



## THE NEW UNFAIR DISMISSAL ERA – WHAT EMPLOYERS MUST KNOW

### 1. INTRODUCTION

For decades, the 'two-year rule' acted as a safety net for UK employers, providing a window to assess staff without the risk of an ordinary unfair dismissal claim. From 1 January 2027, that safety net is being removed.

Combined with the abolition of the compensation limits and a doubled timeframe for employees to bring a tribunal claim, the potential cost of a 'bad hire' or a procedural error has never been higher.

In this month's Hot Topic we break down these seismic changes and show you how to bulletproof your business against the new litigation landscape.



## 2. NAVIGATING THE NEW UNFAIR DISMISSAL LANDSCAPE

For nearly a decade, UK employers have operated under a 'two-year rule', where most employees required two years of continuous service before they could claim unfair dismissal under the Employment Rights Act 1996.

However, the Employment Rights Act 2025 is set to fundamentally disrupt this status quo.

Effective from January 2027, the qualifying period for unfair dismissal protection will be cut from two years to just six months. This shift means the window for assessing a new hire's suitability is closing faster than ever before.

### A rigorous approach to recruitment

The reduction to a six-month qualifying period necessitates a move away from 'trial-and-error' hiring. Under the old rules, employers had a 104-week safety net to identify performance or cultural misalignments. From 2027, that safety net is reduced by 75%.

Recruitment will need to be treated as a high-stakes risk management exercise under the new rules, which will need to involve:

- **Enhanced vetting:** Standard interviews may no longer suffice; practical assessments and deeper competency-based questioning will be essential to ensure capability from day 1.
- **Clearer job specifications:** Misaligned expectations can lead to early-stage performance issues that are now legally riskier to resolve.

### Redefining onboarding and probation

In the current legal climate, many businesses treat the probationary period as a mere formality. Under the reforms, the first six months of employment become a critical legal window. To mitigate risk, businesses must overhaul their onboarding and probation procedures:

- **Accelerated performance reviews:** Waiting until a six-month 'probation pass' meeting will become a high-risk strategy. Monthly, or even bi-weekly, documented reviews will become necessary to identify and address underperformance immediately.
- **Documented training:** Employers must prove they provided the necessary tools and training early in the employment relationship. If a dismissal occurs at month five, the employer needs a robust paper trail to justify the decision before the new statutory rights kick in.

To mitigate this risk, you must review and update your employment contracts to ensure probationary periods are legally watertight and integrated with your performance management processes. Waiting until month seven to address a failing new hire is no longer an option, as they will already possess full statutory protection against dismissal.

### The cost of getting it wrong

The risk of a shortened qualifying period is compounded by another significant change - the removal of the cap on compensatory awards for unfair dismissal.

Previously, awards were subject to a statutory limit, but the 2025 Act omits this limit. A failure to correctly manage a dismissal within those first six months could now result in uncapped financial liability.



# 3. THE END OF THE FINANCIAL CEILING – WHY EVERY DISMISSAL WILL BECOME HIGH RISK

Perhaps the most seismic shift in the [Employment Rights Act 2025](#) is not just who can claim, but how much they can claim. For decades, the compensatory award for ‘ordinary’ unfair dismissal was subject to a strict statutory safety net. Employers knew that, in most cases, their exposure was limited to either one year’s salary or a set statutory limit - currently £123,543.

That safety net is being removed. Effective from 1 January 2027, the ERA25 removes the cap on compensatory awards.

## Parity with discrimination and whistleblowing

Historically, HR professionals and business leaders, categorised claims into two tiers: ‘ordinary’ unfair dismissal (capped and manageable) and ‘automatic’ or ‘discriminatory’ claims (uncapped and high risk). By removing the limit, the government has essentially levelled the financial playing field.

An ‘ordinary’ mistake in a redundancy process or a poorly handled disciplinary can now carry the same devastating financial weight as a high-profile whistleblowing or harassment case. The tribunal will now simply award what it considers ‘just and equitable’ based on the employee's actual financial loss, without any statutory ceiling to stop the clock.

## The risks associated with high-earners

This change is particularly perilous when dealing with high earners and senior executives. Currently, an employer dismissing a director earning £250,000 could calculate their maximum ‘worst-case’ exposure with relative certainty. From 2027, if that same director is unfairly dismissed and it takes them two years to find a comparable role, the employer could be liable for the full two years of lost salary, bonuses, and benefits.

Without the cap, your most expensive employees have suddenly become your most expensive legal liabilities.

## Implications for settlement discussions

The removal of the cap will also fundamentally rewrite an employer’s strategy for entering settlement and COT3 negotiations.

