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Burness Paull



Employment Rights Act 2025 – An update for the Scottish Wholesale Association

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WEBINAR HOUSEKEEPING

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YOUR PRESENTER TODAY IS:



Jamie Meechan
LEGAL DIRECTOR

What's the latest?

EMPLOYMENT RIGHTS ACT – AREAS OF CHANGE

Unfair dismissal

Zero hours
contracts

Collective
redundancies

Fire and rehire

SSP

Flexible working

Family leave and
protection for
pregnant
employees

Equality action
plans

NDA's

ET Time Limits

Harassment

Whistleblowing

Trade Unions

Fair Work Agency

STATUTORY SICK PAY (SSP) – APRIL 2026

- Payable from day one (removal of three-day waiting period)
- Removal of lower earning limit for SSP eligibility



FAIR WORK AGENCY – APRIL 2026

- Established in April 2026
- Will bring together existing enforcement functions of other organisations e.g. HMRC re NMW enforcement.
- Over time, intended to take on the enforcement of a wider range of employment rights, including holiday pay and SSP, with flexibility for the enforcement of additional rights to be brought into scope.

FAMILY LEAVE AND RIGHTS

- Day one rights
 - Paternity leave (April 2026) - and can take at end of shared parental leave
 - Parental leave (April 2026)
 - A more general bereavement leave (2027)
- Enhanced protections for pregnant workers and those returning from family leave (2027)

COLLECTIVE REDUNDANCIES

- “Establishment” test will remain
- Increase in the maximum period of the collective redundancy protective award from 90 days to 180 days pay (April 2026)
- New collective redundancy consultation threshold (2027):
 - the government will have the power to make regulations specifying the threshold number of employees. The threshold number may be either a specified number, a number defined by a specified percentage of employees, or determined in another way specified in the regulations. However, it must not be lower than 20.

PROTECTION FROM HARASSMENT

- Disclosure of sexual harassment to be included under whistleblowing protections (April 2026)
- ‘All’ reasonable steps to prevent sexual harassment (October 2026)
- Protection from 3rd party harassment (October 2026)
- Government may specify in regulations what are to be regarded as reasonable steps to prevent sexual harassment (2027)

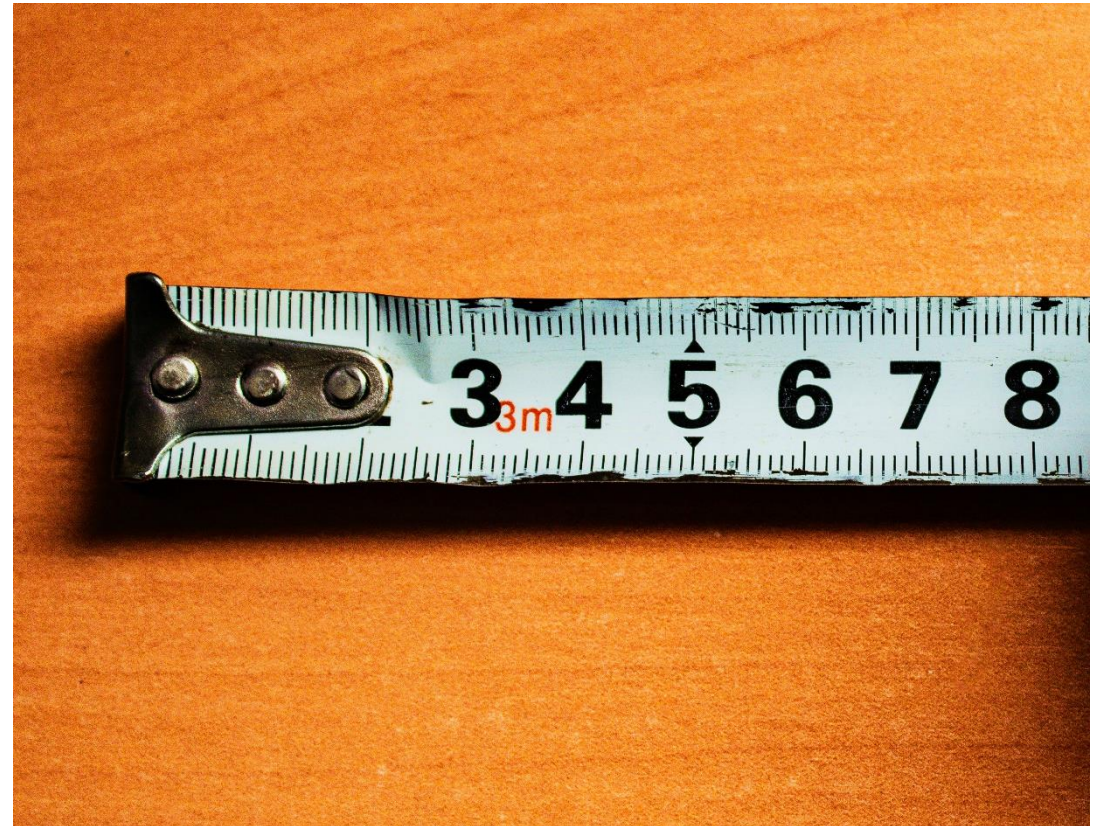
EMPLOYMENT TRIBUNAL TIME LIMITS (OCTOBER 2026)

