

# HR insights podcast

## Series 9 | Episode 7

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*PSA: This transcript has been written with assistance from AI.*

### The new employment law landscape – Part One

Stuart (00:24)

Paul, welcome to the show. How are you today?

Paul Burton (00:26)

I'm good thanks. Thanks for having us Stuart. Yeah all good and nice to see it's a little bit cooler this week so yeah much more comfortable.

Stuart (00:32)

Yeah, it's much cooler and we can joke a little bit about this, but you and I now have tried to record this. I think it's our third attempt, is that right? Yeah. Yeah, we've had a few technical issues in recording this, so we're hopeful that we've got this right now and we're all here. But for our audience and for everybody, do you want to give a little intro to you and your background?

Paul Burton (00:42)

It is, yeah. Yeah, don't say I'm lucky.

Yeah, of course. I'm Paul Burton, VUHR. So personally, I've been an employment solicitor, specialising just in employment for 20 years this year, actually. So yeah, I'm literally at VUHR. I'm one of the solicitors here and I support both internally, my colleagues on the employment law side of things, but more importantly for clients, anything to do with employment law. In terms of me personally,

I live down in Dorset. I'm a bit of a sports fiend, so I like playing lots of sports. Cricket was my big one when I was younger, but eventually my back gave out. So these days I do a bit of tennis and some cycling.

Stuart (01:47)

Very, very nice. I think last time was actually about being a mammal, so you're very in that camp, is that right?

Paul Burton (01:52)

I'm afraid I am, yes, very much a middle-aged cyclist, yes, who wears, who does wear lycra occasionally.

Stuart (01:55)

Yeah, no, that's fair. What about what about paddle? Have you got into that? That's the booming sport at the moment.

Paul Burton (02:07)

Yeah, very recently tried it out, yes. We're lucky we've had a new Dorset Paddle Centre open about 10 minutes from where I live. So, yeah, I've been down there a couple of times. Yeah, it's very interesting.

I played a bit of squash when I was younger, in sort of my teens, twenties. So it's bit of combination of tennis and squash. So, yeah, it's quite good.

Stuart (02:33)

Yeah, I've only played it once or twice, but it feels like it's everywhere at the moment. And I don't know whether that's because it's much easier to play than tennis, or yeah, but it seems to be the sport at the moment.

Paul Burton (02:36)

Yes, very popular. It is. I think it's the fastest growing sport in the UK apparently in the last couple of years. Yeah, it may be. There's courts certainly popping up all over the place. Yeah, and it's indoors. You can fit more courts in a space because they're smaller. And there seems to be, as you say, I think it's a bit of a snowball effect at the moment because it's growing more and more people are coming away with it. And at some point it will plateau, but yeah, it looks good at the moment.

Stuart (02:50)

I think you're right, yeah, I think he is.

Yeah. Very good. Well, we're not here to talk sport all day. We're here to talk employment rights act, yeah, your, your professional expertise that we want to sort of dive in, dive into. look, we know there've been some change in the UK. And I think even when I think about our international audience, a lot of what happens in places like the UK or the U S when something like this changes, that is a sort of a precursor to things happening elsewhere in the world as well.

Paul Burton (03:20)

Yeah, as much as I'd like to, yeah.

Stuart (03:45)

Do you want to give a little bit of a summary of the changes that have been happening?

Paul Burton (03:54)

Yeah, December last year, what's known as the Employment Rights Act 2025 came into force. And it's probably the largest piece of legislation, I would say, in employment law, certainly since the Equality Act in 2010. Some of your listeners might know about that. And even the 1996, unfortunately same name, Employment Rights Act. Because...

Stuart (03:56)

What happened?

Paul Burton (04:22)

It's bringing in a number of changes over, you know, really from early this year, right through until next year and beyond potentially. So, yeah, I can talk about some of the changes that have come in so far. The first major change was in February on the 18th, to be exact, and that was all around trade unions. So some sort of industrial action reforms, which is... probably to be expected with a Labour government coming in without getting political, but that's the sort of thing we'd expect them to do. And so they've made it basically easier again after some restrictions were brought in in previous governments for industrial action to take place. So there's now what's called a mandate for them to take action once they've had a vote that's been extended from six months to 12 months.

