



Solutions

Monthly Newsletter
November 2024

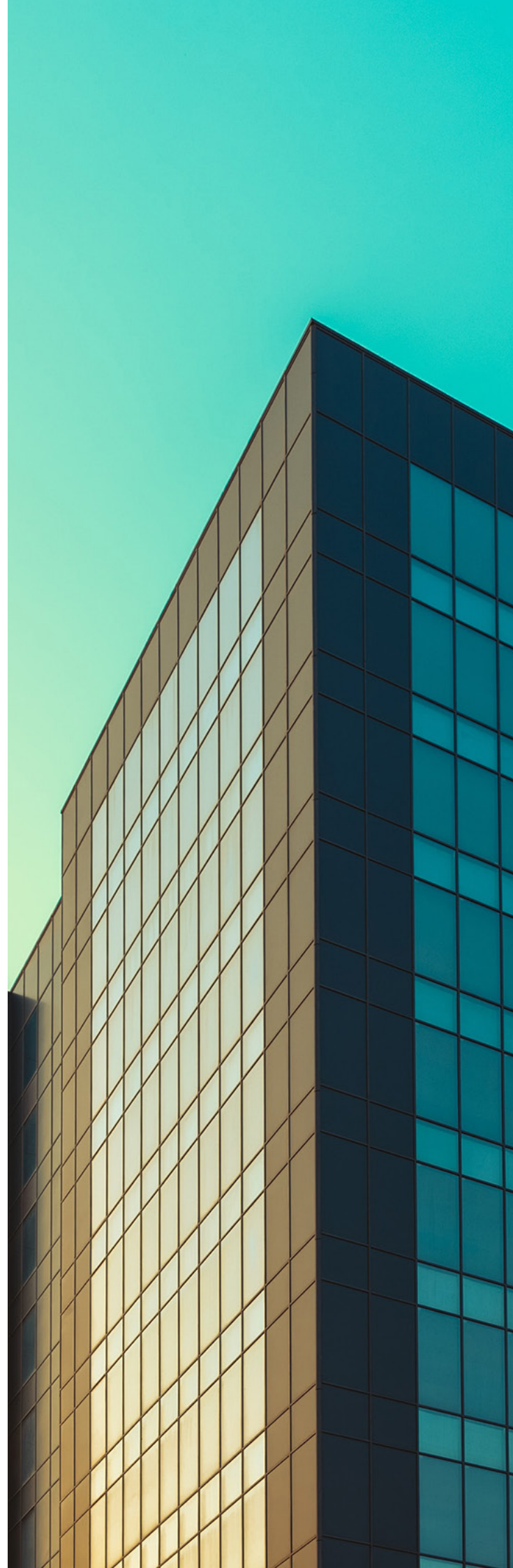


Legal Matters

The Employment Rights Bill was announced on 24 October 2024. It heralds proposed new legislation under the Labour government, most of which had been previously promised (as highlighted in our July newsletter [MHA | HR Solutions Newsletter - July 2024](#)). Whilst the proposals have been “fleshed out” to some degree, they are still subject to consultation, therefore nothing is going to change soon. Employers do, however, need to be aware of these new provisions on the horizon.

Unfair dismissal rights from day one: this is not the removal of the ability to dismiss at all but is designed to improve “lazy” management which relies on the under-two-year dismissal currently in place. Employers would still be able to use a probationary period which will probably be a maximum of six or nine months. There will be consultation on how dismissals during this period will be handled. This may involve an adjusted test for fairness so that dismissals during probation would be fair unless they are wholly perverse decisions, or it may involve a structured probationary dismissal procedure, similar to the Statutory Dismissal Procedure which some may remember being briefly in place before being repealed in 2008. This would require employers to hold a meeting in order to set out their concerns about the employee’s conduct or performance, and giving the employee the opportunity to respond. This is intended to be implemented no earlier than Autumn 2026, thus allowing ample time for businesses to train and educate management. The level of awards made to employees who bring successful unfair dismissal claims relating to dismissals during a probationary period would also be reduced.

