



EMPLOYMENT BULLETIN


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INCREASE IN UNFAIR DISMISSAL QUALIFYING PERIOD AND INTRODUCTION OF TRIBUNAL ISSUE FEES

In a refreshingly positive turn of events for employers the Government has announced an increase to the qualifying period for an employee to bring an unfair dismissal claim from one year to two years. This change will take effect from 6 April 2012. A further change in the Tribunal system, namely the introduction of fees payable by Claimants, is expected to follow in December 2013. Together these changes represent a significant shift in employment legislation in the favour of employers.

Extension to the Qualifying Period for Unfair Dismissal Claims

The first proposed change is to increase the qualifying period for unfair dismissal claims from one to two years. This change is due to come into force on 6 April 2012 and it is suggested that it will save British businesses as much as £6 million a year. The source of this saving would be as a result of approximately 2,000 less unfair dismissal claims being brought each year.

Read against the overall number of Tribunal claims last year (218,000, of which 49,600 were unfair dismissal claims) it is arguable that this will not have a huge impact on the efficiency of the Tribunal system and may, in

fact, simply increase the number of other types of claims where there is no qualifying period, such as whistleblowing, discrimination and union related claims.

Another concern is that the increase may be challenged as unlawful on grounds of indirect sex discrimination or age discrimination (as there may be fewer women and young employees with the required two year's service). In 1999, under the previous Labour Government, the qualifying period for unfair dismissal was indeed lowered from two years to one year amid concerns that a two year period was indirect sex discrimination.

Employment Tribunal Fees

The Chancellor, George Osborne, also announced the introduction of fees to be paid by an individual wishing to issue an Employment Tribunal claim, which is expected to be introduced in December 2013. Whilst the proposal is highly controversial with trade union and employee bodies, it will be welcomed by employers because it will create a degree of financial risk (however small) for employees issuing claims. It is hoped that a fee requirement will help modernise and streamline the Tribunals, reduce the cost of the Tribunal system to the





tax payer, provide an incentive to settle claims early and discourage weak and vexatious claims. If this happens, it would also inevitably reduce employers' legal and administrative costs, although conversely this may make settlements and claim withdrawals less likely as the claimants will want to recoup the money they have had to sacrifice in order to bring the claim.

The Ministry of Justice intends to consult on the level of fees and who will have to pay them in November 2011. However, early speculation suggests that fees could be in the region of £250 to issue a claim and at least £1,000 if the claim progresses to a hearing. It has also been suggested that these fees may increase for claims over £30,000, but at the same time the fees may be waived for individuals on lower incomes (which arguably could be quite a number of claimants considering that many will have recently been made unemployed). The proposal also suggests that these fees would

be refunded if the claimant is successful in his/her claim but forfeited if the claimant loses. Given the current uncertainty as to the precise mechanisms of the Tribunal fee system, its effect as a deterrent to employees bringing spurious claims will only become clear when the full details are confirmed

Red Tape Challenge

We consider that the above changes are a move by the Government in the right direction, identifying the difficulties faced by employers in respect of employment legislation. This reflects a wider willingness by the Government to consider changes to the current legislation. In this regard, the Government is currently consulting on employment related law. The consultation is open between 3 and 19 October 2011 and invites comments from both employers and employees on how areas of employment law could be improved, simplified or even

abolished. Examples of regulations on which opinions are being sought are collective redundancies, National Minimum Wage, statutory sick pay and immigration checks. If you wish to make suggestions in respect of the red tape challenge, comments can be made at:

<http://www.redtapechallenge.cabinetoffice.gov.uk>

The article in this bulletin summarises complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we would be happy to assist. Please contact:

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