

## FortyTwo Talks: Everything you always wanted to know about the Employment Rights Act 2025... but were afraid to ask

*Iris Ferber KC & Carolina Bax*

**Iris Ferber KC:** Hello and welcome to *FortyTwo Talks*, the podcast which takes a deep dive into the legal world led by the experienced members of 42BR Barristers.

I'm Iris Ferber KC, a member of the Employment team at 42BR.

**Carolina Bax:** And I'm Carolina Bax, I'm also a member of the Employment team here at 42BR.

**Iris Ferber KC:** And we're going to be talking today, Carolina, aren't we, about the Employment Rights Act 2025, which was the Employment Rights Bill until very recently, and this podcast is about the law as it stands today - 16 April 2026.

Carolina, now that the Bill has been through parliament, it's been enacted as the Employment Rights Act 2025, I think it's a good time isn't it to summarise the final version of the law as it stands today?

**Carolina Bax:** Yes absolutely, a good part to start with might be looking at the structure of the Act as it stands.

**Iris Ferber KC:** Good idea.

**Carolina Bax:** So, the Act is set out across six sections, and to give you an overview of what those are briefly.

Part one deals with employment rights and within there we'll be looking at some crucial changes as regards zero hours contract, flexible working and statutory sick pay.

There are some other changes that deal with tips and leave entitlements, as well as the headline change of harassment and discrimination within this section, paired with unfair dismissal.

So quite a lot to discuss within that part, isn't there, Iris?

**Iris Ferber KC:** Yes, part one is probably the one that listeners to this podcast will have heard about, perhaps they didn't realise that what they were hearing about was part one of the Employment Rights Act 2025, but all those discussions about the way harassments going to look and unfair dismissal is going to look, those all come from part one.

**Carolina Bax:** And, notwithstanding those being the key parts of part one, they are some things to look at within the rest of the Act as well.

In part two, the other matters relating to employment section, we'll be talking a little bit about annual leave records in Section 35 and collective redundancies in Sections 29 to 31.

The third part of the Act, part three, we won't be delving into as there's no crucial change within, that deals with pays and conditions in particular sectors.

And part four in turn, trade unions, perhaps a whole podcast of its own, lots of changes within that section that we'll touch upon very briefly.

Finally in parts five and six, we'll be talking about part six as regards the time limits to the employment tribunal process when discussing unfair dismissal and as regards part five, we'll be touching briefly upon the creation of the Fair Work Agency.

**Iris Ferber KC:** That's the other headline that probably people have already heard of, and we'll give an introduction to those changes too.

Well, Carolina, as you headlined there, part one is where the big, important changes are and it's fair isn't it to say it's a bit of a mixed bag of things, all sorts of stuff that the government wanted to change, most of which has gone into part one.

Shall we start at the end, if you see what I mean. Let's start with the last few sections of part one, which are the big change, the unfair dismissal changes.

So, Carolina, what are these changes?

**Carolina Bax:** So, they're very big changes, Iris. Effectively what we're looking at is a bit of a rehaul of unfair dismissal.

So first off, the qualifying period for unfair dismissal rights has been reduced to six months from two years.

**Iris Ferber KC:** From two years, so it's a big difference.

**Carolina Bax:** We've also got a removal of the statutory cap coming up within the unfair dismissal framework, and alongside that we are also looking at dismissals for refusing contract variation within Sections 25 and 28, and that applies from the 1 January 2027, for this section overall.

**Iris Ferber KC:** So, the important thing to say about that enforced date of the 1 January 2027 isn't it, is that this is not for people whose contracts of employment begin on the 1 January 2027, this is for any employee who is dismissed on or after the 1 January 2027, and those three things, the fire and rehire protection, so protection for employees dismissed for refusing to agree a contract variation, the six month qualifying period reduced from two years and the removal of any statutory cap on the amount of compensation payable for a successful unfair dismissal claim - all of those come in for anyone dismissed from the 1 January 2027 onwards.

