

Unfair dismissal rights may be eroded by the coalition government

How will this affect you?

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Loss of employment rights may be on the cards as the coalition government tries to get business moving again. How will this affect you?

The Coalition Government is actively looking at the possibility of increasing the qualifying period of service that employees need to have before raising an unfair dismissal claim from 1 year to 2 years. The unions are not surprisingly up in arms.

Changing the qualifying period could be a step the Government could take quite quickly, requiring only an order from the Employment Minister and without an Act of Parliament.

Many employees who leave the security of long term jobs may be unaware that they lose the protection of a vast armoury of employment law rights when they start work in a new company. The qualifying period of service has changed over the years and it was not too long ago that there was a 2 year qualifying period in place before it was reduced to the current 1 year in 1999. The fear is that the re-increase in the qualifying period will strip employees of hard earned rights and allow employers to treat their staff like dirt for a 2 year period. So could this happen in practice?

Well one cannot escape the bold truth that most savvy employers do have an eye on the unfair dismissal time limits if they are about to have a restructuring, or simply want to fast track an employee out of the business. This may be particularly helpful to employers in performance related cases where a fairly lengthy process would otherwise need to be implemented to justify a capability dismissal. Employers could simply circumvent this. In turn, without the ultimate threat of seeking redress in a tribunal, an employee will have little or no leverage against his employer.

It will, however, still be possible for employees with less than 2 years to raise claims for discrimination and a few other limited claims such as whistleblowing and breach of statutory rights. Such claims are presently exempt from the 1 year rule and would continue to be in any extension of this period. This may well push employees to make more claims of a discriminatory nature (as has been shown in the past) and where there is no cap on the amount of damages that can be awarded.

However, the proposals have also received strong criticism from those who believe that this change in the law will make employees extremely vulnerable to being dismissed unfairly. Weakening the rights of employees could create a stressful working environment whereby employees with less than two years' service are constantly under pressure to attain a certain standard or face dismissal. This is certainly not conducive to creativity or loyalty.

Finally, you should always bear in mind that the present 1 year qualifying period is slightly misleading. In most cases, due to the operation of the minimum statutory notice period of 1 week, an employee only needs 51 weeks' service to qualify to issue an unfair dismissal claim. It is amazing how many employers are unaware of this, and leave it until the last day before the complete calendar year to dismiss an employee who they believe will be unable to then make a claim. They are wrong.

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