private sector contractor had to be given no less favourable terms than their ex-local authority colleagues they were working alongside
  - PI test and Code will apply to wholly owned subsidiary companies
  - Strengthen existing TUPE rights/protections
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# Other: Equal pay and outsourcing

- “Labour will put in place measures to ensure that outsourcing of services can no longer be used by employers to avoid paying equal pay, including for work of equal value, to women, ending this longstanding injustice.”
  - As part of plans to strengthen gender pay gap reporting including requirement for action plans: “...we will ensure outsourced workers are included in their [large firms] gender pay gap and pay ratio reporting.”
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# Other: Socio-economic duty and menopause action plans

- Enact the Equality Act 2010 socio-economic duty
    - An authority must “when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.”
  - Requirement for large employers to set out menopause action plans: support
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# Other: Redundancy and NMW

- Strengthen redundancy rights and protections by ensuring e.g. the right to collective redundancy consultation is determined not by number of dismissals at establishment but across the employer
  - National Living Wage: Low Pay Commission's remit changes so it will have to take into account the cost of living, removal of age bands
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# Other: Worker status

- At present:
    - Employee
    - Worker
    - Self-employed
  - “Move towards a single status of worker”
    - Worker
    - Self-employed
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# Other: employment tribunals / bereavement leave

- Plans to “bring employment tribunals up to standard”
  - Increase time limit for bringing claims from three to six months for all types of claims
  - Bereavement leave: “clarify the law and entitlement, introducing the right for all workers” (current right is two weeks for parents who are bereaved, at statutory rate of pay)
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# Other: right to 'switch off'

- Right to 'switch off'
    - “We will follow similar models to those that are already in place in Ireland or Belgium, giving workers and employers the opportunity to have constructive conversations and work together on bespoke workplace policies or contractual terms that benefit both parties.”
    - Flexible employer level implementation, backed up by a Code of Practice?
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## Further information

<https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations>

<https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations/advisory-bulletins-employment-law-updates>



# Further information

<https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations/employment-law-topics-and-guides/equal>

<https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations/employment-law-topics-and-guides/transfer>

<https://www.local.gov.uk/our-support/workforce-and-hr-support/wellbeing/menopause>