

Philippa O'Malley	Hello and welcome to this podcast on delivering the Employment Rights Act 2025. Until recently of course known as The Employment Rights Bill but since Royal Assent now the Employment Rights Act 2025. I am Philippa O'Malley, a Partner in the Employment Team here at Slaughter and May.
Clare Fletcher	...and I'm Clare Fletcher, Knowledge Counsel in the Employment Team. Today we're taking a closer look at the Government's road map for implementing the Employment Rights Act. Giving you a steer on what your immediate priorities should be and what to look out for on the horizon.
Philippa O'Malley	We should say at the outset that the Government's road map was published in July 25 and hasn't been updated since. There are therefore some things in the Acts that were added later and are not covered in the road map, like the new restrictions on using NDAs for allegations of harassment or discrimination.
Clare Fletcher	And of course the new regime for unfair dismissal which is the result of an eleventh hour u-turn by the Government just before Royal Assent. We'll talk more about that later but in terms of the road map this had provided for day one unfair dismissal protection to be implemented in 2027 and it looks like this new regime will also be coming in, in January 2027. Plus, as a broader point, the road map itself is not binding. There are a few implementation dates set by the Act itself and we will come to those in a minute but everything else in the road map is subject to change and there has been a fair degree of speculation about that timeline particularly following September's cabinet reshuffle.
Philippa O'Malley	Yes it was interesting that Peter Carr confirmed the Government's commitment to the road map during Parliamentary debates. However, given that Royal Assent was delayed by the subsequent ping pong process there remains the possibility that some of the dates in the road map may slip.
Clare Fletcher	So with those disclaimers out of the way, let's turn to the road map. I think it makes sense to take this chronologically and as I said there are a couple of measures in the Act which took effect immediately on Royal Assent.
Philippa O'Malley	Yes that's right although the only substantive measure is the repeal of the legislation governing minimum service levels during industrial action in certain services. This was controversial legislation introduced in the later stages of the previous government which would have allowed employers to insist on minimum service levels during strike action in sectors including passenger rail, ambulance services and border security. However, shortly after the election in August last year the labour government announced plans to repeal the Act and explicitly encouraged employers not to impose minimum service levels pending repeal so we don't anticipate much practical impact from the Act in repealing that piece of legislation.
Clare Fletcher	The only other part of the Act which took effect immediately on Royal Assent is that governing the territorial extent of the Act and just to summarise that briefly,

	<p>most of the Act extends only to England, Wales and Scotland and not Northern Ireland. There are some parts that apply throughout the UK including Northern Ireland and the most notable ones are the enforcement provisions of the Act that includes the establishment of the fair work agency and also the increase in tribunal time limits. There are a couple of tweaks though and a couple of parts of the Act which don't apply in Scotland so we would say that clients operating across the UK should take note of those various discrepancies. The next key day takes us to two months after Royal Assent which will be February 2026. What can we expect to change then Philippa?</p>
Philippa O'Malley	<p>This would be the first wave of changes relating to trade unions and industrial action, although I think it's fair to say they will not be the most fundamental of the changes. A lot of this will be just restoring the pre-2016 position, since the main change here is the repeal of most of the provisions of the Trade Union Act 2016. Specifically those relating to industrial action ballots. The current ballot thresholds around turnout and support for action will be repealed so we will be back to a simple majority of however many employees participate in the ballot. The provision of information to employers around industrial action will also be simplified as will the requirements for union supervision of picketing. We will be covering those and other changes in more detail in a separate briefing so please do look out for that. This is really going to be of the most interest to employers who are already unionised, who need to start refreshing their processes and relationships with their union in light of these changes.</p>
Clare Fletcher	<p>Fast forward now to 6th April next year then see another substantial wave of trade union reforms, this time of wider relevance including from employers who are not yet unionised. One of the biggest changes scheduled for implementation on 6th April 2026 concerns trade union recognition. The Act simplifies the support required for recognition in the final ballot so that a simple majority of those voting is sufficient. It removes the requirement to show at the application stage that at least fifty per cent. of workers in the bargaining unit are likely to support recognition. It also grants the government a power to reduce the requirement to show at the application stage that at least 10 per cent. of workers in the bargaining unit are members of the union and that percentage might go down as low as two per cent. which could result in bargaining units being drawn much wider than they tend to be at the moment.</p>
Philippa O'Malley	<p>Another big change we're anticipating for April is the introduction of electronic and work place balloting for industrial action and other trade union matters.</p>
Clare Fletcher	<p>We have a couple of day one rights changes to look at next, which are taking effect in April 2026. The first is entitlement to paternity leave and unpaid parental leave. Day one rights mean more employees will be eligible for these kinds of leave and policies will need to be updated.</p>
Philippa O'Malley	<p>Another big day one rights change in April 26 is to statutory sick pay or SSP. This is currently payable to employees at a rate of £118.75 per week provided that they earn more than the lower earnings limit currently £125 per week. There is</p>

