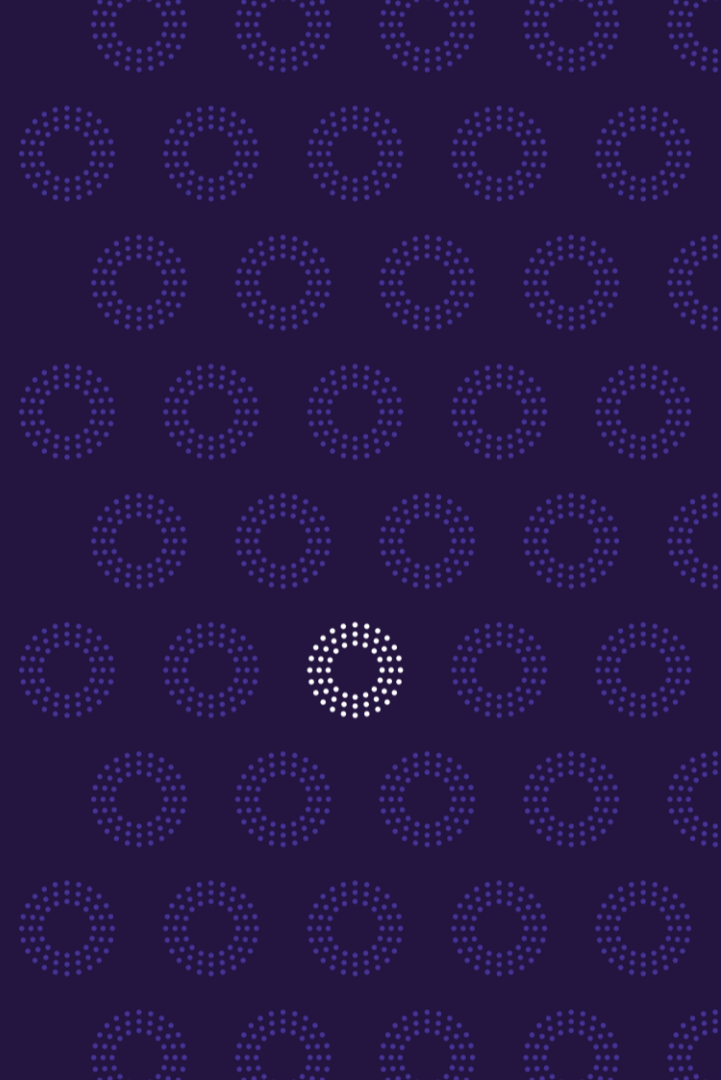


The Employment Rights Bill: navigating the new landscape

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What we will cover today

- Anti-harassment preventative duty
 - Unfair dismissal
 - Flexible working
 - Zero hours contracts
 - Fire and rehire/ collective consultation
 - Other changes
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Preventing sexual harassment

Duty to prevent sexual harassment

- October 2024: duty to take reasonable steps to prevent sexual harassment in the course of employment
- Compensation uplift – up to 25%
- In force 26 October 2024
- Updated EHRC guidance

EHRC Guidance: key points

- Anticipatory duty
- Importance of risk assessment
- Third party harassment
- Dealing with complaints

What steps should employers be taking?



What will change

- All reasonable steps (sexual harassment)
- Liability for third parties (unless taken all reasonable steps)
- Protected disclosures

Unfair dismissal



- Removal of 2 year qualifying period
 - Specific rules for probation period
 - When?
 - Autumn 2026
-

What will the impact be?

More ET
claims

More
settlement
agreements?

Increased risks

Increased
costs

What makes a dismissal fair?

Reason

- Conduct, capability/capacity, redundancy, breach of statute, SOSR
- Importance of clear standards: policies, KPIs, etc

Process

- ACAS Code, redundancy consultation, sickness procedure, etc
- Right to be accompanied
- Appeal

Fairness

- Range of reasonable responses
 - Size, resources, merits of the case
-

Probation/ “initial period of employment”

IPE

- Max length – 9 months?

