

Employment Rights Bill UNISON briefing no.1

1. The Employment Rights Bill (ERB) sets out a wide ranging and ambitious programme of work. It repeals restrictions on trade union activity including our ability to organise, represent and support members and strengthens our rights to access workplaces. It strengthens collective bargaining including a reinstatement of the School Support Staff Negotiating Body (SSSNB) and sets in place the means to create a fair pay agreement in adult social care. It also addresses other long standing UNISON campaigns – the insecure and exploitative economy in the form of zero-hour contracts and fire and rehire, out-sourcing and weak enforcement.
2. UNISON regards the publication of the Employment Rights Bill not as the destination but the beginning of the work. The union will campaign, lobby and mobilise our members to ensure that promises are fulfilled and opportunities are seized to transform the UK's labour market, tackle injustices and empower workers.
3. The Employment Rights Bill will apply only in England, Scotland and Wales – GB only. Some elements will only apply in England – the SSSNB and Fair Pay Agreement.

4. Key components of the Employment Rights Bill

- Repeal of the Strikes Act and the Trade Union Act;
- Ending exploitative zero-hour contracts – with guaranteed hours contracts, a right to reasonable notice of shift changes and payment for cancellation of shifts at short notice;
- Introducing basic day one rights – sick pay, parental leave, unfair dismissal;
- Sectoral collective bargaining – fair pay agreement in adult social care, reinstatement of the School Support Staff Negotiating Body (SSSNB);
- Strengthening family friendly rights and flexible working, making it harder for employers to refuse employee requests;
- Reintroducing the two-tier code on procurement;
- Political fund opt in restored – trade union members no longer have to expressly ask to opt in. Members will in future have to expressly ask to opt-out;
- New protections against 'fire and rehire' – with it being automatically unfair to dismiss an employee for refusing a contract variation and a very limited exception for genuine need to avoid serious financial issues that may threaten the business (making it necessary to go through a lot of consultation first);
- Strengthening facility time – when requests are denied the burden of proof will be placed on the employer, who must demonstrate that the time off requested was unreasonable;

- Introduction of electronic balloting;
- Access rights for trade unions to workplaces for recruitment and collective bargaining purposes, union recognition made less onerous and thresholds reduced;
- Protection from dismissal for taking strike action is being extended – the basic 12 weeks is being removed and instead it is extended for the length of the strike action;
- Measures to tackle blacklisting;
- Strengthening collective redundancy rights, lifting the cap on protective awards and the introduction of interim relief to protect workers in this situation, and consultation based on total business redundancies;
- Increased protection from sexual harassment, introducing gender and menopause action plans and strengthening rights for pregnant workers.
- Strengthening statutory sick pay;
- Creating a Single Enforcement Body to ensure employment rights are upheld – a new ‘Fair Work Agency’;
- Moving towards a single status of worker and a simpler two-part framework for employment status.

5. Timeline

On the day of Royal Assent (which is yet to take place)

Repeal of Minimum Service Levels

Clause 61 repeals the Strikes (Minimum Service Levels) Act 2023.

Two months after Royal Assent:

Repeal of the provisions of the Trade Union Act 2016 relating to:

- industrial action ballots – ballot thresholds around turnout and support for action;
- facility time – publication requirements and the reserved powers the state held to restrict facility time in the public sector;
- restrictions on DOCAS;
- union supervision of picketing;
- provision of information to employers around industrial action;
- enhanced powers of the Certification Office and trade union levy;
- trade union political fund reporting.

6. Secondary legislation

All other provisions will require secondary legislation in the forms of regulations and statutory instruments. The Government will also introduce or update codes of practice after Royal Assent as part of implementation. The Department of Business and Trade (DBT) has stated that “adjusting to these new reforms will take time and is committed to ensuring that all stakeholders receive appropriate time to prepare for these changes ahead of commencement.” Consultations will be launched as part of this with, “the majority of these reforms to take effect in

2026.”

