



Employment Rights Act Made Simple: Fair Work Agency

With Malia Jamison & Leanna Bishton

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Run Time: Approx 50 Mins

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Today We Will Cover

- **What is the Fair Work Agency?**
- **How your day-to-day management and payroll will be affected by heightened oversight.**
- **Practical steps to audit your processes and ensure you are ready for proactive inspections.**

What is the Fair Work Agency?

- A government-established independent body, created under the Employment Rights Act 2025 to combine existing enforcement functions under one unified strategy
- A strong, recognisable, single brand that will oversee the enforcement of employment rights.
- Their goal is to adopt a balanced approach between upholding workers' rights and supporting businesses with their legal compliance.
- Both workers and employers can turn to them for statutory guidance.

What will the FWA cover?

- Employment Agencies and Regulations.
- National Minimum Wage Rights.
- Modern Slavery Offences.
- Statutory Sick Pay.
- Statutory Holiday Pay.
- Record Keeping showing Compliance with Statutory Holiday Leave.
- Gangmaster Licensing.
- Financial Penalties for Unpaid Employment Tribunal Awards.

What powers will the Fair Work Agency have?

Enforce penalties for unpaid statutory payments

- Power to enforce penalties if workers are denied certain statutory payments:
 - Holiday Entitlements
 - Sick Pay
- FWA may issue notice of underpayments where employers will have to pay within 28 days.
- The notice will impose a 200% penalty of the sum – which is capped at £20,000 per individual.
- Can be reduced to 100% if the sums and penalties are paid within 14 days.

Issue notices to provide information

- The power to issue a notice requiring a person to provide information. Person in question must:
 - Attend a specified time or place to answer questions.
 - Or provide specified information or documents.
- To effectively enforce employment rights, investigate breaches, conduct proactive inspections, and ensure employer compliance

Enter Business Premises to Examine Documents

- Enforcement officers may be able to:
 - Enter a business premises to examine documents
 - Require anyone on the premises to produce requested documents.
 - Seize electronic devices used to store information.
- Based on powers the existing bodies have to investigate:
 - Reports of underpayment
 - Suspected modern slavery
 - Employment Law noncompliance
 - Obstruction of rights

Request Labour Market Enforcement Undertakings

- An enforcement regime in respect of labour market criminal offences
- Involves voluntary Labour Market Enforcement Undertakings and compulsory Labour Market Enforcement Orders that require employers to correct their behaviour.
- A "trigger offence" refers to a breach of the Gangmasters (Licensing) Act 2004, the National Minimum Wage Act 1998, or the Employment Agencies Act 1973

Pass new penalties for employment rights breaches

- New criminal offences could apply to all employment rights breaches covered by the FWA. Under the Bill, it could become an offence to:
 - Knowingly or recklessly produce false documents and information.
 - Intentionally obstruct enforcement action.
 - Fail compliance with an enforcement requirement without reasonable excuse.
- The penalty could involve fines, imprisonment for up to 51 weeks (in England and Wales) – or both. Government officers could also be found guilty if they're involved in the offence.

How will the FWA use its enforcement powers?

Recover enforcement costs

- Ability to recover enforcement costs from employers who don't comply with the law.
- The rules on financial charges and relative provisions could be added to the Bill – allowing the FWA to fund its own work.
- Unconfirmed as to whether this will include include fixed fees or hourly rates for investigation and enforcement activities.

Bring Employment Tribunal claims on workers behalf

- The FWA could bring ET proceedings on their behalf of someone who is unable or unwilling to do so themselves.
- Authority to bring claims is expected to cover a broad range of employment disputes
- Power to request evidence or enter premises will support the evidence needed for tribunal claims.

Provide legal aid during civil proceedings

- Provide claimants and respondents with legal support, aid, and representation during civil proceedings
- This would usually cover cases involving employment law, trade union law, or labour relations law.
- If a party that the FWA supports wins a case, they could claim expenditure costs from the award amount.
- This could potentially become a huge change in the process, as costs are normally awarded to successful parties once they reach the Court of Appeal or the Supreme Court.

POLL: Are your records accessible enough to respond to an "unannounced" FWA inspection tomorrow?



How to prepare your business for the Fair Work Agency

Holiday pay

- Currently, process is complicated and isn't subject to state enforcement.
- FWA plan to roll out extension of underpayment notices and associated penalties, combined with new investigational powers.
- Review holiday pay policies and practices to ensure compliance, particularly for irregular and zero hours workers.
- Ensure that your processes allow you to maintain clear records of holiday entitlements and holiday taken.

