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Employment Law and Regulatory Reform: How Financial Services Firms Can Prepare for Change

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UK Employment Rights Act 2025 and FCA Non-Financial Misconduct Guidance — Key Considerations for Financial Services Employers

Financial services firms face a concentrated period of reform. The Employment Rights Act 2025[1] (the "**ERA 2025**") introduces the most significant changes to UK employment law in over a decade with staggered implementation dates[2]. At the same time, the FCA's final non-financial misconduct framework, including guidance published in Policy Statement PS25/23 ("**FCA Guidance**") will take effect on 1 September 2026[3]. Together, these developments create a dual employment and regulatory risk landscape for financial services firms, requiring early and coordinated preparation across HR, legal, and compliance.

Against this backdrop of a concentrated period of employment and regulatory change, the sections below focus on the ERA 2025 reforms of greatest relevance to financial services employers, while also addressing the FCA Guidance and setting out practical steps to address both.

Unfair Dismissal Protection

Currently, employees require two years' continuous service to qualify for ordinary unfair dismissal protection. Employers must establish a potentially fair reason for dismissal and demonstrate that they acted reasonably, including by following a fair procedure. Compensatory awards are currently capped at the lower of 52 weeks' gross pay and £123,543.

From 1 January 2027, the qualifying period for unfair dismissal protection reduces from two years to six months, and the statutory cap on compensation will be removed.

For financial services employers, the cap removal materially increases the potential financial exposure in dismissal disputes. Senior and high-earning employees will be able to recover losses referencing actual remuneration including salary, bonuses, deferred remuneration, and long-term incentive awards.

The shortened qualifying period will also reduce the time available for firms to assess the suitability of new hires. Greater emphasis is therefore likely to be placed on recruitment processes, probation management, and regulatory referencing.

Firms will need to revisit probation periods, performance management processes, and the strategic handling of negotiated exits — particularly for SMF and certified individuals, where employment decisions often have consequential regulatory implications, including fitness and propriety assessments and regulatory reference obligations.

The Government has indicated that further guidance on the operation of the new unfair dismissal regime will be issued, although detailed guidance has not yet been published.

Whistleblowing

Since April 2026, sexual harassment allegations have been expressly covered as a qualifying disclosure for whistleblowing protection. Firms should ensure whistleblowing policies, reporting channels and training materials reflect this change.

Sexual Harassment

From October 2026:

- employers must take "all reasonable steps" to prevent sexual harassment, including by third parties — a higher standard than the current duty.
- employers will be liable for harassment of staff by third parties unless they took all reasonable steps to prevent the harassment.

For financial services firms, this increases focus on conduct occurring in client-facing environments, work-related social events, conferences, networking functions and interactions with contractors, consultants, and other third parties. Although further statutory guidance is expected, employers should begin assessing their harassment prevention frameworks well in advance of implementation.

FCA Guidance

The FCA Guidance relating to non-financial misconduct ("**NFM**") will come into force on 1 September 2026, alongside the new "anti-harassment rule" in COCON 1.1.7FR. It will apply to firms with Part 4A permissions[4] and relevant individuals subject to the FCA Code of Conduct ("**COCON**") and the Fit and Proper Test ("**FIT**"). The FCA has stated that its policy development in this area is complete and supervisory attention will now shift to how firms apply the framework in practice.

The FCA Guidance does not seek to modify employment law. As such, regulated firms will need to approach serious workplace misconduct from several angles: employment law, data protection law, HR procedures, COCON, FIT, regulatory reference rules, and in some cases, FCA notification requirements.

The FCA stayed away from prescribing outcomes, meaning that firms are left to adopt their own proportionate approaches and processes, particularly in borderline cases involving conduct outside the workplace.

The FCA has made it clear that firms do not need to carry out retrospective reviews of past conduct decisions or fitness and propriety assessments. Firms will not be required to monitor employees' private lives or social media accounts, investigate trivial, implausible, or irrelevant private-life allegations, or act contrary to privacy, employment, or other relevant law.

With less than two months to go before the FCA Guidance takes effect, firms should carry out a targeted gap analysis across policies, procedures training, and governance.

Non-Disclosure Agreements

The ERA 2025 will further restrict the enforceability of confidentiality provisions that seek to prevent workers from making disclosures relating to discrimination, harassment or related misconduct. The Government is currently consulting on the scope of these changes, and the outcome is expected to inform the regulations and guidance implementing the NDA reforms.

