

EMPLOYMENT RIGHTS ACT IMPLEMENTATION: HARASSMENT AND FIRE & REHIRE

Introduction

In this Reps Bulletin we are focusing on the Equality measures and the protections against Fire and Rehire that are being introduced by the Employment Rights Act (ERA) 2025 and will go live from 30th October and 1st January, respectively.

This Bulletin should be read alongside the one that we published on changes to time limits and qualifying periods for claims at Employment Tribunals as well as provisions that will enhance trade union rights to access, organise and recruit workers.

From 30th October 2026:

The new measures are as follows:

- **requiring employers to take ‘all reasonable steps’ to prevent sexual harassment of their employees**
- **introducing an obligation on employers not to permit the harassment of their employees by third parties**
- **introducing a power that will enable the minister to make regulations at a later date, specifying evidence-based steps which employers must take to prevent sexual harassment (this will complement, not replace, the broader legislative requirement to take all reasonable steps)**

The Worker Protection (Amendment of Equality Act 2010) Act 2023 introduced a legal protection that changed the law and meant that a new legal duty was placed on employers that they “must take reasonable steps to prevent sexual harassment of their employees in the course of their employment”¹

¹ Section 40(A) of EQA

TSSA published a Reps Bulletin (EQA/038/Nov 2024) under the title of the “Change to law on Workplace Sexual Harassment” which laid out advice from the Equalities and Human Rights Commission (EHRC) on the duty introduced in 2024.

Now, the Employment Rights Act 2025 has tightened this up because from 30th October 2026, employers must take “all reasonable steps” to prevent sexual harassment of their workers.

ACAS advice emphasises that employers will be expected to take all reasonable steps “without exception” and goes on to define the meaning of all reasonable steps as:

- taking all of the steps that are reasonable for your organisation rather than just some of the steps
- focusing on preventing sexual harassment rather than only reacting to incidents
- steps that apply across the whole organisation, not just actions targeted at people involved in a previous incident

All reasonable steps include protecting workers from online and in-person sexual harassment.²

Law firm Shoosmiths emphasise that “The word “all” signals a much higher threshold, requiring employers to undertake proactive risk management, systematic planning and documented preventative action.”³

ACAS has already published guidance on the enhanced duty which can be found at:

<https://www.acas.org.uk/employment-rights-act-2025/harassment-law-changes/sexual-harassment>

In addition, the Government⁴ has stated that the EHRC will soon be publishing guidance on the improved duty on employers.

TSSA will be issuing an updated Reps Bulletin that will cover in more detail the changes in law and guidance on workplace sexual harassment.

- **introducing of an obligation on employers not to permit the harassment of their employees by third parties.**

Employers are currently liable for harassment by employees unless they have taken reasonable steps to prevent it.

From 30th October 2026, however, this duty will be expanded to cover third parties.

² <https://www.acas.org.uk/employment-rights-act-2025/harassment-law-changes/sexual-harassment>

³ <https://www.shoosmiths.com/perspectives/stories/articles/2026-a-new-era-for-the-duty-to-prevent-sexual-harassment>

⁴ <https://www.business.gov.uk/campaign/employment-changes/employers/workplace-sexual-harassment-and-third-party-harassment/>

ACAS advise that a third party could be “anyone that the worker is in contact with through work”, including customers, clients, people at conferences or in public spaces as well as service users and contractors.

It should be noted that this provision covers all the types of harassment under the Equality Act 2010, including sexual harassment and harassment related to a protected characteristic. It does not apply to harassment connected to pregnancy and maternity or marriage and civil partnership.

ACAS advice can be found at: <https://www.acas.org.uk/employment-rights-act-2025/harassment-law-changes>

- **introducing a power that will enable the minister to make regulations at a later date, specifying evidence-based steps which employers must take to prevent sexual harassment (this will complement, not replace, the broader legislative requirement to take all reasonable steps)**

The Government’s “Factsheet: Power to make provision about ‘reasonable steps’”⁵ gives some information on the reasons for this power but, as ACAS note, the details are anticipated at a later date. This is despite appearing on the Government’s list of measures that would be introduced from October 2026.

From January 2027:

- **Dismissal and rehire, aka Fire and Rehire or Fire and Replace**

Final details on these provisions are not yet available and indeed the trade unions are continuing to push for clarity and an expansion of measures to reflect the original Government promise to ban Fire and Rehire and Fire and Replace.

"Fire and rehire" occurs when an employer has decided to dismiss an employee and either:

- re-engage them on new terms
- replace them with another employee who has accepted the changed terms of employment

Until the ERA 2025 it was regarded as a lawful practice, used by employers allegedly as a last resort when agreement on contractual changes could not be reached.

Fire and Rehire or Fire and Replace has been the subject of several of the many Make Work Pay consultations published by the UK Government. In one of TSSA’s consultation responses on this subject we have told the Government:

One of the vilest practices that employers can inflict on their workers is the use of Fire and Rehire or Fire and Replace which the TUC⁶ has established through research was particularly rampant during the Covid Pandemic. One of

⁵ Available at: <https://assets.publishing.service.gov.uk/media/6968f4653f43dfed1544b0d8/preventing-workplace-sexual-harassment-enabling-regulations-about-reasonable-steps.pdf>

⁶ <https://www.tuc.org.uk/news/fire-and-rehire-tactics-have-become-widespread-during-pandemic-warns-tuc>

the most notorious examples was the decision by P&O Ferries to dismiss 786 workers without notice in March 2022, replacing them with poorly trained lower paid staff and without seemingly having much regard for the health and safety implications associated with operating shipping at sea.

Section 28 of the Employment Rights Act inserted a new Section 104(I) in the Employment Rights Act 1995, listing restricted variations to specific contractual terms, including around pay, pensions, hours, shifts (timing and duration), and time off.

This means that from January 2027, it will be automatically unfair to dismiss an employee because they refuse to accept changes to those contractual terms that are classed as restricted variations.

However, unscrupulous employers can still Fire and Rehire or Fire and Replace employees if they can show they are, or would be, in financial difficulties, as well as potentially take the same action over contractual items that are not listed as restricted.

TSSA will update reps and members when additional information becomes available.

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>

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