



UHR Conference 2025

Online 13 - 15 May

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UHR Conference 2025

The Employment Rights Bill: *does HE need to worry?*

13 May 2025

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Please do...

- say hello in the chat, and tell us all where you're from
- feel free to add questions or comments under the Q&A tab, you don't have to save them until the end
- let us know your views via our slido polls, we'll tell you when
- maintain confidentiality outside this session– mindful of what colleagues may share

We will...

- answer as many of your questions as we can in the time available
- share the slides/recording via UHR afterwards
- be happy to hear from you afterwards if you'd like to continue the discussion

Current context– inside and outside HE

UK unions welcome moves to bolster workers' rights bill

Unions delighted there has been no watering down of plans, which will apply to England, Scotland and Wales

Jessica Elgot Deputy political editor

Tue 4 Mar 2025 16.42 GMT



Trade unions have declared victory as Labour bolstered a string of measures in its workers' rights bill, amid criticism of the government from business groups saying there had been no "meaningful change" despite engagement.

Union sources said they were delighted there had been no watering down of any key measures in the employment rights bill, which will face its final vote in the Commons next week, after wrangling between ministers, unions and businesses.

BBC NEWS

Home UK World Business Poli

Business groups urge changes to workers' rights bill



GETTY IMAGES

Sam Francis
Political Reporter

17 April 2025

CIPD

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Employment Rights Bill is a landmark moment for British workers' rights, says CIPD



Employment Rights Bill is a landmark moment for British workers' rights, says CIPD

But ongoing consultation with the people profession will be key to ensuring the plan to Make Work Pay is a success

People Management

Employment rights bill tops 2025 HR priorities as compliance pressures mount, survey finds

As two thirds of people professionals voice concerns over day-one dismissal rights, experts urge teams to be legally minded and act fast on sweeping reforms

by **Islam Soliman** | 24 March 2025

Our agenda today

✓ Background to the ERB and its current progress

🔑 The key changes

💭 Thoughts from a sectoral perspective

🏠 What else is going on or on the horizon?

📅 Planning ahead

👥 Q&A

The Bill and its current progress

- Labour's 'Plan to Make Work Pay' published on 24 May 2024
- King's speech delivered 17 July
- First reading 10 October
- Range of consultations and calls for evidence since then
- Very clear tensions between different governmental agendas
- Business and Trade Committee report 3 March made recommendations and requested much more detail (173 delegated powers)
- Numerous amendments, latest batch 5 March 2025
- Currently at Committee stage in the HoL, started 29 April 2025
- Next stages:
 - Committee of the whole House
 - Third Reading
- Commencement provisions:
 - 2 months after Act passes: industrial action ballots
 - Some provisions will require commencement regulations only
 - Substantive regulations will be required for many of the changes

Key provisions 1: unfair dismissal as a day 1 right

- Removal of two-year qualifying period for ALL unfair dismissal claims
- Right will apply from first day of actual work
- Introduction of an Initial Period of Employment (IPE) during which a “lighter touch” process will apply BUT
 - only for conduct, capability, statutory ban or SOSR cases
 - NOT redundancy
- Currently looks like IPE will be 9 months
- Isn't this just like a probationary period?

Practical implications from an HE perspective

Use of probationary periods in HE is often different from other sectors, particularly in academic roles

Impact on restructuring

“Accidental” appointments

Will this change increase the number of claims?

Key provisions 2: “fire and re-hire”

- aka dismissal for failing to agree to variation of contract, will become automatically unfair
- Not an absolute ban on the use of this technique to effect changes to contractual terms or to effect restructuring BUT
- Exception incredibly narrow in scope
 - The reason for the variation was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties which, at the time of the dismissal, were affecting, or were likely in the immediate future to affect, the employer's ability to carry on the business as a going concern or otherwise to carry on the activities constituting the business AND
 - In all the circumstances, the employer could not reasonably have avoided the need to make the variation.
 - In practice this will mean imminent insolvency

Note: the proposal to make these dismissals subject to interim relief has been withdrawn

Practical implications from an HE perspective

Loss of a useful tool to facilitate necessary change?

Universities will rarely be in such extreme financial peril

BUT the very inability to use such tools to protect the future of the University (by modernising contracts, practices, even pension provision) could make job losses more likely?

Variation clauses become even more valuable tools

Review your contracts

Get on with it now, whilst you can?

Key provisions 3: collective issues, trade unions and industrial action

- Protective awards for failure to collectively consult increase to 180 days per employee
- Written statement under section 1 ERA to confirm right to join TU (and ongoing)
- Improved “access to the workplace” for TU, including digital access
- Removal of 50% requirement for recognition at application to CAC stage (and likely reduction in membership level)
- Presumption that requested paid time off for TU duties/training is reasonable
- Trade Union Equality representatives formally recognised– with rights to time off during working hours for specified equality related duties
- Reduced period of notice for IA to 10 days (from 14)
- Increase in strike mandate to 12 months
- IA ballots simplified
 - Removal of 50% threshold for participation
 - Removal of 40 % support and min service levels (important public services) also removed
 - Reduced information obligations
- Protection against detriment for taking lawful IA (as well as dismissal) and expanded to whole period of IA (from 12 weeks)

Practical implications from an HE perspective

Significantly increased leverage for Trade Unions

Increased cost of “getting it wrong” on collective consultation

Expansion of facility time is likely

Industrial action may become more likely and last longer

Other trade unions seeking recognition?