And the notice period that they have to give to the employers is reduced from 14 to 10 days, as well as some voting changes around the minimum level service levels for say public, important public services such as NHS, emergency services, etc.

So that was in February and there's more trade union changes to come. And then April was the next sort of big raft of changes at beginning of the financial year. Firstly, statutory sick pay. So two major changes to that. What's called the waiting period, which was three days has now been removed. And also there was a minimum earnings threshold below which you literally weren't entitled to statutory sick pay.

Now everyone's entitled to statutory sick pay, but if you're below that threshold, then you get 80 % of your earnings. Then some family-friendly rights, as we call them, changes to paternity leave and unpaid parental leave. They became day one rights. So previously you had to have qualifying periods of work for them. Now they are right from day one of employment. Sexual harassment.

There's changes to law there and again, there's more coming up. But the one in April was around making it a qualifying disclosure as part of whistleblowing. So now sexual harassment is a specifically name in the legislation that can be a protected disclosure. And then finally on collective consultation and what that means is if you've got lots of redundancies, 20 or more, or you want to change lots of employees' terms and conditions,

There's a procedure to go through. If the employer gets that wrong, they can be penalised. But it was previously 90 days per employee affected. It's now 180 days. So theoretically, it can become very expensive because you could be facing pretty much six months wages to pay to each affected employee. So they're the changes. And then the one other thing is a whole new body came into effect, the Fair Work Agency, that came into being in April as well.

Stuart (07:49)

Yeah, okay. Quite a lot to unpack on some of that. quite a lot. Now, before I go into some of those points individually, do you find that these changes are going to affect certain types of businesses more than others? is it companies that are more, I suppose, public sector in orientation, or do you find that this is going to be more, say, manufacturing, or does it genuinely affect sort of white collar workers as well, do you find?

Paul Burton (07:52)

A lot to unpack, yeah.

A lot of the changes will affect every type of business. Some of the changes, in particular ones coming down the line, there will be certain sectors that will be affected more. For example, the ones we've talked about, sick pay, know, unfortunate no matter what sector you work in, as an employer, you're going to have people go off sick. Yes, it is true that some sectors have historically been affected more by higher sick rates. But then again with the paternity and parental leave changes that you no matter where you work, what sector you're in, you're going to have people who need to use those rights. So in essence, yes, it's going to affect all sectors, all types of business, public, private, going forward.

Stuart (09:16)

Yeah, okay. Yeah, well, let's unpack the stuff she said, if I want to touch on that first. if we talk to us about the waiting period, what it was, why it existed and why it's so relevant that it's disappeared now.

Paul Burton (09:21)

Hmm, yeah, well first thing to say is there are of course a lot of employers and this is where it was much better generally in the public sector but still a lot of private sector employees do it as well have contractual sick pay. So, you know, we must make it clear that it has been the case a lot of people did get sick pay from day one but it was contractual sick pay. Statutory sick pay which is the bare

minimum which every employer had to provide. There was a three-day waiting period and what that essentially meant was, if you worked for me and you were only entitled to statutory sick pay and you took a couple of days off because you had a heavy cold or something or you know whatever, then I didn't have to pay you anything because there was a three day waiting period. You weren't entitled to the statutory sick pay amount until day four onwards. Whereas of course that's gone now. So now it's from day one.

Stuart (10:25)

Right, okay. And from day one, does that mean you need to be, I suppose, prescribed off by a doctor or what does that mean exactly then?

Paul Burton (10:34)

No, no, so that hasn't changed. So people can still self-certify for the first seven days. So after seven days, you need me, need what we call a fit note from your doctor. But what employers certainly feared when the legislation come in, and obviously it's early days, we're only a couple of months into, so it'll be interesting to see what the statistics are like on sickness absence levels. But what some employers were fearful of was, course, if people knew they were going to get some sort of pay

Stuart (10:37)

Right. Okay.