- Extension of tribunal time limits to six months
- All types of claim except breach of contract claims



UNFAIR DISMISSAL (2027)

- Original proposal was to make unfair dismissal a 'day one right'
- This has now been replaced with a proposal to reduce the two-year qualifying period of service for unfair dismissal claims, to six months
- The overall numerical cap on unfair dismissal compensatory awards will also be lifted



FIRE AND RE-HIRE/CHANGING TS AND CS (JANUARY 2027)

- Other than in circumstances of “financial difficulty”, an employee will be automatically unfairly dismissed where the reason, or principal reason, for their dismissal is either of the following:
 - The employer sought to vary the employee's contract of employment to make a "restricted variation" and the employee did not agree to the restricted variation.
 - The employer sought to make more than one variation and the employee did not agree to several variations that included the restricted variation.
- “Financial difficulty” - ...likely in the immediate future to affect...the employer’s ability to carry on the business as a going concern...
- “Restricted variation” – pay (including pensions), working time and time off, variation clause, or as otherwise specified by regulations made by the Secretary of State.

FLEXIBLE WORKING (2027)

- The existing day-one right to request flexible working under the statutory scheme will remain, but employers will only be able to rely on one of the statutory reasons to refuse a request for flexible working where it is reasonable to do so.
- If the application is refused, the employer must confirm in writing: the ground(s) for refusing and why it is considered reasonable to refuse the application on that ground(s).
- Compliance with a consultation requirement will include any steps specified in regulations made by the Secretary of State. This may include the steps suggested in the Acas Code of Practice on requests for flexible working, which include inviting the employee to a meeting to discuss the request, allowing the employee to be accompanied and keeping a written record of the discussion.

ZERO HOURS, LOW HOURS AND AGENCY WORKERS (2027)

- The government plans to introduce the following key rights:
 - Guaranteed hours: Employers must offer guaranteed hours contracts.
 - Reasonable notice of shifts: Employers must provide sufficient notice of shifts.
 - Compensation for cancelled shifts: Workers will be entitled to compensation if shifts are cancelled, moved, or shortened at short notice.
- These rights are also to be extended to agency workers.
- Automatic unfair dismissal if it relates to an employee exercising their right to guaranteed hours – this also applies to redundancy.

EQUALITY ACTION PLANS (2027)

- Companies with 250 or more employees must publish equality action plans showing what steps they are taking in relation to prescribed matters related to gender equality.
- Matters relating to gender equality - those concerning the advancement of equality between male and female employees (including addressing the gender pay gap) and supporting employees going through menopause.
- Expected to come into force in 2027 (voluntarily from April 2026).



NON-DISCLOSURE AGREEMENTS (TBC)

- Any agreement preventing a worker from making allegations or disclosures about **harassment or discrimination**, including disclosures about the employer's response, will be void.
- This would apply to settlement agreements, contracts of employment and any other agreement between an employer and a worker of the employer.
- This was not on the roadmap, so we do not have an expected date of when this would potentially come into effect .

TRADE UNIONS AND INDUSTRIAL RELATIONS - BACKGROUND

- Unions can be recognised in the workplace, but no legal obligation to have one:
 - Voluntary recognition; or
 - Statutory recognition
- If no appetite to agree voluntarily, a statutory application needs to be made by the union to the Central Arbitration Committee. Then follows a prescribed threshold with set timings and thresholds that must be met for the application to be successful.
- Once recognised, unions have the power to collectively bargain on behalf of the relevant employees. Terms and conditions of employment (pay, hours, and holidays are the maximum under the legal process).
- Recognition is separate from the individual right to be a member.

TRADE UNIONS AND INDUSTRIAL RELATIONS

- Union recognition to be made easier:
 - Presumption of automatic recognition if the union demonstrates majority membership
 - 10% threshold to be replaced with a test of anywhere between 2% and 10%
 - Removal of 40% support threshold from recognition ballots
 - Removal of employer tactics designed to dilute bargaining units mid-process



TRADE UNIONS AND INDUSTRIAL RELATIONS

- Trade union ‘access agreements’ (October 2026):
 - Union and employer can agree terms on which officials will have access. Otherwise, the CAC will have the power to determine a union’s access.
 - On-site meetings (including during breaks or in rest areas) and digital systems, like intranet, email.
 - Denial of access may result in penalties.
 - This enables unions to build membership and support early, improving the chances of successful recognition.
- Employers required to inform workers of their right to join a trade union (in writing).

TRADE UNIONS AND INDUSTRIAL RELATIONS

- Repeal of Trade Union Act 2016
- Strengthening protections for the right to strike:
 - Strike notice reduced to 10 days
 - Strike mandate extended to 12 months
 - Simplified information requirements
 - 50% ballot turnout thresholds removed



**How will the ERA impact your
organisation?**

PRIORITIES FOR WHOLESALERS AND SUPPLIERS



Biggest reset of employment law in decades



Audit use of zero hours, low hours, agency workers



Review contracts and policies



Review pay compliance and audit holiday pay and records



Update harassment risk assessments and take actions: this applies to trade counters, depots, drivers and beyond.



Training your staff, managers and boards.



Take advice and develop an action plan

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Q&A



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