

Employment Rights Act Made Simple: Business Owner's FAQs

With

Date: 18/03/26

Run Time: Approx 50 Mins

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across **Employment Law, HR and Health & Safety****



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- Helping you safeguard your business



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Industry
Experience

90% Tribunal
Success
Rate

14k Clients

306 Thousand
Advice Line
Calls Per Year

Today We Will Cover

- **A summary of the Employment Rights Act so far**
- **Answers to business owner's burning Employment Rights Act questions**
- **Practical advice that puts your business first**

Please put your questions in the chat!



Hard hitting reality

- 2026 is going to be a busy year for employment law changes
- Changes will affect over 28 areas of employee management
- 173 separate pieces of law to be written/amended
- Laws will be spread over next 2 years
- Vast majority of changes will affect every employer in the UK regardless of size



The biggest changes

- Statutory sick pay expansion – April 2026
- Family Leave/Payments – 6th April 2026
- Introduction of Fair Work Agency – April 2026
- Requirement to inform of right to join a union – October 2026
- Increased harassment obligations – October 2026
- Unfair dismissal protection – 1 January 2027

Probation Periods



Can probation periods still be extended as long as they don't exceed 6 months?

- YES - Employers can still extend probation periods
- Must ensure the total duration does not exceed six months.
- Extensions beyond six months would expose the employer to unfair dismissal claims if the employee is dismissed.



What can we do if an employee is off sick for the majority of their probation period?

- Gather evidence of performance and capability within the time they were present at work.
- Make use of the originally agreed probation duration to evaluate their suitability for the role
- A decision will need to be made about whether to confirm their employment, terminate it, or mutually agree to an extension.
- Consider obtaining medical evidence to understand their prognosis and assess whether reasonable adjustments can be made to support their return.
- Keep clear documentation of all communications, performance reviews, and any accommodations or adjustments offered.
- Ensure decisions are fair, non-discriminatory, and in line with employment law to avoid potential claims of unfair dismissal or discrimination.



Do we have to provide an appeal stage when we terminate the employee after unsuccessful probationary period? ◀

- It is not a legal requirement to provide an appeal stage when terminating an employee during or immediately after an unsuccessful probationary
- Offering an appeal is considered good practice and aligns with natural justice principles
- If an appeal stage is included in your disciplinary or probation policies, it must be followed to avoid breach of contract claims.



Do we need to hold a formal meeting to extend someone's probation period?

- It is not mandatory to hold a formal meeting to extend someone's probation period.
- It is considered good practice to do so to ensure the process is clear and documented.
- An informal one-to-one meeting could suffice, provided the discussion is thoroughly documented
- Key elements to communicate include:
 - The reasons for the extension.
 - The specific areas needing improvement.
 - The new end date of the probationary period.
 - Any support or resources available to help the employee meet the required standards.



We don't have a probation period, can we just review our performance management policy?

- Yes - you can include provisions in your performance management policy to address performance issues during the first six months of employment.
- Include that that during the initial six months, performance concerns will be addressed more promptly
- You must ensure that this approach is fair and complies with employment law:
 - Outline the expectations for employees during their first six months
 - Specify the process for managing underperformance
 - Ensure the policy does not conflict with statutory rights or create an impression of unfair treatment.
 - Communicate the policy to new employees at the start of their employment



Absence Management & Sick Pay



Do they need a medical sick note to qualify for day one or is self cert enough for SSP?

- For absences lasting seven days or less – NO
- If the absence exceeds seven consecutive days, including non-working days - YES
- Employers are advised to ensure their absence management procedures align with these requirements:
 - Accepting self-certification for the first seven days
 - Requesting fit notes for longer absences.



Does SSP have to be paid for just the odd day? What if they self cert for 2 days? If they don't self cert, would it be unpaid?

- From 6 April 2026, SSP will be payable from the first full day of absence, with no waiting days required.
- If an employee self-certifies for two days of sickness absence, SSP must be paid for those two full days, provided the employee is eligible.
- If the employee fails to self-certify or provide sufficient notification of their absence according to the company policy, SSP can be withheld



Can you withhold SSP if the employee is off for more than 7 days but does not provide a fit note for their absence?

- If the employee does not provide a fit note after seven days, you are entitled to withhold Statutory Sick Pay (SSP) for the period of absence that is not supported by the required medical evidence.
- However, you should:
 - Explain clearly to the employee why SSP is being withheld.
 - Allow the employee the opportunity to provide the required fit note if they can do so promptly.
 - Ensure that your decision is consistent with your organisation's sickness absence policy and procedures.



If casual (zero hour) contracted workers are now eligible for SSP how would we calculate this?

- SSP will be calculated as the lower of:
 - 80% of the worker's average weekly earnings over an 8-week reference period.
 - The standard SSP flat rate (currently £118.75, subject to annual updates).
- Steps to calculate SSP:
 - Determine the worker's average weekly earnings by dividing their total earnings over the past 8 weeks by 8.
 - Calculate 80% of the average weekly earnings.
 - Compare this figure to the standard SSP flat rate and pay the lower amount.



