

EMPLOYMENT RIGHTS BILL

On Thursday, 10th Oct 2024, the Labour Government introduced their Employment Rights Bill into Parliament.

Labour has said: "Our Employment Rights Bill will ban exploitative zero-hours contracts, end fire and rehire, and introduce basic employment rights from day one."



Firstly to note: The new measures do not affect contractors who provide their services using Limited companies on an Outside IR35 basis.

The Bill is designed to provide better protections for vulnerable workers who suffer from situations politely referred to as 'one-sided flexibility' - or, in other words, where firms can dictate unfavourable terms because the workers have very little bargaining power to negotiate fairer terms. The Bill partially follows EU Directive 2019/1152 and is

intended to provide guaranteed hours of work and prevent abuses by employers of workers on a zero-hours basis.

This Bill is still very much a 'Framework Bill.' While a few important changes impacting businesses have been outlined, most decisions will come after further consultation. Many of the critical specifics will only be confirmed once secondary legislation is drafted.

WHAT DOES THIS BILL MEAN FOR CONTRACTORS, FLEXIBLE WORKERS AND MATCHTECH, BARCLAY MEADE AND GATTACA SOLUTIONS?

Please see below the links to all of the documents released:

- FULL COPY OF EMPLOYMENT RIGHTS BILL (AS INTRODUCED)**
- EXPLANATORY NOTES**
- EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM**
- WHAT DOES THE EMPLOYMENT RIGHTS BILL MEAN FOR YOU?**
- NEXT STEPS: MAKE WORK PAY**

The measures are drafted in the Bill, with the explanatory notes typically used to provide an easy-to-understand aid for Members of Parliament, ready for the subsequent debates. Given the large Labour majority, one should assume the Bill will make its way through the Parliamentary process without any material changes and reach Royal Assent in due course.

BILL PASSAGE



A supplementary policy document has been released alongside the Bill, confirming several important elements that could impact temporary workers and agencies, such as:

- A timeline indicating that the majority of reforms will not take effect until 2026.
- Confirmation that changes to unfair dismissal will not come into force until at least Autumn 2026, keeping the current qualifying period for the time being.

MEASURES NOT IN THE BILL

Some measures originally proposed by Labour did not make it into the Bill, such as the concept of a Single Worker Status.

In employment law, there are currently three types of status: self-employed, Worker, and Employee. In tax law, there are only two: self-employed and employed.

Labour has stated it will launch a consultation on Single Worker Status. There have been many status consultations, which have not resulted in changes due to the complexity of merging worker and employee.

DOES THE EMPLOYMENT BILL AFFECT IR35 AND OFF-PAYROLL?

The Employment Rights Bill has nothing to do with tax. It's about employment rights. There have been no changes announced to IR35 or Off-payroll by Labour. The legislation remains unchanged.

HOW WILL WORKERS BE AFFECTED?

First, consider the different models of how workers are engaged:

- (A) Permanent employees: Ongoing or fixed-term.
- (B) Agency workers: Directly with an employment business.
- (C) Umbrella workers (Employees): Either directly via a hirer or through an employment business.
- (D) Limited company contractor (Inside or Outside IR35): Either directly or via an employment business.

Starting with D - limited company contractors are not affected by the Bill.

New rules for employees (A and C) will be introduced, including:

- Protection against unfair dismissal from day one (although probation periods are allowed)
- Statutory sick pay from Day 1
- Parental and bereavement leave from day one
- Ending zero-hour contracts
- Inability to fire and rehire/replace
- Right to flexible working where practical
- Stronger dismissal protections for pregnant women and new mothers

Not all the rules will apply to agency workers (B), where the worker is on an agency payroll with a "temporary work agency." A temporary work agency supplies an agency worker to work temporarily for and under the supervision and direction of a hirer and has a contract with the temporary work agency.

However, scenarios A and C will be affected if the Bill survives in law without substantive amendments.

HOW WILL THE ZERO-HOURS RULES WORK?

The critical provisions around zero hours are contained in the first three clauses of the Bill:

1. Right to guaranteed hours
2. Shifts: rights to reasonable notice
3. Right to payment for cancelled, moved and curtailed shifts

Clause 1 means that a firm that engages an employee must, after a 12-week "reference period," offer the employee a contract with guaranteed hours based on the previously worked hours. The worker can then either accept or reject the offer. If the firm fails to make the offer, the worker can seek remedy from an employment tribunal, which will award compensation based on the worker's financial loss.