That means doesn't it, logically Carolina, I mean I've seen people discuss this in general terms and this must be right, that if you have anything less than two years qualifying service on the 1 January 2027 and then you are dismissed on that day, or after it, you are entitled to make your claim, even though if you had been dismissed on the 31 December 2026 and you had under two years' service at that point, you wouldn't be able to bring a claim.

So, it's a real cliff edge, the dismissal from and including 1 January 2027 brings in that whole suite of new rights, that simply aren't there for a dismissal taking effect one day before that.

**Carolina Bax:** Yes, that's absolutely right, Iris, and we may be looking at really quite a substantial change to what litigation looks like in this area of law.

**Iris Ferber KC:** I think so, and I think let's spend a little bit of time talking about this particular change, perhaps more than we're going to talk about other changes in the Act because it is so important.

**Carolina Bax:** So really, I suppose we're looking at three possible consequences if you like, in terms of litigation moving forward.

Previously employers were able to rely on dismissal with relatively little exposure really, weren't they, in terms of legal consequences?

**Iris Ferber KC:** Certainly, it was a known exposure, wasn't it? Because the statutory cap was either a year's salary or it went up every year, but at the moment around £120,000, whichever was lower and a business could plan for that being their maximum exposure on unfair dismissal.

That's now gone, as you say.

**Carolina Bax:** Yes, absolutely.

And it also transforms probation periods somewhat, doesn't it? Because if we're looking at that six-month threshold beginning immediately, then any documentation needs to begin immediately otherwise any legal risk is going to escalate, isn't it?

**Iris Ferber KC:** Absolutely, so where there was a sort of, perhaps, less formal process of probationary assessment over six months, that now has to be very tight, so that if by the last day of the six months that employer is thinking of dismissing that individual for not passing their probation, they're going to have to get on with it. As you say, all the paperwork has to be in order, and they need to get on and make that decision on dismissal before the six months.

**Carolina Bax:** And I suppose finally, when looking at the anticipated removal or the increase of that compensation cap when that does materialise, there's a real cost risk there, isn't there? The financial exposure that any employer is looking at when considering a claim is going to increase enormously, and that's really something to keep in mind.

**Iris Ferber KC:** It is, and this is perhaps a place to muse a little bit on the fact that at the moment, you and I both see this all the time, that claimants who have perfectly good unfair dismissal claims also bring, let's be diplomatic, less strong whistleblowing claims or other detriment claims or discrimination claims, but the most common additional claims are discrimination or whistleblowing claims, and sometimes, let's say it straightforwardly, those claims would not be being brought except to at least give that claimant the option of removing the statutory cap from their compensation, should they be successful and therefore allowing them to negotiate for settlement with their former employer, on the basis that they might succeed in the part of their claim where there is no statutory cap.

That then allows them to negotiate for a larger settlement, even if the claim itself is not particularly strong, as long as it's not absolutely hopeless, all of the case law says that claims for discrimination shouldn't be struck out, and they will tend to go to trial even if they're weak.

Now, we don't yet know, because it's a question of human behaviour and we can't predict that absolutely, but we can guess, can't we, I think? That if you no longer need a discrimination or whistleblowing claim in order to have a negotiation with your former employer for your real losses, as opposed to your capped losses, that claimants may no longer feel the need to include those other weaker claims, and maybe, just maybe, and I really hope, I must say, that this does happen because it would be a good thing. Maybe these weaker claims which take up a lot of tribunal time and in the end are unsuccessful, will simply not be made and we may find that tribunal waiting times, case load problems, are improved a little bit by the claims that are brought, being straightforward unfair dismissal claims with uncapped compensation rather than extremely complex unfair dismissal, plus whistleblowing, plus discrimination claims. We live in hope.

**Carolina Bax:** We do, perhaps now's the right time to also bring up another crucial change that has been made, technically appearing within part six, but a good time to discuss it alongside this big headline change of unfair dismissal.

That being the time limit that we're seeing to the Employment Tribunal timeline as it stands, which is going to increase from three to six months.