Some consultations and additional work will happen after the Bill receives Royal Assent. However, some key consultations will happen while the Bill progresses through Parliament. These include consultations on:

- zero-hour contracts – to ensure that the Bill’s provisions are effective and that they will also apply appropriately to agency workers;
- trade union modernisation – electronic balloting, ballot simplification, strengthening facility time, trade union recognition and access to workplaces and more.
- SSP – what the % replacement rate should be for those earning below the current flat rate of SSP.

These consultations would inform further Government amendments during the parliamentary process.

PRIORITY PROVISIONS FOR UNISON – initial analysis

7. Trade union freedoms

The Employment Rights Bill will swiftly act to repeal two pernicious pieces of anti-Trade union legislation. The Strikes Act will be repealed on the day the Bill receives Royal Assent and the heart of the Trade Union Act will be knocked out within two months.

While the provisions of the Strikes Act have not been enacted in a meaningful way by any employer, its main intention was to create a chilling effect on any worker taking part in an industrial action ballot. The Government has highlighted as part of its motivation, “*the High Court’s judgment on the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022, [that] employment businesses are prohibited from providing agency workers to cover the duties normally performed by a worker who is taking part in a strike or other industrial action*” an action led by UNISON Legal Services.

The Trade Union Act has had a massive impact on trade unions, stretching from industrial action ballot thresholds to massive amounts of red tape on every kind of trade union activity, restrictions on trade union facility time in the public sector and on the use of DOCAS. Repeal of both these Acts will be an important way to empower trade unions. Unions will be freer to focus on core organising, bargaining and recruitment activity, bolstered with a meaningful right to strike.

Other elements of the Bill will aim to set a more positive agenda to support trade union activity.

These include:

- **Access rights** – the bill will introduce greater access to workplaces for trade unions for the purposes of meeting members, recruiting new ones,

supporting members with an employment matter and facilitating collective bargaining.

- **Facility time strengthened** – the bill reverses the burden of proof on time off for TU duties where reps claim they were denied reasonable time off. The burden of proof will be placed on the employer who must demonstrate that the request was unreasonable.
- **Union recognition** – make statutory recognition less onerous and reduce thresholds, removing the requirement for unions to show that at the outset of submitting a statutory recognition application to the CAC that at least 50% of workers are likely to support recognition. It also proposes to remove the additional requirement for 40% of all eligible workers in the bargaining unit to have to vote for recognition;
- Inform employee of right to join TU in contract;
- **Electronic balloting** will be allowed;
- **Ballot simplification** for industrial action;
- Labour intends to change the law so **redundancy** consultations are triggered based on total business redundancies, not just site-specific numbers. This would align the UK with many EU countries and require businesses to monitor redundancy numbers closely;
- **Blacklisting** – the Bill will amend and enhance the ERA 1999 (Blacklists) regs 2010. It will end the loophole that allows employers to bypass laws through third party contractors and give the regulator and ETs the power to order the seizure and destruction of any list, digital or not to prevent blacklisting happening again. It will extend blacklisting protections to self-employed workers. It will outlaw the use of predictive technologies for blacklisting and safeguard against singling out workers for mistreatment or the sack without any evidence of human interaction;
- **Political fund processes.** The Bill repeals the requirement for trade unions to opt out their members from contributions to political funds, unless they have expressly requested to opt in. This will return (in substance) to the position before the passage of the Trade Union Act 2016, trade union members being automatically opted in to contribute to a political fund, unless they expressly opt out.

8. Mercer

Clause 60 of the ERB attempts to address issue raised by UNISON's Supreme Court victory on behalf of our member, Mrs Mercer. The clause provides workers with the right not to be subject to detriment of a prescribed description to prevent, deter or penalise the worker for taking industrial action. UNISON will be reviewing the wording carefully. There will also be a consultation on the nature of the detriment – the outcome of this consultation exercise will be crucial in determining whether this clause successfully addresses the vulnerability currently experienced by workers taking industrial action.

