



# CRONER

## Employment Rights Act Made Simple: Master Probation Periods & Dismissals

Date: 8<sup>TH</sup> April 2026

Run Time: Approximately 50 minutes

**This session will start shortly (11:00)**

The detail contained within this webinar is based on GB & Northern Ireland employment legislation.

Members in the jurisdictions of the Republic of Ireland, Jersey, Guernsey and Isle of Man are asked to please contact the Advice Service to obtain the information relevant to your jurisdiction.



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## Hard hitting reality

- 2026 is going to be a busy year for employment law changes
- Changes will affect over 28 areas of employee management
- 173 separate pieces of law to be written/amended
- Laws will be spread over next 2 years
- Vast majority of changes will affect every employer in the UK regardless of size

**Please put your questions in the chat!**



# The biggest changes

- Statutory sick pay expansion – April 2026
- Family Leave/Payments – 6<sup>th</sup> April 2026
- Introduction of Fair Work Agency – April 2026
- Requirement to inform of right to join a union – October 2026
- Increased harassment obligations – October 2026
- Unfair dismissal protection – 1 January 2027
- More red tape on flexible working refusals – 2027

## Did You Know?

- Its estimated around **6 million people** will gain the right to claim unfair dismissal once these reforms come into effect



# What is a probation period?

- Period of time in which you can assess the suitability of a new member of staff for a role
- Not a legal construct – purely contractual
- Extremely common in the employment world as a structure for early assessment
- For new starters – employee doesn't have ordinary unfair dismissal rights

# Why are they important?

- Reason to have a probation period is twofold:
- Allows a period of time to determine whether the individual is right for the role
- Focuses attention on ensuring the new employee has the training, support and guidance they need to perform in the role
- First few months in a role are crucial to the long-term performance of an individual

# How the ERA25 will affect probation periods

- Qualifying service for unfair dismissal reduces from two years to six months from 1 January 2027
- Will only apply to ordinary unfair dismissal claims that currently carry a two year qualifying period
- No change to current day-one claims eg automatic unfair dismissal
- Right to receive written reasons of dismissal will also reduce from two years to six months

# Impact on claims

- Scenario 1 - Employee does not meet qualifying period requirement:
- Cannot claim ordinary unfair dismissal
- Dismissals can be swift and have bare minimum procedure
  
- Scenario 2 - Employee does meet qualifying period requirement:
- Can claim ordinary unfair dismissal
- Dismissals must follow a fair procedure usually involving a series of warnings
- Takes time

# Impact on probation periods

- Most employers use six month probationary periods
- A duration of six months could put you at risk of an unfair dismissal claim
- Probation period duration should not match the unfair dismissal qualifying period
- Failed probation dismissals do not currently routinely carry a risk of unfair dismissal because of the two year qualifying period – a long time between end of probation period and the two year work anniversary

# Examples

		Six-Month Qualifying Period						
Month		1	2	3	4	5	6	7
Length of Probation Period	6 Months	Probation Period						1 month Extension
	5 Months	Probation Period					1 month Extension	2 month Extension
	4 Months	Probation Period				1 month Extension	2 month Extension	3 month Extension
	3 Months	Probation Period			1 month Extension	2 month Extension	3 month Extension	

# When does this come into effect?

- Comes into effect 1 January 2027 and **applies retrospectively**

<b>Start Date</b>	<b>Impact</b>
Employees who started on or before 1 Jan 2025	<b>Will see no impact</b> ( <i>they will have two years service on 1 Jan 2027 so will already have the right</i> )
Employees who started or start between 2 Jan 2025 and 1 Jul 2026	<b>Will gain unfair dismissal rights on 1 Jan 2027</b> ( <i>this means they will gain it sooner than originally expected</i> )
Employees who start on or after 2 Jul 2026	<b>Will gain the right to claim unfair dismissal when they hit six-month service</b>

# Preparing for change

- New recruits from **July 2026 should not** have a 6 month probation period
- Start now – the sooner you use shorter probation periods, the quicker you will be used to a shorter process

# Updating processes

- Review **probationary period length** and decide what's right for you
- Assess your **recruitment** processes – are you getting the best people in the door?
- Review your **onboarding** processes – are you giving employees what they need to succeed?
- Evaluate your **probation management** process – do you assess performance and give constructive feedback?
- Review your **notice periods** – does the current length really work for you?
- Review contracts - do you have a watertight **pay in lieu** clause?

# Probation Periods Top Tips

- Have regular one-to-one meetings Raise any concerns immediately, don't wait until the end of the probation period
- At the end of the probationary period, a formal end of probation meeting will be held
- The meeting should be arranged just before the date at which probation is due to end — not after that
- Employees should be formally invited to end of probationary period review meetings with the purpose of the meeting and the possible outcomes of the meeting clearly outlined

# Probationary Review Outcomes

- The outcome of the probationary review meeting will be formally recorded and kept on file
- The possible outcomes of the review meeting are:
- Probation completed successfully
- Probation Extended
- Termination of Employment

# Probationary Extension Dilemma

- Larry is coming up to his 3-month probationary review, and we have had some concerns regarding his performance. He is one of our warehouse operatives but isn't hitting his KPI's on picking and packing and is often making mistakes.
- We were concerned about his productivity when we took him on, but he assured us he would be up to the job, so we decided to give him a chance. He is in his late 60's but has fitted in with the rest of the team well despite the majority being in their 20's.
- We know he suffers with arthritis; he also disclosed that he suffers with PTSD on his medical questionnaire and has already called in sick on 2 occasions due to this. His line manager has noticed that he often seems confused and not quite with it.
- Can we fail his probationary period, or would we be better to extend for a month?