Paul Burton (11:04)

in those first few days, they're much more likely to take the odd day off, you know, or two days here than perhaps previously. Yeah.

Stuart (11:09)

Yeah. Okay. And did this mean that I suppose absence management becomes ever more important to a company? Is this something they should be focused on a little bit more than they maybe were?

Paul Burton (11:22)

Yeah, absolutely. A lot of employers will have in their contracts of employment, you know, we may have return to work interviews with you when you've been off sick and that, but actually in practice, a lot of them, you know, for understandable reasons, you you're busy, you're doing other things, just didn't carry those out. I think they're much more important now. As you mentioned, you've got to be a lot more proactive in absence management.

So if people are off, have a return to work interview with them. Fine. From a supportive side of things, see what's happened, why they've been off. It might be something very minor and that's fine. But also keeping, analysing how often people are off. Do you have those persistent short term absences, which as I said, some employers are fearful that are going to increase.

So yeah, that is something to definitely do.

Stuart (12:25)

Yeah, makes perfect sense. And if we move on to the paternity, we can sort of go through these one by one. We'll go into the paternity side of things. Now, obviously these are now, I suppose, particularly day one rites. What were they before?

Paul Burton (12:32)

Right, so they were actually slightly different. The qualifying period for paternity leave was 26 weeks, so six months. Whereas for unpaid parental leave it was a year. So now I must make it clear, because there's even a colleague who were confused about this when the law first came in, this doesn't

change the pay side of things. OK, so there are still different qualifying conditions for pay, but this is much more importantly about leave.

Stuart (12:43)  
Right.

Okay, long time really.

Paul Burton (13:10)  
So if you join me day one, then you are entitled, even though if you're going to become a father, then you're entitled to that leave from day one.

Stuart (13:23)  
Yeah, and parents are leaving the UK. What does it stand out at the moment?

Paul Burton (13:28)  
So unpaid parental leave, again that will be from day one as well. It's not as well used because the key word there is unpaid. Of course there are some employers who will go above and beyond the bare minimum of the law and pay, but it is unpaid leave and it tends to be for, you know... when your children are perhaps, you need to take time off because not necessarily they're ill, but they need some support in something. And what it means is through the child's lifetime, up until they're an adult, parents can take time off as parental leave and they are protected in terms of their job and that if they do so. But as I say, it is unpaid unless the employer decides to go over.

Stuart (14:27)  
Yeah, fair enough. But paternity leave is normally roughly two weeks, is it? Is that right? Paternity leave? Yeah.

Paul Burton (14:31)  
It is. There has been talk about it being increased, but at the moment, yes, it's the minimum. Again, employees can offer more, but the minimum statute now is two weeks.

Stuart (14:44)  
Yeah, that's what I'm hearing a bit more noise on from employers rather than maybe legislation. I do hear a few employees potentially looking at that as a way of differentiating themselves from other companies in terms of benefits.

Paul Burton (14:49)  
Yeah, benefits. the pay these days was it's still predominantly going to be the most important thing that people look at. More and more benefits are something that employers really need to look at to differ, as you say, differentiate themselves from other employers in the recruitment market.

Stuart (15:22)  
Yeah, completely. And if you're an employer, is the biggest thing here about updating policies and that kind of thing, or are there other factors to think about and consider here?

Paul Burton (15:33)  
I would say yes, updating policy is always important. You must make sure that that's in place correctly. But I'd say more important is the training of your managers, making sure that they are updated and are aware of the changes. Because you might have some very good managers who have been around for years and they've always known that you have to work for six months or a year before you get these rights. And what you don't want to do is someone join you, come to the manager and

say, oh, actually, good news. know my partner's having the baby now and I need my paternity leave. And you turn around and say, oh, no, you're not entitled to do it. You've only just joined us. Because then straight away you're into a problem. yeah, making sure not just your staff are aware of their rights, but you your managers know about them and know how to deal with requests when they come through.

