

# Client Alert

Providing Strategic Legal Guidance to the Financial Services Industry



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For more information, contact:

Darren Gardner  
+1 415 318 1246  
[dgardner@kslaw.com](mailto:dgardner@kslaw.com)

Tessa Cranfield  
+44 20 7551 7567  
[tcranfield@kslaw.com](mailto:tcranfield@kslaw.com)

Dominic Hodson  
+1 415 318 1247  
[dhodson@kslaw.com](mailto:dhodson@kslaw.com)

Jesse G. Pauker  
+1 212 556 2355  
[jpauker@kslaw.com](mailto:jpauker@kslaw.com)

Costa Burkov  
+44 20 3929 5345  
[cburkov@kslaw.com](mailto:cburkov@kslaw.com)

King & Spalding

London  
8 Bishopsgate  
London, EC2N 4BQ  
United Kingdom  
Tel. +44 20 7551 7500

## Newsflash – What do the UK’s new employment laws mean for Financial Services?

The UK’s new Labour government unveiled a package of new workers’ rights yesterday, with wide-ranging ramifications for employers. Whilst the most significant measures will not be implemented until 2026 at the earliest, employers will need to use that time for active planning. They should also use the opportunity to contribute to the government consultations which will take place for the most significant plans.

We expect the following to be most relevant to King & Spalding clients in the financial services sector:

### UNFAIR DISMISSAL RIGHTS FROM DAY ONE

No sooner than Autumn 2026, unfair dismissal protection will apply from day one of employment. This is currently subject to two years’ seniority. This will be subject to a statutory probationary period and a ‘lighter-touch’ process for employers to follow to dismiss an employee who is not right for the job within that initial period. But a fair reason will still be needed – and this will not include redundancy/job elimination. And notably unfair dismissal protection will apply *before* Day One for certain protected grounds, including whistleblower status and retaliation.

Still for consultation are the length of the probationary period (with the government proposing 9 months), the dismissal process required to terminate during that initial period, and whether the usual unfair dismissal compensation would be reduced during this period.

Most UK financial institutions are currently subject to the ‘competent employees rule’. The nature and extent of this rule varies depending on the licence the institution holds and the position of the relevant new hire. Each firm must also have systems and controls to enable it to satisfy itself of the suitability of anyone who acts for it. However, the nature of this assessment generally differs depending upon whether it takes place at the outset of employment, at the end of the probationary period (if there is



one) or subsequently. Employers do not all actively manage performance in particular for probationers, as the regulatory rules allow some flexibility with this regard. It is not unusual to extend probation or even let workers pass probation, on the basis a decision on their ongoing employment can be made at a later date. Employers should consider the FCA and PRA reporting impacts of adopting formal performance and exit processes for probationers.

We expect financial services employers to look to strengthen their candidate assessment processes. However, they will need to take not to rule out candidates on the basis they have been in disputes with their prior employers given the protections that will now apply *before* Day One, so covering candidates as well as employees.

As recent case law and regulators' decisions demonstrate, it's important to ensure that the HR and compliance teams work together on all disciplinary decisions involving conduct breaches or issues of fitness and propriety and that all stages of the process are well documented and properly assessed. The UK regulators are taking an increasingly broad approach as to the factors relevant to the fitness and propriety test (see [FCA Final Notice: Ashraf Wealth Management Ltd \(dated 3 October 2024, published 8 October 2024\)](#)), however, any disciplinary decisions must be clearly documented and properly assessed, and HR and compliance actions taken should be consistent (see [B Jones v JP Morgan Securities Plc](#)).