Key provisions 4: zero and guaranteed hours working

- “Qualifying workers” to be offered guaranteed hours based on their average working hours
- Worker under no obligation to accept
- Will include zero hours, low hours and agency workers
- Expected 12-week reference period for calculation of hours
- A “rolling” right
- Right to reasonable notice of shifts
- Right to payment for shifts cancelled, curtailed or moved at “short notice”
- BUT:
 - what will “low hours” mean?
 - will there be some sort of regularity requirement?
 - might workers be able to opt out?
 - What will be “reasonable” and/or “short” for notice purposes?

Practical implications from an HE perspective

Significant administrative burden e.g. PGRs, Graduate TAs, associate or hourly paid lecturers, casual staff

Systems issues– complex rolling calculations

Limitations on flexibility particularly cover/agency arrangements and seasonal work

Atypical arrangements with worker status eg “Residence Life” assistants/sub-wardens may become an issue

Collective agreements?

Key provisions 5: Flexible working

- Right to request became a day 1 right in April 2024
- ERB expands the benefit of this right by making flexible working the “default” position
- BUT does it really?
 - prescribed reasons for refusal still apply
 - refusal must now be “reasonable”
 - employer must provide written explanation
 - penalty remains 8 weeks’ pay– but NB indirect discrimination and/or reasonable adjustments regimes

Practical implications from an HE perspective

Ensuring understanding at Faculty and Departmental level from day 1

Challenge will be easier as Universities are forced to fully explain themselves in writing and there is effectively a change in the burden of proof

Reframing of language in contracts where there are 'no fixed hours' clauses given ability to request condensed hours

Key provisions 6: Changes to enforcement

- Increase in most ET time limits to six months
- Introduction of the Fair Work Agency which will enforce
 - National Minimum Wage
 - Working Time Regulations (including holiday pay)
 - modern slavery and gangmasters regimes
 - employment agency rules
 - Statutory Sick Pay (*more on SSP later*)
 - failure to pay orders or settlements
- FWA enforcement officers will be empowered to enter premises, require production of documents, access computer or other storage media as well as inspect, examine, obtain, seize and retain documents or information
- Will be able to require specified undertakings from employers within 14 days, which can remain in place for up to 2 years
- Failure to give/adhere to undertakings will be a Magistrates Court (or equivalent in other jurisdictions) matter with consequent fines and /or potential prison sentences
- Will also be able to issue notice of underpayment going back up to six years
- Will be able to bring tribunal proceedings (and/or provide advice and assistance)

Practical implications from an HE perspective

Almost certainly more
Tribunal claims

Longer period of waiting to
see if the employee
challenges

Difficulties with recruitment
to fill posts after
dismissals?

Tribunal claims taking
longer to get to
conclusion/overload of
existing processes

Employees don't necessarily
have to challenge personally–
the FWA can do it on their
behalf (eg the bulk holiday
pay claims scenario) and/or it
can provide advice and
representation

Risk of criminal sanction

Potential personal liability
for SLT

Which changes do you think will have the most impact in the HE sector as a WHOLE? – POLL

Unfair dismissal
as a day 1 right

“Fire and re-hire”

Collective issues,
trade unions and
industrial action

Zero and
guaranteed
hours

Flexible working

Changes to
enforcement

What worries you the most in your OWN University? – POLL

Unfair dismissal
as a day 1 right

“Fire and re-hire”

Collective issues,
trade unions and
industrial action

Zero and
guaranteed
hours

Flexible working

Changes to
enforcement

Other ERB provisions to have in mind

- Sexual harassment duties (supplementing new prevention duty in 2024)
- Maternity dismissal protection post return to work for six months
- SMP becomes a day 1 right
- Equality action plans on gender (sex?) and menopause
- Statutory Sick Pay will lose the three-day waiting period and become payable to all with SSP for lowest paid workers set at 80% of their normal weekly pay (if less than the SSP rate)
- Allocation of tips/consultation about tipping practice/tips policy
- Bereavement leave
 - for pregnancy loss
 - expanded beyond parents
- Umbrella companies will be treated in the same way as employment agencies for tax and employment rights purposes

What else is/may be going on?

Review of rights around family leave and pay expected this summer – likely to include paternity leave, carer's leave, kinship care

Employment status review – moving away from the three-tier status model to avoid abuse. Been on the cards for some time.

Further changes to TULRCA to marry up the changes re ballots and address transparency (including costs) PLUS possible increase to 90 days for 100+ redundancies

New EHRC guidance expected in the summer. Interim update (following FWS in the Supreme Court) issued 25 April re single sex facilities

University of Sussex judicial review following their £585,000 fine from the OfS

New OfS condition E6 relating to sexual misconduct and harassment

How can we plan ahead?



Review of contracts, policies and procedures to identify where you may have gaps or risk factors



Audit recruitment and probation processes, in particular in the light of the day 1 right to unfair dismissal



Analyse your workforce to identify zero or low hours staff and how they can be managed under the new guaranteed hours regime



Get any contractual changes needed made asap



Note the change to s1 statements



Raise awareness of the changes amongst colleagues

Now over to you all...



Thank you



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