

Employment Rights Act 2025 – why HR should review its probationary process before July 2026

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Robert Shore: Hello, and welcome to the Brightmine podcast, formerly known as the XpertHR podcast. Brightmine is a leading provider of people data, analytics and insight, offering employment law expertise, comprehensive HR resources and reward data to meet every HR and organisational challenge and opportunity. You can find us any time of the day or night at <https://www.brightmine.com>.

Hello everyone. My name is Robert Shore, and today we're going to be talking about perhaps the most talked-about element of the Employment Rights Act 2025, and that is the changes to the unfair dismissal legislation and the impact of those changes on probationary periods. To do this, I am joined by our very own Stephen Simpson, principle editor at Brightmine. Hello Stephen. How are you?

Stephen Simpson: Good thanks, Robert.

Robert Shore: And of course you've been tracking employment law changes for quite a long time now.

Stephen Simpson: Yes. I've been specialising in employment law since 2001 so I've seen a lot in that time.

Robert Shore: Obviously the Employment Rights Act, though, is bigger than most things that have come through, certainly in a single piece of legislation.

Stephen Simpson: Yeah. I'm generally saying it's the biggest change in at least 30 years.

Robert Shore: Okay. So today, though, we're going to be focusing on just one element of it. We're recording this podcast, I should say, in late January 2026. So Stephen, can you first of all recap for listeners where we are with the timetable for implementation?

- Stephen Simpson:** Yes. So we're over one month on now from the Employment Rights Act 2025 getting Royal Assent, which means that the bill has completed its progress through Parliament and become an Act of Parliament.
- Robert Shore:** That's right. That doesn't mean to say everything's yet come into law. So just to stress that the act is a framework out of which employment law changes will be introduced in stages over the next few years.
- Stephen Simpson:** Exactly. So Royal Assent by itself, just as a reminder, does not have any practical impact on employers. What happens next is that we'll see dozens of pieces of secondary legislation published over the next few years that really flesh out the details of the changes. These changes will come into force in batches, mostly on common commencement dates, i.e. 6 April 2026, 1 October 2026, 6 April 2027 and 1 October 2027.
- Robert Shore:** Yeah. So those dates you mentioned there for 2027, are they confirmed, the April and October periods again?
- Stephen Simpson:** The ones for this April are, but after that it's slightly speculative. But the Government has said that it's going to stick to common commencement dates, and those historically are the common commencement dates that are used for employment law.
- Robert Shore:** Okay, wonderful. So employers don't need to panic yet, is what I was going to say. But actually, what do you think?
- Stephen Simpson:** Yes, I would definitely say don't panic. I really want to stress that this is going to be a long implementation process. Even though the Employment Rights Act, when seen as a whole, looks really daunting for HR, it's really not that different from what they will be used to.
- Robert Shore:** Okay. What makes you say that?
- Stephen Simpson:** So I'd say that because we're expecting no more than five or six changes – some changes big, some changes small – per common commencement date, with six months between each common commencement date spread out over two or three years. So there's a long way to go yet.
- Robert Shore:** Yeah. So obviously we know the changes for April 2026 and October 2026, but actually today's is possibly a bit of an exception, but we'll come to that. It was a dramatic end to the legislation's passage through Parliament, wasn't it? I know everybody in the office was very excited by it.
- Stephen Simpson:** Definitely. The bill was first published in October 2024 but it didn't get Royal Assent until mid-December 2025, just before the

Christmas 2025 parliamentary recess. So that was over one year to get through Parliament, and many of us here at Brightmine were glued to Parliament TV in mid-December to see the final stages when we really should have been out doing the last of our Christmas shopping, but we were watching Parliament TV.

Robert Shore: Yeah, that was naughty of them, wasn't it? So, the late drama relates to what we're talking about today – probationary periods and the impact of the reduction of the unfair dismissal qualifying period from two years to six months. It was, of course, going to be a Day 1 right, if I recall correctly?