UNISON continues to tackle the issues raised by Mercer through an application to the European Court of Human Rights that the current lack of adequate protection in law breaches the Article 11 rights of both Fiona Mercer and

UNISON, because the state has a duty to protect private sector workers too and it is vital for a trade union's efforts to bargain collectively.

9. Adult Social Care Negotiating Body / Fair Pay Agreement (England)

UNISON's campaign for a National Care Service was a key part of the union's campaigning in the run-up to the general election earlier this year. A Labour government is now in power for the first time since 2010, but the campaign continues – and a crucial part of this is the drive to secure a Fair Pay Agreement in adult social care.

After 14 years of Tory rule, the social care system is close to breaking point. The toxic combination of years of chronic underfunding and a dysfunctional, under-regulated market system means that thousands of elderly and disabled people are unable to get the level of care they need, while money continues to bleed out of the system to profit-driven care providers.

A Fair Pay Agreement has the potential to be a gamechanger in social care.

Accordingly, the Bill creates a framework for the establishment and implementation of a legally binding agreement that would set out matters relating to pay and other terms and conditions for workers in the adult social care sector. The agreement would be negotiated by an Adult Social Care Negotiating Body that would be made up of relevant employer and trade union representatives.

The Bill empowers the Secretary of State to make regulations to bring this process into being which will involve further consultation. Since the general election UNISON has been in frequent dialogue with ministers, civil servants and others to ensure that the Fair Pay Agreement measures appeared on the face of the Bill, and guided by our newly established National Social Care Committee, the union will continue to keep up the pressure to ensure the process delivers the changes that are desperately needed by care workers and the wider sector.

10. School Support Staff Negotiating Body (England*)

The Bill will establish the School Support Staff Negotiating Body ("SSSNB"), gives the Secretary of State powers to ratify agreements reached by it on school support staff terms and conditions and makes provision about the effect of ratified agreements. It also gives the Secretary of State a power to issue statutory guidance in relation to school support staff terms and conditions or training and career progression. The body would work toward a number of goals for support staff including: giving them a proper voice in the national education conversation; achieving fair pay and helping move towards a synchronised package of terms and conditions across the country; and ensuring that they are properly rewarded for their work and granted opportunities for professional development. This is of key importance to UNISON as we have policy to campaign for the reintroduction of the SSSNB in England and have

actively campaigned for this since it was scrapped by the Coalition government. UNISON believes the SSSNB is key to providing professional recognition for a group of staff which has been overlooked by the government for too long.

*The nature of the legislation potentially allows Cymru/Wales to be added to the future scope of this provision. We will ensure regular liaison between the Centre and UNISON'S Cymru/Wales, Scotland and Northern Ireland regions, to ensure full consideration is given to the broader implications of the SSSNB for members in the devolved nations and regions.

11. Two tier code – protection of outsourced workers

The Bill creates a power for a Minister to impose a duty and create a statutory code to prevent the emergence of a 'two tier workforce' when outsourcing occurs. The regulations created under this provision will cover the transferring workers and ensure that any subsequent workers of a specified description employed to deliver the contract are treated no less favourably than those who have been transferred. Contracts that will be covered under the regulations will be public services and back-office functions previously carried out by a contracting authority. Utilities will not be covered. The regulations will require contracting authorities to take 'all reasonable steps' to comply with the regulations and to 'have regard' to a code of practice containing guidance.

This is a welcome step. However, we will need to ensure that problems encountered under the previous two-tier code (including poor enforcement and employers redesigning jobs to evade the code) are addressed at the consultation on the draft regulations and code. It will also be important to think through the need for sector level considerations.

The Next Steps to Make Work Pay document that accompanied the Bill, indicates that the broader set of outsourcing and procurement related measures that were included in the New Deal For Workers but not in the Bill will be forthcoming as part of system wide reform. These wider measures include a requirement for contracting authorities to carry out a public interest test before outsourcing and when contracts come up for renewal, making social value mandatory in contract design and using public procurement to raise employment standards. The first instalment of this wider package will be a new National Procurement Policy Statement, which we expect government to consult on imminently. This document sets out UK macro level strategic goals that contracting authorities must have regard to when undertaking procurement for goods, works and services (e.g. creation of more decent, well paying, secure jobs).

