



## Season 3

### Episode 1 – What's on the horizon for employment law in 2025? with Kelly Thomson and Mimosa Canneti

**Ellie:** Hi, and welcome to the Work Couch Podcast, your fortnightly deep dive into all things employment. Brought to you by the award-winning employment team at law firm RPC, we discuss the whole spectrum of employment law with the emphasis firmly on people.

My name is Ellie Gelder. I'm a senior editor in the employment engagement and equality team here at RPC. And I'll be guiding you through the dynamic and ever-changing landscape of employment law, unpacking the people challenges that businesses face in today's environment. We hope by the end of the podcast that you'll feel better placed to respond to these people challenges in a practical, commercial and inclusive way. And to make sure you don't miss any of our fortnightly episodes please do hit the like and follow button and share with a colleague. So a very happy new year to everyone and a warm welcome to season three of The Work Couch. We are kicking off the new season with a look ahead to 2025, where we will explore the employment law changes on the horizon, as well as what you can be doing to prepare. And with me to guide us expertly through these changes is Kelly Thomson, partner and ESG strategy lead for RPC and trainee solicitor in our employment team Mimosa Canneti Hi both, thanks so much for joining me today.

**Mimosa:** Hi Ellie, I'm really pleased to join you today.

**Kelly:** Hi Ellie, it's great to be back on the Work Couch as ever. I can't quite believe we're on season three already.

**Ellie:** It's a big moment. Season three, it has flown by because there's just always so much to talk about. So thank you both for joining me. And yeah, let's start with the development that is or it certainly should be at the forefront of every employment lawyer and HR specialist's mind. It is the Employment Rights Bill and it's been described as a once in a generation overhaul of workers' rights.

**Kelly:** Quite.

**Ellie:** There are 28 proposed changes, which really highlights the government's bold approach to wide scale employment law reform. And we have spoken already a lot about the proposed changes on the Work Couch. Just towards the end of season two, I spoke to Patrick Brodie, partner and head of the employment team here. And he explained the changes to unfair dismissal rights, flexible working, restrictions on so-called fire and rehire measures and lots more. And we'll include a link to that [previous episode](#) but for the purposes of today, Kelly, what else can we expect from the Bill in 2025 and beyond?

**Kelly:** How long have you got Ellie? Yeah Patrick's episode is a definite must-listen but on your question of what else there are lots of other areas of reform proposed in the Bill and I'm going to start with an area that's pretty complex actually but really important and that's trade union rights and so we've got a Labour government so perhaps unsurprisingly a good chunk of the Bill is aimed at strengthening union rights.

**Ellie:** Hahaha!

**Kelly:** And doing away with the majority of what the government describes as unnecessary restrictions and those unnecessary restrictions were contained in the Trade Union Act of 2016 which was brought in by the previous Conservative government. So it does this kind of roll back on that Act strengthening of union rights in a number of different ways in the Bill from changing the rules on strike action and when that is lawful to how employers treat workers who take part in strike action and all the way through to things like unions, access to the workplace and lots of other things in between. So if we kick off with the first change that relates to blacklisting of workers who are trade union members or who take part in trade union activity.