Stephen Simpson: Yes. So just to recap, the Government originally proposed to remove the two-year unfair dismissal qualifying period altogether and introduce an initial period of employment, as they described it, although colloquially it was often referred to as a 'statutory probationary period', where employers would be expected to follow a set procedure. But that has proved to be among the most controversial proposals in the whole bill.

Robert Shore: Yes. Nicely understated. In fact, it was a kind of major sticking point by the end, wasn't it?

Stephen Simpson: Yes. So business groups, including the Federation of Small Businesses, the CBI and the Recruitment and Employment Confederation (which represents recruitment agencies) were concerned that the total removal of the qualifying period for unfair dismissal claims would create uncertainty for employers and stifle growth, making businesses more cautious than ever about recruiting.

Robert Shore: But a compromise was ultimately reached, I believe?

Stephen Simpson: It was. The Government ended up with a bit of a dilemma, as the removal of the unfair dismissal qualifying period was a manifesto commitment, but it did ultimately compromise – some would say it U-turned on its manifesto commitment. It ultimately has kept the qualifying period but reduced it from two years to six months.

Robert Shore: Right. And the idea of an 'initial period of employment' (I'm saying that in inverted commas) or 'statutory probation period' has also been dropped?

Stephen Simpson: It appears so, yes. It's simply unnecessary now for employers to have to get to grips with the new concept of a statutory probationary period, which does look like it's been dropped entirely.

Robert Shore: So that's good news for employers, is it?

- Stephen Simpson:** In some ways, yes. What we'll end up with, i.e. a six-month qualifying period for unfair dismissal, is in some ways a much more elegant solution, particularly considering that six months is the most common length already for probationary periods in the UK.
- Robert Shore:** Yes. That's according to Brightmine research, which of course you can find on the Brightmine website.
- Stephen Simpson:** Yes. So Brightmine's own probation period research in 2025 surveyed 349 employers that, combined, employed just over 1 million employees. And that research found that 6 employers out of 10 used a six-month probationary period already.
- Robert Shore:** Okay. So any bad news for employers?
- Stephen Simpson:** So two major notes of caution for employers, I would say, in case they get carried away with that news.
- The first is that I would not be surprised if the Government at some future post-Employment Rights Act implementation point revisited the proposal to remove the unfair dismissal qualifying period altogether, i.e. make the right to claim unfair dismissal a Day 1 right. After all, it was a manifesto commitment and it's certainly possible that the Government could see the reduction to six months as a stepping stone to its complete removal.
- Robert Shore:** Gosh. Okay. So we might return to the idea of a Day 1 right.
- Stephen Simpson:** It's a little speculative but it's certainly a possibility in the future.
- Robert Shore:** Yeah. Well as you say, it was in the manifesto so I guess the Government may feel that it has to return to that.
- Okay. Well, you heard it hear first. Or you haven't heard it that often, anyway. And what's the second potential area of concern for employers?
- Stephen Simpson:** I'd say the second potential area of concern for employers is that, as part of the compromise, the Government included a surprise late change, which is the removal of the cap on compensation in unfair dismissal claims.
- Robert Shore:** Yes. So the cap is being removed altogether?
- Stephen Simpson:** It does appear so, yes. So alongside the smaller, basic award, the current maximum compensatory award for most unfair dismissals is – and I just wrote this down so I could get the right figure out – is £118,223 or 52 times the claimant's weekly pay if that is lower than the £118,223. So the Government's proposal is the complete removal of the cap on the compensatory award.