If they have 1 day sick during a booked holiday, can an employer still ask for a fit note instead of self certification to change the day from holiday to sick leave?

- YES – If employee wishes to change that day from holiday to sick leave.
- Employees should still follow their organisation's sickness absence procedures, including notifying the employer as soon as possible if they become unwell during a holiday.



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Family Leave & Pay



What happens in same sex couples where both parents are fathers? Do either get maternity standard leave?

- When both parents are fathers, neither will be eligible.
- Same-sex couples are instead eligible for:
 - Statutory adoption leave (up to 52 weeks, one parent only) and pay (up to 39 weeks) if they meet the eligibility criteria.
 - The other parent may take paternity leave (up to 2 weeks) or shared parental leave if adoption leave is curtailed early.
 - Shared parental leave, allows eligible parents to share up to 50 weeks of leave and 39 weeks of pay after the adoption leave has been curtailed.



Is there still a service requirement for Paternity pay?

- YES - Statutory Paternity Pay (SPP) will still require the employee to meet the qualifying criteria, which includes:
 - At least 26 weeks of continuous service by the 15th week before the expected week of childbirth/adoption
 - Average weekly earnings equal to or above the Lower Earnings Limit for National Insurance Contributions.
 - If SPP criteria not met - they can still take unpaid paternity leave unless the employer offers an enhanced paternity pay scheme as part of their contractual benefits.

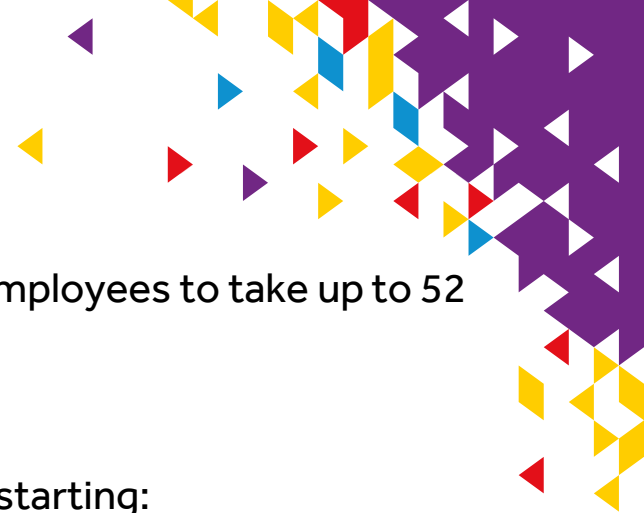


If someone has already advised us they intend to go on maternity in April and there do not meet the length of service requirements, will they qualify for this new ruling if maternity is due to start a few days after 6 April?

- All employees are eligible to take up to 52 weeks of maternity leave from the first day of employment, regardless of their length of service.
- However, eligibility for Statutory Maternity Pay (SMP) requires at least 26 weeks of continuous service by the end of the 15th week before the expected week of childbirth.
- If the individual does not meet the service requirement for SMP, they may still qualify for Maternity Allowance, which is assessed based on their employment and earnings history.



If the bereavement is 40 weeks after the child is born, does that mean they are only entitled to 12 weeks of BPPL?



- Bereaved Partner's Paternity Leave (BPPL) allows eligible employees to take up to 52 weeks of leave.
- The leave must be taken within a 52-week eligibility period starting:
- The day after the child is born, placed for adoption, or enters Great Britain (in overseas adoption cases).
- If the bereavement occurs 40 weeks after the child is born, the employee would still have 12 weeks remaining within the 52-week eligibility period to take their BPPL.



Do we need a specific family related leave policy or is it enough to cover this in the employee handbook?



- NO - It is not legally required to have a standalone family-related leave policy.
- Employers can choose to include details of family leave entitlements within the employee handbook.
- However, having a clear and accessible policy—whether as part of the handbook or a separate document—ensures employees are informed of their entitlements and the procedures for taking family-related leave.



Trade Unions



What about if we don't recognise trade unions, do the new laws still apply?

- YES - the duty to notify employees of their right to join a union applies to all businesses.
- This is regardless of whether they recognise trade unions for collective bargaining purposes.
- Under the Employment Rights Act 2025, employers are required to provide a written statement informing employees of their right to join a trade union.
- This must be done at the start of employment and at prescribed intervals during their employment.



As a non-unionised organisation, do we have to have recognise a union and have union reps within the business?

- As a non-unionised organisation, you are not obligated to voluntarily recognise a union unless you choose to do so.
- However, if a trade union applies for statutory recognition, and certain criteria are met, recognition may be imposed by the Central Arbitration Committee (CAC).
- Unlike voluntary agreements, a CAC-imposed agreement is legally enforceable.



Will putting trade union right into contract be enough or it will need a separate letter/policy?

- The Act allows employers to provide a separate statement instead.
- The separate statement must be provided at the same time as the statement of main terms of employment.
- Employers will also be required to regularly inform employees of their right to join a union throughout their employment.
- The Government is expected to provide further details on:
 - The specific information to include in the statement.
 - The format the statement must take.
 - How and how often the statement must be delivered.



Do existing staff need to be informed of the right to join a trade union?