**Ellie:** And just for those who are unfamiliar with that term, Kelly, what does blacklisting mean in this context?

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- Kelly:** Sure, so from an employment law perspective, blacklisting is essentially compiling information about a person’s trade union membership or union activity with a view to that information being used either by employers or employment agencies for the purposes of discrimination. So that’s the reason that the information is compiled. So you’re on a list, we won’t give you a job, that kind of activity. And that discrimination...could be related to recruitment or in relation to the treatment of workers once they’re in the business and that practice of blacklisting that I described is already currently prohibited by legislation. But what the Employment Rights Bill is proposing to do is extend that protection so that it will apply not just to lists that are compiled with the blacklisting kind of purpose but also lists that are subsequently used to discriminate even if they weren’t prepared for those purposes. And the government have said really interestingly that this will include lists created by predictive technology as well as by humans. For example that could include a situation where AI has created a list of workers which is subsequently then used to discriminate against individuals based on their trade union membership or activity. The intention in the Bill as well is also to prohibit third parties from compiling blacklists and not just those in an employment relationship.
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- Ellie:** And Kelly mentioned that there’s going to be changes to the rules around strike action, Mim, so just explain for us what the Bill proposes in that area.
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- Mimosa:** Sure, well the Bill introduces significant relaxation to the existing rules on industrial action, which does include strike action, and it does this in a few ways. So looking first at the threshold requirement. So this is the threshold for industrial action to be lawful. And currently for an industrial action ballot to be valid, 50% of trade union members who are entitled to vote must vote in favour of such action. So the Bill removes this threshold and instead requires a simple majority of those voting for a ballot conducted by trade union for the industrial action to be successful. And there’ll be no requirements for any level of turnout. So this reform really does represent a massive shift. And secondly, the Bill proposes to reduce the length of notice that a trade union must give the employer of industrial action from 14 to seven days. And just to be clear, this is after the union has secured a ballot mandate, but before any industrial action is taken. And in terms of the information that’s required on the ballot paper itself, the Bill no longer requires unions to include a summary of the matters in dispute to which the proposed industrial action relates nor are they required to indicate the period within which the industrial action is expected to take place.
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- Ellie:** Okay, so Kelly, will the Bill strengthen the existing protections for workers who take part in strike action?
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- Kelly:** Yeah, currently one of the key kind of pieces of legislation is the Trade Union and Labour Relations Consolidation Act 1992, super catchy. It usually gets, it usually gets shortened to TULCRA by employment lawyers. But actually, I just want to take this opportunity to point out it’s actually TULR(C)A. I know, which doesn’t, it doesn’t roll off the tongue, but it always, in my kind of quite sad way, it always sort of...
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- Ellie:** I know. That it doesn’t sound as good, does it? No. Yeah, yeah. Okay, yeah. We’ll cope with that, yeah.
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- Kelly:** scratches my brain but anyway we’ll put that to one side Ellie I’m coping with it I’m working through. So currently section 146 of TULR(C)A protects workers from being subjected to a detriment related to trade union membership or taking part in trade union activity so that sounds on its face kind of pretty broad however there was a Supreme Court case last year called *Mercer v Alternative Future Group* and they found that it’s not kind of all encompassing protection that section 146.
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- Ellie:** Hehehehe
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- Kelly:** and they said that it doesn’t extend to protecting workers from detriment short of dismissal for having participated in official strike action. So anything short of dismissal doesn’t fall within that protection. Given that loophole, that lacuna, the Supreme Court also made a declaration that this lack of protection means that section 146 is actually incompatible with article 11 of the European Convention on Human Rights, which protects freedom of assembly and association.
- So the Employment Rights Bill looks to address that incompatibility, close that lacuna, that loophole and provide that workers as well as having the right not to be dismissed, they also will have the right not to be subjected to detriment if that detriment is for the sole or main purpose of preventing or deterring the worker from taking protected industrial action or to penalise them for having done so.
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- Ellie:** Okay, so the changes that you’ve both talked about so far apply to those employers that are unionised. But the Bill also introduces measures to simplify the process for unions to gain statutory recognition. So, Mim, does that mean we could see a growing union presence in some sectors?

