

Insights

LABOUR'S PROPOSED EMPLOYMENT LAW REFORMS: OUR FIRST WEEKLY PRE-ELECTION GUIDE

REMOVING QUALIFYING PERIODS AND INCREASING STATUTORY TIME LIMITS

Jun 20, 2024

SUMMARY

Following last week's insight, "[Labour's manifesto and employment law - what can employers expect?](#)", we focus this week on the specific issue of removing qualifying periods and increasing statutory time limits.

QUALIFYING PERIODS

Labour's proposal to remove entirely qualifying periods for employment claims represents a major change. Over decades the qualifying period has changed between six months and two years, but there has always been one.

How will no qualifying period affect employers in practice?

PROBATIONARY PERIODS

The manifesto refers to "fair and transparent" probationary periods being a possible exemption. It is not entirely clear what Labour intends to do, but it seems possible that the rules will allow employees to be dismissed (without a full-blown procedure) at the end of a probationary period. This is so long as the probationary rules are "fair and transparent". This might mean for example amending the Employment Rights Act 1996 (ERA) to make failing a probationary period a fair reason for dismissal.

RECRUITMENT

We might see a high degree of caution amongst employers in the recruitment process, even with allowances for probationary periods. Recruitment processes might be lengthier and more stringent, ensuring as far as possible that the employee is a good fit for the role. There may be a lack of willingness to "take a chance" on anyone, and possibly even an overall slowdown on recruitment.

PROCEDURES FOR DISMISSAL

It seems almost inevitable that employers will review generally and tighten up processes and procedures for dismissal. These will need to be as robust and thorough as they can be, given day one rights for employees also being extended to workers, increasing further the number and likelihood of claims.

SHORT-SERVING EMPLOYEES

The idea that short-serving employees can be dismissed without any procedure being followed will obviously be gone, and this will add an administrative burden to employers.

OTHER CLAIMS/RIGHTS

Although not covered in Labour's proposals, there may be a knock-on effect regarding other employment rights. If Labour is trying to make day-one employment rights universal, it might be incongruous still to have a two year qualifying period for a statutory redundancy payment and, for that matter, a 26 week qualifying period for statutory maternity pay. The latter might be particularly the case if Labour is scrapping the qualifying period for statutory sick pay.

INCREASE IN DEADLINES

The current statutory time limit for almost all employment claims is three months from the date of dismissal. Labour intends to increase this to six months, apparently to bring all employment claims into line with the time limit for equal pay claims and claims for a statutory redundancy payment. Labour was also concerned about the issues faced by pregnant women in bringing claims. ACAS Early Conciliation can lengthen the three-month period, but presumably this will be the case with the new limit.

How will this affect employers in practice?

FEWER EXTENSIONS OF TIME

It might be more difficult for employees to argue that it was not reasonably practicable to present a claim with the time limit when the limit is six rather than three months. Tribunals may take a harder line when employees have twice as long to present claims.

MORE NERVOUS EMPLOYERS

Employers who have not used a settlement agreement currently have an uncomfortable three months to wait to see if a claim is brought – that period will now double.

MITIGATION OF LOSS

Six months gives a dismissed employee more opportunity to find alternative employment, and an employed ex-employee may be less willing to bring a claim, both in terms of morale and more prosaically in terms of compensation, which will be all the more reduced.

FINAL THOUGHTS

One almost certain outcome of reforms in this area is an increase in numbers of claims. With no qualifying period and a longer deadline, it is highly likely that the volume of claims will increase. Unless Labour increases funding to the tribunal system, which is still recovering from the pandemic, requires more Judges and is stretched to its limits, claims are most likely to suffer more delays and difficulties.

Also, as indicated above, it will likely lead to employers reviewing and strengthening, where necessary, policies and procedures. This might hit small to medium employers hardest, as they will need to follow (for example) performance and redundancy procedures rigorously to avoid or to better defend employment claims – from day one.

RELATED CAPABILITIES

- Employment & Labor

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