**Iris Ferber KC:** Yes, this is a big deal, so you've got Section 152, we're not going to talk about sections of the Act too much, but this ones important.

The long, long Section 152 which lists all the different time limits that are currently three months in the Employment Rights Act 1996, and shifts them to six months, including the unfair dismissal time limit.

That is a big deal, there is a very big difference between having to make a claim within three months of dismissal and having to make a claim within six months of dismissal, and I think all practitioners in employment law know the tightness of the three month limit, and what a difference a six month limit will make.

Now that part, as you said, Carolina, is not actually in part one of the Act, even though it might have been logically included in part one of the Act, it's in part six of the Act, which has just got this very neutral label, 'miscellaneous', but in fact it contains the most important new law, which is the increase of the time limits.

That as far as we know at the moment is going to be brought in, and I'm quoting from government guidance here, '*not earlier than October this year*',, not earlier than October 2026 whether that actually means that the new time limits will come in, in October, we just don't know at the moment, we will have to wait and see.

Okay, so that's the sort of headline stuff about employment rights relating to unfair dismissal in particular, shall we paddle back a bit and do the rest of part one?

**Carolina Bax:** Yes, lets start with zero hours contracts, and that's at the very beginning of the Act, we are seeing some changes in this part of the Act as well, we're not quite sure when, the government has told us it will be an expected rollout 2027, but really we're looking at a whole new statutory framework, aren't we, Iris?

**Iris Ferber KC:** Yes, absolutely.



Because there's some real changes here, in terms of the guaranteed hours and their reflection of the actual working patterns of workers as it stands. Let's go through them one by one.

That's the starting point really, isn't it? That previously there was no general right to predictable work.

**Iris Ferber KC:** In fact, you could say that that was the nature of zero hours work, that I was not regular or guaranteed.

**Carolina Bax:** Yes, and what were looking at in terms of how that's changing in the Act is that really, with having those guaranteed hours, as I say they're going to reflect the general working patterns, but they're also going to be aligned with a right to reasonable changes regarding notice of shifts.

**Iris Ferber KC:** So, if you've got your guaranteed hours, and then the employer that is employing you on a zero hours contract wants to change your shift to another shift, they have to give you a certain amount of notice of that change, but there's also, isn't there, an equivalent right, if there isn't sufficient notice of a change of shift, if there's short notice or no notice of a change of shift?

**Carolina Bax:** Yes, absolutely, compensation comes in, Iris, and we're looking at that again as being a really crucial change to this part of part one, again that's not something that workers could previously rely upon, and perhaps it's something else that may well generate significant future litigation.

**Iris Ferber KC:** It might, and I mean there's been also speculation that it may reduce employers willingness to offer zero hours contracts and it may be that in fact, in the real world, rather than in the law textbooks, zero hours contracts disappear, or substantively disappear, and the sort of predicted litigation doesn't happen, simply because



employers no longer offer those contracts because with all the additional guarantees it's no longer in the interest of the employer to offer that sort of contract.

We don't know yet, we will see what comes, but it's absolutely right that there are various new rights, including a right to compensation, which will end up being litigated if these contracts continue to be offered.

**Carolina Bax:** Yes, and perhaps some question marks in terms of the future regarding this part of the Act and its changes, such as what is a regular pattern? And how do we treat fluctuating work? But that's only something we can see as the case law evolves, isn't it?

**Iris Ferber KC:** Absolutely, we don't even yet know when this will commence, possibly from 2027 or perhaps not, so it's one to chalk up on the board and keep an eye out for it when it comes.

Similarly with flexible working changes, again we only know that the commencement date is sometime in 2027 or possibly later, we know that the closed list of reasons that an employer can give for refusing a flexible working request is going to be subject to an added test of reasonableness, whereas at the moment, an employer, so long as they rely on one of the permitted reasons for refusing flexible working, the fact that they have relied on it genuinely is sufficient.

When this new law, relating to flexible working requests comes in, there will be a test of reasonableness and Section 80H of the Employment Rights Act 1996 will give workers the right to make a claim to a tribunal for an unreasonable refusal of flexible working.