- Mimosa:** Yeah, that’s right, Ellie. So just to briefly explain where an employer refuses to recognise a union voluntarily, the union may apply to the Central Arbitration Committee, the CAC, to obtain statutory union recognition. And the current process imposes various high hurdles on the applicant union, which the Bill does remove. So firstly, the Bill deletes the current requirement for unions to have the support of at least 40% of the workforce in the proposed bargaining unit in a trade union recognition ballot. In future, unions would only need a simple majority of those voting to win. Secondly, the Bill deletes the requirement for a union to demonstrate on application to the CAC that they are likely to win a recognition ballot.
- So in future unions would only need to show the CAC that they have 10% membership of the proposed bargaining unit for the application for recognition to be accepted by the CAC. And finally, the Bill enables ministers to vary that 10% membership requirement on application within the parameters of 2% to 10% as set out in the Bill.
- And the government has said that it will consult on this threshold. And so these are undoubtedly major changes and will certainly make it much easier for unions to gain statutory recognition. At the moment, the CAC receives on average only 60 trade union recognition cases each year. So it will be interesting to see whether the relaxation of the statutory recognition regime leads to more applications from unions who’ve not been able to reach voluntary agreement or whether it leads to more voluntary agreements being reached, avoiding the need for the statutory process. So let’s wait and see what the outcome of the consultation says as well.
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- Ellie:** In your view, Mim, are there any changes to trade union rights contained in the Bill that are particularly controversial?
- Mimosa:** Yes, I think two stand out for me. Firstly, clause 46 of the proposed Bill introduces a framework to facilitate union access to the workplace, which could certainly be seen as controversial. The Bill contains a lot of quite complicated details on how this would work in practice, but essentially this change will enable any union to request access, so physical entry to a workplace for the purposes of meeting, representing, recruiting, or organising workers, whether or not members of a trade union, or to facilitate collective bargaining. But this doesn’t include access to organise industrial action. So this is a big change from the position today, because unions that aren’t recognised by employers currently have very limited rights of access.
- And as I said, this is a complex framework and we’ll need to wait for regulations to clarify things like what the forms of an access request should be and what information must be given and also the circumstances in which it would be unreasonable to refuse access. So I think you can definitely see this as a potential avenue for litigation. And secondly, another interesting change intended to strengthen the collective worker voice and raise awareness of employees’ rights to join a trade union is the new duty on employers to provide a written statement to employees of their right to join a union. And so that information must be given at the same time as a worker is given their written statement of employment particulars, which is required under Section 1 of the Employment Rights Act 1996. If the statement is not given to them, it’s proposed that the consequences will be the same as a failure to give employment particulars. So two to four weeks’ pay capped as extra compensation in the employment tribunal, but only where another successful substantive claim is brought. Again, we’ll have to wait for secondary legislation to see the finer details.
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- Ellie:** So we talked a lot about different changes there to trade union rights, Kelly. Would you say this is a particularly drastic shift from what the current law says that we have in place today?
- Kelly:** In a word, yeah. If you compare these reforms to what we’ve got in place today, then they definitely signal a major shift. But in the round, the changes really, they largely, not entirely, but they largely bring us back to where we were in 2015 before the Trade Union Act of 2016. So they’re not perhaps as dramatic as they may seem if you don’t take that context into account.
- And if you look at the rest of Europe in comparison, we’ll actually still have fairly restrictive strike laws even if the Bill is published as it’s currently drafted. So for example, in some parts of Europe, there’s no obligation on a union to ballot its membership before calling a strike, let alone minimum thresholds for that ballot. In terms of the expected timeline for the changes, some of them are going to come in, I suspect, before 2026 and they’re likely to be pressure to make that happen.
- It’s probably fair to assume that the first changes we’ll see will be the repeal of the minimum service levels that were pretty controversially introduced under the last government, but I wouldn’t expect things like the access rights that Mim talked about to come in before next year.
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- Ellie:** Okay, so Mim, let’s move on now to some other key changes on the horizon that are due to be brought about by the Bill.

