

Navigating the minefield of employing people

Beverley Sunderland
Solicitor

The three types of workers

- Employees – full employment rights
- Workers – very limited rights
- Contractors – no employment rights



Employees

- Employer dictates how, when and where work done
- Mutuality of obligation – the employer must provide work and the individual must accept it
- Employer has control– their hours, pay, holidays, when they work
- No right to substitute
- Employer provides equipment
- Employee does not have the financial risk
- Has full employment rights - entitled to a statement of terms and conditions from day 1, paid holidays, minimum wage, minimum notice, statutory sick pay, not to be unfairly dismissed, not to be discriminated against, not to suffer detriment for whistleblowing, all statutory time off such maternity, paternity, adoption, shared parental leave, 48 hour week, no detriment for being fixed term or part time, no unlawful deductions, can request flexible working

Workers

- Most casual/zero hours workers/freelancers
- They personally agree to do work themselves
- Not in business for themselves
- They can say no if you offer work to them – no ‘mutuality of obligation’
- No genuine right to substitute
- Work in return for money or benefit in kind
- Entitled to a statement of terms and conditions from day 1, paid holiday, minimum wage, protection from discrimination, detriment to whistleblowing, 48 hour average week, not to suffer unlawful deductions, not to be treated less favourably for working part time
- No entitlement to statutory sick pay, maternity/paternity/shared parental/adoption leave or pay

Contractors

- They are in business on their own account
- No direct supervision
- Provide their own equipment where appropriate
- Dictate their hours
- Right to substitute
- Take all the financial risk
- Entitled to a safe place of work
- All rights they have come from the contract
- They may have protection against discrimination under the general law of discrimination

Law changes from 6 April 2026

The important ones for you

- SSP – 3 day waiting period removed and the rate of SSP is no longer a fixed weekly rate, employees will receive the lower of the flat rate or 80% of their normal weekly earnings
- Duty to keep holiday records – holiday taken, carried over and payments in lieu of holiday
- Statutory paternity leave and unpaid parental leave both become Day 1 rights
- Shared parental leave: employees can now take paternity leave **before or after** a period of shared parental leave

Law changes from 6 April 2026

The less applicable ones

- Trade union recognition - lower membership threshold, no need to show likely support, a simple majority of those who vote in the bargaining unit will be enough to secure recognition
- Employers with 250 or more employees to publish voluntarily from April 2026 their equality action plans covering reducing their gender pay gaps and supporting women through the menopause, mandatory in April 2027
- A new state enforcement body, the Fair Work Agency (FWA), was established on 7 April. It can enforce statutory payments dating from December 2025
- Collective consultation in redundancy protective award changes from 90 to 180 days

Changes in Summer/Autumn 2026

Relevant ones for you

1. Sexual harassment & harassment: (October 2026)
 - employers must take “*all reasonable steps*” to prevent sexual harassment in the workplace
 - Legislation will specifically refer to harassment by third parties
2. Tipping laws tightening
 - 100% of tips must be passed on fairly and transparently in accordance with an employer’s tipping policy
 - Government consulting about introducing new requirements for employers to consult with workers at their place of business when developing or reviewing their tipping policies.
3. Time limits to bring employment tribunal claim extending from three to six months from date of act complained of (no earlier than October 2026)

Changes in Summer/Autumn 2026

Less relevant ones for you

1.Trade union:

- August 2026: balloting can be done electronically and in the workplace for statutory trade union ballots
- October 2026: include within s.1 statement that employees are entitled to join a trade union
- October 2026: new rights of access for trade unions

2.Procurement- two tier code

Changes in 2027

Relevant ones for you

- Unfair dismissal: six months qualifying service (January 2027)
- Cap on compensation in employment tribunal is removed. Currently, the maximum compensatory award is capped at the lower of 52 weeks' gross pay or £123,543
- Fire and rehire changes (January 2027)
- Zero hour contracts: changes to give certain qualifying workers (including agency workers) the right to be offered guaranteed hours over a defined period. Workers who want to remain on ZHCs will be able to do so.
- Flexible working changes: introduction of “reasonableness” requirement when rejecting a request
- New statutory bereavement leave: Consultation is ongoing to extend Statutory Parental Bereavement Leave to a wider number of family than just the parents
- Pregnancy and new mothers: enhanced dismissal protections