- **Shift in leverage:** Previously, employers often used the statutory cap as a ‘hard stop’ in negotiations. If a claim was worth £500,000 in theory but capped at £118,000 by law, there was no reason for the employer to settle for a penny more. That leverage has vanished.
- **Increased settlement demands:** Claimants and their solicitors will now calculate ‘actual loss’ from day one. Expect settlement demands to skyrocket, reflecting the fact that the ‘worst-case scenario’ at an Employment Tribunal is now uncapped.
- **Commercial pressure:** Businesses may find themselves forced into higher settlements simply to avoid the risk of an unpredictable, multi-year loss award that could threaten the company’s cash flow or reputation.



## 4. THE SIX-MONTH SHADOW – WHY EXTENDED TRIBUNAL TIME LIMITS ARE YOUR NEW STRATEGIC RISK

Currently, employers generally follow the ‘three-month rule’, which is, if a claim didn't land on your desk within 12 weeks of a dismissal or dispute, you could usually breathe a sigh of relief.

That window is about to double under the [ERA25](#). The Act will increase the time limits for making claims in employment tribunals from three months to six months (except for wrongful dismissal claims). This shift, expected to take effect no earlier than October 2026, represents a significant change in the ‘tail’ of legal risk following an employee's exit.

### The rise of the ‘ghost claim’

The most immediate practical fallout for your business is the loss of closure. Under the new reforms, an employer could conclude a redundancy process or disciplinary exit and see nothing for five months, only for a claim to appear just as the business has moved on.

This extended window creates a ‘limitation period’ that keeps your legal liability alive for half a year. For HR departments and business owners, this means:

- **Budgeting uncertainty:** Potential liabilities remain on the books twice as long, complicating financial forecasting.
- **Settlement leverage:** Employees have more time to seek legal advice and build a case, potentially increasing the frequency of claims that might have previously lapsed under the tighter three-month deadline.

### The memory gap: when evidence fades

The greatest threat posed by a six-month window is the degrading of evidence. Employment Tribunals rely heavily on the testimony of managers and colleagues who were ‘in the room’ when key decisions were made.

- **Witness unavailability:** In high-turnover sectors, a witness to a grievance or dismissal in January may have left the company by the time a claim is served in July. Finding and convincing former employees to testify is notoriously difficult and expensive.
- **Faded memories:** Even if the witness is still with you, ‘reasonable’ memory of a specific meeting or conversation will begin to blur. Cross-examination becomes far more dangerous when a manager can no longer recall the specific nuances of an interaction, making your business appear inconsistent or unreliable.

### Contemporaneous notes: your new best friend

With the window for claims doubling, the importance of robust, contemporaneous record-keeping cannot be overstated. You are no longer just documenting for a three-month horizon; you are documenting for a six-month legal threat, and a potential multi-year tribunal wait.

The reforms already signal a move toward more stringent record-keeping, such as the new requirement to retain annual leave records for six years. Applying this same level of strictness to disciplinary notes and performance reviews is now imperative.





## 5. DOUBLING THE PROTECTIVE AWARD IN REDUNDANCY

Significant changes to collective redundancy procedures are arriving on 6 April 2026, dramatically increasing the cost of procedural errors. The new Act doubles the maximum protective award from 90 days to 180 days of pay. This means that if a tribunal finds you failed to collectively consult adequately during a collective redundancy process, your financial liability per employee has essentially doubled overnight.

## 6. THE FAIR WORK AGENCY: A NEW ERA OF ENFORCEMENT

The establishment of the Fair Work Agency from 7 April 2026 (will be implemented on a phased basis) marks the end of 'self-regulation' for many employers. This powerful new body will be led by the Secretary of State and staffed by enforcement officers with the authority to enter business premises and seize documents. The Agency will have the power to issue notices of underpayment for any statutory pay provision, which can carry penalties of 200% of the sum due, capped at £20,000 per worker. Unlike individual tribunal claims, the Fair Work Agency can investigate your business proactively, and failing to comply with their Labour Market Enforcement Orders can lead to criminal prosecution and imprisonment.

## 7. WATCH ON DEMAND - OUR VIRTUAL EMPLOYMENT LAW SEMINAR

Each year, Business HR Solutions host its annual employment law seminar. Watch back on demand our webinar event from March, in which we discuss the significant employment developments for the year ahead.

You can [access the recording here](#).

### NEED EXPERT HR ADVICE? GET 30 MINUTES FREE!

The festive season can bring a range of HR and legal risks, from misconduct and discrimination to health and safety concerns. Book your FREE 30-minute HR advice session to discuss how to protect your business this December and ensure your workplace celebrations stay compliant, inclusive and low-risk.

[Contact us today to schedule your free consultation](#)

