SLAUGHTER AND MAY

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HORIZON SCANNING

Employment Rights Act

Implications for the Financial Sector

Governance and Sustainability

Introduction

Employers across the UK are managing the impacts of the Employment Rights Act 2025 (ERA 25), with some of the measures already in force, but most still to come throughout 2026 and 2027.

Financial services is one of the largest sectors in the UK economy, employing 1.2 million people. It is also one of the UK's most internationally facing sectors; the UK is the world's largest net exporter of financial services, and the sector accounts for more than half of the UK's surplus in services exports. Further, as a heavily regulated sector, it has implemented rules in areas such as non-financial misconduct (NFM) and whistleblowing that have helped shape broader employment reforms across other sectors.

In this context, the ERA 25 reforms have a particular relevance and resonance for the financial services sector.

1. Hiring and firing

What is changing?

Employees in the UK enjoy statutory protection against unfair dismissal. This requires the employer to show that (a) one of five potentially fair reasons for a dismissal applies; and (b) that it has acted reasonably in deciding to dismiss (in terms of following a fair process).

Currently, unfair dismissal protection is only available after two years' service. There is also a cap on the compensatory award, set at the lower of a year's pay and £123,543.

This statutory framework has resulted in employers having a lengthy period to judge the suitability of their new recruits before unfair dismissal protection kicks in. It has also meant that unfair dismissal liability is not a significant factor when exiting high earners, with the cap on compensation providing a means of quantifying exit packages.

The ERA 25 makes fundamental changes in this area. With effect from 1 January 2027, it reduces the qualifying period for unfair dismissal protection to six months, and removes the cap on compensation.

What this means

There is concern in the market that the reforms could harm the UK's competitiveness as a place for financial services businesses to hire employees, at all levels but particularly the most senior ones. For this reason, most large EU economies have caps on unfair dismissal liability, such as the Macron reforms in France, and more recently the German rules for senior bankers. The ERA 25 reforms make the UK an outlier in Europe in terms of the potential financial exposure for unfair dismissal.

Financial sector employers already undertake a more rigorous recruitment process than many employers in other sectors, particularly where the individual will be undertaking senior management functions. However, the ERA 25 changes are likely to lead to even greater due diligence on new recruits. Regulatory references from previous roles are likely to be subjected to closer scrutiny by new employers, and other pre-employment checks will become more important. Regulatory approvals, where relevant, should be in place before employment (and the six-month clock) starts running.

Once employment starts, employers will have less time to work out if their new recruit is right for the job. Probation periods may be useful in some circumstances, although it may not be appropriate or feasible to apply probation in each case. Performance management poses

particular challenges in a regulated environment like financial services, where lengthy processes may not be in the best interests of clients, consumers or market stability. There is also an interplay with regulatory expectations of an orderly transition for firms to consider. The government has said it will produce new guidance on what standard of fairness will be expected for dismissals of senior and/or regulated individuals to avoid unfair dismissal liability, although this has not yet been published.

Dismissal decisions will need to be much more carefully managed, particularly once the six-month qualifying period has passed. There will be reputational and regulatory considerations on both sides. Negotiated exits are likely to become more difficult and expensive, where a fair process has not been followed. The need to produce a regulatory reference for a subsequent employer must also be kept in mind – as does the greater scrutiny this is likely to receive by the subsequent employer, which may make exit discussions more challenging.

2. Contractual changes

What is changing?

The ERA 25 makes it harder for employers to make certain changes to employment contracts. These "restricted variations" cover provisions relating to salary, certain bonuses, pensions, hours and holidays.

If an employer can't secure an employee's agreement to a restricted variation, and dismisses the employee as a result, they will face automatic unfair dismissal liability.

This will also apply to certain 'fire and replace' scenarios, including:

a) dismissing an employee in order to replace them with another employee on a contract that includes a restricted variation (this is likely to be argued in many dismissal scenarios without another evident 'fair' reason); and

b) replacing employees with non-employees e.g. agency workers or self-employed individuals to do broadly the same work (there is an exception for redundancy scenarios, but many other restructurings and outsourcings could be caught). This may be pertinent given that in a recent survey 20% of employers in the finance sector said that they will respond to the increased costs of having employees under the ERA 25 reforms by increasing the use of self-employed contractors and temporary staff.

There is only a very limited financial distress exception to this automatic unfair dismissal liability, which requires the employer to be facing imminent insolvency. Importantly, there is no exception for changes which may be required to contractual terms to reflect legal or regulatory changes, something that employers in the financial sector may be particularly susceptible to.

What this means

These new restrictions could strengthen the hand of employees in negotiations and make resistance to variations more common. It could also cause difficulties in applying regulatory requirements, e.g. changing pay in line with updates to the FCA/PRA Remuneration Codes. Employers should act, where possible, to incorporate flexibility into their employment contracts, so that changes can be made unilaterally where reasonably needed to reflect the changing needs of the business and new legal or regulatory requirements. They should also bear in mind the implications of the broader 'fire and replace' liabilities on workplace restructurings and outsourcings.

3. Harassment

What is changing?

Two key changes to the law on harassment in the ERA 25 take effect in October 2026:

- The current proactive duty on employers to take reasonable steps to prevent sexual harassment of their employees will be strengthened, making it a duty to take all reasonable steps.

- Liability for harassment of staff by third parties will be reintroduced. Employers will be liable unless they can prove they took all reasonable steps to prevent it.