So again, as you said about zero hours contracts, Carolina, a real possibility of lots of litigation about this in future, we don't yet know what that will look like.

**Carolina Bax:** Yes perhaps, chipping in, Iris, as regards the reasonableness point, an employer now moving forward once this is implemented, will also have to explain why they believe that refusal is reasonable, and that's not something we were seeing previously, was it?

**Iris Ferber KC:** Sometimes, I mean, some employers did write letters saying, we are refusing your request on these statutory bases, and let us explain to you why, but many didn't.

Now, when this law comes in, it would certainly be a mistake not to explain why not.

**Carolina Bax:** Absolutely.

**Iris Ferber KC:** Now, we're going to go onto the next bit of part one, Carolina, which is statutory sick pay. Now, although perhaps to you and me this is a relatively straightforward, easy to explain change to the law, it's actually had a huge amount of column inches, hasn't it? People are really interested in the changes to SSP and I think that's because it really affects people, lots and lots of people.

**Carolina Bax:** Of course.

**Iris Ferber KC:** It's a sort of pyramid effect, isn't it? Right at the top of the pyramid are the people on very long term sick and there's always going to be those people, a relatively small number out of the workforce, but right at the bottom of the pyramid, the base of the pyramid is all those people who take maybe one or two days off sick and never get paid for it at all, because until last week, until the 6 April 2026, there was no right to statutory sick pay until you'd had three days off sick, that has now changed.

So, tell us, what's the new law?

**Carolina Bax:** Well, there's two main changes really, Iris, which is that in terms of how it's been reformed, the waiting period has been removed, that's the starting point.

So previously we had statutory sick pay becoming payable three days in, so on day four, but now it's payable from day one. So, there's been a shift in timescales.

The second is there's been a complete removal, or lowering depending on the situation, of what the lower earning threshold is at the moment. So, again workers may have needed to earn a minimum amount previously to be eligible.

**Iris Ferber KC:** It was £125 I think, that's now completely gone.

**Carolina Bax:** It is, and we're looking at that minimum amount for eligibility, having effectively been struck out altogether.

**Iris Ferber KC:** There's still isn't there, a rule that if 80% of your income in a particular week is less than £123.25, then you only get 80% of your actual income. You don't end up with SSP, which is greater than what you would've been earning, if you were in work, and that needs to be clarified because, when you remove the minimum pay threshold, there is the possibility that otherwise SSP might end up being greater than what you would have been earning in that week.

So, there's a tweak to the amount to make sure that you get the lower of 80% of your weekly income, or £123.25, but subject to that, the big rule is, it used to be a day four right, but now it's a day one right.

Okay, what is next? Something which there's been a lot of coverage of but actually the new rules are not going to make that much of a difference, I suspect, to most people's work, and that's to do with tips.

**Carolina Bax:** Yes, again we're looking at a starting date of October 2026, I don't have a set date for that, that's when we can expect it to be implemented.

Tipping law is going to change again in a twofold manner.

So, as an employer, there will be a need for consultation with workers or their representatives before there's a tipping policy created and alongside that, an employer will need to make sure they're updating their tipping policy, every three years.

**Iris Ferber KC:** But what there isn't, is there, Carolina, in these rules, is what the policy has to say?

**Carolina Bax:** No.

**Iris Ferber KC:** So, it is a requirement to have a policy and a requirement to keep the policy up to date and a requirement to consult on the policy with employees, but what the new tipping law doesn't say, is 'this is what your rules must contain', or what your policy must contain. Which is why I say, it's not ultimately likely to have a massive effect on people's rights in relation to tips, it's a bit more like a regulatory obligation, than a specific right given to individuals.

The next bit of art one, which really does make a direct difference to peoples working lives is family leave, and there are some quite important changes in part one, some of them are already in force, some of them came into force on the 6 April 2026, and in particular that is a more generous paternity leave, that is a day one right, and as well as being a day one right it's also cumulative now with shared parental leave, so whereas previously if as a father you took shared parental leave you couldn't then take paternity leave, now you can. And shared parental leave is also now a day one right.