Clause 2 requires firms to give reasonable notice of a shift required to work and reasonable notice for cancellation. This requirement applies to zero-hours contracts and contracts where

the employer must make some work available. Further, an employer must provide reasonable notice of cancellation or a change in a shift. Suppose an employer fails to comply with the obligation to provide reasonable notice of cancellation or change in a shift. In that case, a worker can present a complaint to an employment tribunal (subject to the standard 3-month limitation period).

Clause 3 requires an employer to pay a worker each time a “qualifying shift” is cancelled, moved or curtailed at short notice. The qualifying conditions for clause 2 apply to clause 3.

HOW WILL THE EMPLOYMENT RIGHTS BILL IMPACT CONTRACTORS?

Clauses 1-3 are likely to affect recruitment arrangements where a worker is required to do work when available, and there is no certainty that such work will be made available to the worker. Whilst the Employment Rights Bill is not intended to apply to agency workers, umbrella employers are likely to fall within the scope of this Bill (although they are not specifically mentioned in the ERB).

A recent umbrella company judgment, *Exchequer Solutions Limited v HMRC*, confirms that a sufficient degree of mutuality of obligations arises for a true employment relationship while an assignment is in force. Accordingly, clauses 1-3 of the Bill are likely to apply to any contract between an umbrella company and a worker, and the current drafting is sufficiently wide to capture any conceivable zero-hours arrangement in a recruitment context other than category B workers, being Agency Workers – Directly with an employment business.

A worker engaged by an umbrella company is an employee of the umbrella company. The umbrella contracts on behalf of the employee with an employment business or directly with a client. The umbrella remits income tax and national insurance contributions to HM Revenue & Customs.

Matchtech, Barclay Meade and Gattaca Solutions and all employment businesses (i.e. temporary work agencies) that continue to use umbrella providers will need to establish processes to cater for the provisions in clauses 1-3 and ensure workers are offered guaranteed hours after each reference period and that the management around offers and cancellations of shifts (where relevant) do not result in statutory breaches. Fortunately, there is ample time before the Bill becomes live for agencies and umbrellas to get sufficient processes in place.

DAY-ONE RIGHTS

Workers will qualify for protection against unfair dismissal from day one – a benefit for 9 million people. Previously, employees must have been at their place of work for at least two years in order to qualify. There will also be day-one rights for paternity leave and unpaid parental leave. Maternity leave is already a day-one right. A full review of all parental-leave rights is promised alongside the bill.

As many as an extra 30,000 fathers or partners may be brought into scope for paternity leave, while an estimated additional 1.5 million parents will gain flexibility, with unpaid parental leave becoming a right from day one. There will also be a requirement for employers to establish a policy for bereavement leave.

SICK PAY

There will be a universal entitlement to sick pay from the first day of illness for employees. Workers will get rights to sick pay from day one, rather than from day four.

Statutory sick pay is £116.75 a week and can be paid for up to 28 weeks, as long as the employee is earning an average of at least £123 a week. The government says this will be “strengthened” by removing the lower earnings limit for all workers; though the rate could be lower for workers who aren’t eligible for sick pay at all.

PROBATION

The government will consult on a statutory probation period for new hires; employees will still be able to claim for unfair dismissal. Ministers say this means there will be a “lighter touch” approach to letting an employee go during the probation period if the role is not working out.

The probation period will be consulted on and introduced in autumn 2026 to coincide with the enforcement of the new rights. The government now favours a limit of nine months– lengthened after pressure from businesses – which caused some disquiet among trade unions which had asked for a limit of six months.

ZERO-HOURS CONTRACTS

More than 1 million people on zero-hours contracts will gain guaranteed working hours if they want them. Those workers, along with those on low-hours contracts, will have the right to a guaranteed-hours contract if they work regular hours over a defined period, which Labour’s original proposal said would be 12 weeks. Employees can also request to remain on zero-hours contracts if that is what they would prefer.

The government has also committed to limiting the proposed restrictions on zero-hour contracts to workers with ‘low’ hours, which is a significant shift. This means that temporary workers on full-time contracts who occasionally take on extra hours won’t be impacted - a concern raised by recruitment agencies.

FIRE AND REHIRE

Fire and rehire practices will be banned in all but the most extreme circumstances, meaning employers cannot sack employees and rehire them on worse terms and conditions. There will be carve-outs, however – a move that has caused consternation from unions. Businesses at risk of complete collapse may be able to

alter terms and conditions if it is the difference between going bust.

FLEXIBLE WORKING

The law will change to make flexible working the default “where practical”, and action plans must be drawn up to address gender pay gaps and to support female employees through menopause

There will also be stronger protections against dismissal during pregnancy and after returning to work from maternity leave.

