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Employment Rights Bill: Question and Answer session

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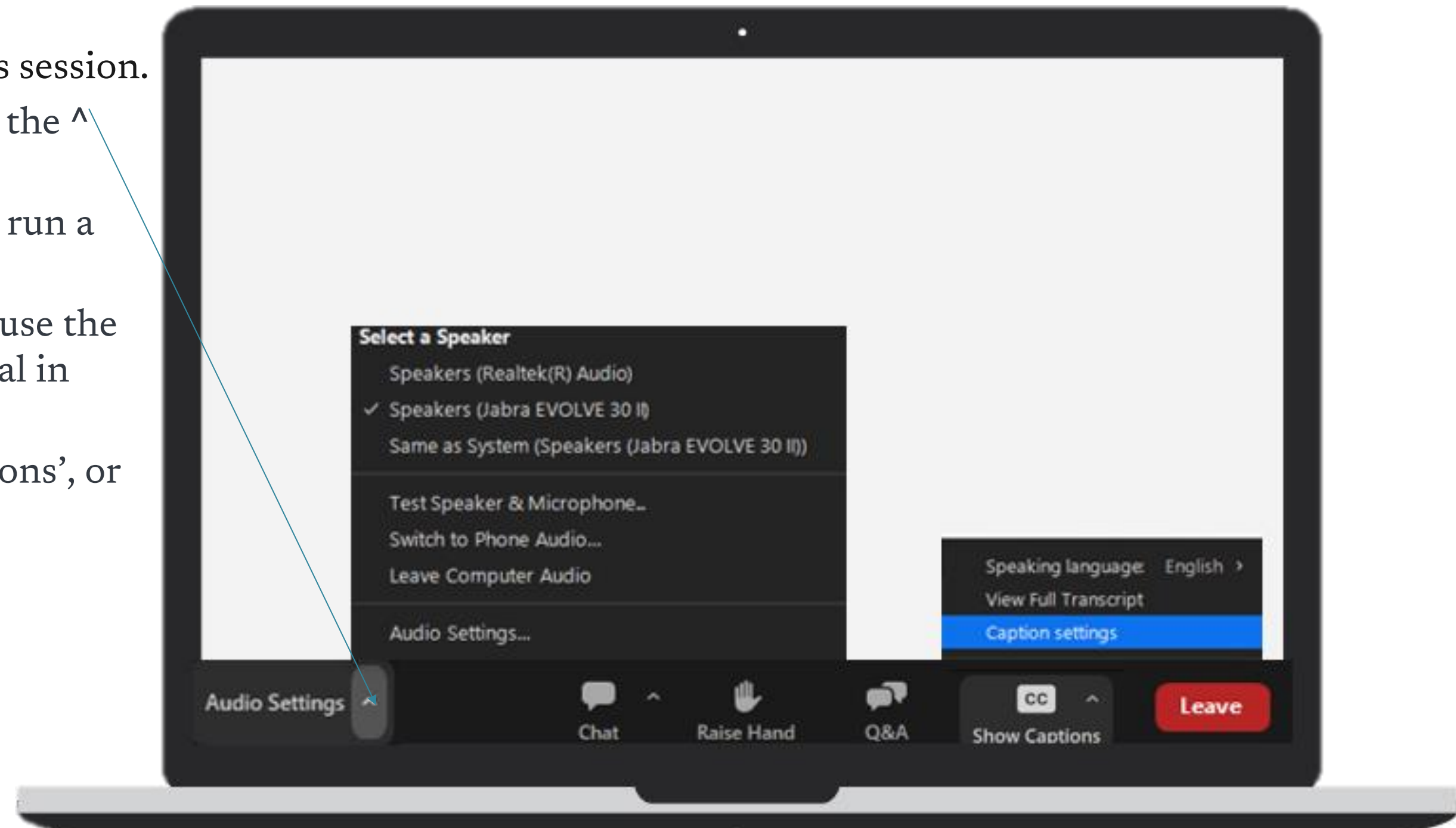