Dismissal

- Conduct, capability, stat breach
- SOSR related to employee

Fairness

- Modified test and process
 - But can still bring UD claim
-

How to prepare

Recruitment

- Screening
- References
- Effectiveness of current practices?

Contracts and policies

- Check notice and PILON clauses
- Set clear performance and conduct standards

Management

- Performance targets and regular review
 - Factor in extra time for full redundancy consultation etc
-

Flexible working



- Statutory grounds remain
 - Refusal must be reasonable and explained
-

Grounds for refusal

Cost

Can't reallocate
work

Can't recruit to
reallocate work

Impact on
quality

Impact on
performance

Can't meet
customer
demand

Lack of work
during
proposed hours

Planned
workforce
changes

Zero hours contracts

“banning exploitative zero-hour contracts”

~~Complete ban~~

Complex provisions
about offering
guaranteed hours



What's changing?

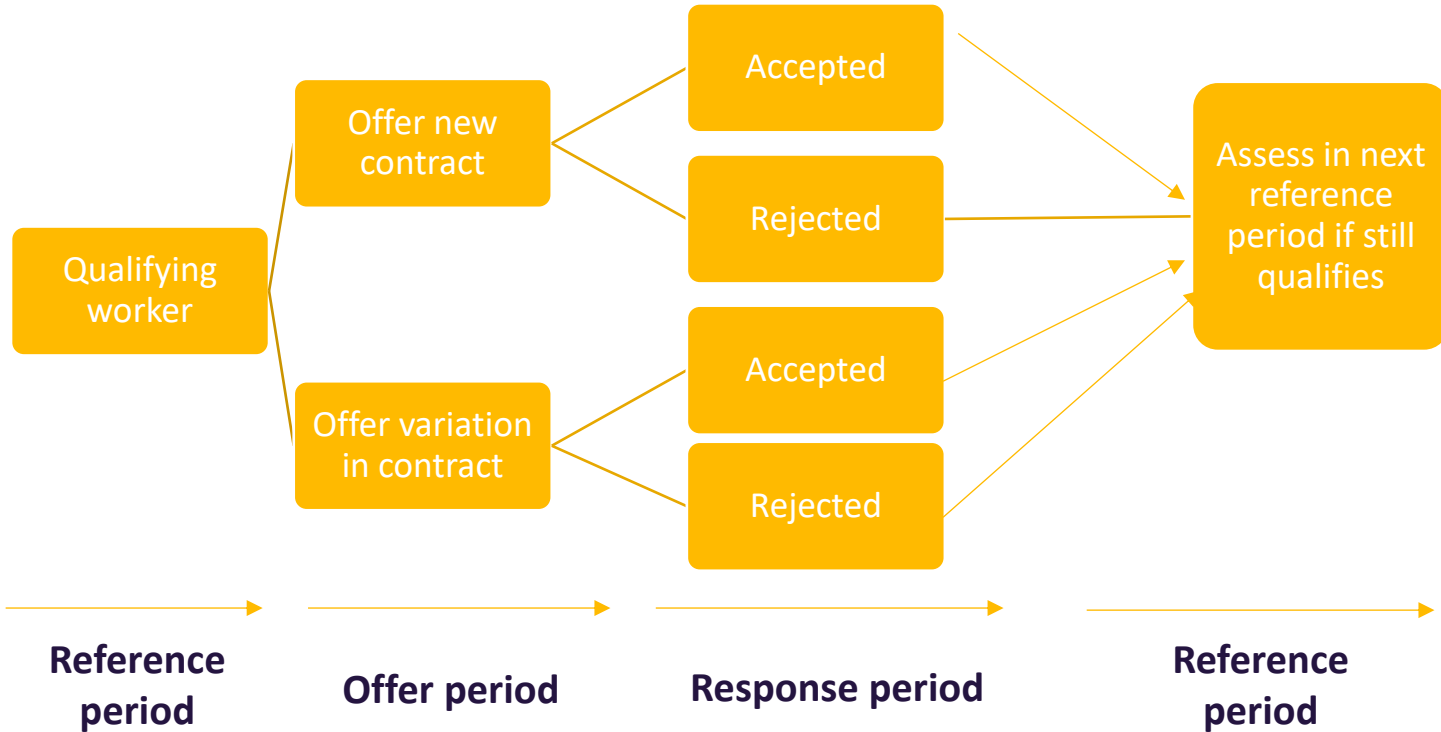
Duty to offer guaranteed hours

- Duty to offer guaranteed hours to zero hours employees /workers who satisfy conditions
- Not yet for agency workers...but watch this space

Shifts

- Right to reasonable notice and payment of compensation if shift is cancelled, moved or curtailed
 - Details to be set out in regulations
-

Duty to offer guaranteed hours



Qualifying workers

- Zero hours or guaranteed hours below threshold
 - In reference period:
 - work more than minimum hours
 - + do so regularly
 - Exceptions:
 - Termination for fair reason during reference period
-

Offer requirements

Hours

- Reflect hours in reference period
- Regulations may require more detail (days/times)

Duration

- Not limited term unless reasonable – must be justified by specific business needs

Other

- No less favourable than terms in reference period (with limited exceptions)

Remedies for breach: declaration and compensation (capped)

Shifts: notice and cancellation

- “Reasonable” notice – TBC
 - Applies to:
 - ZHC
 - Guaranteed hours but variable times (+ other conditions TBC)
 - Shifts outside usual working pattern
 - Notice of shift itself, cancellation, change, curtailment.
 - Payment for cancelled, moved or curtailed shifts: amount TBC
-

How to prepare

Challenge	Solution?
