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United Kingdom

EMPLOYMENT AND LABOUR LAW

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in United Kingdom.

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UNITED KINGDOM
EMPLOYMENT AND LABOUR LAW

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

Although an employer can in theory terminate an employment relationship for any reason, not all reasons will be lawful.

Subject to limited exceptions, where an employee has two or more years' service, they will be protected from being unfairly dismissed. This means that their employer must have one of five potentially fair reasons for dismissing them, as set out in the Employment Rights Act 1996. These are: (1) conduct; (2) capability or qualifications – – this can cover poor performance and ill health; (3) redundancy – when the job is no longer needed; (4) illegality – when the employee cannot do their job legally, for example a lorry driver who is banned from driving; and (5) 'some other substantial reason' ("SOSR") – a catch-all term used for a wide variety of other situations. In addition to having a fair reason for dismissal, an employer must also follow a fair process. Whether a process is fair or not will depend on the context, but it will often require an employer to comply with their internal policies and procedures as well as acting in a consistent manner and treating employees fairly. For example, for a potential misconduct dismissal, an investigation and disciplinary process would need to be carried out before any dismissal can take place. Generally, an appeal should also be offered to the dismissed employee.

Where an employee has less than two years' service, there is generally no requirement for an employer to justify their decision to dismiss or even to follow a fair process. However, in general, an employer will still give a reason for dismissal and may follow a short-form process.

In some scenarios, an employee will not need a minimum qualifying period of service to bring a claim for unfair dismissal. This is because the dismissal of an employee for certain reasons is automatically unfair, irrespective of their length of service. Automatically unfair reasons include where an employee is dismissed for whistleblowing or because they are pregnant or on maternity leave.

Finally, the right not to be discriminated against because of a characteristic that is protected under the Equality Act 2010 is a day one employment right so those with less than two years' service who are dismissed for a discriminatory reason are also protected.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

Where an employer proposes to dismiss 20 or more employees at a single establishment within a period of 90 days or less, it must comply with collective consultation obligations under the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA"). Specifically, the employer must inform and consult with appropriate representatives of affected employees starting at least 30 days before the first dismissal where they are proposing to dismiss 20 to 99 employees, or 45 days where 100 or more dismissals are proposed. Consultation must be with recognised trade unions or, if there are none, the employees' representatives (who must be elected by the affected employees, if there is no existing employee representative body).

Any dismissal for a reason not related to the individual employee counts as a redundancy for the purpose of collective consultation under TULRCA. Therefore, if an employer proposes to dismiss 20 or more employees for failing to agree to new terms and conditions of employment, this could trigger collective consultation obligations.

Failing to comply with the collective consultation

obligations may lead to an Employment Tribunal claim against the employer and liability to pay a "protective award" of up to 90 days' gross pay for each affected employee.

The employer must also give advance notice of collective redundancies to the Secretary of State and failure to do so is a criminal offence.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") ensure that employment rights of employees are protected on a business transfer or a service provision change (i.e. when the business in which the employees work is sold or transferred, or the activities they carry out are outsourced, insourced or transferred between service providers). This is referred to as a "relevant transfer".

Under TUPE, an employee with at least two years' service who is dismissed (whether before or after the relevant transfer) where the sole or principal reason for the dismissal is the relevant transfer, may have a claim of automatic unfair dismissal.

The employer may have a defence to such a claim if it can show that the dismissal was for an economic, technical or organisational reason entailing changes in the workforce ("ETO"). Redundancy is a typical ETO.

Even where there is an ETO reason, the employer will still need to show that it acted reasonably in effecting the dismissal and it is not possible for the transferor to rely on a transferee's ETO reason to avoid an automatic unfair dismissal finding.

In addition, the employer of any employees affected by the relevant transfer has an obligation under TUPE to inform and, if applicable, consult about the transfer with recognised trade unions or, if there are none, the employees' representatives (who must be elected by the affected employees, if there is no existing employee representative body).

Employers who fail to comply with their duty to inform and consult under TUPE (including requirements to elect employee representatives) may be ordered to pay up to a maximum of 13 weeks' gross pay to each affected employee. The transferee and transferor are in general jointly and severally liable for any compensation awarded.

4. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

When considering the termination of an employee, an employer must be aware of its obligations under both statute and the employee's employment contract.

Under statute, an employee who has been continuously employed for one month or more is entitled to a minimum notice period of one week from their employer, rising to two weeks after two complete years of service and by an additional week for each additional complete year of service, up to a maximum of twelve weeks. Employees are required to give a minimum of one week's notice to their employer, irrespective of length of service.