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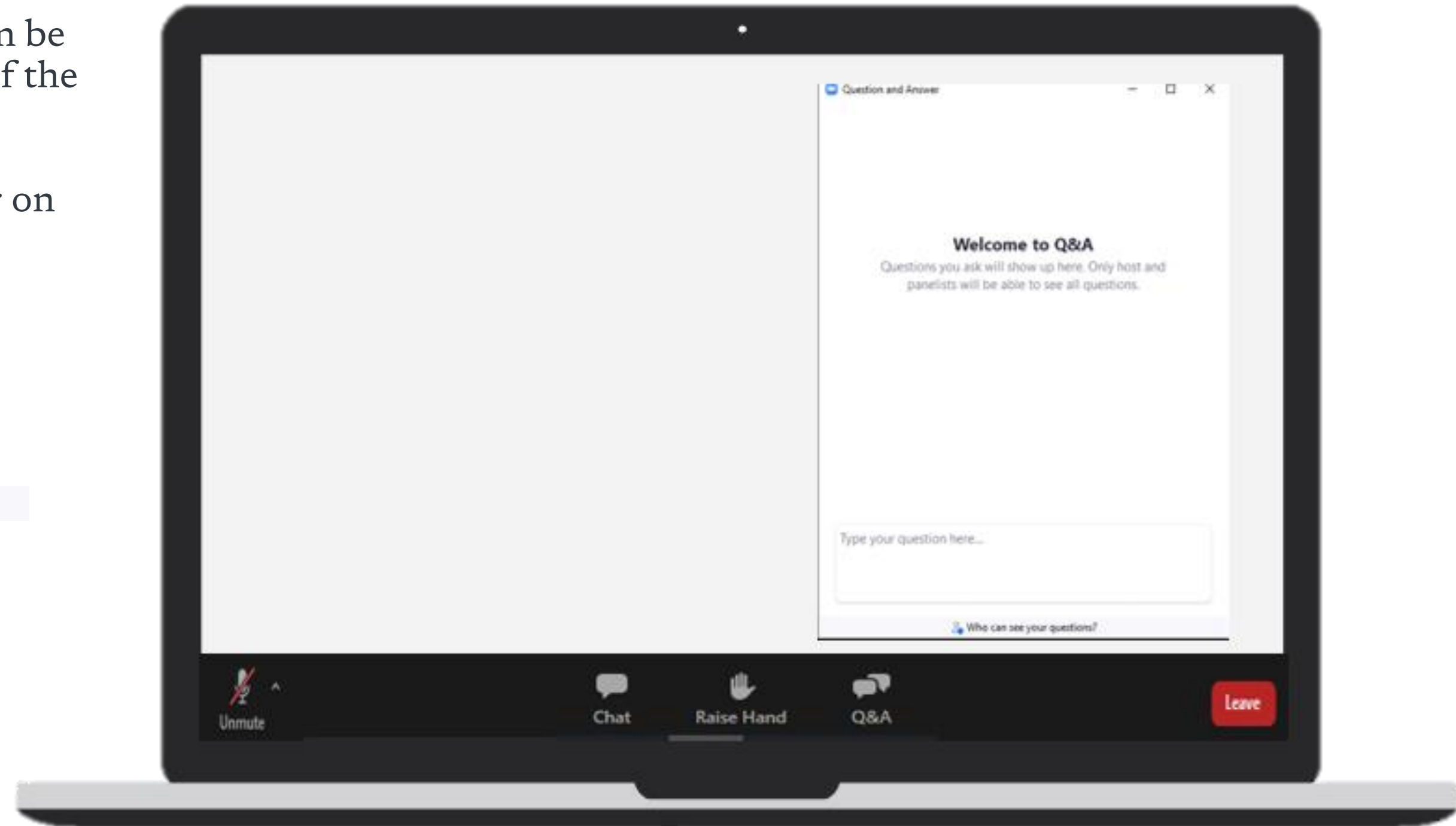
Ask a question

Please ask questions through the Q&A panel, which can be launched by clicking the **'Q&A'** button at the bottom of the screen.

