

Education Matters

Employment Rights Bill – Impact on Schools

Presented by
Abigail Brightwell
Senior Associate, Employment

Today's Session

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The Employment Rights Bill – Key aspects for schools:

- (i) Unfair dismissal
- (ii) School Support Staff Negotiating Body
- (iii) Trade Union rights
- (iv) Public Sector Outsourcing
- (v) Flexible Working
- (vi) Sexual Harassment
- (vii) Zero hours and guaranteed hours
- (viii) Fire and re-hire
- (ix) Other changes

Today's Presenters



Abigail Brightwell

Senior Associate, Employment

abigailbrightwell@brachers.co.uk

[Connect with Abigail on LinkedIn.](#)



The Employment Rights Bill – Key Aspects

Further Reading

- [Employment Rights Bill - Parliamentary Bills - UK Parliament](#)
- [Employment Rights Bill: factsheets - GOV.UK](#)
- [Next Steps to Make Work Pay - GOV.UK](#)



Timeline

- Bill published 10 October 2024
- Second reading 21 October 2024
- Consultation 2024 – 2025
- Introduction Unlikely before 2026

Unfair Dismissal



Unfair Dismissal

Day One Unfair Dismissal Protection

- What do we know?
 - Current two-year qualifying period for employee protections against unfair dismissal to be removed
 - s.108 ERA 1996 will be repealed
 - Reforms will take effect no sooner than Autumn 2026.
 - Will be consultation on the detail and “time for employers to prepare and adapt”
 - Will not apply before the employee has started work (s.108A)

Unfair Dismissal

Day One Unfair Dismissal Protection

- Still to be confirmed in regulations:
 - Government fact sheet refers to “lighter touch and less onerous process” within a statutory probationary period
 - How will this operate? What steps will be required?
 - How long will the initial statutory probation period be? The government’s indicated preference is 9 months.
 - Compensation?
 - How will an employer’s decision to dismiss within a probation period be reviewed by a Tribunal?

Unfair Dismissal

s.98 Employment Rights Act 1996

1. In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
 - a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
2. A reason falls within this subsection if it –
 - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - (b) relates to the conduct of the employee
 - (c) is that the employee was redundant, or
 - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

Unfair Dismissal

s.98 Employment Rights Act 1996

4. Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
 - a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - b) shall be determined in accordance with equity and the substantial merits of the case.

Unfair Dismissal

- Standard of reasonableness for dismissals in initial period will be modified
- New s.98ZZA - power to modify application of s.98(4)
- Two conditions:
 1. Effective date of termination falls on or before the last day of “initial period of employment” or notice is given by employer before the end of the initial period of employment, and effective date of termination is within a 3-month starting from the day after the last day of the initial period of employment
 2. The reason (or principal reason) shown for the dismissal by the employer is a reason in s.98(2) (a), (b), or (d), or some other substantial reason relating to the employee.
- What about redundancy?
- S.98ZZA(5)(c) – what steps will be specified in regulations?

Unfair Dismissal

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Unfair Dismissal

Day One Unfair Dismissal Protection

- What can we do to prepare?
 - Wait for further details announced through regulations
 - Review current probation period review process
 - Are job descriptions and managers clear on required standards?
 - Review pre-employment processes



School Support Staff Negotiating Body

School Support Staff Negotiating Body

- Reinstatement to replace National Joint Council
- Remit to include:
 - Remuneration
 - Terms and conditions
 - Training
 - Career progression
- Will apply to support staff in maintained schools and academies

School Support Staff Negotiating Body

- “Support staff” definition to be determined
- SSSNB to comprise representatives of employers, unions and an independent chair.
- Ratified agreements will go into individual employment contracts

A row of white paper cutouts of human figures holding hands, set against a green background. The figures are arranged in a line, with some slightly overlapping. A large blue arrow shape points from the left towards the right, partially covering the bottom of the figures.

Trade Unions

Trade Unions

Number of significant reforms

- Including:
 1. Right of Trade Union to request access to workplaces for recruitment, organising and collective bargaining purposes
 2. Relaxation of recognition rules
 3. Information on right to join a union
 4. Relaxation of strike rules and lowering thresholds



Public Sector Outsourcing

Public Sector Outsourcing

Public Sector Outsourcing

- Additional protection for workers transferring from public sector
- Transferring workers maintain terms and conditions
- Any employees supplied by the supplied are treated no less favourably than the transferring employees
- Avoidance of a “two tier workforce”
- Details to be set out in regulations
- Code of Practice to be published

A blurred background image of a classroom. Several students' hands are raised in the air, indicating an interactive session. A chalkboard is visible in the background. A large blue arrow-shaped graphic points from the left towards the right, partially obscuring the lower half of the image.