12. Zero-hour contracts

There have been extensive discussions with civil servants around the most effective ways to tackle the problem of zero-hour contracts. Labour's stated intention is end 'one sided' flexibility and ensure all jobs provide a baseline level of security and predictability, banning exploitative zero hours contracts and ensuring everyone has the right to have a contract that reflects the number of

hours they regularly work, based on a twelve-week reference period.

In UNISON's experience, zero-hour contracts are an expression of the deep imbalances of power in the labour market and the ability of unscrupulous employers to exploit vulnerability to enforce a one-way flexibility. Maximum flexibility for the employer translates into rigid control for the worker. Any successful attempt to curb this exploitation will stand or fall in tackling this imbalance and giving a workable right accessible to those in the most precarious parts of the labour market.

The Bill introduces a right to a guaranteed hours contract which reflects the hours eligible workers regularly work over a 12-week reference period. This would initially be the first 12 weeks and then could be reviewed again if there are changes to working patterns. The Bill also introduces a right to a reasonable notice of shifts and payment for shift cancellation and curtailment at short notice for those on zero hour and low hour contracts. The emphasis on tackling low hour contracts means that these clauses go beyond simply trying to tackle the phenomenon of zero-hour contracts – they attempt to protect workers on low hours as well. UNISON's campaigning on the insecure economy has always had a concern for all forms of insecure and low paid work.

The clauses also attempt to tackle employers who might try to use a loophole of a low-hours contract to evade the ban.

The provisions in the Bill are very complex. Work will be done to carefully review the wording and how they will work in practice.

13. Fire and Rehire

Fire and rehire has been a significant issue for UNISON. Members in British Gas, for example, were threatened with fire and rehire during the pandemic, with all employees told they would have to sign new contracts on far worse terms and conditions than currently – or face redundancy. It is also used across public services, used to undermine decent standards of employment. It has become a routine threat, not a rare action only employed by the worst employers. Labour's promise to ban this practice is therefore welcome.

In July, the new Labour Government confirmed that the previous government's statutory code would come into force in July as planned. This included powers for a tribunal to make a 25% uplift on unfair dismissal awards where an employer fails to take the code into account. The new Government would also reintroduce the Statutory Instrument which will allow this uplift – this is necessary because it had not yet completed its parliamentary journey before the dissolution of the last Parliament. The ERB now contains clauses to address the problem of fire and rehire. They will restrict employers' ability to use fire and rehire by amending the law on unfair dismissal so that, where employees are dismissed for failing to agree to a change in their contract of employment, those dismissals will be treated as automatically unfair unless the employer can show evidence of financial difficulties and demonstrate that the need to make the

change in contractual terms was unavoidable.

14. Unfair Dismissal

The Government intend to introduce a day one right not to be unfairly dismissed rather than the current two-year qualifying period. This could mean immediate protection against unfair dismissal – employers must have a fair and transparent reason for terminating employment even within the probationary period. The Bill will repeal the two year qualifying period meaning employers will only be able to be dismiss employees if the reason for dismissal is one of the following potentially fair reasons for dismissal (conduct, capability, qualifications for which they were employed, contravention of a statutory duty or restriction, or some other substantial reason that would justify the dismissal) and the dismissal for that reason is fair. The measure will provide for regulations to set out an ‘initial period’ of employment during which a modified version of the right to unfair dismissal will apply to dismissals for some of those reasons. This has been referred to as a ‘probationary period’ in the press and the Labour Party has indicated its preference for this to last 9 months. The consultations that will take place around this new right will be crucial in ensuring that this is a workable and meaningful right, both in the courts and in the workplace.

15. Sexual harassment, gender pay gaps, menopause and maternity

The Bill will increase protections from sexual harassment in the workplace, introduce gender pay gap action plans, strengthen protections for workers through menopause and strengthen rights for pregnant workers, making it unlawful to dismiss them within 6 months of returning to work. UNISON believes that there is huge potential for the Bill to be life-changing for women workers.