The employment contract may provide for a longer notice period. For example, it is standard practice in the professional service industry for employees to be required to give and receive three months' notice of termination, increasing to up to six months (and sometimes more) for senior executives. A notice period of more than 12 months is unusual. Although the contractual notice periods for an employer and employee do not have to be the same, most employers adopt the same notice period.

An employer can disregard the statutory and contractual obligation to give a minimum period of notice where the employee has committed gross misconduct. In such circumstances, the employer is entitled to terminate the employment contract with immediate effect.

Similarly, if an employer commits a fundamental breach of the employment contract, the employee may resign without notice and treat themselves as constructively dismissed.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

Yes, if the employment contract includes an express right for an employer to make such a payment, otherwise known as a payment in lieu of notice ("PILON"). In most cases, the employment contract will state whether the PILON is made up of basic salary only or includes bonuses and/or benefits (or their value).

If there is no PILON clause in the employment contract, an employer who makes a PILON would technically be in

breach of contract. However, some employees elect to "accept" this breach, especially where they have secured alternative employment.

Where the contract is terminated in breach by the employer, they may not be able to enforce key provisions of the employment contract that would otherwise have survived termination, including any post-termination restrictions. Therefore, an employer should normally try to agree in writing with the employee if they would like to make a PILON and there is no express right to do so in the employment contract.

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Yes, provided the employment contract includes an express right for an employer to place an employee on garden leave during their notice period.

A garden leave provision is common in most employment contracts, especially for senior employees, as a way to protect the employer's business by restricting the employee's ability to work for a competing business during the notice period.

If an employee on garden leave is also subject to post-termination restrictions, it is common practice to state in the employment contract that the period of the restrictions is reduced by any time that the employee spends on garden leave. This may assist in improving the enforceability of the restrictions.

Where an employment contract does not contain an express garden leave clause, it may still be possible to place an employee on garden leave, depending on the context of the termination and the nature of the employee's role.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

This will usually depend on the reason for the dismissal, the terms of the employment contract and the employee's length of service.

If the employee has more than two years' service, they have the statutory right not to be unfairly dismissed. Procedural fairness is a key element of a fair dismissal (see question 1 above). The appropriate procedure will depend on the circumstances, but it usually involves presenting the employee with the facts supporting the contemplated dismissal, permitting the employee to respond , treating them in a fair and consistent manner with other employees and giving a right to appeal the decision to terminate. Usually the process will entail one or more meetings with the affected employee, before a final dismissal decision is made.

The employment contract and/or staff handbook may also require specific policies and procedures to be considered as part of a fair and effective termination of the employment relationship. Whether or not these are applicable to those with under two years' service will depend on the drafting of the relevant contract or policy.

In addition, the Advisory, Conciliation and Arbitration Service ("ACAS"), an independent public body, has a Code of Practice on Disciplinary and Grievance Procedures. Although there is no legal obligation to follow the Code, it is generally accepted as the minimum standard an employer should follow for handling misconduct and poor performance disciplinary situations and grievance issues at work.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

An employee with more than two years' service at the termination date may be able to bring an unfair dismissal claim in the Employment Tribunal if their employer dismisses without a fair reason and/or has not followed a fair process.

If successful, an Employment Tribunal may order (i) reinstatement; (ii) re-engagement; and/or (iii) compensation (which is most common). Compensation for unfair dismissal is composed of a compensatory award and a basic award and is additional to any contractual entitlements such as notice pay. The compensatory award is based on the employee's financial loss suffered as a result of the dismissal (principally loss of earnings) and is capped at the lower of: (1) 52 weeks' pay; and (2) a statutory cap (currently £105,707), which usually increases every year in April. The employee has a duty to take reasonable steps to mitigate their loss. The basic award is calculated by reference to the employee's age, salary and length of service (in the same way as statutory redundancy pay).

In addition a Tribunal may increase any compensation by up to 25% (subject to the cap) if the employer unreasonably failed to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures (see question 7).

9. How, if at all, are collective agreements relevant to the termination of employment?

Collective agreements are uncommon in the private sector. They are more common in the public sector, privatised industries and labour intensive industries (such as the industrial waste sector).

Where they do apply, they may contain provisions relating to enhanced payments or procedures to be followed upon the termination of employment (for example enhanced redundancy payments and consultation procedures).

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

No, there is no requirement to obtain the permission of or inform a third party before being able to validly terminate an employment relationship.

