

Welcome...

to the first in our new series of regular newsletters from our **Employment Law department**. The aim is to not to rattle off all the latest decisions – there are many other newsletters doing that. Instead, we will take one aspect and explore it in a bit more detail – in particular, practice points that can be drawn from it. Our hope is that it will continue to be a useful resource, long after the lawyers have moved on to the next novelty case!



Can you do better? Suggest a name for our newsletter and, if we prefer it, we'll use it for all editions from 1 March 2012, plug your organisation and give you a thank you gift!

Please also let us know your other thoughts, as our aim is to meet your needs. Is the information of use? Do you like the style? Could we be doing better things with our time? All (polite) suggestions welcome! Contact us at OTR@ormerods.co.uk.

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Two year qualifying period for unfair dismissal

The government intends to increase the qualifying period for most claims of unfair dismissal to two years.

"We will double the qualification period for unfair dismissal tribunals. Currently an employee can claim for unfair dismissal after being employed for only a year. We will double that, so from April 2012 employees will only be able to make a claim after two years."

Chancellor of the Exchequer- 3 October 2011

The original details were patchy, but the intention is that the change will happen on 6 April 2012.

What will it mean?

Taking the original announcements at face value, the change could have meant that someone with one year's employment on 5 April 2012 could be more safely dismissed by being allowed one day's extra service. This would have been bizarre.

However, the government has now clarified that it will stagger the impact so that those employed prior to 6 April 2012 do not lose that protection. So, those biting their nails until 6 April in order to dismiss will be disappointed.

Key Dates Calendar

31.01.12	Consultations on <i>TUPE</i> and <i>collective redundancy consultation</i> end (www.bis.gov.uk/consultations)
01.02.12	Tribunal compensation limits increase (eg. £430 max for a "week's pay")
06.03.12	Consultation on <i>Introduction of Tribunal fees</i> ends
06.04.12	Extension of normal qualifying period for unfair dismissal to 2 years
06.04.12	Abolition of contracting out from additional state pension
09.04.12	SMP, Paternity, Additional Paternity, Adoption Pay and Maternity Allowance increase to £135.45. SSP increases to £85.85
04.06.12	Bank holiday moved from 28 May to 4 June
05.06.12	Additional bank holiday
31.08.12 to Aug 2016	Various final dates for employers to send NEST auto-enrolment pension information to staff (www.legislation.gov.uk/uksi/2010/4/regulation/4/made)
Mar 2013	Parental leave increases from 3 months to 18 weeks
Dec 2013	Proposed introduction of Tribunal fees
2013	Compulsory eye tests for commercial drivers
2015	Introduction of flexible maternity/paternity

Some say it will have a very limited impact - that discrimination claims will be pursued instead. We disagree. We anticipate a big impact, eg: savings in management time (eg. avoiding a lengthy performance management process); more speculative claimants being dissuaded by the complexity of discrimination law; and "no win no fee" deals becoming less viable.

Challenges ahead

We anticipate that the change to the law will be challenged as being discriminatory, but that the challenges will ultimately fail.

What should I do?

Generally, if contemplating dismissing an employee who has less than a year's service (or less than two years' service from 6 April 2012), it is wise to create a prompt record of any such decision, particularly if there is going to be any delay in communication (eg. an internal note or an email exchange with a lawyer). An employer who can show the decision to dismiss in March 2012 was made in January 2012 (but not communicated) is better able to defend any claim that the dismissal was for an intervening event (eg. a 'whistleblowing' incident in February 2012).



Calculating continuous employment

Be careful! A year's service is completed the day before the anniversary of employment, and this will be the same for two years' service. An employee who starts on 5 April 2012 will have one year's service on 4 April 2013 (and one who starts on 6 April 2012 will have two years' service on 5 April 2014).

Effect of statutory notice

Be careful! Save where immediate termination of employment can be justified, a Tribunal will also add on the statutory period of notice. Therefore an employee who started on 5 April 2012 and who is dismissed on 27 March 2013, without being allowed to work out their notice period, may still be able to establish one year's service.

Effect of contractual notice

A claim from an employee who would obtain the necessary period of service if they were employed throughout their contractual notice period can be thwarted if they are dismissed with a payment in lieu of notice ("PILON"). It is irrelevant whether there is a contractual right to make a PILON. The statutory period of notice may still be relevant, though (see above).

Other unfair dismissal claims

The change will not affect unfair dismissal claims that don't require a qualifying period (eg. relating to whistleblowing, pregnancy, trade union membership, health and safety, asserting statutory rights etc.)

Anything else I should sensibly consider?

- Do not defer dismissal in the anticipation that it will be easier from April 2012
- Do consider delaying new appointments until 6 April in order to take maximum advantage on the increased protection
- Do check your disciplinary procedure will not oblige you to jump through all hoops for employees with less than two years' service

This document is guidance and cannot replace specific legal advice on individual circumstances.

About the author

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