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- Mimosa:** Sure, so another significant change is the government’s announcement in November that it would amend the Bill to extend time limits for bringing tribunal claims from three to six months. So currently most tribunal claims, including those for dismissal, discrimination and unlawful deduction from wages, must be submitted within three months of the act complained of.
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- Ellie:** So Kelly, what’s that going to mean in practice then?
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- Kelly:** Well, it’s a change that will undoubtedly be welcomed by claimants and claimant lawyers. And if we put a kind of more general positive hat on it, it will mean that both parties, employers and employees alike, will have additional time to resolve grievances or complete kind of settlement negotiations before the claim has to be issued. Often, know, practicing lawyers will know often the kind of submission date for that claim can become very relevant in those settlement discussions.
- However, I can’t see how this won’t lead to an increase in claims and that is concerning not just to employers but also because the tribunal system is already buckling with an increasing backlog of claims. Figures from the Ministry of Justice reported that open cases, so that’s claims that have been commenced but they haven’t yet been heard, that that figure rose by 18% just between April and June of last year. So further delays are clearly going to adversely affect not just employers but also claimant employees as well. Practically speaking, I think there’s some things that employers in particular need to be mindful of, including the fact that this is probably going to mean obtaining witness evidence as soon as possible becomes even more important before people’s recollection of events diminishes, before witnesses leave the organisation, because we’re already seeing in many areas of the tribunal system long delays between the issuing of the claim and the eventual hearing can only see that going in one direction on the basis of the current resourcing. In terms of when the change is going to come into effect, it’s unlikely to be before 2026, but as Mim said a couple of times, nothing’s been confirmed yet.
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- Ellie:** Mim, can you tell us a bit more about the new enforcement agency that is due to be created under the Employment Rights Bill?
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- Mimosa:** Yes, so currently most employment rights are enforced by individuals submitting a claim to an employment tribunal, but a limited number of employment rights, mostly pay related, are enforced by the state on workers behalf. The Employment Rights Bill proposes to create an enforcement agency called the Fair Work Agency, which will bring together existing state enforcement functions and over time take on enforcement of a wider range of employment rights. The government has said that the aim of this Fair Work Agency is to resolve issues upstream by supporting employers that want to comply with the law, but it will have strong powers to investigate and take legal action against businesses that flout the law to level the playing field for compliant businesses.
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- Ellie:** And Kelly, how exactly will this Fair Work agency take over the existing enforcement functions?
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- Kelly:** I think actually the way the government describe it is probably the most helpful summary so I’m just going to kind go through that. They say that the Bill brings together existing state enforcement functions as well as functions relating to holiday pay and statutory sick pay and includes a power for the Secretary of State to make affirmative regulations to expand the remit of the state enforcement functions to include other employment legislation.
- The Bill abolishes two current public bodies, that’s the Gangmasters and Labour Abuse Authority and the Director of Labour Market Enforcement, but the important work they do will carry on under the Fair Work Agency. The Bill also requires the Secretary of State to create an advisory body with a social partnership model, equal representation from businesses, trade unions and independent experts, which will in practice provide advice to the Fair Work Agency.
- So the Fair Work Agency is going to also have rights of enforcement related to holiday pay and statutory sick pay, for which there’s currently no state enforcement regime. So that’s an important point to note. And on that, employers will know very well how complex holiday pay can be, especially for atypical workers and in relation to those non-salary elements of pay. And so there is real potential, I think, here for this particular change to expand the risk to businesses of getting it wrong in areas like holiday pay.
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- Ellie:** Mim, can you just explain for us briefly the powers that this Fair Work agency are due to have?