Stuart (16:35)

Yeah, so ultimately it's not just a policy change, there's a training and development angle to this or learning and development angle to this as well.

Paul Burton (16:43)

Yes, yes, I always think that the management risk side of things is much higher almost than the policy updates. I would hope that a lot of HR experts will be able to do obviously the policy updates fairly easily. It's all the stuff that comes around it like the management training.

Stuart (16:49)

Right. Yeah, that makes perfect sense. And again, as I said, we're going through this little lumbar line a little bit, but the sexual harassment disclosures are now protected under whistleblowing legislations, suppose. There are a of questions here. Why is that so important? Can you also talk us around what the changes are here, just so that everyone is crystal clear on what this is?

Paul Burton (17:11)

Yeah, so we've got whistleblowing legislation in place already in the UK. And what that means is if an individual says to their employer, you're doing something wrong, traditionally it would be you're breaching health and safety or you're breaking a law of some sort and then they suffer a detriment. So it could be anything. It could be like, well, you haven't promoted me or you haven't given me a bonus like you have, something negative, or they're in fact dismissed because, and they say it's because of that disclosure, then straight away they're going to have claims around that. And what the government have done, they've now added sexual harassment to the list of things that can be a protected, what we call a protected disclosure. And what that means in practice is a few things.

Firstly, gives an individual another route. So, up until April, it was the case that if you had suffered sexual harassment, then you had to bring a claim under the Equality Act as a form of discrimination, or maybe you even resigned and claimed constructive unfair dismissal. Now it's been added to the whistleblowing legislation. Firstly, the person doesn't have to be a victim themselves.

So if you see someone else being harassed and you say to the employer, well, this is going on, and then you suffer, you think you suffered detriment or dismissal, you could bring a claim then. So that's the first big thing is it expands the remit for one of a better phrase. And then secondly, it does open up if the employer does get it wrong and doesn't deal with it properly. It does open up.

As I said, not only further claims, but even types of claims. So there's something called interim relief, which is very technical and has to be claimed within seven days of the individual sort of bringing the initial whistleblowing claim. But essentially at its worst for the employer, if they succeed in what's called an interim claim, relief claim, then they can claim their wages, even if they've been dismissed, all the way up to whenever a final hearing to determine the whole claim takes place. And unfortunately, with the tribunal system at the moment, sometimes having to wait two or three years, that could be a very expensive issue for an employer. you know, it does, and then there's further amendments to sexual harassment later in the year. So combined, it is a very big area for employers to be careful of.



Stuart (20:09)

Yeah, in terms of I suppose, I think you were chatting to the marketing team ahead of this and I think one of the things that you mentioned was around whether disclosure would be managed as harassment, grievance or a whistleblowing concern. How can it fall under three or would it fall under one or how does that work?

Paul Burton (20:16)

Yes, it cannot. So the short answer is yes, it can. So they could raise a grievance. They could say they've made a protective disclosure. And of course, they can bring just a general sort of, think, I'm being discriminated against. For employers, though, I think it's not so much, and HR experts, I don't think it's so much what policy it falls under because you could tell yourself I'm not about what procedure do I know I've got a grievance procedure in the handbook, I've got whistleblowing policy etc. It's more like well what's the legal protections that the individual has and therefore how do I deal with that and practically what I think that means is as long as you conduct one proportionate investigation not necessarily badge it in one of those three things, but make sure that you are looking to minimise the risk of any of those types of claims, a whistle blowing, discrimination, etc.

That's the important thing. you know, listening to the employee, you know, sitting down with them, maybe interviewing other people and really sort of come into a sensible, reasonable conclusion and communicating that back to the individual, that's much more important than worrying too much about the badge you associate with it.