Zero-hour contracts: there has been rhetoric about Labour “banning” Zero Hours Contracts completely; this is not the case. The legislation would ensure that workers who work a regular number of hours over a “reference period” will have the right to a contract which correctly reflects this. Clarity on how this reference period will be structured is awaited. Exceptions would be included for genuinely temporary contracts e.g. those that expire upon the completion of a specific task or event; again, clarity is awaited about how this will affect genuine seasonal work or fluctuating demand for other reasons. The Bill would also introduce a new right for workers to receive “reasonable notice” of their shifts. Similarly, the detail of what constitutes reasonable notice is yet to be finalised, but it is clear that employers will need to ensure that shifts are communicated well in advance to their workers.





So-called “Fire and Rehire”: where employees are dismissed for refusing to agree to a change in their contract of employment and then offered re-engagement on the new terms, those dismissals would be automatically unfair unless the employer can show:

- evidence of financial difficulties; and
- that the contractual changes were necessary to eliminate or significantly reduce the effects of those financial difficulties; and
- that the need to make the change to terms and conditions was not reasonably avoidable.

If the employer meets those tests, it will still need to be considered if the dismissal was fair in the usual way. The Employment Tribunal would particularly take into account if the employer consulted with the employee (and any trade union or employee representatives if applicable), and whether the employee was offered any compensation in return for agreeing to the variation.

Statutory Sick Pay: the three “waiting days” would be removed so that SSP would be payable from day one of absence. In addition, the Lower Earnings Limit (currently £123 per week) would no longer apply; approximately 1.5m people have earnings below the LEL and are therefore ineligible for SSP. Those earning less than the LEL would be paid a lower rate of SSP, possibly 60-80% of their average weekly earnings.

National Minimum Wage

The government has also committed to delivering a genuine living wage that accounts for the cost of living. Increases in the National Living Wage and National Minimum Wage were announced: £12.21 per hour for those aged 21+ and £10.00 per hour for those aged 18-20 from 1 April 2025. The Apprentice rate will also increase to £7.55 per hour; the rate for 16-17 years olds has not yet been announced so it is unclear if this will differ from the Apprentice rate. The government had originally stated that they proposed to remove the age bands completely; this is not going to happen from April 2025 but may do so in the future.

Other developments in legislation which are expected to follow include:

- **Making flexible working the default from day one:** with employers being required to accommodate this as far as is reasonable (it is already a day one right to request but the shift will be in employers’ attitude to try to accommodate it wherever possible rather than finding reasons not to).
- **Making the dismissal of a woman returning from maternity leave unlawful for the first six months after her return to work:** there would be an exception for specific circumstances i.e. this would not be carte blanche for gross misconduct!
- **Setting up a Fair Pay Agreements across sectors:** starting in the adult social care sector.
- **Removing “unnecessary restrictions” on trade union activity:** the Strikes (Minimum Service Levels) Act has already been repealed and the process of statutory union recognition would be simplified so that workers have reasonable access to a union in their place of work.
- **The ‘right to switch off’:** preventing employees from being contacted out of hours, except in exceptional circumstances.
- **Ethnicity and disability pay gap** reporting for large employers.

Overall, the proposed changes seek to increase employee loyalty, productivity and retention by providing a more even position between employers and employees, but they will require a cultural shift in management attitudes.

HR Solutions can advise you on the whole range of employee relations issues within the framework of the current legislation. We can also guide you through new and amended legislation as it is finalised, ready for when it comes into force.

Please see below some examples of the work that we have completed recently.

 **London**

Sponsor Licence application; applying for and assigning Certificate of Sponsorship; advising on Skilled Worker Visa application

 **Northampton**

Advising on UK Employment Rights and collating information on Employment Rights in France and Germany

 **London**

Settling an Unlawful Deduction from Wages claim via a COT3 with ACAS

 **Maidstone**

Review of a Non-Executive Director Agreement and Provision of a Privacy Notice

 **London**

Sponsor Licence application; applying for and assigning Certificate of Sponsorship; advising on Skilled Worker Visa application



How we can help?

If you require HR support, please contact us at HRsolutions@mha.co.uk to discuss how we could assist you.

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available according to your needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.



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Now, for tomorrow

