

Qualifying Period for Unfair Dismissal



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Author: **Thomas Mansfield**

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Moves are afoot to increase the qualifying period for unfair dismissal from one to two years. The government believes this will encourage economic growth by giving businesses more confidence when they consider taking people on.

According to the government, the emphasis is on employers and employees having longer to resolve any differences and to avoid situations where employers bring the employment relationship to an end earlier than necessary.

The reality of the situation however, is that increasing the qualifying period for unfair dismissal from one to two years will undoubtedly empower employers to dismiss staff more readily. To this extent, some commentators argue that it will become a charter for businesses to sack people unfairly – and this means a wealth of new work for [employment solicitors](#) like Thomas Mansfield.

Another concern presented by the increase in the qualifying period is that it may disproportionately affect younger employees. Research on the subject suggests that half of the three million employees affected by the proposed change are under the age of 35. And while nearly half of all those under 20 currently qualify for unfair dismissal protection, this figure would fall to one in five under the government's proposals.

Any government-enacted legislation increasing the qualifying period must comply with the Equal Treatment Framework Directive, which outlaws age discrimination and specifically indirect age discrimination. This discrimination occurs when an apparently neutral provision, criterion or practice puts people of a particular age at a particular disadvantage compared with people not of that age. The exception to this is where the provision, criterion or practice is

capable of being objectively justified. Legislations which do not comply would be exposed to legal challenge by way of judicial review.

If such a challenge were to be mounted, the government would need to justify the measure by showing that it achieves a legitimate aim and is proportionate.

So is the increase in the qualifying period from one to two years a legitimate aim? Whilst it would be very nice to think that a longer qualifying period would enable employers and employees to resolve their problems without the possibility of dismissal, one can foresee the emergence of a hire and fire culture. Rather, employers should consider resolving their differences with staff earlier and in more meaningful ways, through inclusion and open dialogue.

It is easy to see how the increase in the qualifying period will be regarded as a boon for employers to remove troublesome staff. It also is a useful tool in circumstances where employers looking to dismiss 20 or more employees at one establishment find themselves having to adhere to the law relating to collective consultation. Quite often, an employer is well advised to terminate the employment of those employees with less than one year's service if to do so would reduce the number of affected employees below 20, this being the point at which the obligation to collectively consult is triggered. Employment solicitors advise that avoiding collective consultation can save an employer both time and money.

It is very easy to be cynical about the government's avowed purpose behind the increase in the qualifying period but we shall have to see how this debate pans out and whether a challenge is indeed mounted on the grounds of age.

Thomas Mansfield Solicitors, winners of the Innovation Award at the Law Society's Excellence Awards 2009, are specialist employment solicitors, London based, who handle legal disputes concerning areas of employment as well as [compromise agreements](#). For further information please contact:

Email: info@thomasmansfield.com

Telephone: 0845 6017756

Website: www.thomasmansfield.com

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