Stuart (22:04)

Yeah, yeah, okay. And I suppose, is this, again, this is more responsibility on managers, right? I'm assuming this is like, HR is obviously going to be aware of this, but it's more about the managers than it is HR sort of knowing and understanding these rules.

Paul Burton (22:14)

Absolutely.

Yes, yes. And some legislation changes came in back in 2024 actually. So we were telling them employers and clients then that they had to be looking at this with their managers. But it's even more essential now, Stuart, you're absolutely right that it's at the cold face because usually it's quite common for an individual not necessarily to go off to HR and for smaller businesses you may not even have an HR department, they're going to go to their line manager or senior manager. And yes, it's those managers that need to know how to deal with when those concerns are raised. yeah, training is absolutely essential.

Stuart (23:04)

Yeah, I think I feel more sorry for managers than I do maybe HR with some of these changes in legislation. it's, cause it's, I suppose they're the ones that are going to see it. If it happens every day, they're the ones managing teams where this is going to impact. It's a lot of responsibility.

Paul Burton (23:19)

Yeah, it is. Yeah, it always has been unfortunately, you know as employment laws grown since it first came in in the early 70s Unfortunately, yeah, it is the case that obviously if you've got good HR behind you supporting you then that should help so I don't want to take away from that but yes managers really do need to You know be aware. I always say to people, if in doubt, ask, whether it's your internal HR or whether it's someone external, an expert externally, don't be afraid to do that rather than trying to second guess.

Stuart (24:02)

Yeah, it's, it's, suppose I only just raised that a little bit because we, I talk a lot on podcasts with, with say people in sort of leadership and development, et cetera. And they talk a lot about the accidental manager people that have fallen into this because they're good at saying maybe an individual contributor role. And they go into them being a manager without, without thinking about things like this, they don't, you don't, you don't go into management thinking this is what you're going to have to deal with. You go into management because you enjoy the job that you do.

Paul Burton (24:11)

Yeah, and you're good at it. Yeah, I have to say Stuart that historically and some of my solicitor colleagues out there might not necessarily like this, but it's my experience. Law firms were almost some of the worst at this because what would happen historically is, you obviously you have billing targets, et cetera. And if you were good at your job, you got promoted up, you'd suddenly have a team below you, but you wouldn't necessarily get the training to help you support that team. And yeah, I would say the legal sector wasn't necessarily, you know, was probably one of the worst ones in, sorry, certainly historically. Yeah. Yeah. So I know exactly what you're talking about.

Stuart (25:14)

Yeah. And I suppose like good HR functions, are they, are they the ones that I know that's, they're the ones that maybe are not just saying, I'll do a training session. I'm done. They're the ones that sort of continually educating and supporting on things like this. Because again, I can imagine being a manager and you go to sort of do some training on this. It goes in one ear and out the other in the first round. It, it, it's really hard to sort of remember all this stuff on top of the day job.

Paul Burton (25:31)

Yeah, and you're not going to remember it, especially as time goes on. Because you'd hope that a lot of these issues only come up very occasionally, if at all. And yeah, if you had your training four years ago, you'd be like, I can't remember. So yeah, it's constant and sexual harassment training, which, as I said, since 2024, I say, employers should be doing anyway. It has to be regular.

It should be, you know, every year, every 18 months, even if it's just a refresher and obviously not as detailed as the initial induction training. Yeah, it's really key.

Stuart (26:14)

Hopefully. Yeah, I completely agree. Now, you mentioned this at the start of the call again. I want to talk about the Fair Work Agency because I have say this is something I've not really heard of before. Do you want to tell us what it is and what it's designed to change?

Paul Burton (26:28)

Yeah, of course. So the Fair Work Agency is a brand new body that's come into force from April this year. historically, and it's all about enforcing individuals' rights against their employers who have done things wrong in certain areas. So historically, you had a claim, maybe you succeeded with it in a tribunal, and then the employer doesn't pay.

Or it could be that you've raised it with HMRC about national minimum wage and your employer doesn't pay once they've determined. That was the issue. There were several different bodies to go to for different things. So as I said, if it was national minimum wage, it was HMRC. If it was employment agency standards, then you had to go to the what's called employment agency standards inspectorate.