For many financial services firms, the proposed restrictions on confidentiality provisions will not represent a fundamental change in direction. Existing regulatory expectations, together with evolving market practice following heightened scrutiny of workplace culture and NFM issues, have already led many firms to narrow the scope of confidentiality provisions in employment and settlement documentation. Nevertheless, once the regulations are finalised, settlement agreement templates, confidentiality provisions and employment contract wording should be reviewed ahead of the changes expected to take effect in 2027.

Fire & Rehire and Contractual Changes

The ERA 2025 introduces significant restrictions on the use of dismissal and re-engagement as a mechanism for imposing contractual changes. From 1 January 2027, dismissals will be automatically unfair where the reason, or principal reason, for dismissal is that the employee refused to agree to certain “restricted variations”, the employer seeks to replace the employee, or otherwise secure the restriction variation through dismissal and re-engagement, except in limited circumstances involving serious financial difficulties. The protections extend beyond traditional “fire and rehire” scenarios and (subject to consultation) are likely to affect employers seeking to amend key contractual terms relating to remuneration, incentives, pension arrangements, or hours of work without consent.

All firms, even those who would not contemplate the practice of fire and rehire, should review template employment contracts, deferred bonus plans, and incentive documentation ahead of January 2027 to ensure that the terms have appropriate flexibility built in. Particular attention should be given to clauses relating to pay, hours, time off, and pension, in addition to existing variation clauses.

There is no general exception for regulatory-driven contractual changes. Firms that need to amend remuneration structures in response to evolving FCA/PRA requirements (including malus, clawback and deferral obligations) will need contractual flexibility built in from the outset.

How to Prepare

Implementation of the employment and regulatory changes will occur on a phased basis, with key developments expected during 2026 and 2027. As further guidance emerges on both the ERA 2025 and the FCA Guidance, financial services employers should now finalise implementation plans.

Before 1 September 2026, firms should identify and plan for changes in the following areas:

- Review employee conduct policies, investigation protocols, and escalation procedures, including who will triage complaints when HR, legal, and compliance should be involved, and when COCON, FIT or FCA notification issues may arise.
- Review governance and management arrangements relating to serious misconduct matters, including whether relevant committees receive meaningful NFM management information on whistleblowing, complaints, and themes.
- Stress-test NFM procedures using realistic scenarios, including incidents at work-related social events, business travel, conferences, client meetings, or investor events.
- Train managers and senior personnel on reasonable steps, intervention, complaint handling, escalation, and protection of staff who raise concerns.
- Update regulatory reference, certification, and FIT assessment procedures, including how findings and disciplinary outcomes will be recorded and reflected in future assessments, references, or notifications.

In practice, firms should be able to show who made key decisions, what information they considered, and why they reached the outcome. A practical challenge for firms will be ensuring consistent decision-making across HR, legal, and compliance functions, particularly in borderline cases involving conduct outside the workplace.

For the wider 2026 and 2027 employment law reforms, firms should also:

- Update harassment prevention frameworks to the “all reasonable steps” standard, with third-party risk assessed and documented before October 2026.
- Review and update dismissal, exit, and negotiated settlement decision-making, documentation, and processes, including the interaction with regulatory consequences. Consider targeted training to senior managers on the same.
- Review employment contract and incentive documentation flexibility, particularly remuneration-related provisions.

- Review settlement agreement templates and confidentiality wording once the NDA changes are confirmed.
- Update whistleblowing channels and training to cover sexual harassment as a qualifying disclosure.

If you would like to discuss how these changes may affect your organisation, please contact:

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[1]UK Employment Rights Act 2025, https://www.legislation.gov.uk/ukpga/2025/15.

[2] Proskauer Rose LLP, "UK Employment Rights Act 2025: Major Reforms for UK Employment Law" (December 2025), https://www.proskauer.com/alert/uk-employment-rights-act-2025-major-reforms-for-uk-employment-law.

[3]FCA Policy Statement PS25/23, Tackling non-financial misconduct in financial services, https://www.fca.org.uk/publication/policy/ps25-23.pdf.

[4] Firms authorised under the Financial Services and Markets Act 2000.

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