Seasonal workers: retrospective hours pose challenges	Analyse prior years' working patterns – do you need zero hours/ low minimum hours contracts? Careful management of reference periods/ short contracts?
Predicting need	Data analysis?
Shifts: notice and cancellation fees	Automation?

Restructuring and redundancy




What's changing?

- Fire and rehire/ fire and replace:
automatically unfair except limited
circumstances
 - Collective redundancies
 - When? 2026
-

Collective redundancies: recap

Proposing to
dismiss 20+ /100+
within 90 day
period

Dismissals to take
effect 30/ 45 days
later



Information given
to employee reps
and HR1 submitted

Woolworths and what's changing

- “*at one establishment*”
 - *Woolworths* case: establishment = entity to which employees assigned
 - New law: ~~at one establishment~~
 - Focus on employing entity
-

Key challenges

Legal

- 90 day period
- HR1 – criminal liability
- Protective award
- Waiver of claims

Practical

- Multi-site employers
 - Keeping track of unrelated redundancy exercises
-

Fire and rehire

Now	What's changing
Fire and rehire = potentially fair where compelling business reason for + fair consultation	Automatically unfair unless needed to eliminate/ mitigate financial difficulties threatening business as going concern. Further factors re overall fairness
Fire and replace: unlikely to be fair	Automatically unfair unless above conditions met (harder to justify?) Then ET to consider further factors re overall fairness

Further changes?

Interim relief

- Bring claim within 7 days
- Paid salary etc until trial
- “Likely” to succeed

Protective award

- Increase to 180 days’ pay OR remove cap altogether
-

Preparing for these changes

- Review contracts now:
 - Flexibility and variation clauses
 - Systems for monitoring number of redundancies
 - Bear in mind when planning reorgs
-

Other changes

- SSP from day 1 of absence
 - Parental leave & paternity leave from day 1
 - Family leave changes
 - Bereavement leave
 - Tips: requirement to consult
 - Trade union reforms
 - Fair Work Agency
 - Equality action plans
 - Disability and race pay gap reporting
 - And more!
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Any questions?

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