However, in a collective redundancy situation (see question 2), an employer will need to notify the potential dismissals to the Secretary of State. Failure to do so is a criminal offence punishable by an unlimited fine. Notwithstanding this, failure to comply with this legal requirement does not invalidate the termination of the employment.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

The Equality Act 2010 makes it unlawful for employers to discriminate against workers because of the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Discrimination can be either direct or indirect. Direct discrimination occurs where an employer treats a worker less favourably than other workers because of a protected characteristic. With the exception of direct age discrimination which can be lawful if objectively justified, there is no defence to a claim of direct discrimination.

Indirect discrimination occurs where an employer's provision, criterion or practice ("PCP") places persons who share a protected characteristic at a particular disadvantage when compared to those without that protected characteristic, and that PCP cannot be objectively justified as a proportionate means of achieving a legitimate aim.

Harassment related to a protected characteristic is also unlawful under the Equality Act 2010. Harassment is defined as unwanted conduct related to a protected characteristic which has the purpose or effect of either violating the victim's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Harassment of a sexual nature that is related to sex or gender reassignment is also unlawful.

Victimisation, that is, less favourable treatment of a worker because they have made (or it is believed they may make) a claim or allegation of harassment or discrimination, is also unlawful under the Equality Act 2010.

12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

Under the Equality Act 2010, discrimination committed by an employee in the course of their employment is treated as having been committed by their employer as well as by the individual employee, whether or not the employer knew about or approved of the acts of the discrimination. This is known as vicarious liability.

Employers can avoid vicarious liability by showing that they took all reasonable steps to prevent such discrimination. Reasonable steps may include providing anti-discrimination and equality training to all employees and having relevant policies in place.

In a successful discrimination claim, an Employment Tribunal may award compensation which is uncapped (taking into account the employee's financial and other losses) and an award for "injury to feelings". The Tribunal may also award damages for personal injury, aggravated damages (where the employer's conduct has aggravated the employee's injury to feelings) and, in the most serious of cases, punitive damages. This is limited

to cases where compensation itself is an insufficient punishment. The Tribunal can also make recommendations that the employer take specific action to remove or reduce the effect of the discrimination.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed term employees the right not to be treated less favourably than a comparable permanent employee, unless such difference in treatment can be objectively justified.

Similarly, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 protects part-time workers against less favourable treatment than a comparable full time worker because of their part-time status, unless such difference in treatment can be objectively justified. In general, the "pro rata" principle must be applied, meaning that pay and benefits must pro-rated to reflect the proportion of full-time hours worked by the worker.

Currently, employees who are on maternity leave have specific protection in a redundancy situation. If their role is redundant, they are entitled to be offered a suitable alternative vacancy (where one is available) in priority over other individuals who are at risk of redundancy.

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023, which comes into operation from 6 April 2024, extends this protection to pregnant employees and employees on other forms of family leave, and will provide for an extended period of protection after an employee's return to work.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Yes, the Public Interest Disclosure Act 1998 and Employment Rights Act 1996 provide for protection against detriment and dismissal for workers who make a "protected disclosure", in relation to malpractice by their employers or third parties.

The worker must have a reasonable belief that their disclosure of information is in the public interest and that the information relates to one of six types of relevant failure, comprising: criminal offences; miscarriages of justice; endangerment of health and safety; failure to comply with a legal obligation; damage to the environment; and deliberate concealment of any of these failures.

If an employee is dismissed because they have made a protected disclosure, the dismissal will be automatically unfair and there is no minimum length of service requirement to bring a claim for unfair dismissal. In addition, the normal cap on compensation for unfair dismissal does not apply, although compensation can be reduced by up to 25% where the disclosure has not been made in good faith and an Employment Tribunal considers that it is just and equitable in the circumstances to make such a reduction.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

Some employers adopt a practice of dismissal and re-engagement (more commonly known as "fire and rehire") where they are facing financial difficulties and would like to engage employees on less favourable terms. This practice carries significant risk.

In particular, given that the termination would constitute a dismissal, where an employee has more than two years' service, an employer must have a fair reason for the dismissal and follow a fair process to avoid claims of unfair dismissal.

In addition, where an employer proposes to dismiss 20 or more employees within a period of 90 days or less it must comply with the collective consultation obligations (see question 2 above).

In February 2024, the Government published an updated statutory Code of Practice (originally published in January 2023) on Dismissal and Re-engagement. The purpose of the Code, the Government states, is to "*to ensure that an employer takes all reasonable steps to explore alternatives to dismissal and engages in meaningful consultation with a view to reaching an agreed outcome with employees and/or their representatives*".

