

Big changes ahead in UK employment laws

In the pre-Christmas haze, it seemed almost like a festive miracle. The Employment Rights Bill (ERB) was passed by the House of Lords after much to'ing and fro'ing in Parliament and it is now the Employment Rights Act.

This article sets out the main headline points of the changes to employment laws that employers in the UK will need to understand and manage in the not-too-distant future.

Unfair Dismissal – the qualifying period

The Government's original proposals for a 'day 1 unfair dismissal right' ran into trouble in the House of Lords, which instead suggested a short qualifying period of six months, dispensing with the need for a new 'light touch' dismissal process for use during a new 'statutory probationary period'. After considerable wrangling over a protracted period, the Government agreed on 27 November 2025 to accept this amendment.

Therefore, the Day 1 right to unfair dismissal, a 'headline' provision of the ERB and a Labour manifesto promise, will not be taken forward, and a shorter six month qualifying period will replace the current qualifying period of two years.

The new qualifying period is set to take effect from 1 January 2027 meaning that employers will need to ensure their probationary and early performance management processes are in order, to ensure that any new recruits who are not up to standard when they are in post can be managed and, if necessary, dismissed prior to them achieving rights to be protected from unfair dismissal.

Unfair Dismissal – the cap on compensation

In an unexpected move during the wranglings that resulted in its concession on the qualifying period (above), the Government introduced an entirely new amendment to the ERB 'lifting' (which, it transpires, means removing rather than increasing) the compensation cap on unfair dismissal awards in the employment tribunal.

The House of Lords was entirely unimpressed with this turn of events and accordingly the ERB returned again to the House of Commons on Monday 15 December 2025, only to be immediately ping-ponged back to the Lords with no substantive concessions countenanced by the Government.

The Lords eventually conceded and allowed the Bill to pass with the removal of the unfair dismissal compensation cap in place. This is big news!

Implications of uncapped awards

Currently, compensation for 'ordinary' unfair dismissal, is capped at £118,223 (regularly updated to account for inflation) or one year's salary for the individual employee, whichever is lower.

The removal of the cap on compensation for unfair dismissal will have huge implications for how employers and their legal representatives approach dismissals and litigate unfair dismissal claims.

The 52-week cap is a valuable tool both in giving certainty to employers and sometimes in managing claimants' expectations. The removal of the upper limit will undoubtedly make it more difficult, and potentially more expensive, to settle claims before an employment tribunal hearing.

A general increase in the number of unfair dismissal claims is also likely, placing additional strain on an already struggling employment tribunal infrastructure and further stretching out the average lifecycle of a claim. In some cases, a claimant might be persuaded to settle a claim for immediate payment, rather than 'holding out' for an ET award many months or years in the future, but this will depend on the circumstances of the case and the tenacity of the individual.

Unfair dismissal awards are already uncapped if the dismissal is alleged to be discriminatory or related to a whistleblowing complaint. The removal of the cap is partly intended to address the perception that employees often 'over-complicate' their unfair dismissal claims, by introducing tenuous discrimination or whistleblowing allegations to maximise compensation. However, we don't believe the proposed changes are likely to result in a significant reduction in this practice.

Liability v Remedy

Currently, the primary focus of employment tribunal litigation tends to be on 'liability' (i.e. whether the claim will succeed or fail at employment tribunal), with arguments around 'remedy' (i.e. the compensation a successful claimant will receive) often coming into play only at a later stage.

Once awards are uncapped, far closer attention will need to be paid, by the parties and the tribunal, to remedy from the outset. For example, how easily might a claimant have found a similar job? What other attempts have they made to mitigate their losses? All of this is likely to result in more preparation time, and therefore legal cost for the parties and more employment tribunal time being required, if matters do not resolve themselves early.

High earners

Traditionally, employment tribunal litigation has been an unattractive option for very high earners, deterred by the overall financial cap, currently £118,223. Such claims tend to be pursued in the civil courts, where higher awards are available and successful parties usually recover their legal costs from the losing side. However, this may change when the employment tribunal compensation cap is lifted. High value claims will be pursued within the cost-free employment tribunal, with less financial/cost risk for employees pursuing speculative claims; all of which will also add to the workload of an already over-stretched employment tribunal system.

Employers may be much less inclined to ‘take the risk’ on dismissing a senior individual if there is no longer a ceiling on potential compensation. It may also be considerably harder to reach agreed exit terms in the senior executive space if employment tribunal litigation is potentially a more lucrative option. At the very least, negotiation upon exit will likely become harder.

Greater exposure for respondents

It is important to remember that even unfair dismissal claims brought by lower or moderate earners may quickly become extremely expensive without the cap. For example, without the one-year limit, an older worker might attempt to recover ‘career long losses’ covering the remainder of their working life. Pension losses, previously falling within both the 52-week cap and overall financial cap, may also greatly inflate average claim value.

The Employment Rights Act received Royal Assent and came into force on the evening of Thursday 18 December 2025.

Consultations

We are next to be hit by an avalanche of consultations about the detail and implementation of the Act's provisions; and we will provide more insight on this in the weeks and months ahead in line with the previous consultation synopses we have published already.

The Government has committed to maintaining constructive and receptive dialogue with employers and business representatives, so employers are encouraged to get involved in the consultations and have their say on what remains to be settled in the new Employment Rights Act 2025 world of employment rights in the UK.

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