

# EMPLOYMENT RIGHTS ACT FOR CONSTRUCTION



For construction businesses, the Employment Rights Act 2025 (ERA) lands in three places at once. Heavy reliance on subcontractors and agency labour, a history of varying terms during project downturns, and significant union presence across many sites create a distinct combination of exposures.

| THE CHANGE                           | WHAT IT MEANS FOR YOU                                                                                                                                                                                                                                                                                                                     | WHAT YOU NEED TO DO                                                                                                                                                                                                                                            |
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| <b>Trade union access rights</b>     | The ERA simplifies union recognition and gives unions new physical and digital access rights to the workplace. Construction sites with existing union presence will see expanded organising activity. Sites without recognition may face new requests under the simplified process. All of these changes come into force in October 2026. | Review current union agreements or prepare a union readiness plan. Brief site managers on new access rights. Put access agreements in place that balance union rights with site safety. Prepare for digital access (union communications via company systems). |
| <b>Fire and rehire restrictions</b>  | From January 2027, dismissing employees to re-engage on new terms will be automatically unfair in most circumstances. Construction businesses have historically used this approach during project transitions and contract renegotiations. The narrow exceptions require robust evidence of financial necessity.                          | Audit any current or planned changes to terms. Take legal advice on lawful routes before beginning consultation. Review template letters and procedures – standard dismiss-and-re-engage documentation is now actively dangerous.                              |
| <b>Zero-hours and agency workers</b> | Many construction businesses use casual or agency labour for project-based work. The guaranteed-hours and shift-notice obligations will apply to these arrangements where actual working patterns suggest ongoing engagement rather than genuinely casual arrangements.                                                                   | Review casual and agency workforce. Identify anyone whose working pattern suggests regular, predictable hours. Consider whether contracts need redesigning or agency arrangements need restructuring.                                                          |

## THE COST OF INACTION

A construction firm that attempts to vary terms using dismiss-and-re-engage faces automatic unfair dismissal liability for every affected worker. With uncapped awards, a restructuring exercise involving 20 workers could generate aggregate liability well into six figures. Add expanded union access during the process, and the risks compound.

## NEXT STEPS

We advise construction businesses on ERA compliance, including union readiness, lawful routes to varying terms, and casual workforce reviews. An initial conversation is free and typically takes 20 minutes.

[stephens-scown.co.uk](https://stephens-scown.co.uk)

[era2025@stephens-scown.co.uk](mailto:era2025@stephens-scown.co.uk)