The Code was drafted partly in response to the negative public reaction to companies using "fire and rehire". It is expected that the Code will come into force in Summer

2024.

If an employer unreasonably fails to comply with the Code once it is in force and an employee brings a claim (for example for unfair dismissal), the Employment Tribunal will be able to increase an employee's compensation by up to 25%.

Generally, when seeking to implement detrimental changes to employees' terms of employment, an employer should try to obtain the affected employees' consent to the changes in the first instance.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

The use of artificial intelligence in an employer's recruitment or termination decisions is relatively new but AI is increasingly being used by businesses to streamline processes and create efficiencies and cost-savings. However, there are increasing concerns that the use of AI in the workplace can create legal risk for employers including, in particular, the risk of discrimination.

For example, a well-known car hailing platform has been subject to claims of indirect race discrimination. It is alleged that its identity verification software platform does not correctly identify people of colour, which has resulted in their driving accounts being terminated and their removal from the platform. Although the Employment Tribunal is yet to consider this case, it demonstrates the legal and public relations risks of using AI in employer decision making.

There is also a risk that the data that is inputted into AI models and tools unintentionally perpetuates discrimination and bias. For example, if an AI tool for selecting candidates for recruitment is trained on a historic data set that suggests that younger white males are the most successful, this may result in biased recruitment decisions being made with the effect of limiting opportunities for those from more racial, gender and age diverse groups.

Employers should consider implementing clear policies and procedures regarding AI and its use within the workplace. Data protection legislation will also need to be considered carefully before adopting AI tools in recruitment or termination. UK GDPR includes specific restrictions on automated decision taking and profiling, which will be particularly relevant.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

The financial compensation available to an employee upon the termination of their employment will depend on their employment contract and any statutory entitlements.

An employee is entitled to receive:

- the period of notice set out in their employment contract or the statutory period of notice (if greater) or a payment in lieu of notice; and
- a payment in lieu of accrued but untaken holiday upon the termination of employment.

If an employee's employment is terminated due to redundancy and they have more than two years' service, they are also entitled to receive a statutory redundancy payment. This is calculated by reference to a statutory formula, taking into account the employee's length of service, weekly pay (which is subject to a cap) and their age.

Some employers also offer enhanced redundancy payments (inclusive or exclusive of an employee's statutory redundancy payment) as a gesture of goodwill or in accordance with their internal redundancy policy. This may include payment of redundancy pay to those who have less than two years' service at the termination date.

An employment contract, or other contractual documents entered into between the employee and employer during the course of employment, may set out other additional payments that an employee may be entitled to receive upon the termination of their employment, such as bonus, commission and equity-related payments. Senior executives in particular may have contractual entitlements to termination payments, if their employment is terminated in prescribed circumstances or for prescribed reasons.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment?

If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Yes, a worker can sign a settlement agreement under which they give up their right to bring certain legal claims against the employer, usually in return for an incentive of some kind. That incentive will most often be a cash payment but could take other forms. Specific legal requirements, set out in the Employment Rights Act 1996, must be met for a valid waiver of statutory employment claims (noting that the following conditions do not apply to the waiver of contractual claims). In particular:

1. the agreement must be in writing and signed by the employee;
2. the agreement must relate to particular proceedings (there must be a potential dispute);
3. the employee must have received independent legal advice from an insured and qualified legal adviser on its terms and effect;
4. the legal adviser must be identified; and
5. the agreement must record that the statutory requirements regulating the settlement agreement have been satisfied.

Settlement agreements often contain detailed clauses restricting employees from disclosing the contents of the agreement to third parties. However, following the #MeToo movement, the use of confidentiality clauses in settlement agreements came under significant scrutiny. The UK's regulator of solicitors has issued guidance on best practice for advising on and drafting confidentiality provisions, and solicitors must comply with this guidance when advising on settlement agreements. This includes (amongst other things) ensuring that an employee is not precluded from making reports to the police or disclosures to health and care professionals, professional advisers and spouses/partners.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Non-compete obligations are void as a restraint of trade, unless the employer can demonstrate that they are necessary to protect the legitimate interests of the business (for example in protecting confidential information, trade connections and the stability of the workforce), and go no further than is reasonably necessary to protect those interests.

Enforceability will depend, among other things, on the employee's job role, seniority, the type of business they are employed in and the width of the restrictions imposed on them. In addition, if an employee is subject to other obligations, such as a restriction on misuse of confidential information and/or restrictions on soliciting customers or poaching employees, that provide adequate post-employment protection to an employer, a non-compete post-termination restriction may be deemed unreasonable and therefore unenforceable.