The other type of leave that is coming in, this one not enforced yet, coming into force some time not before 2027, is what is being labelled as 'bereavement leave', so that is a period of unpaid leave, as a statutory right, following the death of particular family members of the employee, and there's a list of which family members would qualify the employee for that bereavement leave.

Okay, deep breath, Carolina, we're coming on now to something that really is important. Potentially this is going to sound a bit extreme, but it's really genuinely potentially important to the way that employers run their businesses overall, and that's the changes to harassment law that are coming into the Equality Act, let's talk a bit about that.

**Carolina Bax:** Yes, really such a crucial change, Iris, in terms of what we're looking at in this part of the Act, we're going to see a new liability effectively for employers for harassment from third parties and perhaps a question mark about what that really means.

**Iris Ferber KC:** Yes, I mean it's all defined, there's a form of words coming into Section 40(1A) of the Equality Act, it is "*not to permit a third party to harass a person who is the company's employee*", 'permit' is defined and 'third party' is defined, and 'third party' is defined extremely widely, it's defined as widely as it could be defined, which is that it's anyone who is not also an employee, a co-worker, of the person who has been harassed.

So, just thinking about that logically, that means that employers from October 2026, that's when it's proposed to come in, from October 2026 employers will have an obligation to take all reasonable steps to prevent, which is to say not to permit, a third party to harass their employees.

And for a company running a pub, that will include the customers in the pub. For a company running a hospital or for an NHS trust, that

will mean the patients in the hospital, for a transport network. For a rail company or a bus company, that will mean the travellers on the bus or the travellers on the train.

That's just three examples, but you can see, can't you, that anything which encapsulates a person who is not a co-employee, it could be anyone, it could be a bus driver who gets abused by a person walking down the street, not even on the bus, it really is as wide as that.

So, how employers will manage that risk, manage that obligation, is I think at the moment unclear, because it is such a very significant widening of the obligations relating to harassment of staff.

**Carolina Bax:** Yes, and perhaps one of the issues is that when looking at what steps they need to take, that shift we've had from the current law which is reasonable steps, and an employer now from October 2026 needing to take more reasonable steps, is that we don't have the law specifying as it stands, what reasonable steps actually mean, do we?

**Iris Ferber KC:** No, and it's worth saying isn't it, that there are two things changing relating to harassment in October, there is what we've been talking about, which is third party harassment, and there's also the prevention of sexual harassment obligations, which are lined up with that expansion of harassment law to third parties, so that from October 2026 employers will have not only the obligation not to permit a third party to harass their employees, but they will also have to take all reasonable steps to prevent sexual harassment of their own employees, that's Section 40A of the Equality Act.

As you say, Carolina, we've got these two massive obligations, including all reasonable steps, with it currently being written into the Equality Act that the Secretary of State will be able to pass regulations to state what steps are going to be included in the list of all reasonable

steps, as things stand now, we don't yet know what that's going to look like and I posed a question, which you and I talked about a little bit earlier before we started recording this podcast, which is to a judge, hearing a claim about a failure to prevent sexual harassment of an employee, what is going to be the difference between an employer taking reasonable steps, and an employer taking all reasonable steps?

**Carolina Bax:** Absolutely.

It really is quite difficult to see how those two things are different, bearing in mind that in English law, the word 'reasonable' incorporates into the law an objective test already.

So, it already means, if there's a requirement to take reasonable steps, that a judge can look at what an employer has done and decide for themselves whether what they did was reasonable.

Now, how does adding the word 'all' to that test, change the test?

It must change it, because Parliament has explicitly decided to add that word in to make it a wider obligation. So, it must be a wider obligation, but I don't think yet we know, how the tribunals are going to interpret that test and make it wider than the existing reasonable steps test.

