The Employment Rights Act – Part Two

People, Culture and Law Conference 2026

Winckworth Sherwood

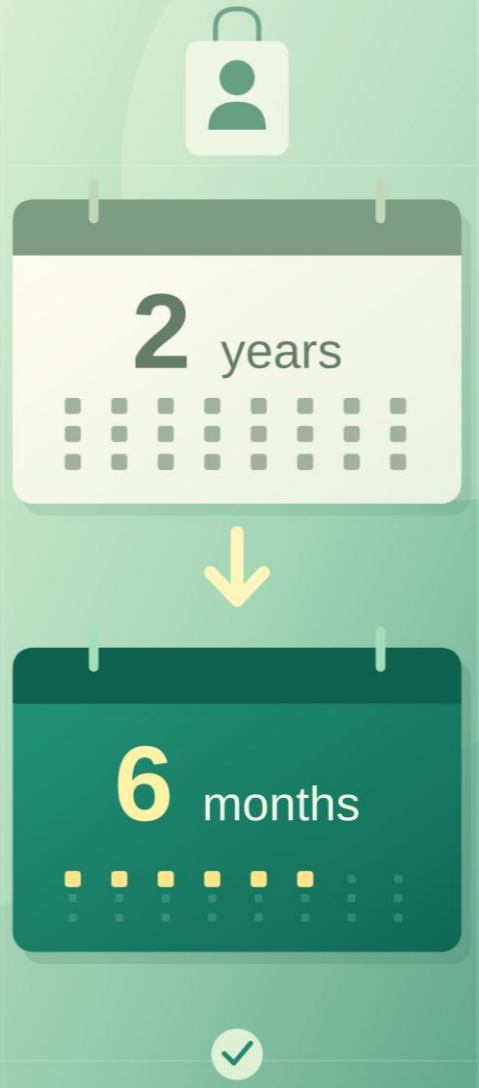


The key changes to unfair dismissal: (1) qualifying service and (2) compensation



What is changing and when?

	Now	On 1 January 2027 and after
Qualifying service for ordinary unfair dismissal rights	2 years' continuous service	6 months' continuous service
Compensation for ordinary unfair dismissal claim	Capped (lesser of 52 weeks gross pay and £123,543)	Uncapped – although "just and equitable" remains



How should this change your approach to a potential dismissal scenario?

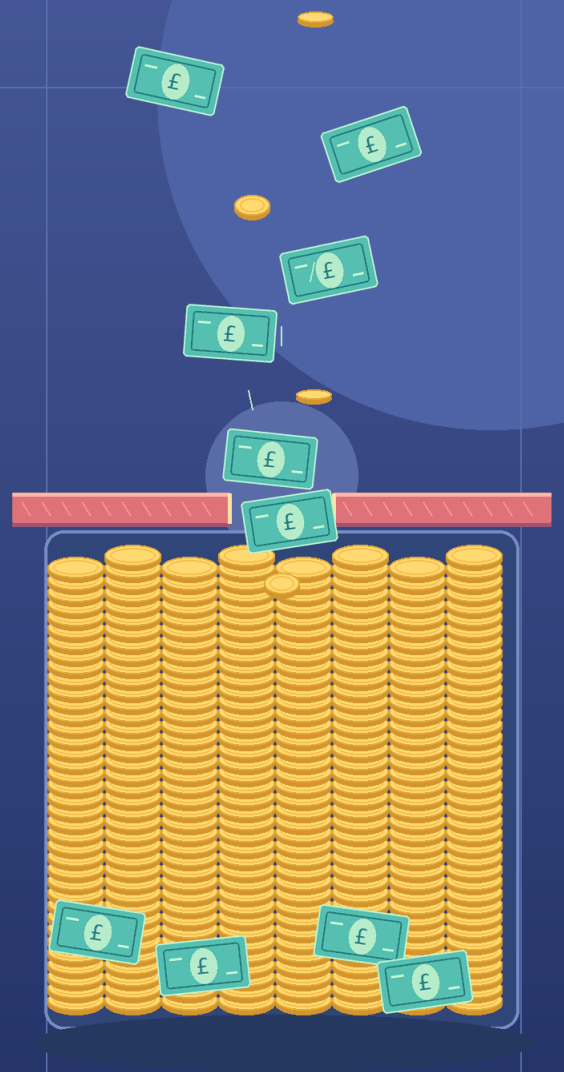
Qualifying service reducing from 2 years to 6 months

