



The hazards of first-anniversary dismissals

Employees don't always need a year's service to make a claim, warns Charles Wynn-Evans

Removing employees with less than a year's service on the basis they cannot claim unfair dismissal presents significant risks. For example, no service is required to bring a claim alleging unlawful discrimination under the Equality Act 2010. Using a truncated or non-existent dismissal process may prejudice an employer's ability to establish non-discriminatory reasons for dismissal. Likewise, no service is required to claim (automatically) unfair dismissal where dismissal or redundancy selection relates to issues such as:

- pregnancy, childbirth, or statutory maternity, adoption, parental or dependant care leave;
- health and safety, the Working Time Regulations 1998, or whistle-blowing;
- refusing to work on a Sunday (relevant to shop workers);
- acting as an occupational pensions trustee, or an employee representative for Tupe or redundancy consultation;
- being a member (or non-member) of a trade union, or being involved in a recognition claim, lawful industrial action, or other trade union activities;
- exercising the right to be accompanied to a disciplinary, grievance or retirement hearing.

Unfair dismissal can also be claimed without one year's service where the sole or principal reason

for dismissal is the assertion of one of the specific statutory rights that attract that protection.

Outside the circumstances listed, the timing of a dismissal is crucial. It will generally be clear whether the one year's service requirement is satisfied when a notice period expires. But, when there is a summary dismissal without notice, the termination date will be the date on which the statutory minimum notice period applicable would have expired. This is one week in the first year of employment, which may mean that employees dismissed in the week before the anniversary of joining have a week added to their continuous service and actually acquire the right to claim unfair dismissal as a result.

The case of *Gisda Cyf v Barrett* demonstrates the risks of dismissal by post close to the point at which unfair dismissal rights are acquired. The employee was not at home to receive and, therefore, read a dismissal letter, and so was in effect dismissed only when she actually read it. This took her past one year's service. Had the employee deliberately avoided opening or receiving the letter, the result might have been different.

Even where there is no statutory claim, a failure to follow dismissal procedure may lead to increased liability. Unreasonable breach of the Acas code on disciplinary and grievance procedures can increase compensation by 25 per cent. Similarly, tribunals can increase compensation where claims are successfully brought for automatic unfair dismissal in the circumstances listed.

Where there is a contractual dismissal procedure, dismissing in breach of it can lead to a damages claim for the period for which that process would have lasted. Breaching a contractual, and potentially lengthy, performance improvement programme could lead to a substantial damages claim.

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