	also a three day waiting period so that SSP is not payable for the first three qualifying days in any period of entitlement, it only kicks in on the fourth day.
Clare Fletcher	So the Act removes that three day waiting period which means all employees will be entitled to SSP from the first day of sickness. SSP will also become available to those earning less than the lower earnings limit. It will be payable at the lower of the prescribed weekly rate, currently £118.75 or 80 per cent. of the employees normal weekly earnings.
Philippa O'Malley	For employers this again is going to mean higher costs. SSP entitlement will kick in from day one and apply to more employees. Employers may want to consider changes to their own enhanced sick pay offering if any to offset that additional cost.
Clare Fletcher	And speaking of additional cost April 2026 will also see an increase in the maximum protective award for employees where the employer hasn't complied with its collective redundancy consultation obligations. The current maximum of 90 days pay per affected employee will double to 180 days pay. This will be the starting point if employers have made no attempt to engage in collective consultation so employers can mitigate their exposure by understanding where the obligations apply and what is required.
Philippa O'Malley	We will also see changes that trigger for collective consultation but not until 2027. Again, there will be a need for consultation on this first. The government also included establishment of the fair work agency on the list of April 2026 changes. This is the agency that will combine the various existing labour market enforcement functions including national minimum wage enforcement, the employment tribunal penalty scheme and powers to tackle labour exploitation and modern slavery as well as introducing the enforcement of SSP and holiday pay. We anticipate it may be some time beyond April 2026 before the fair work agency is fully up and running.
Clare Fletcher	The final change we're expecting in April 2026 relates to sexual harassment. The Act amends the statutory list of disclosures which can qualify for whistle-blowing protection to explicitly include a complaint that sexual harassment has occurred, is occurring or is likely to occur. This is essentially a matter of form over substance. Sexual harassment complaints were already covered within the existing list of protective disclosures and can and do form the basis of whistle-blowing complaints but the Act increases the visibility of whistle-blowing as an avenue reporting harassment by giving it this explicit recognition.
Philippa O'Malley	There are some more fundamental changes the Act makes to harassment protections and these are the first things we wanted to talk about in the next tranche of changes on 1 st October 2026. As of October next year employers will once again become liable for harassment of their staff by third parties such as customers and suppliers. Importantly, this time there will be no three strikes and you're out rule like they used to have when we last had third party harassment liability pre-2013. One instance will be enough to fix the employer with liability

	unless it can show it took all reasonable steps to prevent that third party harassment.
Clare Fletcher	That all reasonable steps defence mirrors the existing defence from employers where harassment was committed by a colleague for whom the employer is vicariously liable. The Act also carries that same standard all reasonable steps through to the preventative duty on employers so the employers must take all reasonable steps not just reasonable steps as currently to prevent sexual harassment.
Philippa O'Malley	We've been working a lot with clients on the preventative duty since it was first implemented last year. In our experience clients have already taken a thorough approach to this and taken risk assessments and put in place a range of preventative measures, may not need to do much more in order to satisfy the new all reasonable steps duty but it would certainly be worth revisiting those exercises particularly as we will get regulations to prescribe what may be regarded as reasonable steps for these purposes, although perhaps not particularly helpful as those wouldn't be until 2027.
Clare Fletcher	<p>October will also see the implementation of the fire and rehire changes in the Act. These have been pretty controversial in their scope and changes have been made during the passage of the bill through Parliament though they're still going to fundamentally alter how employers navigate changes to contractual terms of their employees.</p> <p>The Act will make it automatically unfair to dismiss an employee in two main scenarios. Firstly, where the employer sought to make a restrictive variation the employees contract of employment and the employee didn't agree to that variation and is dismissed as a consequence.</p>
Philippa O'Malley	Just unpacking that a bit restricted variations are those relating to pay including performance rated pay, pension, hours, holidays and anything else specified in regulations. It also includes any clause allowing unilateral amendment of those terms by the employer but not seemingly if the term is included before these provisions come into force.
Clare Fletcher	The second automatically unfair scenario is going to be where an employee is dismissed to enable the employer to engage another person and that includes the agency worker or a self-employed contractor or indeed to re-engage the same employee under a contract which includes a restricted variation as Philippa's just taken us through. To carry out the substantially the same duties as the employee carried out before they were dismissed.
Philippa O'Malley	There is a financial distress exception to this automatic unfair dismissal liability but it's incredibly narrow so that is unlikely to benefit many employers. One of the things that has made this part of the Act so controversial is that it makes no allowances for scenarios other than financial distress but may require the

