



Day one rights: the right to protection from unfair dismissal

...what does this actually mean?

The premise behind this proposal in the Employment Rights Bill is to clamp down on the government's perception that there's unfair practices in play.

Unfair is a harsh word and I see it slightly differently.

In the small business world, you often need to react quickly and with the current 2 year rule (unfair dismissal claims currently cannot be brought before this date) you can. Reactions can be quick because you don't have to jump through as many procedural hoops to exit someone from the business and you don't need to give much in the way of detail.

I personally always thought 2 years was pretty excessive. It went from 1 year to 2 in 2012. I know of many people who were nearly at 2 years and then were just dumped at the 11th hour with no prior warning and they could do nothing about it. I'd advise clients that they could do this but it always left a nasty taste. It also sent shock waves to other employees that you were just not safe until 2 years in.

Anyone in the HR profession will have noticed an influx of challenges about termination of employment with people claiming their termination was not linked to performance or company fit. Examples of other reasons cited (which could allow a claim at tribunal from day one) are; 'my dismissal is discriminatory – linked to my age, disability, gender' etc or 'you're terminating my employment because I've made a protected disclosure' (ie blown the whistle).

The 2 year rule brought out a tendency to bring into play other factors even though there was often no merit to the claims. The point I'm trying to make is that, whilst this will not go away, it was always around, and caution should have always been taken when dismissing anyone.

There's no getting away from the fact though that any business when hiring will need to be very aware of the new timescales.

Whilst the 2 year rule will go – the fallback position instead will be to have 9 months probationary period (we're still waiting on how this will look).



When clients ask me – can I extend their probation again, I often challenge that if you don't know if someone is right within the business by 9 months, then they're not right.

More caution will need to be exercised – but is that such a bad thing? We will definitely need to be more mindful of the probationary period and hoping that this will still be less onerous than the full procedures which currently need to be adopted after the 2 year period.

Top Tips from TC:

Here are some tips so you don't feel like overnight changes will be needed when the day one rights to protection from unfair dismissal ruling comes into force in 2026.

It's a good idea to start doing these now anyway as it's best practice:

- Keep an eye on Mint's newsletters and client emails – we can help you make sure your handbook and contracts are up to date. Make sure that the probationary period is mentioned in your contracts – we have some clients who weren't keen on them and took them out – they need to be added. This is because the probationary period is likely to become a statutory right.
- Make sure your recruitment processes are robust so you're taking on the right people in the hope you don't need to exit.
- When you take someone new on – diarise their probation – we would suggest you check in at the end of month 1, 3, 6 and 9. We support many clients with this already.
- Ensure there's clarity in the role – everyone has a job description and clear objectives to hit during their probation and beyond. If they're not meeting requirements – don't sit on it – discuss it and put in place improvement plans.

The main message is that you still do not need to panic on this. It's likely nothing will come into effect until Autumn 2026 and, if you're a client, Mint HR has got your back.

Tracy Carpenter, January 2025