

EMPLOYMENT & INCENTIVES

The Employment Rights Act 2025: The Fair Work Agency

The Fair Work Agency (the “**FWA**”) launched on 7 April 2026 as a single enforcement body for employment rights across Great Britain (as well as certain rights in Northern Ireland), consolidating functions previously spread across multiple agencies or not proactively enforced at all.

Current position

Prior to the establishment of the FWA, employment rights enforcement in Great Britain was fragmented across multiple bodies, including HMRC, the Employment Agency Standards Inspectorate, and the Gangmasters and Labour Abuse Authority. Some important employment rights, such as the right to holiday pay, were not subject to enforcement by a specific government body. The FWA has been established with the intention of consolidating these functions into a single, more powerful enforcement body, providing a step-change in the enforcement of employment rights and improving compliance across the labour market.

Establishment and structure

The FWA, through enforcement officers appointed by the Secretary of State, will be responsible for enforcement. Matthew Taylor has been appointed as the FWA’s Chair, Lisa Pinney as CEO, and the Fair Work Agency Advisory Board - consisting of independent members, trade union members and employer members - has been appointed to support the FWA’s work.

Remit

The FWA consolidates enforcement across areas that were previously either not enforced or enforced by separate bodies (see the summary table below). Its remit may also be expanded further in future. Whilst the FWA has now launched, establishing a body of this scope and complexity is a significant undertaking, and it is likely to be some years before it is fully operational.

Jurisdiction	Previous enforcement body/ status	FWA enforcement remit
National Minimum Wage (“ NMW ”)	HMRC.	NMW payments, record-keeping obligations, workers' right to access records and receive a NMW statement, entitlement to additional remuneration, the right not to suffer detriment, and related offences.
Holiday pay	Not proactively enforced by a specific government body.	Payment of holiday pay and “rolled-up” holiday pay under the Working Time Regulations 1998.
Statutory sick pay (“ SSP ”)	HMRC on a dispute-resolution basis only, with no penalties available.	Employers' liability to pay SSP and the obligation to provide SSP entitlement statements and related information to employees.
Employment agencies	Employment Agency Standards Inspectorate.	Employment Agencies Act 1973 and regulations made under it.

Jurisdiction	Previous enforcement body/ status	FWA enforcement remit
Modern slavery	Gangmasters and Labour Abuse Authority.	Provisions of the Modern Slavery Act 2015 relating to slavery, servitude, forced or compulsory labour, and slavery and trafficking prevention and risk orders.
Fraud Act offences	Not proactively enforced by a specific government body.	Certain offences under section 1 of the Fraud Act 2006 committed in relation to a worker or work-seeker.
Employment Tribunal financial penalties	The Employment Tribunal Penalty Enforcement and Naming Scheme.	Obligation to pay financial penalties imposed for failure to pay sums ordered by an Employment Tribunal or settlement sums agreed in a COT3.

Importantly, equality legislation does not fall within the FWA's remit. For example, enforcement of an employer's equal pay obligations, their duty to take reasonable steps to prevent sexual harassment, and their obligations to comply with gender pay gap reporting regulations, remains with the Equality and Human Rights Commission ("**EHRC**"), but the government has said the FWA will work closely with the EHRC to develop guidance for employers regarding new employment rights introduced by the Employment Rights Act 2025 (the "**ERA 2025**").

Key enforcement powers

The FWA has a substantially expanded enforcement toolkit compared to its predecessor bodies, including:

Information gathering: the FWA can require individuals to attend a meeting, or request that information and documents are provided by a specific deadline.

Premises entry: the FWA can enter premises to inspect or examine documents, including by accessing computers and other devices. No warrant is needed unless the premises are a dwelling or certain limited exceptions apply. Officers must enter at a reasonable time, but may enter at other times if they have grounds to suspect that doing so at a reasonable time would frustrate their search.

Document seizure: the FWA may copy and retain seized documents for as long as it considers necessary. Its powers are limited to information it has reasonable grounds to believe is necessary for enforcement purposes, and employers may refuse requests on the basis of legal privilege.

Notices of underpayment: previously available only for NMW, notices of underpayment are now issuable across all statutory pay provisions such as sick pay and holiday pay. The employer must pay a penalty of 200% of the amount owed per individual, capped at £20,000 per individual (minimum £100). Payment must be made within 28 days, but if the amount owed is paid within 14 days, only half the penalty is due. A notice can relate to sums due in the last six years.

Name and shame: The public "name and shame" lists currently used for NMW underpayments may be extended to other statutory pay provisions. In the 2025 Budget, the government confirmed that they will "*name employers who break the law*" more regularly, and that employers who are in breach of the law can expect to be named within a year of their case closing. Employers need to be mindful of the reputational risk this can bring.

Bringing Employment Tribunal proceedings: the FWA can bring Employment Tribunal proceedings on behalf of a worker who has the right to bring a claim but is choosing not to exercise it.

Legal assistance: the FWA can provide legal assistance, including advice and representation, to individuals who are party to legal proceedings relating to employment law (including in relation to trade unions and other labour relations matters).