- Robert Shore:** Okay. How certain are you about this?
- Stephen Simpson:** It's an official Government proposal and has found its way into the Employment Rights Act, although it's worth pointing out that the Government has promised to carry out an impact assessment before proceeding with this change. So it's not set in stone right now.
- Robert Shore:** Right. So actually, it is in the act but, as we said at the very beginning, in fact there are some steps before it becomes law as such. So we need to keep listening. So we could do an entire separate podcast just on the potential impact of this proposal, the removal of the cap. But what are your initial thoughts?
- Stephen Simpson:** Well I don't mind telling you, Robert, that I was well and truly flabbergasted when this was added so late in the day to the Employment Rights Act, and not just because of the lateness of the addition. I know a lot of employment lawyers were really surprised that this happened.
- Robert Shore:** Ah. So what are your concerns precisely?
- Stephen Simpson:** So I'm really not sure that the Government knows what it's done here. At the most basic level it could lead to some larger tribunal wars. It's always worth remembering that most of the compensation in an unfair dismissal claim will be made up of loss of earnings, so claims will simply be more attractive to high earners where currently the compensation cap normally makes it not worthwhile for them to pursue a tribunal case, although the counterargument to that is that the vast majority of claims don't actually get anywhere near the current cap anyway. So I think it's one where we have to wait and see what happens.
- Robert Shore:** Okay. Any other impacts it could have?
- Stephen Simpson:** Let's say potentially elongating the length of tribunal cases, with tribunals having to hear detailed arguments in remedy hearings from successful claimants about, for example, the amount of bonuses and incentives, which is a really complex area.
- Robert Shore:** And the tribunals are already slightly overloaded with cases, aren't they?
- Stephen Simpson:** Yes, and this may only make it worse.
- Robert Shore:** Right. Any more immediate concerns for employers?
- Stephen Simpson:** So this change could have a big impact on the dynamics of an employer's approach to settlements. For example, a larger potential award might encourage the claimant to hold out for a higher settlement and result in employers being more keen to settle claims given that it would increase financial risk. One thing's for sure – we

haven't heard the last of this proposal and it will be a concern for employers, and of course another reason why they will want to get their recruitment, induction and probation processes right in the first place.

Robert Shore:

Ah, brilliant. Yes. Which brings us neatly onto the importance of probation periods. So, remind us what a solid probation period looks like.

Stephen Simpson:

So I'd say that an effective probation period has seven key features, which are: a plan at the start; an educated existing workforce; clear expectations from the start; ongoing support; communication is of course key; have a contingency plan if probation goes wrong; and ongoing review process; and final review at the end. So that's those seven key things, I think.

Robert Shore:

Okay. Right, let's go into a bit more detail. Let's take them in turn. Firstly, it does sound obvious, but have a plan. What does that mean?

Stephen Simpson:

Yeah. Basically both the new starter and their line manager should know from the very start exactly what will happen during the probation period. At the most basic level, they should know the purpose of the probation period, how long it's going to last, what training the new starter will be given, who they will be working with, and what their initial tasks and objectives are. The start of the probation period is also a good time to set expectations around behaviour, for example timekeeping and dignity at work.

Robert Shore:

Second on your list, an educated existing workforce.

Stephen Simpson:

Yes. So I'm thinking here about things like line manager training, including specific training on what needs to happen during the probation period. There could be associated relevant training too.

Robert Shore:

Okay. Tell me more about training.

Stephen Simpson:

So relevant associated training could include things like how to give effective feedback and how to have difficult conversations with employees, for example if the new starter is underperforming. Those are a couple of the things that spring to mind.

Robert Shore:

Yeah, and I think we have some guidance and material on that on the Brightmine website, don't we? Having difficult conversations.

Right, third you said clear expectations from the start.

Stephen Simpson:

Exactly. So set very clear goals and expectations for the new starter. In short, make clear what you would expect to see during the probation period and, in fact, what does a successful probation period look like.