Further, from 2027 the ERA 25 will render void any non-disclosure agreement (NDA) in a contract between an employer and a worker that attempts to prevent the worker from making allegations or disclosures of

information about harassment or discrimination. This extends to disclosures about an employer's response to these allegations or disclosures, and would apply to both employment contracts and settlement agreements. There is provision for 'excepted agreements' where an NDA will be permitted – the government is currently consulting on this.

Finally, since April 2026, sexual harassment allegations have been expressly included as one of the disclosures which may qualify for whistleblowing protection.

What this means

The harassment changes coincide with the FCA's new NFM guidance on a manager's responsibility to prevent harassment in the workforce (COCON 4.1.8-A to -D), which takes effect from 1 September 2026. This guidance emphasises that "failing to take reasonable steps to protect staff against [specified] misconduct" is a breach of the requirement to act with due skill, care and diligence.

The addition of "all" to the proactive duty under ERA 25 is unlikely to move the dial much for employers who take a robust approach to complying with the existing duty. It does however mean that an employee will only need to show that the employer failed to take one reasonable step to establish liability.

NFM is broader as a concept than harassment under the Equality Act 2010 (which the ERA 25 provisions amend). It can relate to bullying or other conduct which is not related to a protected characteristic. Firms therefore need to be clear when conduct can be in scope of regulatory rules, employment law, or both.

The FCA's guidance operates on the individual rather than the organisational level, and mentions "reasonable steps" rather than "all reasonable steps" - in fact stating that there "will often be a number of different reasonable courses of action that can be taken in a particular case". However, the regulatory and legal focus on preventing harassment means that financial services firms may wish to review and tighten their policies, procedures and guidance to ensure that they are protected on both levels.

The reintroduction of liability for third party harassment is more significant (and not explicitly covered by NFM rules, which are primarily concerned with conduct by a firm's own staff rather than third parties). This may be of concern to employers in the financial sector, many of whom will have staff interacting with members of the public and other third parties over whom the employer may have little or no control. Where an employer does have a contractual relationship with third parties such as clients and suppliers, it will be expected to make clear its expectations about appropriate treatment of its employees.

The ERA 25's restrictions on NDAs follows scrutiny of and opposition to the use of NDAs in the financial services sector in recent years. In its "Sexism in the City" report of 8 March 2024, the Treasury Committee recommended the introduction of legislation to ban NDA use in harassment cases, stating that the "widespread misuse of [NDAs] in sexual harassment cases is shocking". The ERA 25 has now effectively followed that recommendation, subject to the possibility of "excepted agreements" on which the government is currently consulting.

The least consequential change is likely to be that relating to whistleblowing. Since it was already possible to gain protection under employment law for blowing the whistle about sexual harassment, the change was primarily about increasing transparency of whistleblowing channels as a mechanism to report such concerns. In the financial sector, complaints about sexual harassment are already embedded within the FCA's whistleblowing regime (and is covered under the concept of a 'reportable concern' in SYSC).

More broadly, the ERA 25's changes in this area are likely to be less consequential for financial services employers than most other sectors, given the existing regulatory regime and focus on NFM and culture. Arguably the reforms begin to level the competitive landscape for financial services and other employers.

4. Trade unions

What is changing?

The ERA 25 reverses restrictions placed on trade union activity under previous governments. The reforms make it easier for trade unions to gain recognition, for example by removing support and turnout thresholds and increasing the mandate period following a successful ballot. They also make it easier for unions to call industrial action, with shorter notice and for longer

periods, and with greater protection for participating employees.

The ERA 25 also introduces some new union rights – including, most significantly and from October 2026, a new right of access to workplaces. Access may be physical or digital, does not require any existing membership or relationship with the employer/employees, and can be requested in accordance with short statutory timescales. If an access agreement cannot be reached, the union may apply to the Central Arbitration Committee, who can impose access terms and levy significant fines for non-compliance.

What this means

The retail financial sector in the UK has historically had high levels of union involvement, but this has declined by about half since 2000. As of 2024, union density within the sector was just 10%. Some of the larger banks and insurers already recognise unions in relation to at least part of their workforce, and will be keen to re-examine that relationship in light of the ERA 25 reforms. Many other employers in this sector, particularly investment banks, are less likely to be unionised.

The sector may find itself an attractive target for unions, given concerns about working conditions and culture within the sector, the history of union involvement, and the greater ability of its proportionately higher-paid workforce to pay union membership fees.

Regardless of their unionised (or otherwise) status, employers across the sector should be preparing now for the reforms. As a priority, given the October 2026 implementation date, employers should be preparing for a union access request, and considering what response they would make. Employers with good working relationships with an existing union could be well placed to avoid any other approaches, but should be prepared for their existing union to push for greater representation. Employers without any union engagement who wish to remain as such should look to strengthen direct engagement with employees - providing meaningful channels for employee concerns, demonstrating that feedback is taken seriously, and making changes where possible to reduce the appetite for, or perceived need for, union involvement.

Conclusion

The ERA 25 reforms will place additional legal, administrative and financial burdens on financial sector employers. Some of the measures, such as the unfair dismissal reforms, may pose particular challenges, while others, such as the harassment measures, may be less impactful given existing regulatory requirements. However, much will depend on each employer's ethos, culture, management behaviours, and levels of employee engagement. It remains to be seen whether the ERA 25 changes support the UK Government's latest Financial Services Growth & Competitiveness Strategy (published July 2025) "to enable the UK to once again be the global location of choice for financial services firms to invest, innovate, grow and sell their services throughout the UK and to the world."

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