EMPLOYMENT RIGHTS BILL: NUTS AND BOLTS

Area of law	The law now	The change	When will it happen	Level of impact	HR actions
Fire and re-hire	Employers can (generally) give notice of dismissal to employees on their current terms of employment and offer them re-engagement on new, altered terms. Employees can choose to accept the new terms or reject them and treat themselves as dismissed. Such a dismissal can be fair for SOSR if the employer has a good business reason and has consulted about the change. Since July 2024 there is an additional requirement that the Statutory Code of Practice on Dismissal and Re-engagement is followed in such cases.	Dismissal will be automatically unfair where (i) the employer 'sought to vary' the contract and the employee did not agree to the variation; or (ii) where the employer was seeking to employ another person or re-engage the employee under a varied contract of employment to carry out 'substantially the same duties as the employee carried out before being dismissed'. There is a limited exception where 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.	2026 at the earliest	High	Undertake a review of contracts of employment. Consider removing now any provisions the business might want to remove in the future (in circumstances other than dire business performance) before the law changes. Variation clauses need to be robust and in all employment contracts to avoid (where possible) a need to 'request' a variation rather than being able contractually empowered to impose it (remembering always that variation clauses have their limits and must be exercised reasonably). Employers need to be more careful about all contractual provisions and work in 'flex' where possible.

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Harassment by third parties	Employers are vicariously liable for acts of harassment committed by other employees in the course of employment. Employers are not liable for harassment if the harassing act was carried out by a third party.	Employers will be liable for acts of harassment committed by third parties unless they took all reasonable steps to prevent them. This liability will cover all forms of harassment: age, disability, race, sexual orientation, religion or belief, sex and gender re-assignment and sexual harassment (including conduct of a sexual nature and less favourable treatment for submitting to or rejecting unwanted conduct of a sexual nature).	2026 at the earliest	High	Policies may need changing to reflect the employer's obligation to prevent third-party harassment. The fact that the new positive duty to prevent sexual harassment in the workplace (in force from 26 October) extends to third parties provides employers with a good opportunity to get their house in order on third-party harassment: risk assess, identify reasonable preventative steps, and take them.
Unfair dismissal	Only employees with at least two years' service able to claim ordinary unfair dismissal.	All employees (regardless of length of service) will, once they have started work, be able to claim ordinary unfair dismissal. Where dismissal occurs during the 'initial period of employment' — nine months is proposed in the Next Steps document — then a potentially fair reason is still required. Where the reason is poor performance, misconduct, capability, or some other substantial reason relating to the employee, the test for 'fairness' will be modified (likely more 'light touch') and compensation may be lower. Redundancy dismissals would still, seemingly, require the full process to be followed.	Autumn 2026 at the earliest	High	The long lead time means nothing needs to be done immediately. However, a general focus on effective recruitment strategies to make sure you get the right people through the door in the first place will reduce the practical impact of this change *(See p14 for guidance on minimising recruitment advertising risk.)*. Also consider reviewing probationary processes to make sure managers are acting diligently — meaning any future change is seamless. Review contractual probationary periods in contracts, and consider making sure they line up with the period (currently nine months) set out as the 'initial period of employment'.

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Sexual harassment —preventative duty	Preventing sexual harassment in the workplace is currently defined as a duty to take 'reasonable steps' to prevent it taking place. The duty is in force from 26 October — see page 10 of this issue for full details	The new duty will require employers to take '*all* reasonable steps' to prevent sexual harassment occurring. This change aligns the test for breach of the preventative duty with the statutory defence for harassment (which only applies where an employer has taken all reasonable steps to prevent the harassment from occurring). The Bill also makes provision for regulations setting out what 'reasonable steps' might be required — hopefully providing much needed clarity.	2026 at the earliest	Medium	There was some debate as to whether the 'reasonable steps' initially required by the new preventative duty were one and the same as the 'all reasonable steps' required for the statutory defence. This amendment makes it clear that, in the future, they will be. Employers need to look again at the steps they have in place and consider if there are any other 'reasonable' ones they haven't yet taken. Policies may need amending to clarify the extent of the pro-active duty when the stated change comes in. Once the regulations are introduced, employers should make sure all relevant 'steps' referred to have been covered by actions already taken — and make changes if they have not.