The Worker Protection Act 2023 comes into effect this month providing significant new protections from sexual harassment including an obligation for employers to take all reasonable steps to protect their employees from harassment, but it fails to address third party harassment, i.e. from contractors, customers, clients. UNISON wants to see a regulation that does this.

UNISON has consistently pointed out that the current requirement for employers to ‘report’ their gender pay gaps is toothless and would like to see action plans, and not just for gender pay gaps but disability and ethnicity pay gaps too.

The pandemic highlighted how badly pregnant workers are treated by employers, e.g. forced to go off sick despite this being against the law either because employers don’t know the law or don’t care. Pregnant workers are protected from redundancy for up to six months on return to work. New protection from dismissal is a significant win, providing security of employment in the vital early months after a baby’s birth.

Support through the menopause is both an equality and health and safety matter. UNISON has won significant agreements with many employers to introduce UNISON’s own model policy. But some employers need more of a

push, particularly in parts of the private and independent sector.

16. Flexible and family friendly working

Labour intends to make flexible working a day one right for all workers by default. UNISON welcomes the expansion but while not all jobs are suited to all flexible working patterns, we believe all jobs can have some flexibility options built in at a job design stage. UNISON is calling for a right to some form of flexibility in all jobs and will be engaging with the consultation process to highlight our aspirations for this new right.

Bereavement Leave is expanded for all with 1 week for non-parental bereavement leave being given (per bereavement). Definition of bereaved' will be in regulations (relationship to employee). There will also be new protections for dismissal (other than redundancy) after a bereavement leave. Bereavement can have a significant impact on a person and their work, if workers are not adequately supported with appropriate, paid, time off at this time this can lead to longer term impacts on health and wellbeing which can have a much broader impact on people's ability to stay in work.

There is a commitment to review parental leave and carer's leave. UNISON welcomes the review in hopes of improved provision i.e. a new right for carers' leave to be paid, formal championing and improved support for employers to implement. We will be engaging and campaigning on these issues within the Bill's progress and any ensuing consultation process. Parents and carers represent a huge proportion of the workforce. Employers have everything to gain by helping them juggle their home and work responsibilities. It's vital they get the support they need. Too many workers are struggling to stay in work while also caring for their loved ones.

17. Statutory sick pay reforms

Most workers receive occupational sick pay. But large numbers rely either on statutory sick pay or receive nothing at all if they are absent from work due to illness. These workers are more likely to be low-paid. The Government has promised to strengthen SSP and to remove the lower earnings limit, to make it available to all workers and remove the waiting period. Labour has also promised to ensure that it provides a fair earnings replacement for people earning below the current rate of statutory sick pay. The removal of the lower earnings limit will extend SSP to the 1.15 million employees who are not currently eligible due to being in work but not earning £123 per week.

Scrapping the three-day wait will mean that employees who are off for one to three days with a short illness will now get SSP. This will also boost the amount of SSP received for people who are off for longer than three days. Under the current system, an employee who typically works a five-day week receives just £46.70 if they're off work for a week, as they're only paid for two days. If the three-day wait is scrapped, they'll get the full week's payment of £116.75.

This measure will make a significant difference to low paid and part-time

workers who are mainly women. For example, 6.5% of women do not earn enough to qualify for sick pay compared to 2.8% of men. The Women's Budget Group has calculated that 1.47 million women will have new rights to sick pay under these new provisions. There will be consultation on SSP during the parliamentary passage of the Bill.

The above is not exhaustive. Future briefings will cover other measures and be tailored to the timing of parliamentary scrutiny of specific provisions.

Link to the bill in full:

[Employment Rights Bill - Parliamentary Bills - UK Parliament](#)

The explanatory notes: [Employment Rights \(parliament.uk\)](#)

DBT paper on 'next steps'

<https://www.gov.uk/government/publications/next-steps-to-make-work-pay>