Flexible Working

Flexible Working

- Recent reforms introduced April 2024
- The Bill proposes:
 1. Employer can only refuse a flexible working request if it is reasonable for them to do so, and
 2. An employer must state the ground for refusal and explain why it is reasonable to refuse the request on those grounds
- How much scrutiny will be applied?
- Flexible working “the default”?



Harassment Protections

Protection from Harassment

Sexual Harassment

- Worker Protection (Amendment of Equality Act 2010) Bill introduced new s.40A duty
- Employer under a duty to take “reasonable steps” to prevent sexual harassment of employees in the course of their employment
- Will widen to “all reasonable steps”
- Power for regulations to set out what amounts to reasonable steps

Protection from Harassment

Third Party Harassment

- Bill proposes to introduce a duty to take “all reasonable steps” to prevent harassment from a third party in the course of employment
- Students/parents/guardians
- Not limited to sexual harassment

Protection from Harassment

Protection from whistleblowing detriment

- Sexual harassment to be added to the list of protected disclosures for purposes of whistleblowing legislation
- Must meet existing tests to amount to a valid protected disclosure
- Reasonable belief that it is made in the public interest
- Already covered?

A photograph of a modern classroom with large windows. Several students are seated at long tables, working on papers. The room has a high ceiling with exposed metal beams and white pendant lights. The view outside the windows shows a green landscape with trees and some buildings in the distance.

Zero-Hours Contracts and offers of guaranteed hours

Zero-Hours Contracts

Next Steps to Make Work Pay:

22. To end exploitative zero hours contracts, the Government will give workers on zero hours contracts and workers with a 'low' number of guaranteed hours, who regularly work more than these hours, the ability to move to guaranteed hours contracts which reflect the hours they regularly work over a 12-week reference period. If more hours become regular over time, subsequent reference review periods will provide workers with the opportunity to reflect this in their contracts. We will consult on how these subsequent review periods should work with employers and trade unions, ensuring they are reasonable and proportionate for both workers and employers. Alongside this, the Government will ensure workers get reasonable notice of any change in shifts or working time, with proportionate compensation for any shifts cancelled or curtailed at short notice. This will give them a greater ability to plan their lives, without banning flexible arrangements that some workers benefit from.

Right to Guaranteed Hours

- The Bill proposes:
 - A right for **qualifying workers** to be offered **guaranteed hours** at the end of every **reference period**, reflecting the hours worked in that period.
 - Grounds for workers to bring complaints to the ET if they are entitled to a guaranteed hours contract but do not receive one
- Will replace Conservative government plans for a right to request a predictable working pattern (now repealed).
- Positive obligation on employers
- Do not currently apply to agency workers

Right to Guaranteed Hours

Qualifying Workers

- New duty will apply to “qualifying workers”
 - Includes zero hours workers and “low hours workers”
 - What is a low-hours worker?
- Employers must look at guaranteed contractual hours and hours actually worked to determine if required to make an offer of guaranteed hours

Right to Guaranteed Hours

Reference Period

- To be confirmed in regulations
- Anticipated to be 12 weeks
- Keeping track of hours being worked = key

Right to Guaranteed Hours

Offer/Rejection

- Employers must offer new contract or variation which reflects the hours worked during the reference period
- Reflects number of hours? - 100%? 80%?
- Prescribed form of offer to be set out in regulations, including response period
- Must be made after an initial reference period, and after each subsequent period
- Cycle continues until no longer qualifying low-hours worker, or resignation/termination/other exceptions

Right to Guaranteed Hours

Preparation

- Audit current workforce
- What contractual arrangements are in place?
- Keep track of fluctuations



Shift Worker Rights

Shift worker rights

- Right to reasonable notice of shifts and changes to these
 - Applies to zero hours workers and others – scope not yet known
 - What is “reasonable”?
 - How must notice be given?
- Right to payment of cancelled, moved and curtailed shifts at short notice
 - Compensation amount and short notice to be determined
- Right not to suffer detriment
- Currently do not apply to agency workers



