

A photograph of three people (two men and one woman) sitting around a table in a modern office setting, engaged in a discussion. One man is holding a tablet. The background shows large windows and office furniture.

Preparing your Future Workspace

A simple line-art icon of a paper airplane with a long, curved tail, pointing towards the right.

Day one employee rights – an employer’s to do list

28 June 2024

A rectangular stamp with a distressed, ink-like border. The text inside is written in a bold, sans-serif font.

Getting
Election Ready

If Labour win the election next week, they have proposed significant changes to employment rights, notably in the form of changes to expand unfair dismissal protection.

In our latest Future Workspaces insight, we look at what employers need to know - and what steps they should take - in preparation for these anticipated changes.

Whereas employees currently (pre-election) require two consecutive years’ service to qualify for unfair dismissal protection, Labour proposes legislation allowing employees to benefit from this protection on their first day of employment.

In short, employees would gain unfair dismissal protection a full year and circa 357 days earlier than they do presently. This is a profound change.

However, as part of this proposition, employers will likely continue to have flexibility during an employee’s probationary period. We do not know yet what that flexibility will look like.

Why are these changes being proposed?

The rationale underpinning Labour’s proposal, along with other employment changes, is to end “one-sided flexibility” while affording people security in their day-to-day lives.

These proposals are part of a wider plan which refers to a decline in workers moving jobs, posing a risk to productivity, along with the fact that the current wait for unfair dismissal protection means the “risk of moving jobs falls heavily on the individual”.

There’s synergy between this plan and granting more flexibility to workers, but in our experience many employees are not even aware of the two year waiting period for unfair dismissal, much less making decisions based on it. In reality, employees move roles owing to personal, career or financial gain, or a change in circumstances. People don’t intentionally cling on to the same job, with white knuckles, until they reach the magic two year mark.

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What should employers be doing now?

It's understandably all too easy for employers to have become fairly relaxed in their approach at proactively managing employee issues during the first two years of employment. After all, unfair dismissal protection doesn't kick in for two whole years – for now.

It's anticipated that employers will be grappling with a workforce equipped with earlier or greater rights. Smart employers can get ahead of the curve by mitigating unnecessary risk now. We recommend the following step-by-step actions.

1 Conduct a workforce audit

- Review your workforce to identify employees who have less than two years' service and who have successfully completed their probationary period. Create a list of these individuals and check by whom they are line managed
- Assign line managers the task of auditing relevant staff in their teams, considering whether there are any underlying performance concerns, workplace grumbles or other niggles that have scope for becoming bigger issues if left untreated. Whilst these individuals won't necessarily have been at the top of a manager's priority list, now is the time to identify these, take swift action as appropriate and document the same
- Equip managers with the task of improving the performance or attitude of those employees, and taking action where that is not possible. Begin formal performance management or steps to remedy any behavioural issues
- Managers will either see success or will determine that an employee isn't a good fit. With the latter, an employer will be able to more easily dismiss before the anticipated change. After the proposed changes have been implemented, these employees will have far greater protection, or will be much better placed should a dismissal take place.

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2 Get on top of probationary periods

- Get into good habits now with probationary periods. All the indications are that they are about to become very important
- Communicate with line managers to ensure all probationary period dates, including half-way points and check-in dates, for staff are correctly and clearly diarised, with reminders
- Ensure line managers are aware of the enhanced importance of accurately monitoring an employee's performance and suitability for continuing employment during probation
- Train line managers to be alive to, identify and tackle low-lying performance or workplace issues promptly and effectively during an employee's probationary period
- If the employment contract allows, line managers should be aware of their ability to extend an employee's probationary period and should have training to empower them to take proactive steps, ensuring any extension date(s) are carefully diarised and utilised.

3 Provide clarity in your employment contracts

- Ensure employment contracts have suitable probationary period provisions, furnishing both the employer and employee with clarity and certainty as to:
 - The length of the probationary period
 - What happens if the employee is incapacitated or otherwise absent and cannot work for a material part of their probationary period
 - How the employee will be notified that they have successfully completed their probationary period
 - Whether – and, if so, how and for what time period – an employer can extend a probationary period.
- Consider whether to grant new starters a fixed-term employment contract with a clear, natural expiry date. This will not avoid unfair dismissal rights when the time comes, but if the employer genuinely does not know whether the role will be needed long-term – for instance, expanding a sales team which needs to deliver results to justify its continued existence – a fixed-term contract could be a helpful tool in the box
- Consider the creation of greater detailed job descriptions and policies on expectations of staff. These will assist in providing evidence of why individuals have passed or failed probation.



This anticipated change is one of the most significant proposed employment law changes by a hypothetical new Labour government that will affect both employers and employees. Employers will benefit from getting ahead of these proposed changes and working through the steps shared above.

If you would like advice, please get in touch with our Employment and Immigration team.



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