	employer to make changes to employees terms for example, changes in law or regulation or operational matters.
Clare Fletcher	We would say the best preparation for these changes is to look at your contractual arrangements with your employees as they are at the moment and identify where you might need some more flexibility and if you don't have a variation clause in there already, get that in now before it becomes a restrictive variation. And I think otherwise employers will need to be prepared to engage more with employees to get their agreement to any necessary changes.
Philippa O'Malley	October will also see in another wave of trade union changes including most notably a new broad right of access for trade unions. This will be both physical and electronic access to enable them to recruit new members, facilitate selective bargaining or pursue one of the other recognised access purposes. This is where employers who are not currently unionised may need to start preparing for a possible union approach. Consider how you'd respond to that first union request, what physical or virtual access would be reasonable or unreasonable and do you have evidence to support that?
Clare Fletcher	Other related changes also taking place in October 2026 include new rights and protections for trade union representatives, extending protections against detriments for taking industrial action and a new duty to inform workers of their right to join a trade union. We're expecting consultations on each of these measures which should help shape what steps employers will need to take to prepare.
Philippa O'Malley	On a different note the Act also contains provisions to ensure the fair allocation of tips which will come into force October next year. These provisions were required and consult with workers before producing their first written policy about the allocation of tips and keep the policy under regular review. The final change we're expecting in October is the extension of employment tribunals time limits from three to six months.
Clare Fletcher	That's a significant one I think and I think when combined with the sheer volume of new claims made possible by the other measures in the Act looks pretty certain to increase the number of tribunal claims being lodged which could put further strain on the tribunal system and the one measure thought most likely to generate the highest volume of new tribunal claims? The new regime for unfair dismissal.
Philippa O'Malley	Which takes us to 2027. We don't yet have dates within 2027 for this list of measures, they will likely be split between April and October but we have no indication of how that might work yet.
Clare Fletcher	So lets start with the new regime for unfair dismissal. Our listeners will no doubt be aware of the controversy caused by the original proposal in the Bill for day one protection. The Parliamentary ping pong which ensued threatened the rest of the provisions in the Bill and the government's row back for those changes to the point that the government was persuaded to renege on its manifested commitment and pursue an alternative regime. What the Act now does is reduce

	<p>the qualifying period for unfair dismissal protection from the current two years to six months. Gone is day one protection and also gone is the somewhat convoluted statutory probation period originally proposed by the Bill. The initial period of employment or IPE that is no more. Employers will instead be free to impose their own contractual probation arrangements and we suggest that employers begin reviewing those now. Even more controversially the Act removes the cap on compensation for unfair dismissal. That currently sits at the lower of twelve months pay or a statutory amount currently £118,223. The potential for unlimited compensation will make unfair dismissal claims much more attractive than they currently are for high earners amongst many other potential implications which we sadly don't have time to go into today but please get in touch if you would like to hear more on that.</p>
Philippa O'Malley	<p>Another measure scheduled for 2027 is the measure to tackle what has been dubbed exploitative zero hours or low hours contracts. The basic premise is that qualifying workers must receive a guaranteed hours offer or GHO which is essentially an offer of guaranteed hours that reflect the average of those worked over a reference period.</p>
Clare Fletcher	<p>Qualifying workers for these purposes are not just zero hours workers it's also going to include workers with a low number of guaranteed hours who regularly work more than those hours. Agency workers are also covered which the government felt was necessary to avoid a loophole in protection but I think that's likely to fundamentally alter the nature of the agency worker relationship with the end user since it could result in a direct contract that isn't normally there at the moment.</p>
Philippa O'Malley	<p>As with many of the other changes we've been talking about much of the detail of this reform is not set out in the Act and will need to be determined by as yet unpublished regulations. This includes what low hours will mean. How will guaranteed hours offer as calculated and what the reference period is? This lack of clarity is making it very difficult for businesses to prepare for implementation which is why we suspect this may be one of the last measures to be implemented in 2027. What we can say at this stage is that it will undoubtedly impact how employers use low and zero hours workers and agency workers. This is likely to disproportionately hit those sectors where usage of those contracts is highest such as retail, hospitality, manufacturing and logistics.</p>
Clare Fletcher	<p>In a similar vein the Act will also allow the government to more closely regulate umbrella companies which are commonly used to employ and supply individual workers to end users. The Act's changes will allow these umbrella companies to be regulated in a similar way to employment agencies and businesses are at the moment, although that function will be taken over by the new fair work agency. The power to make regulations will be implemented in 2027 but it may be later before the changes actually come into force.</p>
Philippa O'Malley	<p>We spoke earlier about changes to the collective redundancy protective award which doubles to a maximum of 180 days pay in April 2026. A more fundamental development is due for 2027 with the addition of a new trigger for the obligation</p>

