FACTSHEET 1

# UNFAIR DISMISSAL RIGHTS

## WHAT'S CHANGING?

The changes to ordinary unfair dismissal cover two broad areas: the qualifying period and the level of award which a tribunal can make.

### The qualifying period

The government's headline reform proposal for unfair dismissal under the Employment Rights Bill was the abolition of the current two-year qualifying period – making the right to claim ordinary unfair dismissal a day-one right. After meeting serious objection in the House of Lords, the government altered its proposal. The Employment Rights Act 2025 ('ERA 2025') reduces the qualifying period for unfair dismissal to six months. It has not been removed in its entirety. The new, shorter qualifying period will apply immediately to all employees who have six months service at that point, not just those who commence work after the implementation date.

This change is due to come into effect on 1st January 2027.

### The compensatory award cap

The ERA 2025 will also remove the cap on the compensatory award for unfair dismissal in its entirety. Awards for ordinary unfair dismissal are split between the basic award (which follows the same formula as statutory redundancy payments) and the compensatory award (under which the tribunal is empowered to make such awards as are "*just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer*". The amount of any compensatory award is currently limited to whichever is the

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lower of one year's salary or the statutory cap (which changes each April and is currently set at £118,223).

This change is also due to come into effect on 1st January 2027.

## HR IMPACT – WHAT TO DO NOW

These changes mean rethinking how you handle hiring, probation, and early-stage dismissals.

Some steps to consider:

1. **Review probation processes.** A six-month qualifying period means decisions on performance, conduct and fit must be made early. Policies should be refined so managers are prompted to act well before the six-month point.

2. **Build in timing safeguards.** Allow flexibility in review schedules to avoid eligibility being reached due to rearranged meetings or delays.

3. **Re-think business approach to senior executive exits:** Businesses often skirt formal processes with senior executives they are looking to exit, preferring to negotiate a settlement. When recoverable compensation for unfair dismissal was capped, this provided a clear financial framework to negotiate within. With the cap gone, all bets are off. Businesses may find it more difficult to reach settlements. This may lead to additional cost – and Boards should be made aware of the increased financial exposure in this area. It may also mean that businesses rethink how they manage underperformance at the top. If they want to avoid ever-increasing payoffs, they may start treating senior executives who are underperforming more like any other employee: clearer expectations, evidence, and documented opportunities to improve. The risk analysis becomes closer to standard HR practice than the old "cut a deal and move on" model.

4. **Foster a positive workplace culture.** Treat people well on the way out because most high-value claims arise from feeling mistreated, not the dismissal itself. Employees who leave with dignity and a reasonable package often choose not to sue, while those who feel blindsided may litigate out of principle. A humane process, a modest ex gratia payment, or a genuine apology can defuse risk. Fairness and respect in terminations are your strongest protections against litigation.

5. **Prepare for higher-value claims.** Once the cap goes, employees are more likely to claim. The current ceiling makes unfair dismissal claims unattractive to high earners – this disincentive will be removed. Settlement negotiations will become more difficult as employers will not have the statutory cap to fall back on as a ceiling. There will be a greater risk when dismissing older workers or those with long-term health conditions impacting their ability to work – future loss of earnings claims could be career-long. Robust processes and clear medical evidence will be needed. In all cases, the collation of early evidence around mitigation will be essential to counter any arguments of long-term unemployment.

## FAQS FROM MANAGERS:

- *Can we still dismiss an employee with under six months' service without following a full unfair dismissal process?*

  Yes, but, once the ERA 2025 changes come into effect, only up to the six-month point and provided the dismissal is not discriminatory or automatically unfair.

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Managers should still act carefully, as notice periods or delays can push service over the qualifying threshold.

- *If we pay in lieu of notice, can we dismiss all the way up to the six-month mark without risk of a claim?*

  Statutory notice counts towards an employee's length of service, even if they do not work it. This means a dismissal intended to fall just under six months with a payment in lieu of notice can accidentally create unfair dismissal rights.

- *What is the interplay between the removal of the compensatory award cap and the uplifts for failure to follow the Acas Code of Practice?*

  A tribunal is able to uplift the compensatory award for unfair dismissal by up to 25% where it concludes that there has been a failure by the employer to follow the Acas Code of Practice on Disciplinary and Grievances. This potential uplift will still apply, it is just that the 'base' amount is no longer limited by the statutory cap. So, in a high value case where there has been a failure to follow the Acas Code, the employer could end up on the end of a large compensatory sum with an additional penalty of an uplift on that large sum of up to 25%. However, there is some hope for beleaguered employers: tribunals have to consider proportionality in any awards (and uplifts) they make.

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