

Changes to the Unfair Dismissal Rules – What Employers need to know...

April 6th 2012, will see a fairly significant change for employees wishing to bring a claim for unfair dismissal against their employer.

From this date, it will be necessary for employees to once again, accumulate two years of continuous service with their employer before they can bring a claim within an Employment Tribunal for unfair dismissal.

What is Unfair Dismissal?

Early employment legislation established rights for employees to be treated fairly by their employer. This established that in order for an employer to dismiss an employee they must do so for one of five potentially fair reasons, these being: -

- Capability or qualification
- Conduct
- Redundancy
- Contravention of a Statutory Duty
- Some other substantial Reason

Previously, 'retirement' was also considered a fair reason for dismissal; but the recent removal of the Default Retirement Age has now rendered this invalid. As well as having a fair reason for dismissing, an employer also has to show that they have followed a fair and reasonable process in taking the decision to dismiss an employee and they are aided in doing this by following the guidance laid down in the relevant ACAS Code of Practice.

If an employer fails to follow a fair process and does not dismiss for one of these fair reasons and provided that an employee has the requisite period

of continuous employment (the 'qualifying period') then the employer is liable to find themselves dealing with a claim for unfair dismissal in an Employment Tribunal.

What is the 'Qualifying Period'?

The 'qualifying period' is the period of time for which an employee has to be employed in order to accumulate certain employment rights. These are variable dependent upon particular employment rights. For example, there is no qualifying period required for an employee to bring a claim of discrimination against their employer and an employee has to be employed for 2-years before accumulating rights to statutory redundancy payments.

The qualifying period for unfair dismissal claims was first introduced in 1975 and at that time, an employee had to work for their employer for a period of 6 months before accumulating this right. This was increased to a 2-year qualifying period during the 1980s before being reduced to 1-year in 1999 and this is indicative of it being a partisan policy for successive Governments.

Why Change?

Those who are not in favour of the changes have cited that it will run the risk of enforcing a 'hire and fire' culture in the workplace, which is detrimental to the fostering of a culture of genuine engagement and trust between employers and their staff. There is also a suggestion that it may be discriminatory towards females in the workplace who have traditionally been more likely to take career breaks to raise families.

Additionally, it is felt that increasing the qualifying period for unfair dismissal will reduce the burden on Employment Tribunals by reducing the number of claims brought before them. However, this is disputed with figures supplied by the Office of National Statistics suggesting that only an extra 12% of employees would be denied the opportunity to bring forth an unfair dismissal claim as a result of not having sufficient service with their employer. It is also widely believed that any decrease in unfair dismissal claims will be offset by an increase in 'discrimination' claims, for which no qualifying period is required.

However, the arguments in favour of this most recent increase in the qualifying period back to two-years and the principal reason for pressing ahead with the change, are that it will boost recruitment and improve job prospects for young people and the long-term unemployed; something which will be monitored with interest by Analysts.

What does this mean for Employers (... and Employees)?

The change will be implemented from 6th April; meaning that anyone who commences employment up until the 5th April will continue to have a 1-year qualifying period to bring claims of unfair dismissal, whilst those employed from the 6th April onwards will be affected by the change and will have to accrue 2-years service before having this same right. Employers should ensure that their disciplinary policies, contract terms, employee handbooks etc. reflect these changes and that they keep accurate records so that they are clear on which of their employees are affected by this change and which are not.

If you would like further information, please contact: Helen Smith, HR & OD Consultant, Crescita HR & OD.



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