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Type your question here...

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Overview

- Bill was introduced into Parliament on 10 October 2024
- Marks the first phase of the government delivering the Plan to Make Work Pay
- Brings forward 28 employment law reforms
- Already seeing amendments proposed to the initial draft and concerns raised by business
- Clear need for Regulations or Codes of Practice to set out the detail
- Policy paper 'Next Steps to Make Work Pay' sets out plans for future consultations and reforms
- Two years of consultations and drafts ahead

Question 1: Probationary periods

Will all new contracts of employment require a probationary period and, if so, how long should it be for and how should it be used to limit the risk of new hires?



Unfair dismissal

- Removal of the two-year qualifying period for UD – but not until Autumn 2026
- Light touch dismissal process during an initial period of employment (9 months?)
- Employer will still need to show fair reason for dismissal and that certain procedural steps were taken prior to dismissal in initial period
- Reason for dismissal in initial period likely to be limited to conduct / performance / statutory ban or SOSR (where related to the employee) – so redundancy dismissals would require a fair reason and full consultation process from day one to avoid UD claim
- Consultation and Regulations to follow on how the initial period of employment will work

Unfair dismissal: what's been added?

- Increase to the time limit for all types of employment tribunal claims from 3 to 6 months
- Secretary of State to have power to cap the compensatory award for employees unfairly dismissed during the initial period of employment

Question 2: Redundancies

What practical steps can we take now to prepare for the increased likelihood of collective consultation being triggered once the 'one establishment' limit is removed?



Collective consultation

- Removal of one establishment requirement
- 20+ proposed redundancies anywhere (within 90 days) will trigger collective consultation
- Not yet clear when this change will take effect
- Remember the rules apply to the broader definition of redundancies
- Consultation has been published to consider:
 - the role of interim relief (for this and fire/re-hire dismissals)
 - increasing or removing the maximum protective award that can be made if an employer found not to have followed the collective consultation process
- Potential amendment to exclude redundancies across sites where they are unrelated?

Question 3: Contract variation

Will it be possible to make changes to contracts of employment when the new rules on fire and re-hire take effect?



Fire and re-hire / fire and re-place

- Dismissal for seeking to, or a refusal to agree to, vary a contract will be automatically unfair unless:
 - the reason to vary is due to financial difficulties which affect employer's ability to continue as a going concern or
 - where the variation cannot be reasonably avoided
- A dismissal will also be unfair if the employer replaces the employee with another person who is willing to accept the varied terms
- High bar – changes to improve efficiency won't come within the exception
- Even if exception applies, tribunal still has to determine fairness of the dismissal (will depend on consultation, alternatives considered, what offered in return etc.)
- Government consultation due on the exception
- Note the triggering of the collective consultation rules

Question 4: Harassment

Is there any view yet on the additional steps we will need to take to protect ourselves from claims of third party harassment?



Harassment

- Duty on employers to take **all** reasonable steps to prevent sexual harassment
- The Bill also introduces a duty on employers to take all reasonable steps to prevent harassment of staff by third parties to avoid liability for those acts
- Allegations of sexual harassment to be a protected disclosure under the whistleblowing legislation
- Further regulations will be needed setting out the reasonable steps in respect of sexual harassment

Question 5: Flexible working

How strong will the flexible working right be for employees and will it still be possible to refuse a request?



Flexible working

- Employees already have the right to request flexible working from day one
- The Bill seeks to make flexible working the default position for all employees
- Any refusal of a request has to be reasonable
- Employer must state their grounds for refusing and explain in writing why it is reasonable for them to refuse the request on those grounds
- Likely to require more objective evidence to be provided to support the refusal
- Detail of approach required to be developed through consultation and further regulations
- Again, the timescale for this coming into force is not yet known

Question 6: Zero hour workers

Will it still be possible to use zero hour and low hour contracts and are there any alternative approaches that might assist organisations that currently rely on such contracts?