# Automatic Unfair Dismissals

- Protection applies from day one of employment
- Tribunal will consider the merits differently:
- **Ordinary unfair dismissal** – reason for dismissal + the procedure used to dismiss
- **Automatic unfair dismissal** – only the reason for the dismissal is considered
- All the employee needs to demonstrate is the reason for dismissal was one of the automatic unfair reasons
- No further consideration of whether employer was acting reasonably

# Reasons for Automatic Unfair Dismissals – Part 1

- Discrimination
- A reason connected with pregnancy/maternity
- Asserting a statutory right
- Seeking to take, or taking statutory time off e.g. time off for dependants/parental leave
- Joining or not joining a trade union
- Whistleblowing
- Making a health and safety complaint
- Refusing to agree to work more than the average weekly working hours limit

# Reasons for Automatic Unfair Dismissals – Part 2

- Taking, or seeking to take, leave for family reasons including pregnancy, maternity leave, paternity leave, adoption leave, childbirth, parental leave etc
- Taking leave for family emergencies or to care for dependants
- Taking, or seeking to take, time off for antenatal or adoption appointments
- Making a protected disclosure (ie whistleblowing)
- Undertaking certain health and safety activities
- Refusal of Sunday working by shop and betting employees
- Refusal to undertake certain activities that would breach the Working Time Regulations

# Reasons for Automatic Unfair Dismissals – Part 3

- Undertaking certain functions as a trustee of an occupational pension scheme
- Undertaking certain functions as an employee representative under the TUPE or collective redundancies legislation
- Asserting certain statutory rights
- Seeking to exercise the right to be accompanied or to accompany a fellow worker at a disciplinary and grievance hearing
- Taking certain steps under the National Minimum Wage laws
- Seeking to exercise the right to request flexible working
- Because they are a part-time worker

# Increased Risk for Short Service Employees

- Employers have more flexibility to dismiss when employee is not protected against unfair dismissal
- Don't need a "proper reason" eg conduct/capability – but beware
- Need to analyse what the actual reason is and make sure it's not protected under the automatic unfair principle

# Dismissal Dilemma

- We took Ria on under a fixed term contract for one year as an Activities Co-Ordinator 5 months ago, unfortunately the Council has confirmed we will not be receiving any further funding from them and therefore we will not be able to renew Ria's contract when it comes to an end.
- It's such a shame as Ria has settled into the team really well, she's brought great energy to this new role and is very reliable with a 100% attendance record. In her last review yesterday, she disclosed that she was suffering from domestic violence and was seeking support for this, she'd recently had a pregnancy scare and it had put things into perspective for her and she now wants to get out of her relationship. She also confirmed that she absolutely loved her job and feels part of our family.
- We can bring Ria's contract to an end with one week's notice; we have the right to PILON or can use garden leave but to ensure all employees are treated fairly our disciplinary procedure is contractual.

# Reforms that Impact Automatic Unfair Dismissal

- Several reforms in the ERA25 either enhance the protection or may make it more likely that an automatic unfair dismissal claim may arise:
- Enhanced protections for pregnant workers
- Family leave/flexible working changes
- Whistleblowing protections for sexual harassment disclosures
- Fire and rehire restrictions
- Industrial action protections

# Conducting Short Service Dismissals

- Continue to follow a fair procedure
- Don't assume that any dismissal under the qualifying period will be "fine"
- Ask yourself what the real reason you want to dismiss is
- Don't assume that adding in another reason alongside the automatic unfair reason will work – tribunal will look at the principal reason
- Always confirm in writing the reason for the dismissal so that the employee isn't left wondering

# Summary

- From 1 January 2027, the qualifying service required to make an unfair dismissal claim reduces to six-months
- Anyone you recruit now, or have recruited since 2 January 2025 will not need two-years to make a claim
- A six-month probation period puts you at risk of the employee gaining unfair dismissal rights if there are any delays or you want to extend
- Understand what kind of dismissals can be classed as automatically unfair and how to protect yourself
- Remember –some of these may become more prevalent thanks to the ERA25

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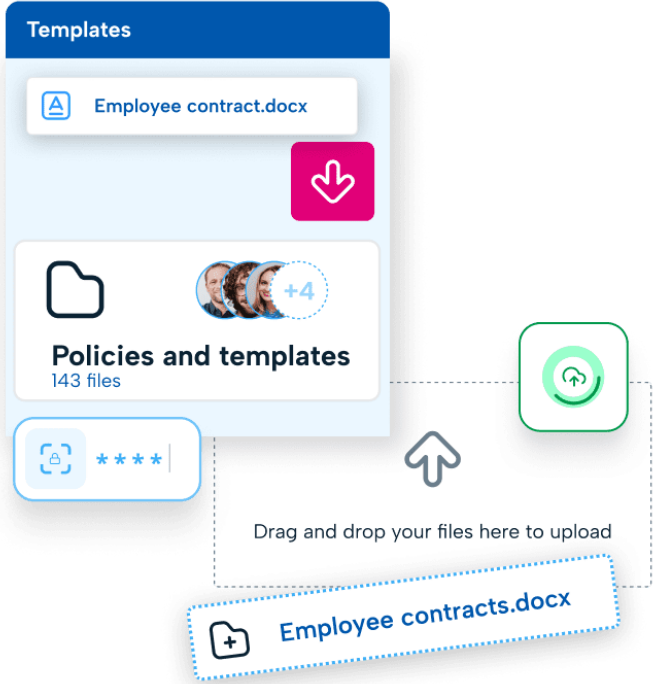
# Additional Support Resources Reminder

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# Thank you!

Any questions



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