

The Employment Rights Bill Overview

The new Employment Rights Bill was published on 10 October 2024. This has been a priority for our General Secretary, who has been at the helm of the negotiations. We have undoubtedly had key wins (listed below) and we will keep Labour's feet to the fire on areas we believe are watered down or missing.

Key Wins

Repeal of anti-union laws

The repeal of the Strikes (Minimum Service Levels) Act

The repeal of key provisions of the Trade Union Act 2016 including:

- The 50% turnout threshold for industrial action (IA) ballots
- Requiring 40% of those entitled to vote in IA ballots in "important public services"
- The two weeks' notice requirement for IA ballots (will go back to one week)
- Unions having to describe the dispute, types of action and timetable for IA on the ballot paper
- The obligation to provide enhanced information to employers about ballot outcomes
- Some restrictions on picketing – including the requirement to notify the police of picket and to appoint picket supervisors
- The requirement for public services to publish facility time (and powers for Ministers to cap for facility time)
- Mandatory charges for check-off in public services
- The requirement for new members to opt into union political funds contributions
- Certification Officer (CO) powers to investigate unions, even when no member has complained
- The removal of powers for CO to impose financial penalties
- The levy on unions to cover the cost of the CO
- The requirement for unions to report to CO about political spending and industrial disputes.

New collective rights:

- Allowing electronic and workplace ballots

- A framework for a Fair Pay Agreement for Adult Social Care
- Negotiating machinery for school support staff (England only).
- Improvements to statutory recognition, including removing the 40% ballot threshold.
- A statutory two-tier code for outsourced public sector workers.
- Closing loopholes that stop workers in smaller workplaces getting consultation rights and protective awards when employers fail
- Removing the 12-week cap on unfair dismissal protection for employees participating in lawful industrial action.
- Updated blacklisting laws, although Unite will press for stronger rules

New equality and family friendly rights:

- Statutory rights for equality reps.
- Improved rights to work flexibly – limiting the reasons why an employer can refuse a request
- More protection for women from redundancy after maternity leave.
- Protection from third party harassment at work
- Day one rights to paternity leave and parental leave although the latter is still unpaid)
- Improved rights to bereavement leave
- Larger employers must publish equality action plans alongside gender pay gap reports

Other rights:

- A day one right to unfair dismissal (with a statutory probationary period)
- A new Fair Work Agency – to bring together statutory enforcement bodies
- Extended Rights to Statutory Sick Pay
- A requirement to consult with recognised unions, or workers, about the allocation of fair tips.

Key Issues

However, there are still things in the Bill that are a real concern for Unite, especially:

- Trade Union Access watered down – right to refuse
- Fire and Rehire – not a total ban
- Zero Hours Contracts – not a total ban

Trade Union Access

As a union we have been pushing for workers to have a right of access to trade unions in their workplace - as promised in the New Deal for Working People.

This Bill has new laws on that but they are so restrictive and problematic it might almost be better if they weren't there.

The Bill makes unions ask employers for the right to access workplaces. If the employer says no and we can't negotiate a deal we can only get access through a CAC process (similar to recognition) which is overly bureaucratic and could take months or even years.

This is a gift to hostile employers to delay access while they get the union busters in.

It could even be used to undermine existing voluntary arrangements where employers feel able to deny access and make unions go through the CAC route.

As drafted it certainly won't help workers who urgently need support about health and safety or harassment issues at work.

Out of all the countries in the world (like New Zealand and Australia) who have a law on right of access - this would be the least union friendly of the lot.

Fire and Rehire

In Labour's Green Paper – the New Deal for Working People – they promised to outlaw fire and rehire. This Bill does not do that.

Unite has been fighting this row back ever since it first happened. Because we have had too many members that have seen their pay taken away from them in this way by hostile employers – including over 30,000 workers in British Airways.

The language is now a bit better than it once was but it is not where we need to be.

Employers will still be able to fire and rehire if they can convince an Employment Tribunal that the reason for the cuts to pay and conditions was to “significantly reduce” or “mitigate” financial difficulties that were or were likely to affect the business “as a going concern” or ability otherwise to carry on the business activities.

Almost every employer who uses fire and rehire says there’s ‘no financial alternative’ – including BA. How are lawyers in a tribunal going to assess whether a company really has financial difficulties that are likely to affect the business as a going concern? We know they will just end up believing what they are told by the employer.

Zero Hours Contracts

The New Deal for Working People also promised to ban of zero hours contracts. This Bill does not do that either.

At the same time that the Labour Party started rowing back on Fire and Rehire they also decided that they were only going to ban “exploitative” Zero Hours Contracts.

Again - we were the only union that opposed Labour’s decision to water down this commitment. We still say Zero Hours Contracts (ZHCs) needs to be a ban – no ifs, no buts.

The Bill says employers have to offer workers on ZHCs a contract which ‘reflects their normal working hours’ over a reference period (expected to be 12-weeks) but workers can turn it down.

This just leaves the so-called ‘ban’ with more holes than a Swiss cheese. Bad employers have all sorts of options to keep on going as they are.

They could just get rid of staff in the 12 weeks period before it is possible to comply. Or they could make it clear that workers will need to turn down a proper contract in order to stay employed.

The Bill also allows the government to introduce rules capping the number of hours protected and even exempt workers who are supposed to be on short term projects.

In truth there is no reason why we shouldn't have a real ban. Employers could still use flexible working, term-time working or annualised hours.

Other

The Trade Union Act 2016's 6-month limit for industrial action ballots is still being discussed. This must be repealed.

We also have concerns about a 'simplified dismissal process' for workers in the first year of employment.

Details are not yet agreed - but for Unite it is important that:

- employers must always have a fair reason and follow a fair procedure before dismissing an employee.
- Workers must have the right to be represented by a trade union in any disciplinary hearings.

Next Steps

The Government is committed to on-going consultation and the Bill can still be amended in the Commons and/or Lords and the Government is expected to table some amendments. So, of course, we will also continue to demand improvements to the legislation as the Bill goes through parliament.

New rights are due to be effective in late 2026.

Devolution

Most parts of the Bill will apply to England, Wales and Scotland. This is because employment law is devolved in Northern Ireland.