Zero hours contracts

- Covers those on zero hours contracts and workers with a low number of guaranteed hours who regularly work more than those hours
 - NB: means employers cannot avoid these requirements by having workers on a contract guaranteeing minimum but low number of hours
 - low hours definition will be subject of consultation
- Employer must make guaranteed hours offer to worker after the end of a set period
 - this will involve either varying the zero hours contract or giving a new contract
- Employer also has to give a worker reasonable notice of cancellation of or change to a shift
- Employer must pay a specified amount to a worker each time the employer cancels, moves or curtails at short notice a shift

Zero hours contracts

- These measures will also be adapted and applied to agency workers
- Will be the ability for workers to stay on zero hours contracts if they want to
- No expectation to guarantee hours where work is genuinely temporary
- Won't impact those on full-time contracts who occasionally work overtime
- Consultation published on application of these measures to agency workers
- Consultation on definitions, length of reference period (likely 12 weeks), terms to be offered and review periods promised
- Further regulations will then be made to bring these provisions into force

Zero hours contracts: what's been added?

- New requirement for employers to take reasonable steps to ensure workers are given specified information in relation to their rights to guaranteed hours during an 'initial information period'
- New requirement for employers to give workers notice if consider exception to duty to make a guaranteed hours offer applies or where an offer has been treated as withdrawn
- Workers to have the right to bring tribunal claims for breach of these duties

Question 7: Trade unions

What are the likely future impacts on trade union relationships in light of the proposed changes for both unionised and non-unionised workplaces?



Trade unions

- Significant changes to TU rights
- Employers required to provide a written statement confirming employee's right to join a trade union
- TU's to be able to request an 'access to workplace agreement' from employers to provide access for them to meet members, recruit new members, support a member or facilitate collective bargaining
- Changing the triggers for statutory recognition to make it easier to achieve
- Simplifying industrial action ballots
- Reversing the burden of proof on time off for union duties
- Protection from detriment for participating in lawful strike action
- Minimum service levels repealed
- Changes likely to come into force sooner rather than later – initial consultation published with more

to follow

Trade unions: what's been added?

- Requirement for union to have a certificate of independence to benefit from access to workplace provisions
- Workplace to exclude any part used as a dwelling

Question 8: Timescales

When will the new Bill come into force and when are the changes under it likely to come into effect?



Timetable

- Bill currently passing through Parliament
- Targeted consultations published which may result in amendments to the Bill
 - percentage replacement rate for those earning less than the current SSP rate
 - preventing abuse of rules on collective consultation and fire & re-hire
 - application of zero hours contracts provisions to agency workers
 - proposals to modernise and update trade union laws
- Once Bill receives Royal Assent, implementing regulations and codes of practice will be needed to bring the provisions into force
- Consultations on these regulations and codes of practice due to start in 2025
- Likely majority of reforms will take effect no earlier than 2026
- Reforms of unfair dismissal will take effect no sooner than Autumn 2026

Question 9: Actions

Is there anything we can be doing now to prepare for the changes coming into force?



Actions

- Assess the impact this may have on your workforce – how many dismissals do you have in the first two years? First nine months? How many are redundancies?
- Monitor the progress of the Bill in respect of probation periods and how you can align to the light touch rules
- Assess the impact this may have had on your business in recent years and any restructuring in the pipeline
- Consider having a standing body of elected representatives if the rules may be triggered frequently
- Comply with the new duty to take reasonable steps to prevent sexual harassment of workers to be a good position when the extended duty is introduced
- Identify which policies changes to family leave will impact and prepare to update them. Ensure that payroll is kept up to date with developments
- Train managers on recruitment practices, performance management and handling flexible working requests
- Identify who across your workforce could be caught by the zero hours provisions

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