DOWNS
SOLICITORS AND NOTARIES

Employment Rights Act 2025 – a summary for small businesses (October 2026)

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UNFAIR DISMISSAL

- Qualifying service period reduced to 6 months (from 2 years)
  - Automatically unfair dismissal cases unaffected
- Cap on UD compensation scrapped
- Changes come into effect from 1 January 2027
- Effects of the changes
  - Employers will need to be aware of new employees' increased rights
  - Relatively short period to assess whether to retain a new employee
  - Consider amending probation period where appropriate
  - Look at recruitment processes – are you employing the right people?
  - Lifting the cap may make settlement more difficult in UD cases
  - Ironically, big earners well served by lifting of the cap

STATUTORY SICK PAY

- Payable from first day of sickness
- Payable for all workers - LEL requirement scrapped (LEL currently £129pw)
- Payable at lower of:
  - 80% normal weekly earnings; or
  - prescribed rate (currently £123.25)
- Employers will continue to be liable for cost (unlike for SMP)
- Came into force 6 April 2026

DISCRIMINATION

- Employers will need to take ‘all reasonable steps’ to avoid sexual harassment in the workplace (current duty is to take reasonable steps).
  - If a claim for SH is successful the tribunal can increase compensation by up to 25% if employer failed to comply with preventative duty.
  - Regulations expected to state what will be regarded as reasonable steps for employers to take.
  - These may vary depending on size of employer, sector etc
- Reintroduction of liability for third party harassment
  - Employer must take all reasonable steps to prevent harassment.
  - Applies to all relevant protected characteristics (sex, race, age, disability etc)
  - Includes a one-off incident.
  - Particularly onerous for retail/hospitality sectors.
- Expected to come into force from 30 October 2026 (with regulations in 2027/8 after consultation)

FAMILIES/PREGNANCY

- Extension of protection for pregnant employees and new mothers (and possibly other employees taking or returning from statutory family leave) went to consultation. Changes expected from 2027.
- Consideration is being given to changing UD rules for such employees. One possibility is that such employees will not be able to be dismissed for misconduct unless it is gross misconduct.
- Paternity leave and parental leave became day 1 rights (from 6 April 2026).
- Bereavement leave (but not pay) extended to wider group of persons (and will include to all miscarriages). Expected from April 2027.
- Government is reviewing all statutory family leave and pay rules.

FAIR WORK AGENCY

- New government agency responsible for enforcement of NMW, holiday pay, SSP and other areas.

- Wide enforcement powers and able to bring claims on behalf of workers or provide them with legal assistance.

- FWA established 7 April 2026

FLEXIBLE WORKING AND RIGHT TO SWITCH OFF

- ERA 2025 doesn't make FW the default as promised in the Labour manifesto.
- New test of reasonableness will apply when deciding FW requests (expected Autumn 2027).
- But no change to compensation cap (current max. £6,008 – 8 weeks' pay).
- Right to switch off not included in the ERA 2025.

ZERO/LOW HOURS WORKERS

- Right to offer of guaranteed hours
  - Regs will set out who qualifies as a LHW
  - Employer must offer a contract reflecting the hours the worker usually works over a reference period
  - Reference period to be set out in regs (likely to be 12 weeks)
  - Obligation to make offer arises for every reference period (until worker no longer qualifies as LHW)
  - Agency workers are protected under the Z/LHWs provisions
- Right to reasonable notice of shifts
- Compensation for cancellation, moving or curtailing shifts
- Due to come into force in 2027

OTHER CHANGES

- Statement on day 1 re right to join TU (expected from 1 January 2027)
  - Regs will stipulate when this must be periodically reissued

- Employment tribunal claim time limits increased from 3 to 6 months (effective from 1 October 2026)

- Holiday records must be kept 6 years (from 6 April 2026)

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