Fire and Rehire

Fire and Rehire Practices

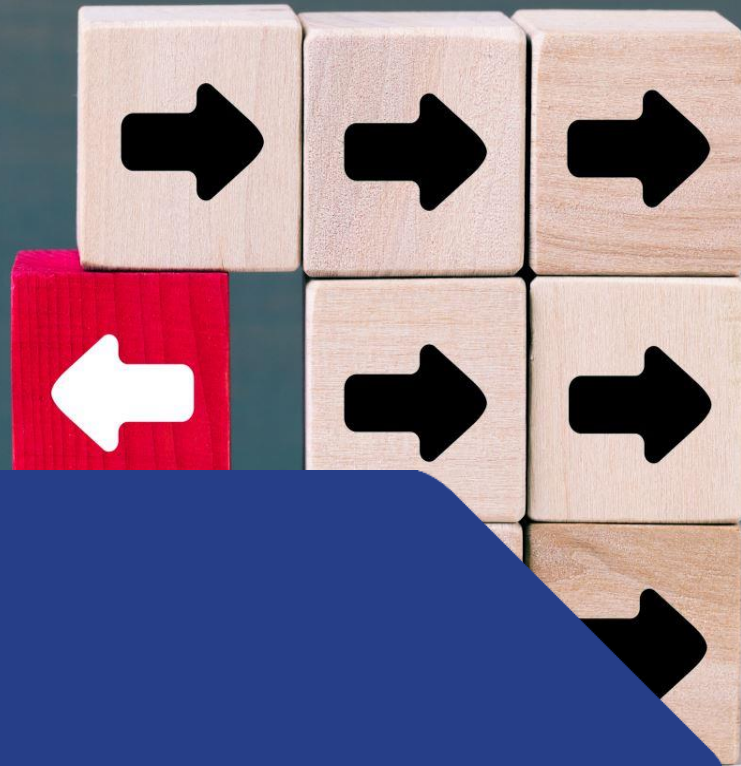
- Not gone but restricted
- Automatically unfair reason for dismissal if:
 1. (i) the employer sought to vary the employee's contract of employment, and (ii) the employee did not agree to the variation.
 2. To enable the employer to employ another person, or to re-engage the employee, under a varied contract of employment to carry out substantially the same duties as the employee carried out before being dismissed.

Fire and Rehire Practices

- Limited exception if the reason for the variation was:
 - a) to eliminate, prevent or significantly reduce, or significantly reduce 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
 - b) In all the circumstances the employer could not reasonably have avoided the need to make the variation.
- Employer must still have acted fairly in all the circumstances

Fire and Rehire Practices

- Next Steps document – must be “genuinely no alternative”
- Effect on new ACAS Code of Practice?
- Consultation open until 2 December 2024



Other Changes

Other Changes

- Collective redundancy consultation - reference to “one establishment” trigger removed
- SSP reforms – day 1 entitlement and removal of lower earnings limit
- Dismissal protection during pregnancy and maternity leave following return from maternity leave and other forms of family leave
- Day 1 right to bereavement leave
- Day 1 paternity leave and parental leave
- Introduction of gender pay action plans
- Menopause action plans
- Fair Work Agency

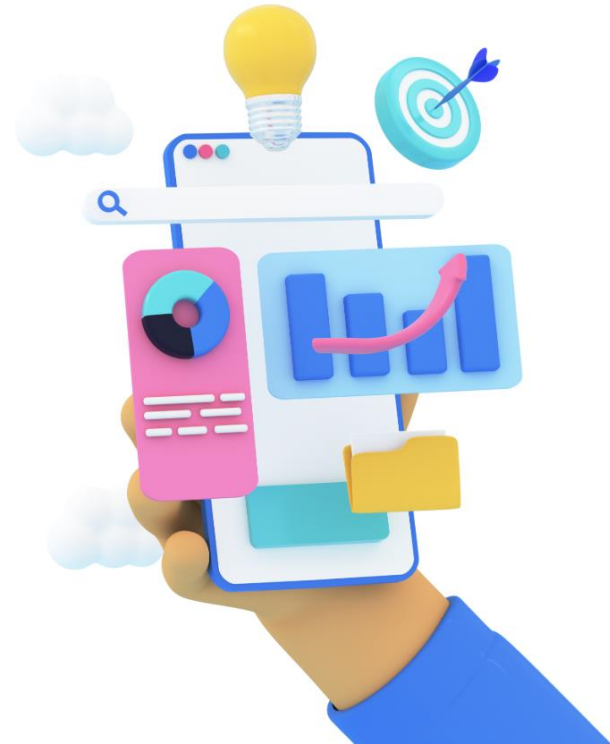
What didn't make it (yet)?

- Right to switch off – statutory Code of Practice
- Single employment status
- Collective grievances
- Extension of time limits for Employment Tribunal claims (yet)

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