If you were working under a gang master, you had to go to the gang master's and labour abuse authority, some of these things I hadn't heard of years ago. And so it's very confusing for, not only was



it very confusing for individuals, but more importantly, it was difficult. And so often people would just give up and the statistics on awards not being made are paid by employers were high.

So anyway, this government decides to bring in the Fair Work Agency. And first thing it does, it's a single enforcement agency. So it brings all those things I just mentioned, which were fragmented before under this one new body. But this body also has extra powers. So rather than just sort of enforcing awards against employers who have breached national minimum wage, for example, or, you know, abusing, exploiting people and not having the right licenses for their workers. Not only do they can investigate and enforce action, but for the first time, pretty much in employment law, they can actually bring claims on behalf of individuals. So, you know, they can go to tribunal on behalf of an individual, for example, who hasn't received their national minimum wage. At the moment, it is restricted to those areas I've just said.

But over time, it's going to be expanded, we've been told by the government, to things like unpaid holiday, which of course has been a big issue over the years. So yeah, it's obviously too early to say how effective it will be. I don't know how well it's resourced by the government, but yeah, it's now in play from April.

Stuart (29:27)

Yeah, I've so I didn't know too much about this at all. when I when I started looking into it, I found out that it sort of takes over the of the employment agencies act as well in terms of conduct and regulations for recruitment agencies. So there's, there's a lot there that falls under this that I genuinely wasn't aware of.

Paul Burton (29:49)

Yeah, that's what I'm say. Employment agency, as I say, was the standard authority before, now it comes under the Fair Work Agency. Yeah. And as I said, I have increased powers. Of course they can impose penalties and fines of their own as well. So yeah, it's something you need to be aware of.

Stuart (30:04)

Yeah, completely. And this is part one of the conversation that you and I are having. So I want to wrap up part one with a of a final question for you. Like in terms of, so I suppose advice around these changes, if you were sort of talking to HR people at the moment and they're a little bit nervous about what was happening, what advice would you give them at the minute?

Paul Burton (30:12)

We've talked about this quite a bit up till now. I think the big mistake that some have made in the past is treating all these legislation changes in employment law as just legal updates. We'll just update our policies and leave it at that. It's more treating it as an organisational change and management risk, as I mentioned earlier. So it's all about focusing on your manager's capability, how to deal with all these issues because as you said earlier Stuart, there's so much to try and remember and think about and there's more more things that your staff can come to you about with concerns and issues. So it's really about focusing on that side of things and of course, and I said this earlier, don't be afraid to look for help, whether it's internally or there's lots of external help out there as well. So if in doubt, ask the old adage.

Stuart (31:33)

Yeah, and I suppose just a question business wise for you. Is this resulting in business for you? Are you doing a lot of this sort of training and development for organisations at the minute?

Paul Burton (31:44)

Yeah, right from doing the contractual changes and handbook changes. But yes, also we do training. So we do the sexual harassment training, for example, as I said, that's really important now. And just advising clients on a day to day basis, really, because no one can remember everything. And you you're most experienced HR or managers will need assistance.

Stuart (31:45)

Yeah.

Paul Burton (32:13)

Cynically, you could argue he's given us more work and we are certainly very busy now.

Stuart (32:19)

Yeah, nothing cynical about it. I think this is one of the arguments that a lot of businesses have, isn't it, on changes. It makes work more complex or more complicated, which means expertise like yourself is ever more in need when changes like this happen. So yeah, I think it's something that's really important. But I want to thank you for your time because obviously this is just part one, as I said, two parts that we're going to go to.

Thanks so much for your time today Paul, it's been a real pleasure to talk to you and I look forward to talking to you on our next episode.

Paul Burton (32:43)

Yeah, thanks Stuart, it was great, and I'll speak to you soon. Thank you.

Stuart (32:53)

Perfect.