#### MAKING FLEXIBLE WORKING 'THE DEFAULT'

This change has been trailed as requiring employers to allow flexible working as the 'default' position, with reports that employers should be ready to agree compressed hours (such as 5 days' work and pay, condensed into a 4-day week). In fact, employees will still only have a right to *request* flexible working. But, to reject a request, employers will have to show both a specific valid ground (as currently) *and* that the rejection is reasonable. Building on increased flexibility post-pandemic, we expect employers to face more pressure to agree flexible arrangements, such as remote working and compressed hours, which will particularly impact financial services. We already see a polarization between larger organizations such as banks, moving back to majority office-based working, and smaller organisations in particular in fintech who are often remote. What is 'reasonable' for this sector could take into account regulator requirements around supervision, the costs of home technology and IT security, but would also look at practices across the sector and workarounds accommodated in the aftermath of the pandemic.

Given the publicity the change has already received, we expect an increase in employee requests. Employers should review their flexible arrangements now, to log good and bad practice by role and business area. If arrangements are not working, we recommend taking action to address these now, or there is a risk that it will not be seen as 'reasonable' to reject requests from similarly situated employees.

Financial sector is one of the sectors that has most strongly returned to in-office working following the COVID pandemic. They will welcome the amended proposal that the right to flexible working will be less weighted to employees as had been anticipated, but financial institutions should still be wary of discrimination risks as they consider requests. The proposed requirements may create certain expectations in the market which may impact financial institutions as they look to hire and retain the best talent. In addition, the UK regulators are considering new measures to boost diversity and inclusion ("D&I") in the financial sector (which will be subject to regular reporting) and financial institutions will need to show they have considered a range of methods to boost D&I within their organization, including potentially through offering flexible working arrangements.



## RIGHT TO SWITCH OFF

The new planned 'right to switch off' will take the form of a Code of Practice rather than mandatory rules will be welcomed by employers in the sector. Early indications are that it will follow the Irish model. This allows for limited exceptions (notably for senior management, specific needs such as 'on call' services, and where by agreement). If borrowing from this model, the UK financial services industry could see an impact in various functions and levels. And, similarly to the proposal around flexible working, the guidance may create new market expectations. We hope that the guidance will include factors as to when work outside 'core hours' is considered reasonable, to include client demands and the employee's role and pay – all of which will be key for financial services employers. Financial services employers should participate in the consultation to make these points.

## ACTION PLAN TO ADDRESS GENDER PAY GAP AND SUPPORTING EMPLOYEES THROUGH MENOPAUSE

A requirement to produce annual action plans to address gender pay disparities rights builds on existing gender pay reporting and applies only to larger employers (with 250+ employees). Interestingly, the information required will potentially extend to outsourced workers, although it is unclear whether this will be limited to the public sector. Policies to support employees going through the menopause will not be legally binding and will apply only to large employers. Again, however, these changes may reinforce existing cultural changes, which include recent recognition that menopause symptoms can constitute a legal disability. The new proposal appears to be in line with a number of the current FCA and PRA initiatives focusing on diversity and inclusion, which will for example require larger financial institutions to report representation on certain D&I characteristics.

## DISABILITY AND ETHNICITY – EQUAL PAY AND REPORTING

An Equality (Race and Disability) Bill is to follow by Spring 2025, which will extend gender pay gap reporting to ethnicity and disability for employers with more than 250 staff. This will be subject to an extended consultation period, given this is a complex area – but the government's starting point is to mirror existing gender pay rules, potentially with new requirements to publish and implement action plans to close any identified pay gaps. The government also intends to require equal pay and reporting where services are outsourced, although it seems this will be limited to the public sector, at least initially.

## OTHER CHANGES

Other major changes, but which will be less relevant to our Financial Services clients, are guaranteed hours and shift guarantees for 'zero' and low hours workers, 'Day One' sick pay and family leave rights, and an easing of rules for Trade Unions to take industrial action and seek members.

Of relevance to the sector, but subject to consultation and further down the line, is the plan to broaden employment rights and benefits to a wider category of 'workers' who currently have legal contractors status.

## NEXT STEPS

The above is a high level summary. For questions on how these changes will impact your UK operations, and practical steps which employers can take in anticipation, please reach out to your usual King & Spalding contact.



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