EMPLOYMENT RIGHTS ACT BRIEFING – MARCH 2026

Headline position

1. Make UK has welcomed the passage of the Employment Rights Act 2025, ending a long period of uncertainty. We are pleased that our members' views have already had a big impact on the Government's wider Plan to Make Work Pay, and look forward to continuing to work with the Government on the remaining policy decisions and implementation of the Act over the next two years to ensure that new measures can be made to work for businesses.
2. We support the Government's efforts to eradicate exploitative labour market practices where they exist, but it is crucial that this is balanced so that the overwhelming majority of quality manufacturing businesses can operate flexible workforces and recruit the people they so badly need. The legislation begins to constructively set out how this balance might be struck, but getting the detail right is the critical next step of the process.
3. In November 2025, the Government made a significant amendment to the Act to insert a qualifying period of six months for the right to protection from unfair dismissal. This is a change for which Make UK had long argued and represents a major improvement to the legislation for businesses, who were concerned about the potential disincentive to hiring.

State of play

4. The Government has made welcome changes to the Act during the legislative process, including:
    a. **Protection from unfair dismissal:** retaining a six-month qualifying period for the right to protection from unfair dismissal and no longer proceeding with a statutory probation period. Moving to a day one right would have significantly increased the risk of employers facing employment tribunal claims at a time when the system is already severely backlogged, and no proposal for a 'light-touch' fair dismissal process in a statutory probation period would ultimately have removed this risk. This would have resulted in lower hiring, particularly among candidates with recent experience or at higher risk of inactivity – precisely the candidates the Government is trying to include in the labour market with its Get Britain Working agenda.
    b. **Fire and rehire:** broadening the scope of reasons for which it is legitimate for an employer to dismiss an employee for failing to agree a variation of contract, and subsequently re-engaging them on different terms and conditions. This ensures that employers can restructure where necessary and makes it easier to achieve broad consent for changes to employment contracts across groups of workers.
    c. **Trade unions:** compromising on a 10-day notice period for industrial action, as opposed to reducing to 7 days. The Trade Union Act 2016 increased the notice period to 14 days; the Government's intention was to revert to the pre-2016 position of a 7-day notice period. The compromise reached in December 2024 of a 10-day period helps to mitigate employers' concerns about the impact on productivity and the potential disruption caused by industrial action at shorter notice, although there remain concerns over the increased ballot mandate to 12 months and the broader industrial relations framework proposed by the Act.

d. **Collective redundancy:** allowing further consultation on abolishing the so-called 'establishment test'. This enables more input from industry and reduces the risk of imposing measures which would require significant consultation across the business on collective redundancy, increasing complexity and confusion for employers. Removing the establishment test would be harmful to productivity and be likely to result in a high level of unintentional non-compliance with a complex set of measures.

5. Following the legislation receiving Royal Assent in December 2025, there remain a number of critical policy decisions still to be made in consultation with stakeholders. These decisions will be introduced through secondary legislation in 2026.

6. Key areas include:

    a. **Right to guaranteed hours:** the Government will consult on the proposed reference period of 12 weeks; the threshold for eligibility in terms of hours worked per week; and measures relating to notice of shifts and compensation for shift cancellation and postponement at short notice.

    b. **Trade unions:** the Government has recently closed its consultation on trade union access rights and employers' duty to inform workers of their right to join union, where we have urged the Government to enable sufficient time and flexibility for businesses and unions to negotiate. It is still to consult on a potential decision to lower the union membership threshold for statutory recognition from the current 10% to as low as 2%.

    c. **Fire and rehire:** further consultation on the scope and application of automatic unfair dismissal in cases of failure to agree on variation of employment contracts, specifically on changes to expenses/benefits and shift patterns. We are calling for both of these areas to be excluded from the definition of 'restricted variations' which would lead to automatic unfair dismissal.

    d. **Flexible working:** implementation of the requirement for employers to rely on a reason for declining a flexible working request.

Current priorities for manufacturers

7. **Protection from unfair dismissal:** The Government should not implement the changes to unfair dismissal until: guidance has been published on compliance; Acas has updated its code of practice on disciplinary and grievance procedures; and proposals to clear the backlog of cases in the employment tribunal system have been published. Implementing the changes before these steps have been taken risks creating major uncertainty from employers, leading to potential spikes in dismissals and ET cases, and a further slowdown in hiring.

8. **Zero hours contracts:** The reference period should be a minimum of 52 weeks rather than 12, the Government needs to define 'low hours' to avoid part-time work and annualised hours being captured and make sure it is targeted at genuinely exploitative practices. On this basis, we would recommend further scrutiny of the Act to ensure that only 'exploitative zero hours contracts', as per the Plan to Make Work Pay, are targeted by this measure. The right to guaranteed hours should also be a right for the employee to request or claim a contract reflecting their regular working hours, rather than an obligation on the employer to make an offer regardless of circumstance.

9. **Trade union reforms:** Reforms should ensure that trade union recognition and industrial action require strong support from across the workforce, and focus on enabling employers to engage effectively with their workforce and plan efficiently in the event of industrial action being taken.

10. **Statutory sick pay:** The Government's decision to set the lower earnings replacement rate at 80% of earnings will lead to a significant cost for business which should be mitigated by the re-introduction of a rebate for SMEs.

Assessment of costs

11. The Government's initial impact assessment of the Bill puts the total financial cost of the measures to employers at 'up to' £5 billion, with a breakdown of the estimated impact of the individual measures from the Bill. The revised impact assessment published after Royal Assent significantly downgrades the potential cost to employers – but given the number of policy decisions outstanding, and that it excludes the lifting of the unfair dismissal compensation cap, the IA is likely to understate the impact of the Act on businesses.
12. A significant portion of the estimated cost of the Bill is attributed to the establishment of a Fair Pay Agreement for the adult social care sector and the creation of the School Support Staff Negotiating Body, meaning that the two most expensive policies from the Bill will have no direct impact on manufacturers.
13. The biggest direct cost to manufacturers from the Bill is likely to be the reforms to Statutory Sick Pay, where the removal of the three-day waiting period and lower earnings limit is estimated to cost £1.07 billion to businesses across all sectors. The right to guaranteed hours – including the right to reasonable notice of shifts and proportionate compensation for cancelled or postponed shifts – is also likely to have relatively high-cost implications compared with other measures in the Bill (estimated in total at c.£550 million across all sectors).