- Yes, the Employment Rights Act 2025 introduces a duty for employers to inform both new and existing staff of their right to join a trade union.
- The requirement applies to all employees, not just new starters, and employers must provide this information at prescribed intervals during employment.



Sexual Harassment



What is someone reports inappropriate/unprofessional behaviour but doesn't want to take anything formally?

- The employer should still take the matter seriously and consider the following steps:
 - Determine whether further steps are needed to address the behaviour and prevent recurrence.
 - Arrange a confidential meeting with the individual to understand the concern
 - Reassure the employee that their complaint will be handled sensitively and confidentially
 - If appropriate and the employee agrees, encourage them to speak to the person whose behaviour is causing offence
 - Suggest mediation as an option
 - Consider offering training or reminders about acceptable workplace behaviour to all staff



We have included sexual harassment as part of our bullying, harassment and discrimination policy, is this sufficient or should we have a completely separate policy?



- Can be sufficient, but having a separate policy for sexual harassment might be preferable in some circumstances.
- If sexual harassment is part of a combined harassment policy, it must be clearly distinguished as a separate form of harassment with specific rules and definitions.
- Since 26 October 2024, employers have a proactive legal duty to prevent sexual harassment. A separate policy may help demonstrate this duty by outlining tailored preventative measures and procedures.





Have the 'all reasonable steps' for prevention of sexual harassment been defined?

- NO - The law does not provide a specific list of steps
- Guidance from EHRC provides examples of practical measures that can be considered reasonable.
- Carry out a risk assessment to identify potential risks and implement measures to reduce them.
- Implement an effective anti-harassment policy that clearly defines unacceptable behaviour and the consequences of such behaviour.
- Provide regular training to all workers, managers, and senior staff
- Establish a clear and accessible reporting procedure
- Take steps to prevent harassment by third parties



Does this mean that any reports of sexual harassment should be dealt with via the whistleblowing policy rather than grievance?

- NO – Not necessarily
- Sexual harassment complaints are typically handled under the grievance or harassment policy, these are designed to address workplace issues affecting individuals
- Whistleblowing is primarily for reporting wrongdoing that is a matter of public interest, such as criminal offences, health and safety risks, or breaches of law.
- This means that if an employee makes a disclosure about sexual harassment as a serious wrongdoing it could fall under whistleblowing protections.



Fire & Rehire



Are there any expectations that would make fire and rehire acceptable?

- YES - there are circumstances and expectations that may make such practices acceptable:
 - Evidence of financial difficulties that are affecting or likely to affect the viability of the business.
 - The contractual changes are necessary to eliminate, prevent, significantly reduce, or mitigate the effects of those financial difficulties.
 - The need to make the changes is unavoidable.



How can unfair dismissal be avoided when firing and rehiring?



- Employers must follow a fair procedure to avoid claims of unfair dismissal. This includes:
 - Giving adequate notice of dismissal and re-engagement.
 - Providing the statutory or contractual notice period as a minimum.
 - Ensuring employees retain continuity of service after re-engagement.
- Employers must demonstrate that all other options were considered and ruled out before resorting to fire and rehire.



What are now classed as restricted variations?

- From January 2027, fire and rehire will be restricted to specific contractual changes, such as:
 - Pay-related terms.
 - Total hours or shift patterns.
 - Holiday entitlements, bonuses, and pensions.
 - Changes to other terms, such as duties or place of work, will not fall under these restrictions.



Fair Work Agency



How is the Fair Work Agency different from the Employment Tribunal?

- The Fair Work Agency focuses on proactive enforcement and compliance, while Employment Tribunals resolve disputes brought by individuals.
- Tribunal claims require individuals to initiate proceedings, whereas the FWA can enforce rights and bring claims on behalf of workers.
- The FWA has investigative powers, whereas tribunals rely on evidence submitted by the parties.
- Employment tribunals are judicial bodies, whereas the FWA is an enforcement agency with administrative powers.



How can employers prepare for the FWA?

- Ensure policies, practices, and processes are compliant with employment law.
- Maintain accurate records of statutory payments and entitlements taken by employees.
- Review and update policies to ensure compliance with statutory requirements enforced by the FWA, such as holiday pay and sick pay.
- Resolve employee issues effectively and ensure robust internal processes to mitigate the risk of tribunal claims.
- Prepare to cooperate with FWA inspections, including maintaining accessible records and documentation for review.



What powers will the FWA have?

- Bring Employment Tribunal claims on behalf of workers
- Provide legal assistance, advice, and representation in civil proceedings relating to employment law
- Issue notices of underpayment to employers
- Enter business premises to examine documents and require individuals to produce records
- Inspect computers or equipment used to store and process employment-related information.
- Serve notices requiring compliance with labour market laws and statutory payments.
- Seek court orders where undertakings are refused



Please put your questions in the chat!



Did we miss your question?

- Get your specific questions answered by an expert.
- Submit your questions in the chat/
- Receive an exclusive follow up review of your HR policies & health and safety programs you have in place for attending today's presentation.
- A Croner consultant will contact you in the next 1-2 business days to book your complimentary documentation review.



Thank you!

Any questions

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