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- Mimosa:** Yes, so to list the main ones, the Secretary of State will have a power to request a so-called labour market enforcement undertaking if they believe that a person has committed a labour market offence. A labour market undertaking is an undertaking to comply with any prohibitions, restrictions and requirements set out in that undertaking. So if a person refuses to give an undertaking or fails to comply with an undertaking, then the Secretary of State can apply to court for a labour market enforcement order. And failure to comply with this labour market enforcement order is a criminal offence. There will also be the spectre of enforcement officers being able to dawn raid employers, inspect computers, seize documents, et cetera. And additional enforcement powers will also be added as the Bill, of course, goes through Parliament and may include powers to issue civil penalties and to order employers to compensate workers based on existing powers in the National Minimum Wage Act.
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- Ellie:** So Kelly, is it fair to say that this Fair Work agency could prove to be quite a significant change?
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- Kelly:** Yeah, I think that is fair, although there’s still a lot unknown at present in terms of the detail. I think this is one where the devil will be in the detail. We’re not expecting that new agency to be up and running before 2026, not least because it’s going to take some time and thought to kind of close down the existing agencies and move their work across. I think there are two key things at this stage of what we know that stand out for me. The first is that it’s going to be essential for that fair work agency to sufficiently and properly distinguish between employers on the one hand who are deliberately flouting the law, who arguably are in the minority, and on the other hand those sort of unintentional breaches that are commonly made by employers, often SMEs, who are trying their best to comply with their legal obligations but they don’t necessarily understand how to comply, for example in relation to those notorious complex rules we talked about on holiday pay and similarly in relation to national...minimum wage calculations. I think that distinction and how the Fair Work Agency intends to operate that distinction will be really important. And the second point, I think, is that for enforcement to be effective, the fair work agency is going to rely pretty heavily on individuals reporting breaches. But many of those workers, they’ll often be perhaps the most vulnerable workers in the workforce, they’re going to fear the loss of their job, perhaps their impact on their right to work in the UK, other adverse consequences from kind putting their head above the parapet from being that whistleblower. So from the Fair Work Agency’s perspective, they’re going to need to be comfortable, I think, that those individuals are properly protected from victimisation, whether under whistleblowing legislation or otherwise, to enable them to make reports to the agency about employers who are, particularly those who are deliberately flouting the law.
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- Ellie:** Thanks Kelly, it’ll be interesting to see how that Fair Work agency strikes the balance there. Mim, just quickly, are there any other topics that aren’t addressed by the Employment Rights Bill that you think will be addressed by the government at some point?
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- Mimosa:** Yes, there are a whole raft of other areas that the Bill doesn’t address, but which the government has indicated it plans to take forward. So those include the right to switch off, developing guidance on menopause and general health and wellbeing for employees, extending pay gap reporting to ethnicity and disability for employers with more than 250 staff and extending equal pay rights to race and disability.
- And there are also longer term reforms which could take many years to progress through Parliament. So those include reviews of parental and carer leave, the ability to raise collective grievances, examining issues relating to TUPE and the implementation of the much anticipated single worker status.
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- Ellie:** Wow, so it’s a pretty packed agenda for employment law in 2025 and far beyond. Kelly, how should employers be preparing for the new legislative changes coming up?
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- Kelly:** Yeah, it’s certainly an exciting time to be an employment lawyer. It’s always an exciting time to be an employment lawyer, but particularly at the moment. So in terms of the Employment Rights Bill specifically, it’s only recently started its journey through Parliament. And so it may well be subject to various amendments through that process. And we’re expecting that consultation documents will start to come out in the coming months, which will give us a lot more information about specific areas of the proposals and we’ll obviously be keeping a close eye on those and advising our clients on all the latest updates as they come through. One thing also to flag is that there is the new-ish duty to take reasonable steps to prevent sexual harassment of employees which is already in force, it came into force on the 26th of October 2024. We did touch on this in our previous episode on the Employment Rights Bill that we mentioned earlier. I’m flagging it because it’s a super important topic for all employers and we’re going to therefore do a deeper dive into how to comply with that new duty in a future Work Couch episode. But just a heads up with the Employment Rights Bill wrapper in mind, in case you haven’t heard, the Bill goes much further in strengthening that new duty. So you don’t want to miss that episode to hear more about that.

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- Ellie:** Absolutely. Well, thank you both so much. I think that’s really helped us all see the wood for the trees as we embark on another very busy year for employment law and HR practice.
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- Kelly:** Thanks for having us Ellie.
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- Mimosa:** Thanks, Ellie.
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- Ellie:** If you’d like to revisit anything we discussed today, you can access transcripts of every episode of the Work Couch podcast by going to our website. That’s [www.rpclegal.com/theworkcouch](http://www.rpclegal.com/theworkcouch). Or if you have questions for me, Kelly or Mimosa or suggestions of topics you’d like us to cover in future, please get in touch. We’d love to hear from you. Our email address is [theworkcouch@rpclegal.com](mailto:theworkcouch@rpclegal.com).  
Thank you all for listening and we hope you’ll join us again in two weeks’ time.



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