

4 October 2011

## New UK Employment Laws

The UK Government yesterday announced two significant changes to UK employment laws intended to favour employers. These will come into effect in 2012 and 2013 respectively.

### Increasing the qualifying period

Currently, employees gain protection against being unfairly dismissed only after they have been employed for a year (known as the “qualifying period”). There are a few exceptions to this rule, where a dismissal will be automatically unfair, including (but not limited to) where an employee claims he or she is unfairly dismissed for a reason relating to pregnancy or family leave, for asserting a statutory right, for health and safety reasons, for a reason relating to trade union activities or because he or she has made a qualifying “protected disclosure” (*e.g.* the employee has told the employer in good faith that he or she believes a breach of a legal obligation has or is likely to occur). Employees currently have, and will retain, rights to bring claims for unlawful discrimination without completing a qualifying period.

If an employee has less than one year’s service, the employer can dismiss the employee without having a potentially fair reason for doing so and without following a fair procedure (apart from where the exceptions mentioned above apply). There are five potentially fair reasons to dismiss employees: redundancy, poor performance, misconduct, where the continued employment would breach a legal obligation on the employer and for “some other substantial reason” (a catch-all category for substantial reasons and, usually, applicable if the dismissal is a last resort for the employer).

From 6 April 2012, employees will need to have been employed for at least two years before they can bring unfair dismissal claims. The exceptions to this rule, mentioned above, will continue to apply. It is not yet clear whether the rule change applies to employees employed after 6 April 2012 or if it will apply to employees who have been employed for more than one year but less than two years prior to 6 April 2012.

The reason for increasing the qualifying period to two years is that the Government feels that employers currently face an unfair burden to prove they have both a potentially fair reason to dismiss an employee as well as following a fair procedure to manage the employee and, ultimately, to dismiss

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# Client Alert

the employee if he or she has been employed for a year or more. Increasing the qualifying period to two years will mean that employers have additional time to manage their workforce in an efficient manner. This should prove fairer on the employer as well as the employee.

## **Tribunal fees**

The UK Government announced an introduction of fees payable by individuals to bring tribunal claims against employers from 2013. The details have not yet been finalised. Current reports, however, indicate that an initial fee of £250 will need to be paid by individuals to start a claim with an additional £1,000 for a claim to be listed for a hearing. A higher fee for claims valued at £30,000 or more may be payable by individuals. It is likely that the fees will be recoverable if the individual succeeds in the claim.

## **Comment**

The increase in the qualifying period is likely to come as a relief to many employers who do not complete their assessment of difficult or poorly performing employees within the current one year qualifying period. In practice, an employee who is dismissed without the employer proving a potentially fair reason and without the employer following a fair procedure who is minded to file a tribunal claim will still do so and he or she will present the claim as a dismissal for an unlawful discriminatory reason or an automatically unfair reason. The consequence of such a claim, as well as meaning that the qualifying period does not apply, is that compensation for loss of employment is not subject to the statutory cap (currently approximately £70,000). The introduction of tribunal fees to start claims and to continue claims to a hearing is likely to deter the spurious claims many employers face almost as a matter of routine after dismissing certain employees who intend to bring claims to force the employer to pay a “nuisance” settlement to them.

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