Changes in 2027

Less relevant for you

- Collective redundancy consultation: threshold changes are likely
- Employers with 250 or more employees to publish their equality action plans covering reducing their gender pay gaps and menopause action plans (April 2027)
- Non-disclosure agreements: further restrictions

Sexual harassment

- Equality Act 2010 originally introduced the obligation to prevent employees being sexually harassment by third parties – was repealed as considered unworkable
- Worker Protection (Amendment of Equality Act 2010) Act 2023 reintroduced it with effect from 26 October 2024.
- Although it does not specifically say ‘by third parties’ the EHRC guidance makes it clear it is and the law will change to reflect this.
- Obligation of ‘reasonable steps’ to change to ‘all reasonable steps’
- EHRC has set out 8 steps:

<https://www.equalityhumanrights.com/employer-8-step-guide-preventing-sexual-harassment-work>

- ACAS also offer excellent guidance

<https://www.acas.org.uk/sexual-harassment/steps-for-employers-to-prevent-sexual-harassment>

Practical steps to take

- Do a risk assessment – here is sexual harassment likely to take place – keep a copy of it and update it regularly
- Have a sexual harassment policy and ensure all workers know it is there and have read it
- Do training for all workers about sexual harassment
- Ensure any contract you enter into with an end user makes it very clear harassment on any grounds will not be tolerated
- Ensure managers or those present at events have had training on sexual harassment
- Ensure your workers have a clear plan as to who to go to at the venue if they experience sexual harassment
- Take extra care over younger workers
- Make sure they are not put in harms way with travel to and from venues

Hiring

- It is a day one right that all employees and workers have a written statement of terms and conditions
- You can get templates from ACAS
<https://www.acas.org.uk/templates-for-written-statements>
- Make sure they are signed, especially if you want to rely on clauses allowing you to deduct money from their salaries
- Ensure you do your right to work checks
- Make sure they know your policies, especially in relation to sexual harassment

Firing

- Currently only employees employed for 2 years or more can bring claims for unfair dismissal and compensation is capped at **£123,543** or a year's pay whichever is the lower
- From 1 January 2027 this changes to six months and compensation is uncapped.
- Fair reasons: redundancy, capability, conduct, illegality, 'some other substantial reason'. All but gross misconduct require a process and for conduct and capability this means a series of warnings.
- Make sure the required notice is given (contractual or one week for each complete year worked up to a maximum of 12 weeks – whichever is the greater). If the contract says it must be given in writing then do it.
- There is NO ability to agree to a reduction in the notice period and pay the money ex gratia – new rules called post employment notice pay came into effect in 2023

AI

- All employers, ACAS, the Tribunal system and the Information Commissioner (for subject access requests) are overrun with long AI generated grievances.
- Use AI to your advantage in terms of replying to DSARs
- Employers are asking employees to come in person and explain their issues rather than rely on what AI tells them to.
- All CVs are AI generated, and interviews on-line are being answered by AI tools so ensure interviews in person.

When to seek legal advice?

- There is a saying: ‘if you think taking legal advice is expensive, it is nothing compared to the cost of not taking legal advice’.
- There is a lot of basic information on-line in terms of process and potential claims – on websites from specialist employment solicitors.
- AI can help but it is in its infancy, lacks nuance, makes cases up and has no ability to weigh up the commercial issues. It can tell you that you have done everything correctly and there is no basis for the grievance but not that the employee can be off for six months on full pay, they have restrictive covenants preventing them from going to a competitor which they might be trying to wriggle out of or the practicalities of e.g cost warning letters.
- Once you have gone into writing on something it is hard to roll back from it so at the very least take advice early to have a plan, even if you execute it yourself

Crossland Employment Solicitors

99 Park Drive

Milton Park

Abingdon

OX14 4RY

www.crosslandsolicitors.com

Tel: 01235 841506

Beverley@crosslandsolicitors.com