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Legislative Update

Employment Rights Bill: Crucial Updates for UK Employers Ahead of Final Commons Vote Tomorrow

By Suzanne Horne, Christopher Jones and Lauren Howells

As anticipated, the Employment Rights Bill (ERB) continues to evolve — the latest development being the release of an amendment paper last week. But what do these latest changes really mean for U.K. employers?

With the final vote scheduled for this Wednesday (12 March), several key amendments have emerged in the past week that should be on the radar for HR teams and business leaders.

Now, just over 150 days since its initial publication, the ERB has been refined through consultation and feedback, addressing critical concerns around collective redundancies, zero-hours contracts, Fair Work Agency (FWA) enforcement and umbrella companies. However, many uncertainties remain. Here is a succinct overview of the most important updates for U.K. employers.

Collective Redundancies

One of the most debated aspects of the ERB has been its impact on collective redundancy consultation obligations. Originally, the ERB proposed removing the 'establishment' concept from redundancy legislation, meaning that consultation requirements would be triggered when 20 or more redundancies occurred *across* a business, rather than at a single site. This raised concerns for large, multisite employers, who feared they would be in almost constant consultation, even for separate, unrelated redundancy processes at different locations.

- **Collective Consultation Thresholds**. A major new revision introduces a potential alternative threshold system for triggering consultation requirements, and commentary suggests that this would mean employers would need to consult when either:
  - The existing requirement when there are 20 or more redundancies occurring at a single establishment, *or*
  - A certain percentage or number of the total workforce is affected across the business. The exact measure will be set in future regulations, but government commentary suggests it may be a typical case of "X% or X employees, whichever is lower".
- **More Flexible Consultation Process**. Employers will *not* be required to consult all employee representatives together or seek the same agreement across all representatives at different sites. This change responds to employer concerns that the ERB could have forced a single consultation process for separate, unrelated redundancy exercises at different sites if the threshold was met.

- **Interim Relief Dropped**. The government has abandoned earlier proposals to introduce interim relief for employees dismissed in breach of collective consultation rules.

- **Higher Financial Penalties for Noncompliance**. In somewhat of a trade-off for these concessions, the government has concluded that they will be going ahead with doubling the maximum protective award for failing to consult from 90 to 180 days' pay per affected employee, significantly increasing financial risks for employers who do not comply. Reassuringly, the government maintained that tribunals will retain discretion to reduce payments based on the severity of the breach and resisted calls to remove caps on protective awards.

Employer Takeaway: The revised approach to **establishment-based** redundancy thresholds is a welcome change from the original position, offering greater flexibility for employers. However, the increased penalties for noncompliance mean businesses must tread carefully. The upcoming threshold details will be crucial, and employers should prepare for higher financial penalties to deter employers from attempting to circumvent their obligations by pricing them into restructuring costs.

Zero-Hours Contracts

In a significant change, recent legislative updates extend zero-hours contract protections and introduce new safeguards for agency workers. Key updates include:

- **Guaranteed Hours for Agency Workers**. End hirers will be responsible for offering guaranteed hours to agency workers, ensuring equal treatment with directly engaged employees.

- **Shift Notice and Compensation**. Both the employment agency and the end hirer will share responsibility for providing reasonable shift notice and compensating agency workers for last-minute changes. Financial liability primarily rests with the agency, though amendments allow for agencies to reclaim costs from hirers if they are responsible. The amendments outline that for contracts signed before or within two months of the ERB passing, agencies can recover costs from the hirer if responsible. For contracts made after this period, agencies and hirers are expected to contractually agree cost recovery terms.

- **Opting Out via Collective Agreements**. The amendments clarify that the original 'opt-out' referred to in the original publication will take the form of negotiating collective agreements with trade unions to replace guaranteed hours and shift notice with alternative terms, provided these are contractually included. Agency workers' agreements can be made with the contracting agency, strengthening union recognition.

- **Exemptions for Temporary Work**. The government acknowledged concerns but confirmed that seasonal and "*genuinely temporary*" work will be treated differently. However, there is still no clarity on what this will look like in practice.

Employer Takeaway: The increased administrative burden with agency workers, along with new contractual considerations for recouping costs, adds complexity to employer operations. Given the nature of agency work, businesses will need to carefully navigate these changes. The opt-out system, functioning through collective arrangements, could encourage more union recognition agreements, potentially reshaping employer-union dynamics more broadly.

Fair Work Agency — Expanded Enforcement Powers

In a significant move, the government has strengthened the prospective role of the FWA in compliance, giving it real enforcement power to ensure businesses adhere to wage and worker entitlement regulations.

- The FWA will consolidate enforcement functions for minimum wage, sick pay and worker entitlements, and will also have authority over holiday pay compliance. It can issue

underpayment notices, with penalties of up to 200% of the owed amount and a 28-day rectification period.

- Employers must maintain holiday pay records demonstrating compliance for six years; failure to do so may result in civil charges and fines.

- The agency will be able to bring Employment Tribunal claims on behalf of workers and provide advice in legal proceedings, even if the employee does not initiate it.

Employer Takeaway: Ensuring compliance from the outset is crucial, as proactive enforcement and financial penalties could significantly impact businesses. Particularly in light of existing legislative changes requiring overtime to be included in holiday pay, employers should review their holiday pay compliance to avoid penalties. While many advocated for the FWA to take on an intervention role to take strain off the Employment Tribunal, its increased enforcement powers may actually place it under additional pressure.

Umbrella Companies — Tighter Scrutiny

The government is tightening regulations on the use of umbrella companies, which are entities that employ workers and supply their labour to end clients via recruitment agencies.

- A legal definition of umbrella companies will be introduced, classifying them as employment businesses regulated by the Employment Agency Standards Inspectorate, later transferring to the FWA.

- Workers engaged through umbrella companies will have the same rights as those hired through employment agencies, including protection against nonpayment of holiday pay.

- From April 2026, as announced in the Autumn Budget last year, responsibility for PAYE/NICs will shift from umbrella companies to recruitment agencies or, in some cases, end clients.

Employer Takeaway: Businesses using umbrella companies must reassess their payroll strategies and compliance frameworks ahead of the 2026 deadline.

Final Thoughts From Our Team

The government continues to push for expanded workers' rights, and while some employer concerns have been addressed, key issues such as day-one unfair dismissal rights remain unresolved. Employers can take some relief from the more pragmatic approach to collective consultation, but the compliance risks have significantly increased with the doubling of the protective award.

The swift extension of guaranteed hours to agency workers was somewhat unexpected, as they were initially excluded pending consultation in the first published version of the ERB.

Additionally, many questioned the role the FWA would ultimately play, and while clarity is still evolving, it's now clear that the government intends the FWA to assume a central role in enforcing worker entitlements. While their scope appears broad, the shift towards increased compliance ultimately depends on funding.

While full clarity will come through secondary legislation, U.K. employers must prepare for heightened risks related to noncompliance and recordkeeping. For tailored guidance on how these changes may affect your business, our employment law team is ready to assist.

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