

EMPLOYMENT RIGHTS ACT IMPLEMENTATION

Introduction

The Labour Government's Employment Rights Act (ERA) 2025 is now being implemented on a phased basis and in this Reps Bulletin the intention is to highlight what this means for TSSA members and our union.

What has to be said from the beginning, however, is that the ERA is the biggest change in employment rights for decades and is part of the Government's Make Work Pay agenda.

It comes after fourteen years of Conservative Governments that undermined and cut workers' rights.

One of the most notorious of those changes was the introduction of charges for using employment tribunals as a way to deter working people from enforcing their rights after they had been unfairly treated. Evidence showed that when the measure was introduced in July 2013, overnight the number of employment tribunals for things like unfair dismissal plummeted by as much as 80%.

The Supreme Court outlawed this policy in July 2017 but just before the General Election in 2024, the Conservative Government carried out a consultation to reintroduce the policy but lost the subsequent election. Labour has since made it clear that they will not be reintroducing charges, upholding the principle that workers must have access to justice regardless of income.

The use of consultations

On the way to the Employment Rights Bill becoming an Act of Parliament the Government carried out a number of consultations on aspects of its provisions. Those consultations sought views from stakeholders like unions and employers on subjects such as:

- Creating a modern framework for industrial relations
- Strengthening statutory sick pay arrangements,
- Ethnicity and disability pay gap monitoring

The ERA became law in December 2025 and, following usual Parliamentary practice, the detailed arrangements in the Act will be set out in Regulations and/or Codes of Practice. This has meant the Government has been carrying out further consultations, including on:

- Bereavement Leave and Pregnancy Loss
- Fire and Rehire resulting from changes to expenses, benefits and shift patterns
- Revised Code of Practice on Union Access and Unfair Practices

Since Easter 2026, further consultations have been published under the Make Work Pay agenda, including one seeking evidence on how the TUPE¹ legislation operates.

What has been implemented from the ERA so far?

As stated previously, the implementation of the ERA is taking place on a phased basis. This Reps Bulletin is concentrating on the measures that have been introduced to date, but others are planned for later this year and in the course of 2027.

Measures that have been introduced so far are as follows:

- From 18th December 2025: Provisions in the ERA repealed the Strikes (Minimum Service Levels) Act 2023.

The 2023 law was an attempt by the last Conservative Government to undermine industrial action in certain industries, including transport, requiring some of those workers who may have voted for the strike to report for duty against the threat of the loss of their employment protections.

- From 18th February 2026: the repeal of the great majority of the Trade Union Act 2016 which was another anti trade union law introduced by the Conservative Government.

One of the provisions that has been changed for members is that dismissal for taking part in industrial action has now been classed as 'automatically unfair'.

Previously, it had only been a protection that lasted for 12-weeks which meant that it was not automatically unfair after that period of time.

Other changes have:

- removed the need for trade unions to conduct a ballot every ten years in order to retain their Political Funds. Political Funds are important for the work of TSSA and all unions because it enables us to seek to influence politicians over matters that are important to our members, especially around employment rights and health and safety concerns.
- removed the 40% support threshold in industrial action ballots but until at least August 2026, unions will still have to ensure at least a 50% turnout of those eligible to vote

¹ Transfer of Undertaking (Protection of Employment) Regulations 2006

- From 6th April 2026:

- *Protective award increased:*

There are legal provisions around the need for employers to carry out collective consultation when they are proposing to make 20 or more employees redundant at one establishment within 90 days.

Those employers that fail to carry out that obligation will now face a doubling of the existing Protective Award which from 6th April increases from 90 to 180 days' pay for each affected employee.

- *'Day 1' Paternity Leave and Unpaid Parental Leave:*

- Before 6th April 2026, employees had to have worked for their employer for at least 26 weeks before they could apply for Paternity Leave whilst for Unpaid Parental Leave it was 12 months.
 - From 6th April, all employees are regarded as eligible for both Paternity Leave and Unpaid Parental Leave from Day 1 of their employment.
 - It appears that qualification for Paternity Pay still requires the employee to be employed by the same firm for 26 weeks.

