

Employee Benefit ■ Plan Review

Unfair Dismissal Reform in the UK: What Employers Need to Know

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The current two-year qualifying period for ordinary unfair dismissal claims has stood since April 2012. From 1 January 2027, this will be reduced to six months.

There is no transition period. From 1 January 2027, all employees with at least six months' continuous service will have unfair dismissal protection. This means that anyone hired on or before 1 July 2026 will have accrued the requisite six months by the time the change comes into effect on 1 January 2027.

It is important to note that for the purposes of calculating the unfair dismissal qualifying period, a "month" means a calendar month. Unfair dismissal protection arises on the last day of the six-month period. So, an employee starting on 1 January 2027 gains protection on 30 June 2027.

The scale of the change is significant. The UK government estimates that this change will give unfair dismissal protection to approximately 6.3 million additional employees. The government also expects around 9,000 additional Advisory, Conciliation and Arbitration Service (ACAS) early conciliation cases and around 3,000 additional Employment Tribunal claims per year as a result of this reform.¹

IMPORTANCE OF THE EFFECTIVE DATE OF TERMINATION

The "effective date of termination" (EDT) is the date that determines whether an employee has sufficient continuous service to qualify for unfair dismissal protection. In light of the much shorter qualifying period, getting the EDT calculation right will be even more critical than it is now — a miscalculation could mean that the employee has unfair dismissal protection at the time of their dismissal.

KEY RULES

- Where an employee works their notice period, the EDT is the last day of the notice period.
- Where an employee is dismissed without notice (including where a payment in lieu of notice, or PILON, is made), the statutory minimum notice period (one week for employees with between one month's and two years' service) is added to the actual termination date to create a "notional" EDT.
- This statutory extension cannot be avoided by making a payment in lieu of notice — it applies regardless of whether a PILON clause exists in the contract.
- The only exception is where there is a genuine gross misconduct dismissal.

Worked Example 1: Employee Works Notice

Sarah started employment on 1 January 2027, so will gain unfair dismissal protection on 30 June 2027. On 1 June 2027, her employer gives Sarah one week's contractual notice of termination. This notice expires on 8 June 2027, which is her EDT. Sarah therefore does not have unfair dismissal protection.

Worked Example 2: Employee Dismissed with PILON

James started on 1 January 2027, so will also gain unfair dismissal protection on 30 June 2027. His employer dismisses him with immediate effect on 24 June 2027, making a payment in lieu of his one week's contractual notice period. His actual EDT is therefore 24 June 2027. However, because no notice period was worked, one week's statutory minimum notice is added to create a "notional" EDT of 1 July 2027. Because James's unfair dismissal protection arises on 30 June 2027, his notional EDT of 1 July 2027 means he has acquired unfair dismissal protection.

IMPORTANCE OF PROBATIONARY PERIODS

The current two-year qualifying period has led many organisations to treat probation as a tick-box exercise, with real performance issues only addressed through extensions or deferred decision-making. That luxury of time has now gone. Probationary periods will need to be operated as structured, actively managed assessment periods, with clear expectations set from day one, regular documented check-ins, and timely decisions taken well before the six-month qualifying period expires.

IMPACT ON FIXED-TERM CONTRACTS

A failure to renew a fixed-term contract is treated as a dismissal for unfair dismissal purposes. As such,

where the fixed-term contract is for a duration of six months or more, a failure to have a potentially fair reason for the nonrenewal and/or to follow a fair process will amount to an unfair dismissal. This will significantly reduce the flexibility provided by fixed-term contracts from 1 January 2027. That said, fixed-term contracts will likely remain a helpful tool for setting expectations between the parties and creating a natural review point.

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REMOVAL OF THE STATUTORY CAP ON UNFAIR DISMISSAL COMPENSATION

Currently, the compensatory award for unfair dismissal is capped at the lower of 52 weeks' gross pay or £123,543. Both limbs of the cap are being abolished from 1 January 2027. The basic award (calculated in the same way as statutory redundancy pay) remains unchanged and continues to be capped.