- Robert Shore:** Okay. Let's move onto Point 4. You said 'provide support'. What does that mean?
- Stephen Simpson:** Yes. So really just make sure the new starter knows from the beginning where they can turn to for support, and crucially, provide support continually throughout the probation period. It's not something you just do at the start. And remember that support does not just come from the line manager. Peer support is just as important, with a buddy system and shadowing colleagues often being both useful tools during the probation period.
- Robert Shore:** Yeah, and in fact when I started at Brightmine you were my buddy, actually, Stephen...
- Stephen Simpson:** Yes.
- Robert Shore:** ...and that was very useful. So thank you for that. Fifthly, right, let's go and look back at the list. Hold on a second. Fifthly you said communication. Now that's of course key.
- Stephen Simpson:** Definitely communication is key. Dialogue between the new starter and their line manager should be ongoing, with the new starter being asked regularly how they're getting on, and any practical problems should be tackled as and when they occur. As well as ongoing open lines of communication, line managers must also have regularly scheduled one-to-ones with the new starter.
- Robert Shore:** Number six – is there a contingency plan when things go wrong, for example an option to extend the probation period?
- Stephen Simpson:** Yes. So the employer needs to have the option of extending the probation period, which may be appropriate when the new starter has been underperforming but is showing signs of improvement. In extreme cases, dismissal before the end of, or at the end of, the probationary period may be necessary, for example if it becomes clear that the employee is simply unable to fulfil the role effectively. Even if the employee still hasn't reached the unfair dismissal qualifying period, a fair dismissal procedure should still be followed. We always advise that, as there is always the risk of a discrimination claim, which an employee can bring whatever their length of service.
- Robert Shore:** Yeah. Now, I know this is a question that has come up quite a lot, which is that if you extend the probationary period beyond, say, six months, obviously now you cannot have an unfair dismissal after the six-month period.
- Right, and finally number seven on the list, an ongoing review process.

- Stephen Simpson:** Yes. So it's important that the review process is ongoing so that there are no surprises when the final review happens at the end of the probationary period. Make sure progress is recorded so that you have a record of what the new starter is expected to achieve and by when, and record progress against those milestones.
- Robert Shore:** Right. Obviously we would encourage HR professionals to start reviewing their probation periods now. We said don't panic, but at the same time do take useful action.
- Stephen Simpson:** Yes. So I'd say find out whether across your organisation these things are actually happening. And I mean in reality, not just that they're in a policy or mentioned in passing, say in an email once a year to line managers.
- So just to recap my seven points, do line managers put probation plans in place in advance of the start date? Secondly, have you trained line managers on probation and on issues associated with probation? Thirdly, are probationers provided with clear expectations from the start? Fourthly, do you provide ongoing support to new starters? Fifth point is, are line managers, HR and peers communicating effectively with probationers? Sixthly, is there a contingency plan when things go wrong, for example an option to extend the probation period? And seventh and finally, is there an ongoing review process and a final review at the end?
- Robert Shore:** Wonderful. Very clear. And actually, we talked about the timetable for the implementation of the various things in the Employment Rights Act, which being April and October. This slightly breaks the pattern, doesn't it? So it's actually 1 July 2026 is that date for HR professionals to pencil in to have that review done by, isn't it?
- Stephen Simpson:** Yes. So it's actually still to be confirmed but the Government has indicated that it intends to change to the reduced unfair dismissal qualifying period to take effect on 1 January 2027, with protection against unfair dismissal expected to apply retrospectively from that date. So what that really means is that employees hired from 1 July 2026 would gain protection from an unfair dismissal after six months. So that's the date for your diaries, 1 July 2026.
- Robert Shore:** Right. And employers, they have five months to get their probationary processes in order.
- Stephen Simpson:** Absolutely. So the clock is ticking and employers now have less than six months to prepare if that implementation timetable is actually confirmed.
- Robert Shore:** Okay. So don't panic at the beginning but you panic just a little if you want to at this point! What I should say, of course, is that there is no



need to panic because we have lots of excellent supporting materials on the Brightmine website. I'll put links to some of those in the show notes today.

It remains for me just to thank Stephen for coming in and recording with us today, and for bringing all of his wisdom with him.

Stephen Simpson:

Thank you, Robert.

Robert Shore:

Beyond that, it remains for me to say, until next time.

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