



# No Second Chances: Recruitment and Probation in the Age of the Employment Rights Act

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# Your presenters today



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# Your presenters today



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- Employment Law Advice
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# What's changing?

## The headline points

- Qualifying period for claims of ordinary unfair dismissal will reduce from 2 years to **6 months**
  - NB the statutory right to receive written reasons for dismissal will also reduce to 6 months
- Removal of statutory compensation cap
- Currently the lower of £123,543 (statutory maximum) **or** 12 months' gross pay
- Compensation will be unlimited
- Expected in place from **1 January 2027**



# What's changing?

## The headline points

This means that:

- All those recruited on or before 1 July 2026 will have the right to claim unfair dismissal from 1.1.27
- Employees recruited after 1 July 2026 will gain protection after 6 months of service

Termination risk increases for employers:

- More employees will be entitled to bring a claim
- Increased level of compensation
- Reduced settlement prospects?

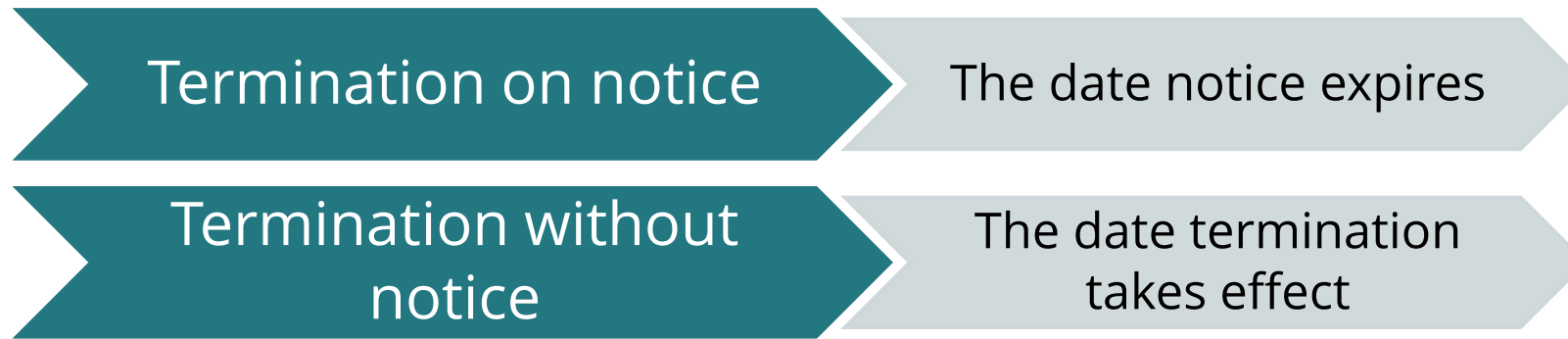
### **DON'T FORGET!**

From 1 October 2026 employees will have **6 months** to bring a tribunal claim (up from 3 months)

# Effective date of termination

A reminder of the rules

## When is the EDT?



- **This is the basic rule BUT**



# Effective date of termination

- The EDT can be extended where a statutory minimum notice period is required but not given
- The EDT does not take effect until an employee is aware of it/has a reasonable opportunity of learning of it

## **EXAMPLES:**

- Employee has a contractual one month notice period during their 6 month probationary period. At 5 months and 3 weeks employer terminates the contract and pays the contractual notice period in lieu.
- Employee has a contractual one month notice period during their 6 month probationary period. At 5 months and 3 weeks employer terminates the contract for gross misconduct.
- Employee has a contractual one month notice period during their 6 month probationary period. At 5 months and 2 weeks employer terminates the contract and pays the contractual notice period in lieu. The employee finds out about the termination at the end of 5 months and 3 weeks.

# Unlimited compensation

## Unintended consequences?

- Compensation is calculated based on an assessment of financial losses (no injury to feelings)
- Currently subject to maximum of 52 weeks' pay or £123,543 (from 6 April 2026) – whichever is lower
- Majority of awards are significantly lower

Removal of cap will primarily benefit:

- High earners – greater incentive to pursue employment tribunal claims
- Those nearing retirement – losses to retirement
- A disincentive to agree early settlement?

Most recent ET compensation statistics (2023/24) – unfair dismissal awards:

Average Award  
**£13,749**

Median Award  
**£6,747**



# Unlimited compensation

## Unintended consequences?

Complex remedy hearings to assess losses:

- Earnings
  - Pension
  - Bonus/commission
  - Share options
  - Incentives
- 
- Likely to (further) increase tribunal delays
  - Expert evidence to evaluate schedule of loss?
  - Mitigation of losses will be important - harder in current economic climate?



# Recruitment

## Time to review your processes?

- Enhanced Pre-Employment Screening- Invest more time upfront.
- Pay careful attention to job advert, job descriptions and person specifications– clear expectations prevent disputes later.
- Ensure recruiters put forward only suitably qualified and vetted candidates
- Robust and objective shortlisting process
- Structured and consistent interviews – ideally by more than one person
- Competency-based interviews, skills assessments, scenario-based exercises, and reference checks become even more critical.
- Strengthen pre-employment checks – request and follow up all references
- Provide training to your hiring managers
- Make it clear that successful candidates will be subject to a probationary period and performance regularly reviewed



# Induction/Onboarding

## Invest time in your new recruits

- Structured Induction Programmes: The first days and weeks set the tone. Comprehensive inductions covering role expectations, performance standards, organisational values, and key policies.
- Early Engagement: Assign mentors/buddies, schedule regular check-ins, and integrate new recruits into your culture quickly.



# Probationary periods

## Check your contracts!

- Common to have 3 months' probation with option to extend by 3 months
- This will be risky under new regime
- Consider changing to 3 months plus extension of no more than 2 months (or 4 months plus 1 month)
- Include a PILON clause - no breach of contract for paying in lieu
- Proactive management of probationary periods – regular reviews and probationary pathways
- Ensure your managers are confident and supported in handling probation performance
- Dismiss well within 6 months if performance/conduct is unsatisfactory
- If in doubt, dismiss!
- **Unless** the poor performance relates to a disability (or other protected characteristic/whistleblowing applies)

# Senior Executives

## Performance management?

- Increased risk of unfair dismissal claims from senior staff/high earners
- Is it realistic (or desirable) to follow a performance management procedure?
- Following a [basic procedure](#) will reduce risk (Acas Code)
- Will tribunals take a pragmatic approach?
- Dismissal without warning not necessarily unfair (but only in exceptional cases)

*“those employed in senior management may by the nature of their jobs be fully aware of what is required of them and fully capable of judging for themselves whether they are achieving that requirement. In such circumstances, the need for warning and an opportunity for improvement is much less apparent”*

***James v Waltham Holy Cross Urban DC [1973] ICR 398 (NIRC)***

Any questions?