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Sexual harassment whistleblowing	There are six disclosure subject matters with the potential for whistleblowing protection ('qualifying disclosures'): criminal offences; breach of any legal obligation; miscarriages of justice; danger to the health and safety of any individual; damage to the environment; and the deliberate concealing of information about any of the above.	The Bill adds a seventh qualifying disclosure: that sexual harassment has occurred, is occurring or is likely to occur. Provided it is 'protected', workers are protected from detriment by reason of making any such disclosure and employees are protected from both detriment and dismissal by reason of making such a disclosure.	2026 at the earliest	Medium	There was already case law support for the fact that reports of sexual harassment could be a protected disclosure. This was on the basis that they were reports of a breach of a legal obligation/health and safety issue, or amounted to a criminal offence. The change really just signposts it as an area that is specifically covered by whistleblowing protection. As long as the disclosure is made in the reasonable belief that it is in the public interest, and is made to the appropriate person (usually the employer), then the person making the disclosure will have protection against detriment and, if an employee, dismissal as a result of the disclosure. Amend whistleblowing policies to make it clear that allegations of sexual harassment can be qualifying disclosures. Harassment policies may also need amending to ensure any specific whistleblowing reporting structures are cross-referenced.

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Flexible working	Employer who wishes to reject a request for flexible working must state which of eight statutory grounds for refusal is relied on.	Employer will still need to state which of the eight statutory grounds is being relied on to refuse but will also need to show that the refusal was 'reasonable'. The penalty for failure is eight weeks' pay (capped).	Next Steps document says 'immediately'. Likely earliest Spring 2025	Medium	Amend flexible working polices. Managers will need training on the need for reasonable grounds for refusal. Template letters will need to add space for an explanation as to why a refusal was reasonable on the chosen ground.
Redundancy	For the purposes of collective redundancy consultation, when looking at whether there are 20/100 or more potential dismissals, you count how many are proposed at each 'establishment'. Different places of work, branches and offices can generally be treated as separate establishments. This means that, for multi-site businesses, you often don't reach 20 or 100 at any single 'establishment'.	Now you must count across the *whole* business — not single 'establishments' — when considering whether the thresholds of 20 or 100 (as appropriate) have been reached.	2026 at the earliest	Medium	Review redundancy policies. Managers and those responsible for strategic decisions will need guidance on the implications of the change.
Bereavement leave	Employees who lose a child (including stillbirth after 24 weeks of pregnancy) can take a period of up to two weeks (in blocks of at least a week) of parental bereavement leave in the 56 weeks following their loss. The time off is paid at the same weekly rate as statutory maternity pay	The right to bereavement leave is extended so that those who have lost a loved one other than their child can take at least one week of leave and pay. The regulations will set out exactly which 'loved ones' will be covered. The existing provision for parental bereavement leave is unchanged and sits alongside this new right.	Next Steps document says 'immediately'. Likely earliest Spring 2025	Low	Family friendly policies will need altering and managers made aware of the new right in due course.

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Paternity leave	To be eligible, a parent must have completed 26 weeks' continuous service,	Parents will be eligible for paternity leave from the first day of employment.	Next Steps document says 'immediately'. Likely earliest Spring 2025	Low	Family friendly policies will need altering and managers made aware of the change in due course.
Parental leave	To be eligible a parent must have completed one year of service.	Parents will be eligible for parental leave from the first day of employment.	Next Steps document says 'immediately'. Likely earliest Spring 2025	Low	Family friendly policies will need altering and managers made aware of the change in due course.
Statutory sick pay (SSP)	No SSP for first three 'waiting days' of absence. No SSP at all for those who earn less than the 'lower earnings limit' per week.	SSP from first day of absence. All employees entitled to SSP regardless of earnings. Rate for low earners will be a percentage of their weekly earnings rather than a flat rate.	Next Steps document says 'immediately'. Likely earliest Spring 2025	Low	Nothing for now. Absence policies and payroll systems will need amending or adjusting when the change comes in.
Tipping	The new Allocation of Tips Act 2023 requires employers to create a tipping policy	The obligation to create a tipping policy is expanded to state that employee/union representatives (or employees if no reps) should be consulted on review of the policy and that the policy must be reviewed every three years.	Unknown. Likely 2026.	Low	The additional obligation to consult with employees will need to be flagged on HR systems. A requirement to review every three years is not particularly onerous as policies are generally reviewed more frequently than that anyway.
Menopause	No requirement for employers of any size to publish a menopause action plan	Employers with 250+ employees may be required (if separate regulations are brought forward) to develop and publish an action plan for supporting employees through the menopause.	Unknown. Likely 2026.	Low	It is a good idea to begin formulating a menopause action plan now so that the business has time to work with it and adapt it prior to any formal legal obligation requiring it.