**Carolina Bax:** No, we're going to have to wait for the case law to tell us, aren't we?

**Iris Ferber KC:** We are, and it's going to be very interesting.

Okay so, assuming all of the provisions that we've discussed come in by October 2026, let's just briefly summarise those for a moment, or some of them at least.



We're going to see significantly increased obligations relating to harassment of employees.

We're going to see, and we already are seeing more generous paternity and parental leave.

Policy requirements relating to tipping.

More generous statutory sick pay, day one statutory sick pay.

And we're going to see a situation where by October 2026, and certainly by January 2027, if you are advising a company or an employee who's just been dismissed or is threatening to be dismissed, you are going to be trying to work out, between October 26 and January 27, what that persons qualifying service actually is, what the time limit for their claim is, and whether the statutory cap applies, and that is going to be significantly affected by what point in time they are dismissed.

So, all of those things are going to come in as really significant issues to think about between October 2026 and January 2027, when all these areas of law are all shifting and moving towards the new unfair dismissal regime.

Okay, I think we've probably said enough about part one, haven't we?

Shall we touch on parts two, three, four and five now?

**Carolina Bax:** I think we have, yes, lets have a whistlestop tour of part two, which is other matters relating to employment, and let's start with collective redundancies.

This is a part of the Act that we've seen in terms of its new changes, already implemented on the 6 April 2026, so let's summarise that.

Effectively we had collective redundancy rules already, but the penalties that apply to that and the enforcement that applied to that were somewhat limited, now any errors that are going to be in the process, may well result in a higher financial penalty, or even increase litigation exposure.

**Iris Ferber KC:** And in particular it was 90 days previously for the maximum award, and it's now going to be 180 days for the maximum award, for the worst breaches of consultation on collective redundancies.

**Carolina Bax:** Yes, and also within part two, the other headline change, is of course, the need to keep employee annual leave records.

**Iris Ferber KC:** That's something we've heard and awful lot about actually, even though it's a short bit of part two it's had a lot of column inches, it's important, it actually is a bit surprising that employers haven't had to keep records of annual leave previously, but now they must.

**Carolina Bax:** Yes.

**Iris Ferber KC:** Okay, what about part three, this is going to be really, really quick, because it's all about paying conditions for school support staff, ie staff who are not teachers but are supporting teachers in schools, workers in the social care sector and sailors.

So, those three sectors have new rules on paying conditions.

Part four is all about trade union rights, that deserves a podcast all of its own, there are all sorts of new rights and extended rights, relating both to the practicalities of trade union membership and work, and also strikes in particular.

And then, shall we say a little bit about part five?

**Carolina Bax:** Yes let's. In part five, we're looking at enforcement of labour market legislation.

So, really the key change to think about here is the establishment of the Fair Work Agency, again that's already come into play on the 7 April 2026, and just to give you a short summary of what that does is it brings together enforcement bodies that already exist, and it also takes on enforcement of other employment rights, so that's for example, holiday pay or statutory sick pay.

**Iris Ferber KC:** I think the one headline that really struck me relating to part five, and the creation of the Fair Work Agency, is the absolutely new, shiny, new, never existing before, right, ability, for this new agency, the Fair Work Agency, to make a claim on behalf of a worker in the Employment Tribunal, essentially to stand in the shoes of an employee or worker and bring a claim that that employee or worker has chosen not to bring.

It is sort of a representative capacity, it is a real departure from the way that employment litigation operates at the moment.

So, Carolina, really radical changes already in place and coming up to unfair dismissal law and to harassment law.

Some other less radical changes, but quite important day to day changes like SSP, like keeping annual leave records, to all sorts of other little aspects of employment law, and perhaps we should say stay tuned for more podcasts, because as these new laws develop and as we get some cases that tell us what 'all reasonable steps' might mean, what the new harassment provisions might mean, and all of the other things we've been chatting about today, as we start to see those cases we're going to do some more podcasts and talk about that new law.

**Carolina Bax:** We are, and hopefully you'll be listening to us on those podcasts sometime soon, but in the meantime, thank you very much for tuning into *FortyTwo Talks*.

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