Undertakings and orders: the FWA can request "labour market enforcement undertakings" from employers, under which employers commit to correcting non-compliant practices. If an employer does not agree to provide an undertaking or fails to comply with one, the FWA can apply to a court for a "labour market enforcement order" lasting up to two years.

Criminal offences for non-compliance

The ERA 2025 creates a number of criminal offences, attracting both fines and (in extreme cases) potential prison sentences, including:

- > Failure to comply with a labour market enforcement order without reasonable excuse;
- > Producing information or a document that is false in a material respect, knowingly or recklessly; and
- > Intentionally obstructing an enforcement function, or failing to comply with a requirement imposed under one.

Where an offence is committed by an employer with the "consent, connivance, or neglect" of an officer, both the officer and the employer may have committed an offence and be prosecuted. "Officer" covers a director, manager, secretary, or similar officer, or a person purporting to act in any such capacity.

Impact on employers

The government has been clear that the FWA will be a body with "real teeth". The consolidation of enforcement into a single body with broad investigative powers — including the ability to enter offices without prior notice, review workplace devices, collect documents, and interview individuals — represents a step-change in employment law enforcement.

Holiday pay and NMW are two areas where the impact is likely to be significant. Historically, employers have only been liable where employees have brought Employment Tribunal claims (for example, the Police Service of Northern Ireland was liable for over £30 million in holiday pay underpayments in 2023). That may change, with the FWA investigating these types of issues without the need for employees to start litigation.

The FWA's Chair, Matthew Taylor, has indicated that the FWA's approach will be one of proportionality and compliance-first enforcement¹:

- > The FWA will prioritise persuading employers to comply with employment reforms, rather than immediately deploying police-like powers of entry and seizure. Mr Taylor has said the threshold for using such powers will be "*quite high*".

¹ "Workers agency will use persuasion", The Times, 25 March 2026

- > Enforcement powers such as entering workplaces or homes will be used sparingly.
- > The FWA's stated aim is to maximise compliance through education rather than enforcement.
- > The FWA will focus its efforts on sectors with a higher risk of exploitation, including car washes, nail bars, construction and social care, which are known for higher vulnerability.

The FWA is expected to use its power to bring tribunal proceedings to target cases involving systemic or widespread non-compliance affecting large numbers of workers, rather than isolated individual cases.

It is expected that normal practice will be to bring proceedings only with a worker's consent and involvement. However, in the worst cases of serious exploitation and intimidation, workers may fear repercussions from their employer should they not be anonymised. By allowing cases to be taken forward without the worker's consent in such circumstances, it would be harder for employers to attribute blame to (and victimise) individual employees. This is not intended as a routine power but as a targeted tool for the most egregious cases of exploitation.²

Preparing for the changes ahead

Most of the rights being enforced are not new, but the FWA's broad investigative powers and ability to bring tribunal proceedings on behalf of workers mean that compliance gaps which previously went unchallenged are now more likely to be identified and acted upon. Steps employers can take include:

Review holiday pay compliance: Ensure compliance with legal requirements, maintain good records (including complying with the new duty to keep annual leave and holiday pay records, which came into force on 6 April 2026), and clearly set out how holiday pay is calculated and what elements it includes.

Audit compliance across the FWA's full remit: Review NMW compliance and record-keeping, SSP obligations, any employment agency arrangements, and any supply chain

exposure under modern slavery legislation. Address any gaps in compliance proactively.

Strengthen record-keeping systems: Ensure clear and comprehensive audit trails, which evidence compliance with legal duties, are available.

Review and update policies: Ensure policies comply with legal provisions and set out sufficient detail of the processes followed.

Prepare a dawn raid protocol: Train staff - including security, reception, and senior management - on how to respond if FWA officers attend the office or make contact.

Know your safeguards: If officers look to inspect an employer's premises, they must produce identification if required. Employers are not obliged to provide information or documents protected by legal professional privilege. Information provided under enforcement functions is subject to the privilege against self-incrimination and cannot be used as evidence against the person in criminal proceedings.

Ensure awareness at all levels: Criminal liability can extend personally to directors, managers and other officers. The government is also considering how the FWA can use powers in the Company Directors Disqualification Act 1986 to disqualify directors where violations of employment rights indicate that they are unfit to be concerned in the management of a company. Boards should be briefed on the FWA's powers and the potential consequences of non-compliance.

Monitor FWA priorities: The FWA must publish a labour market enforcement strategy every three years. Employers should use this, along with published enforcement action, to track which issues and sectors the FWA is focused on.

Engage with the transition period: Although the FWA launched on 7 April 2026, it is likely to be some years before it is fully operational as functions transfer from predecessor bodies. Employers should use this period to embed compliance practices before the FWA's full enforcement capability is established.

If you have any questions, please get in touch.

2. Baroness Jones of Whitchurch, House of Lords, Employment Rights Bill Committee, 18 June 2025, Hansard: <https://hansard.parliament.uk/lords/2025-06-18/debates/F97F1CD0-4604-4694-8B93-17F4AE68223C/> EmploymentRightsBill

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