

Employment Law Update

New Unfair Dismissal Rights

Significant changes to UK employment law are due to be implemented over the next year under the Employment Rights Act 2025 (ERA). These mostly benefit employees, the most significant being the reduction of the qualifying period for unfair dismissal claims from two years to six months and the removal of the maximum limit on compensation. These are due to commence on 1 January 2027. The government's previous proposals for day one unfair dismissal rights will not be implemented.

Background

Currently, employees are required to have two years continuous employment to bring an unfair dismissal claim unless the dismissal is 'automatically unfair', in which case no qualifying period is required. This applies if the dismissal is due to specified reasons such as pregnancy or whistleblowing.

The practical effect of the qualifying period is that it allows an employer to dismiss an employee during the first two years of employment without the risk of a claim.

Compensation for unfair dismissal is based on loss of earnings. The compensatory award is currently capped at £123,543 maximum or twelve months' pay whichever is lower.

Awards for automatically unfair dismissal and discrimination claims have no maximum limit. Nor is any qualifying period of service required.

Consequently, employees frequently bring (spurious) discrimination or whistleblowing claims in addition to unfair dismissal claims aiming for higher compensation or to improve their negotiating position.



Changes under the ERA

From 1 January 2027:

- the qualifying period to bring an unfair dismissal claim will be reduced from two years to six months. The new qualifying period will apply to all employees who have six months' service or more on or after 1 January 2027.
- the cap/limit on unfair dismissal compensatory awards will be removed so that unfair dismissal awards will be 'unlimited' similar to discrimination and whistleblowing claims.

From 1 October 2026*:

- the time limit to bring most employment claims in the Employment Tribunal, including unfair dismissal, is due to be increased from 3 months to 6 months from termination. This can be extended by up to 12 weeks during the ACAS Early Conciliation process which is required before issuing any claim (although this may be put back to 6 weeks as it was intended to be temporary to deal with the ACAS backlog).

Government's Rationale

The six months' qualifying period was a compromise position following the House of Lords' continuous rejections of the government's previous proposals for 'day one' unfair dismissal rights.

It will also be difficult to change for any future government as it will require new legislation rather than regulations.

The removal of the cap on unfair dismissal claims was introduced without prior warning although there may still be consultation on this. The government's rationale for this is to remove the incentive for employees to bring spurious claims for discrimination and automatically unfair dismissal to get round the cap. These have contributed to the current backlog of Tribunal claims.

The government also relied on statistics showing that few compensatory awards actually reach the current cap and the average award in 2025 was £14,000** so its removal will not significantly increase costs for employers.

In practice, and as the compensatory award is based on loss of earnings with a duty to mitigate ie find alternative employment, the twelve months' limit has more impact than the maximum figure.

However, the expense for employers is the time and costs in defending Tribunal claims. These tend to be considerably higher than any compensation awarded. Consequently, most claims settle with the 12 months' limit being a useful benchmark from which to negotiate.

The current 3 months' limitation period to bring claims is strictly applied by the Tribunal and can lead to claims being struck out. The new six months period is intended to assist employees. However, the risk of a claim for up to 9 months (including ACAS Early Conciliation) will lead to more uncertainty for employers.

* Exact date to be confirmed

** According to the latest tribunal statistics

Comment

A sensible compromise would have been to put back the qualifying period to one year as applied from 1999 to 2012. The six months' period is too short and will overlap with the probationary period.

Most probationary periods range from one to six months with provision for extension, if appropriate. Employers will now be reluctant to extend probationary periods beyond six months if the employee would then get unfair dismissal rights.

Unfortunately for employees, there is a currently a three to four year back log in the Employment Tribunal system and this is likely to get worse with new rights increasing the number of claims without sufficient

additional resources for the tribunals. This means employees bringing claims are unlikely to get any compensation for several years, whether or not justified.

The only way to prevent claims being brought is to enter into a settlement agreement in which employees give up their rights in exchange for compensation. We are likely to see an increase in settlement agreements from January 2027. The removal of the cap is likely to benefit higher earners and will, doubtless, be referred to in any settlement negotiations. Perhaps an unintended consequence for the government!

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Disclaimer – This update is intended to provide readers with information on recent legal developments. It should not be construed as legal advice or guidance on a particular matter.

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