- *Whistleblowing on sexual harassment:*

The ERA strengthens protections for workers who 'blow the whistle' on sexual harassment, making it a "qualifying disclosure" and, therefore, an automatically unfair dismissal if sacked. Employees who suffer detriment (eg, bullying, harassment, etc) are also protected.²

- *Statutory Sick Pay (SSP):*

The Government's reforms mean that the Lower Earnings Limit (LEL) and the three "waiting" days (before payment of SSP) have been removed. With effect from 6th April 2026, workers who are sick will be entitled to be paid from Day 1 of their sickness absence at the lower of either £123.25 or 80% of their average weekly earnings.³

Members should note that whilst a lot of UK workers are paid Statutory Sick Pay, virtually all of the employers that TSSA bargains with actually pay company sick pay which is usually equivalent to basic pay.

- *Action plans on gender equality and supporting employees through the menopause:*

This is a voluntary requirement on employers with over 250 employees.

² See: <https://www.acas.org.uk/whistleblowing-at-work/what-someone-can-whistleblow-about>

³ See: <https://www.acas.org.uk/checking-sick-pay/statutory-sick-pay-ssp>

It sets a series of requirements to be included in the action plans and the dates by when they have to be published⁴. The Government has also published guidance on this subject⁵ which additionally requires that in the private or voluntary sector a “responsible person”, such as a director, partner or senior officer must confirm that the information submitted is correct.

It is also expected that the gender equality plans will become compulsory in 2027 with ministers having reserved that power to themselves under Section 33 of the ERA 2025.

- *Simplifying trade union recognition process:*
In place of the existing requirements, from 6th April the threshold for the Central Arbitration Committee to accept a statutory application for collective bargaining recognition will be set at between 2 and 10% of the workers in the bargaining unit after which there will be a requirement to achieve a simple majority in a ballot of the workers.

An updated Code of Practice on trade union recognition supporting this is expected to come into force in October 2026.

- *Keeping holiday records*
The ERA introduces an obligation on employers to keep records of annual leave and holiday pay, with the requirement that that information is retained for at least 6 years and is compliant with the UK’s GDPR. ACAS suggest that an employer that fails to comply could be guilty of a criminal offence and face unlimited fines with enforcement taking place by the new Fair Work Agency.

- From 7th April 2026:

The Fair Work Agency (FWA) was formally launched with the purpose to overcome exploitation of workers. The Government has highlighted research by the Resolution Foundation that estimates 900,000 UK workers each year have their holiday pay withheld whilst the Low Pay Commission has concluded that nearly 20% of workers entitled to the National Minimum Wage were underpaid it in 2024.

The FWA will combine the powers of four previous Government agencies and take on responsibilities going forward that include:

⁴ 30th March 2027 for most public authority employers and 4th April 2027 for private, voluntary and all other public authority employers. Source: <https://www.gov.uk/government/publications/creating-an-action-plan-guidance-for-employers/overview>

⁵ At: <https://www.gov.uk/government/publications/creating-an-action-plan-guidance-for-employers/overview>

- ensuring that workers who should be paid the National Minimum Wage receive it
- those employers who ignore employment tribunal awards are fined and named
- protecting workers from serious labour exploitation and abuse, including prosecuting those responsible.⁶

The Government has stated the FWA will in time take on additional responsibilities.

Bereaved Partner's Paternity Leave Regulations 2026

In addition to the ERA, the Labour Government has also introduced separate legislation in the form of the Bereaved Partner's Paternity Leave Regulations 2026. This enables bereaved fathers and partners to take up to 52 weeks of unpaid paternity leave if the mother or primary adopter dies on or after 6th April 2026 within the first year of the child's life. Further details on this can be found at:

<https://www.gov.uk/bereaved-partners-paternity-leave>

Introduction of further measures in the Employment Rights Act 2025

The Government has published a timeline⁷ of when further measures from the ERA will be introduced, although for some items the final detailed content is yet to be published and will no doubt be informed by the consultations that continue to take place.

TSSA intends to publish additional updates as new measures are introduced.

Reps' action

All TSSA reps who receive this Bulletin are requested to share it with the members and colleagues they represent.

We would also ask reps to speak to non-members about joining TSSA which can be done online at: <https://www.tssa.org.uk/join-tssa>

Acknowledgments

In preparing this Reps Bulletin we want to acknowledge material published by the UK Government and ACAS which is cited in the document and footnotes.

⁶ See: <https://www.gov.uk/government/organisations/fair-work-agency/about>

⁷ At: <https://www.gov.uk/government/publications/implementing-the-plan-to-make-work-pay-and-employment-rights-act/plan-to-make-work-pay-and-employment-rights-act-timeline-update>