ENFORCEMENT

The introduction of a new Fair Work Agency (a rebadged version of the Single Enforcement Body originally proposed by Matthew Taylor in his 2018 report) has been set out in the Bill as expected. Enforcement does need an overhaul in the labour market, to make it more efficient for workers to protect their rights, but questions remain about the resourcing and structure of the FWA.

Combining the remits of the Employment Agency Standards Inspectorate, the Gangmasters Labour Abuse Authority and HMRC’s National Minimum Wage enforcement team makes sense, so workers get a one-stop shop for enforcement. But it is important that the expertise of each organisation is maintained so the quality of service doesn’t falter.

This is particularly pertinent when it comes to the role of the EAS and enforcement in the temporary labour market, where their experience in dealing with legislation specific to the recruitment industry must not be diluted. Labour’s proposals also include the expansion of SSP enforcement to be within the remit of the FWA. This is something businesses will really need to be aware of considering the expansion of SSP entitlement.

The remit of the new body is not likely to be fully clear until all the measures in the bill have been consulted on or enacted. It is expected that the

introduction of the FWA could potentially result in umbrella companies coming under its control.

MINIMUM WAGE

The government plans to change the remit of the Low Pay Commission so it must take into account the cost of living when setting the minimum wage and remove all the age bands that set lower minimum wage for younger staff. It will mean a pay rise for hundreds of thousands of young workers.

WHAT'S MISSING?

There are significant gaps in the bill compared to the promises Labour made in its original “new deal for working people”. But a document is planned that will promise to implement at least 30 more proposals, including:

- Guidance – but not legislation – on the right to switch off, preventing employees from being contacted out of hours, except in exceptional circumstances. The Government have confirmed this will not be legislated for. There will instead be a statutory code of practice.
- Legislation to end pay discrimination, which is expected to come separately in a draft bill that will include measures to make it mandatory for large employers to report their ethnicity and disability pay gap.

- A consultation on a move towards a single status of worker – one of the most important changes that has been left out of the bill, which Labour sources have said needs a much longer consultation period.
- Reviews into the parental leave and carers’ leave systems.

TRADE UNIONS

Union rights were a big part of the plans, though the commitments are often being delivered through other means. Angela Rayner has written to government departments telling them not to enact the Tories minimum level of service bill and changes will be made to other union restrictions enacted by the Tories.

New rights to online balloting are also expected to be introduced but no new legislation is required to do this.

The Bill does not affect limited company contractors operating “outside IR35”, so clients engaging contractors outside IR35 do not need to make any changes in anticipation of the Bill coming into effect.

The Employment Rights Bill opens the possibility of further regulations for agency workers, who may gain additional rights.



FUTURE UPDATES VIA CONSULTATION

Some previously proposed provisions were left out of the initial Bill, detailed in Section 3 of the publication "Next Steps to Make Work Pay", titled Wider Reforms.

Labour will publish some consultations after the Bill's introduction, seeking views on the next steps, including matters such as Parental and Carer's Leave, Single Worker Status, TUPE, and Health and Safety Guidance.

The Single Worker Status consultation concerns employment rights only and will not change the current tax statute around IR35 and Off-payroll.

The current timetable for further consultations to begin is 2025, and the majority of the reforms are signalled to take effect after 2026.

AUTUMN BUDGET

There may also be some additions or announcements in the up coming budget on Wednesday 30th October 2024. I would draw your attention to speculation relating to Employer's NICs, which would have an impact on cost of sales if they came to fruition.

While the chancellor and prime minister have repeated their manifesto pledge that Labour will not raise taxes on "working people", there has been some recent press speculation about employers having to pay more NICs.

Darren Jones, the chief secretary to the Treasury, in late August told Times Radio: **"We will have to consider some tax measures at the Budget on 30 October, while honouring that promise to the public not to increase income tax, employee National Insurance or VAT."**

The reference to employee NICs leaves the door open for potential changes to employer's NICs – with possibilities including increasing the current rate (13.8%) and imposing employer's NICs on employer contributions to pension schemes. The prime minister was specifically asked this question in PMQ's this week but refused to answer it.

Disclaimer

Nothing on this site constitutes legal advice. Specialist legal advice should be taken in relation to specific circumstances.

The contents of this site are for general information purposes only. Whilst we endeavour to ensure that the information on this site is correct, no warranty, express or implied, is given as to its accuracy and we do not accept any liability for error or omission.

We shall not be liable for any damage (including, without limitation, damage for loss of business or loss of profits) arising in contract, tort or otherwise from the use of, or inability to use, this site or any material contained in it, or from any action or decision taken as a result of using this site or any such material.