Statutory Sick Pay

- Currently, the HMRC decides whether Statutory Sick Pay should be paid during a dispute.
- Under the FWA, the same rules on holiday pay could apply to SSP.
- However, this area is less complex as SSP rights are easier to run correctly compared to holiday pay entitlements.

National Minimum Wage

- HMRC already has significant enforcement powers over employers to pay missing National Minimum Wage amounts.
- The introduction of the FWA could be seen as a transitional move rather than the reshaping of the system itself.
- Assess agency worker arrangements and check that contractors comply with, as the FWA may hold employers accountable for third-party violations.
- Review your employment contracts and job adverts to ensure they comply with NMW

Modern slavery

- The existing modern slavery regime includes criminal sanctions with a maximum penalty of 10 years' imprisonment.
- There doesn't seem to be much change to powers already held by the Gangmasters and Labour Abuse Authority.
- The GLAA already has the power to conduct criminal investigations where an offence is suspected.
- A dedicated team within the FWA will be established in April 2026 to target sectors known for high-risk exploitation, such as hand car washes, and move on to other areas.

Immigration

- Immigration rules on a whole wont be fully covered by the FWA.
- The main change to the current system relates to immigration LME undertakings and orders being replaced by the provisions in the Bill.
- These new provisions are similar and may not make significant changes in practice.

Documents & Policies To Review

- 1. Audit Existing Records :** Identify gaps in payroll, holiday pay, and contract documentation
 1. Review all salary structures for increases coming in April 2026.
 2. Ensure calculations for irregular-hours and zero-hours staff include all required pay elements
 3. Ensure detailed records of pay, hours worked, and deductions are maintained and accessible for 6 years.
- 2. Update Policies:** Revise Employee Handbooks to reflect new statutory rights and FWA standards
 1. Remove references to "3 waiting days" for Statutory Sick Pay
- 3. Train Management :** Ensure line managers understand updated, strict procedures for hiring, sickness, and termination.
- 4. Implement Systems:** Configure payroll and HR software for immediate changes to Sick Pay and Parental Leave.

Conclusion

- The Fair Work Agency (FWA) is a new UK state enforcement body, set to be established in April 2026 under the Employment Rights Act 2025.
- In addition to NMW, it will directly enforce statutory holiday pay and Statutory Sick Pay (SSP), areas currently rarely enforced by the state.
- Focused on "rogue" employers, particularly in sectors with high reliance on agency, casual, or migrant labour.
- Unlike current complaint-driven systems, the FWA can launch inspections and investigations without a specific worker complaint.
- The agency can take cases to employment tribunals on behalf of workers, reducing the need for individuals to bring their own claims.

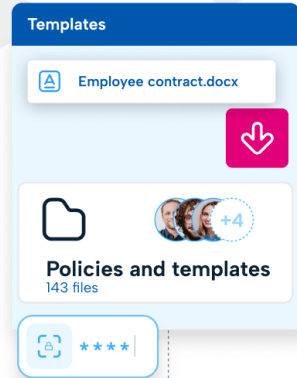
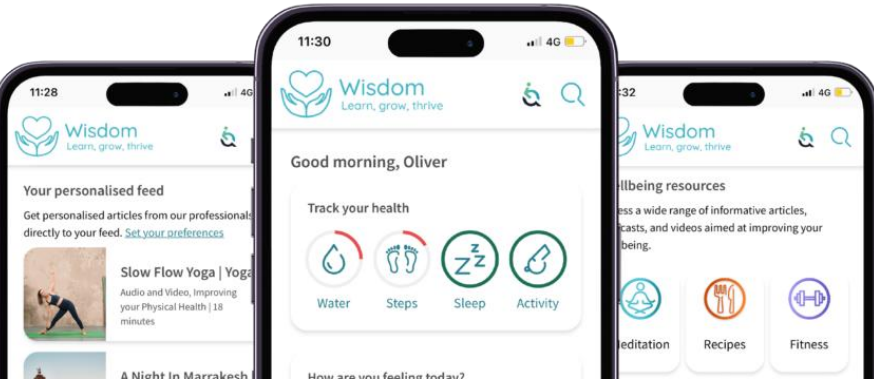
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