Impact on Higher Earners

Previously, high earners had limited incentive to bring unfair dismissal claims because their actual losses often far exceeded the maximum award.

With uncapped compensation, employees can now potentially recover their actual financial losses in full. A senior employee earning £500,000 per year who is unfairly dismissed could potentially claim years of future losses, plus benefits and employer pension contributions. Ordinary unfair dismissal therefore becomes a much more significant

standalone cause of action for higher-paid employees.

Impact on Settlement Agreements

The statutory cap previously provided a natural anchor point for settlement negotiations, allowing employers to calculate their maximum exposure for unfair dismissal with reasonable confidence. Without a cap, quantifying appropriate settlement amounts becomes significantly more difficult, creating substantial uncertainty for both parties.

For boards seeking clean, swift exits of underperforming senior executives, the calculation fundamentally changes. Where the alternative is a potential award running into several hundreds of thousands of pounds, the risk analysis shifts dramatically.

INCREASING TIME LIMITS FOR EMPLOYMENT TRIBUNAL CLAIMS

From 1 October 2026, the time limit for bringing most Employment Tribunal claims (including claims for unfair dismissal) is expected to increase from three months to six months. Combined with the anticipated rise in claims from the unfair dismissal reforms, and the significant existing backlog in the Employment Tribunal system — where hearings in some regions are already being listed several years after dismissal — employers should expect that claims brought under the new regime may take considerably longer to reach a final hearing.

RECOMMENDATIONS FOR EMPLOYERS

Employers should take the following steps now to prepare for the January 2027 changes:

1. *Workforce Auditing*
Review your current workforce against the new qualifying period. Identify employees with between six months' and two years' service who will be

newly protected from 1 January 2027. Assess business needs and employee capabilities against role requirements. Where performance concerns exist or business needs have changed, take action now.

2. *Probationary Period Check-Ins*
Implement structured, regular check-ins during employees' probationary periods. Document performance concerns raised, training provided, and support offered contemporaneously. Treat probation as a genuine assessment period — not a tick-box exercise.
3. *Policy Updates*
Review and update disciplinary and grievance policies, performance management procedures, and any HR documentation that refers to the two-year qualifying period. Ensure policies are compliant and reflect the new six-month timeline.
4. *Contractual Drafting*
Review employment contract templates — particularly provisions dealing with probationary periods, notice provisions, and PILON clauses.
5. *Manager Training*
Train line managers on the new regime. They need to understand that timeframes are much

shorter, risks arise much earlier, and delays will have much bigger consequences. Training should cover: how to run probationary reviews effectively; when and how to address performance concerns; the statutory notice trap; and the importance of contemporaneous documentation.

6. *Settlement Strategy*
Review your approach to settlement and exit negotiations. Without a cap, the financial assessment for resolving disputes changes significantly. Budget accordingly, particularly for senior employees.
7. *Recruitment Investment*
With a shorter window to correct hiring mistakes, invest in thorough recruitment processes — structured interviews, proper reference-checking, robust onboarding and clear expectations from day one.

IN SUMMARY

- *Reduced qualifying period:*
From 1 January 2027, the qualifying period for ordinary unfair dismissal claims will be reduced from two years to six months.

- *Uncapped compensatory awards:*
From 1 January 2027, the statutory cap on the compensatory award for unfair dismissal (currently the lower of 52 weeks' gross pay or £123,543) will be abolished, creating potentially uncapped financial exposure for employers.
- *Extended Employment Tribunal time limits:* It is expected that from 1 October 2026, Employment Tribunal time limits for most claims will increase from 3 months to 6 months.
- *Most significant reform in a generation:* These reforms mean that employers should be taking immediate action on recruitment, probation management, and dismissal processes. 🌀

NOTE

1. UK Government Employment Rights Act 2025 Economic Analysis (January 2026), p.120 (employment-rights-act-2025-economic-analysis.pdf).

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Number 8, pages 19–21 with permission from Wolters Kluwer, New York, NY,
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