	to collectively consult when redundancies are proposed. Currently there is one trigger, the employer must be proposing to dismiss as redundant twenty or more employees at one establishment within a period of ninety days or less.
Clare Fletcher	The Act introduces a new alternate threshold where an employer is proposing to dismiss as redundant within a period of ninety days or less at least the threshold number of employees. This threshold number isn't yet defined and will be prescribed by regulations. It could be a specified number or a percentage of employees but we do know it will not be less than twenty.
Philippa O'Malley	This alternate threshold also has no reference to establishments so will apply across the whole of the employers workforce and therefore will require much greater central supervision of redundancy processes than may currently be the case.
Clare Fletcher	There are a couple of smaller amendments to be collective redundancy legislation that will take place in 2027. One of those clarifies that the employer doesn't need to consult all of the appropriate representatives together or indeed undertake the consultation with a view to reaching the same agreement with all of the appropriate representatives. That is intended to address concerns that where consultation is required across multiple establishments or in relation to unrelated redundancy proposals, consulting on all proposed redundancies together could be impractical.
Philippa O'Malley	2027 will also see some significant new family friendly rights. The first mention is enhanced protections for pregnant employees and new mothers returning to work. Although it is not clear on the face of the Act what those changes may be. It simply allows regulations to be made about dismissals during or after the protective period of pregnancy. The policy paper published alongside the Act states that the government will make it unlawful to dismiss pregnant workers within six months of their return except in specified circumstances.
Clare Fletcher	The Act also extends the existing rights to parental bereavement leave to a more general right to bereavement leave. A bereaved person will be entitled to take leave for the death of any person as long as they meet the relevant conditions which will be set out in regulations. This new protection will also include pregnancy loss after less than twenty four weeks and failed IVF treatment. We are anticipating more widespread changes to family leave entitlements in due course and that's because the government is currently undertaking a review of the entire family leave system with the intention of producing positive changes for consultation in 2027.
Philippa O'Malley	So back to what the Act is changing in 2027. In terms of flexible working, Labour's manifesto promised to make this the default position, which employers should be required to accommodate as far as is reasonable. The Act arguably stopped short of this commitment as it retains the current right to request mechanism which employers will be able to refuse if one of the statutory reasons applies. All the Act does by way of amendment is require that it must be reasonable for the employer to refuse on that basis and that the employer must communicate the employee

	both the reason for the refusal and why it has determined it is reasonable to refuse on that basis.
Clare Fletcher	And I think Philippa we would say wouldn't we that all good employers would already be handling flexible working requests on that basis so this wouldn't require much if any change of approach.
Philippa O'Malley	Similarly, many employers have already implemented policies to support menopausal women and put in place action plans to tackle any gender pay gap their annual reporting reveals. The Act will however make both these measures compulsory for large employers meaning those with 250 or more employees from 2027. Those action plans will also be encouraged on a voluntary basis from April 2026.
Clare Fletcher	Finally there are still more trade union related reforms that have been saved for 2027, this time to address blacklisting. The Act will make it unlawful not only to compile lists of trade union members for the purposes of discrimination as is currently unlawful but also to use any such list for the purposes of discrimination and what that means is that any list of union members that compiled for another lawful reason could be brought within scope if its used unlawfully.
Philippa O'Malley	Now as far as the government road map takes us as has been evident from this discussion, there's a huge amount of change for employers to get to grips with in multiple different areas of employment law. We hope this discussion has been useful in giving you a bit of an oversight of those changes and when to anticipate them coming into force.
Clare Fletcher	If you find the more visual format useful we have prepared a Slaughter and May version of the implementation road map with all the changes being discussed to day marked out against a timeline. A link to that road map is available alongside this podcast.
Philippa O'Malley	There is so much more we could say on the detail of all of these changes and we will be producing further content in due course. As you start preparing for the Act changes please do get in touch with us. Our team of employment experts are ready to guide you through the detail and advise you on the best approach for your business.
Clare Fletcher	If you'd like to find out more about our broader horizons scanning series please do subscribe on your preferred podcast app, but for now thank you very much for listening and goodbye.