Non-compete restrictions are most typically found in employment contracts for more senior individuals and/or those in technical, creative or customer-facing roles who have significant access to sensitive confidential information, as an employer is more likely to be able to justify the business need to impose restrictions on these types of employee.

In May 2023, the Government announced its intention to limit the length of non-compete clauses to three months in employment contracts on the basis that this will boost flexibility and dynamism in the labour market.

It is unclear when the legislation needed to effect this change will come into force or how it will impact existing non-compete restrictions that are longer than three months. It is possible that existing non-compete restrictions longer than three months could be void in their entirety or, alternatively, they may remain enforceable but only up to a maximum of three months.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Generally, an employee has a common law duty to keep their former employer's trade secrets confidential after termination.

An employment contract will usually supplement this common law duty and provide for an express confidentiality obligation, setting out a detailed definition of the categories of information that will be considered confidential and imposing express prohibitions on their use or disclosure following the termination of employment.

21. Are employers obliged to provide

references to new employers if these are requested? If so, what information must the reference include?

Generally, employers are not obliged to provide references to new employers, even if they are requested.

However, most employers do provide a reference when requested but many will only confirm the employee's job title and employment dates.

Where an employer decides to provide a more detailed reference, it will have a duty to the subject of the reference to take reasonable steps to provide one which is accurate and not misleading. It will also have a duty to the recipient of the reference not to misrepresent the facts, though the risk of claims can be mitigated through the use of an appropriate disclaimer. An employer must also comply with data protection law when giving a reference.

In the financial services sector, certain regulated employers must give a reference for individuals in regulated roles in a prescribed format when requested to do so.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

Terminating employment where the employee has a neurodivergent condition or mental health difficulties can be a difficult matter to manage. Individuals with neurodivergent conditions, such as autism, have been held to be disabled for the purposes of the Equality Act 2010, as well as those with mental health conditions including anxiety and depression, although whether or not an employee has a disability as defined in the legislation will depend on the context.

Where an employee has a disability, employers need to ensure that any decision to terminate is not connected with the employee's disability. If the dismissal is because of something arising from the disability (such as a disability-related absence), the decision must be objectively justified, to avoid disability discrimination. Employers also have a duty to make reasonable adjustments to eliminate any disadvantage suffered by the employee at work or in connection with the dismissal process as a consequence of their disability. Medical evidence and advice are often needed where an employer is proposing to dismiss an employee who may be disabled.

Other difficulties include employees raising grievances or going on sick leave during a redundancy consultation, disciplinary or performance management process, often as a way to delay dismissal. When handling this type of situation, employers will need to balance the need to avoid setting a precedent and giving in to spurious grievance(s) against the cost of legal fees and management resources in dealing with the grievance and commercial business pressure to finalise the dismissal. Appropriate training for managers and HR in handling grievances efficiently and fairly can be helpful, and discretionary sick pay schemes which do not provide for long periods of paid sickness absence may help to minimise the amount of sick leave taken in this type of scenario.

23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

The Government recently announced its intention to limit the length of non-compete clauses to three months in employment contracts, although there is no confirmation as to when legislation to implement this change may come into force.

If the legislation does come into force, employers who are concerned about a departing employee moving to a competitor will need to consider other ways to control the post-employment activities of their outgoing employees.

This may include extended notice periods (although this would represent a greater cost to employers), removing any off-set provision which reduces the length of post-termination restrictions by the period of time an employee spends on garden leave (noting that there may be enforceability issues to consider) and increased use of settlement agreements on termination of employment as a way to implement longer non-compete periods (though this will only be an option if settlement agreements do not fall within the scope of the proposed legislation – this remains to be seen).

The next general election in the UK is less than a year away, and the current opposition party has proposed radical reform of employment laws, if elected. This includes (i) ending the two-year qualifying period for employees to bring an unfair dismissal claim and making it a "day one" right; (ii) removing the statutory cap on

unfair dismissal compensation; and (iii) extending the limitation period for claims in the Employment Tribunal (currently three months from the date of termination).

If implemented, these proposals would clearly have a significant impact on employers and their approach to termination of employment, in particular in relation to underperforming employees who are often dismissed within the first two years of employment with limited risk for the employer. Employers will need to focus on reviewing and improving their performance management and dismissal processes to ensure they are fair, ensuring that employees' performance is regularly reviewed with documented feedback on areas for development and improvement, and that managers are trained to carry out legally compliant performance management and dismissal processes.

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