

Key Takeaways from ERA Ready?

As discussed in our webinar, significant employment law reforms are due to come into force shortly. From 30 October 2026, employers may be liable for third-party harassment of their employees. Trade unions will also gain a right of access to workplaces, and employers will be required to give workers a written statement explaining their right to join a trade union. From 1 January 2027, the unfair dismissal qualifying period will reduce from two years to six months, and the compensatory award cap will be removed, with important implications for performance management and senior exits. We have summarised the key changes and practical steps below.

Trade Union Access

From 30 October 2026, independent trade unions will gain a statutory right to access workplaces both physically and digitally to meet, support, represent, recruit and organise workers and to facilitate collective bargaining. The right does not extend to organising industrial action. The regime applies to employers with 21 or more workers.

A statutory access request may be made by a trade union without first attempting a voluntary arrangement, although the Code of Practice: Right of trade unions to access workplaces encourages this.

Timescales are relatively tight. Employers have 15 working days to respond to a statutory access request. A 25-working-day negotiation period follows, and if there is no agreement, either party may refer the matter to the Central Arbitration Committee (CAC). There is a presumption in favour of access where it does not unreasonably interfere with business operations.

This new right is backed up by a serious enforcement regime. The CAC can award penalties for non-compliance of up to £75,000 for a first penalty order, up to £150,000 for a second order, rising to £500,000 for a third or subsequent order.

Steps to prepare for access requests include:

- identifying who will take ownership of trade union access requests and how requests will be escalated internally;
- publishing an appropriate contact address for access requests and putting in place records of when requests and responses are sent and received;

- reviewing existing trade union arrangements and considering whether to approach a recognised trade union to formalise or strengthen effective voluntary access arrangements, giving both parties greater flexibility to tailor the arrangements to the workplace;
- preparing a short summary or 'heads of terms' document setting out the employer's preferred approach to access, for discussion with the relevant trade union in advance of any formal access agreement being negotiated;
- planning training and awareness for line managers on how to recognise and respond to an access request and issues to be aware of when unions are on site;
- reviewing internal communication channels that may become relevant to digital access discussions;
- setting proportionate rules around data protection, confidentiality, frequency of visits and acceptable use of digital channels; and
- identifying any relevant site or location restrictions, visitor rules and security arrangements.

Duty on employers to provide information on the right to join a union

From 30 October 2026, employers will be required to give workers a written statement informing them of their right to join a trade union. The statement should be issued to new workers when they start employment at the same time as they receive their written statement of employment particulars. The government has yet to publish its consultation response or the final guidance on the content of the statement, although further details are expected in the coming weeks. The consultation also considered how employers should notify existing staff of their right to join a trade union and the frequency of the reminders. Employers should monitor developments and be ready to update their onboarding processes and written statements once the final requirements are confirmed.

Preparation steps include:

- monitoring government guidance as the final rules are confirmed;
- ensuring that **new** workers starting on or after 30 October 2026 receive a written statement informing them of their right to join a trade union; and
- developing a process to update **existing** staff once the details are known on what method of delivery is appropriate and how often existing staff must be notified.

Third-Party Harassment

From 30 October 2026, employers will be liable for harassment of employees which takes place in the course of employment by third parties (e.g. clients, customers, suppliers, members of the public) where the employer fails to take “all reasonable steps” to prevent it. This is not limited to sexual harassment - it covers harassment related to any relevant protected characteristic under the Equality Act 2010.

Liability can be triggered by a single incident with no requirement for prior knowledge. An employer’s main route to avoid liability will be providing evidence that they have put in place “all reasonable steps” to prevent this.

Sectors with higher third-party contact, including hospitality, retail, construction and professional services, are likely to face the greatest exposure.

Steps to prepare for third party liability include:

- identifying which third parties’ employees come into contact with and the potential risks associated with their interactions;
- updating risk assessments for third-party-facing roles and events;
- training managers and employees on how to deal with third-party harassment;
- updating anti-harassment policies to explain that employees are protected from third-party harassment, including reporting routes for concerns involving third parties;
- taking action where a concern is raised;
- reviewing and updating commercial contracts with clients and suppliers;
- providing, where appropriate, signage and other messaging on expected standards of behaviour; and
- records of preventative measures.

Unfair Dismissal

From 1 January 2027, the qualifying period for ordinary unfair dismissal claims will be reduced from two years to six months, bringing an estimated 6.3 million additional employees within scope.

The statutory cap on compensatory awards is being removed entirely (currently the lower of one year’s gross pay and £123,543). Failure to follow the ACAS Code of Practice may result in a 25% uplift on an uncapped award; this is a very significant exposure.

Tribunal claim time limits will be extended from three to six months (where the effective date of termination is on or after 1 October 2026). ACAS early conciliation is up to twelve weeks, meaning in some cases and taking into account employment tribunal processing time, employers could wait more than ten months post-dismissal before receiving a claim.

For senior exits, potential exposure will extend to future salary, bonus, deferred remuneration, LTIPs, pension loss and other benefits. Career-long losses may be recoverable, making settlement negotiations more complex and higher in value.

Non-renewal of a fixed-term contract after six months’ service will require a fair reason and fair process.

Steps to prepare for the changes to unfair dismissal include:

- reviewing probationary periods and any impact on contractual PILON rights;
- training managers on performance assessment during probation;
- auditing recruitment procedures;
- reviewing the wording of incentive plans, including LTIPs, bonus and equity arrangements;
- reviewing fixed-term contract processes;
- ensuring that robust dismissal processes are in place;
- considering flexibility and variation clauses; and
- seeking early legal input before settlement discussions and modelling potential financial exposure at the outset.

If you would like to find out more about any of these issues, please get in touch with your usual CMS employment team contact, or any of our speakers from the webinar.

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