1. Dramatically widens your exposure for unfair dismissal claims.
2. Early focus on performance & conduct: contractual probationary period labels can be helpful, but also perilous.
3. Be extra careful when calculating the “effective date of termination” (EDT) – particularly for dismissals taking effective in late December 2026, for employees with between 5 and 24 months' service!



A word of caution about "EDT"

- The EDT is usually the date the employee actually learns of the dismissal or has a reasonable opportunity to do so. Notice sent by email or post over the Christmas period could be risky – notice may not be received or read sufficiently early.
- Take account of statutory notice requirements.



How *else* should this change your approach to a potential dismissal scenario?

Compensation becoming uncapped

1. This changes the risk calculus, especially for higher-earners. An unfair dismissal claim is easier to win than a discrimination or whistleblowing claim.
2. It's not just about salary. Loss of bonus, benefits and deferred compensation become far more material.
3. What if an employee is dismissed in late December 2026 – could their EDT still fall into January 2027, with uncapped compensation?

Table discussions

Base scenario – let's introduce you to Mia!



We are in 2027. Mia is a Regional Operations Manager at a mid-sized logistics and distribution business.

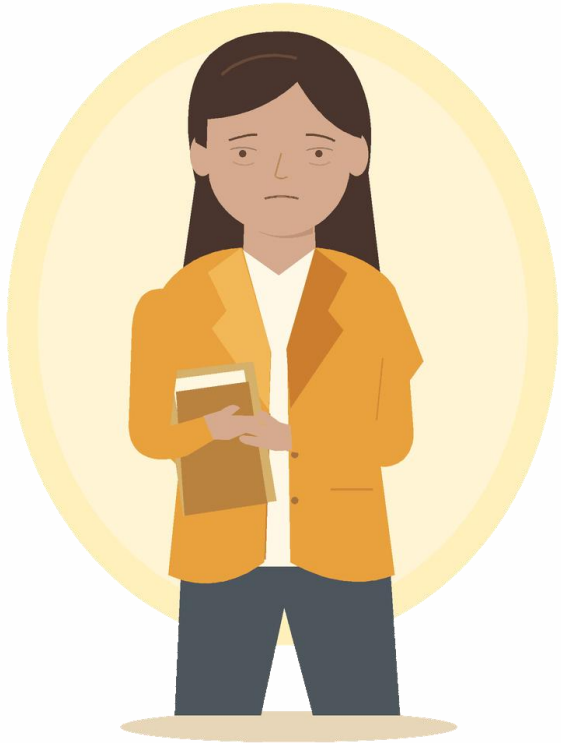
Her line manager has had growing performance concerns over the last two months: missed deadlines, a client complaint, and an uncomfortable exchange in a team meeting - none of it documented, just informal comments in one-to-ones.

The Operations Director wants this "sorted by the end of the month" and asks HR for the quickest, lowest-risk way to part ways with Mia. Separately, a regional restructuring could affect her role within two quarters.

Variation 1

Mia earns £28,000 a year and has been employed for four months. The performance concerns above are the entire story - there is no redundancy angle.

However, Mia has, over the last four months had sporadic days off, including for blood tests and hospital appointments and notified her line manager of these - but she has not specified what they relate to.



Variation 2

Mia earns £140,000 a year (she is a senior regional director rather than a manager), she has a generous pension and a potentially lucrative commission plan. She has seven months' service when the performance concerns above arise, after 1 January 2027.



Variation 3

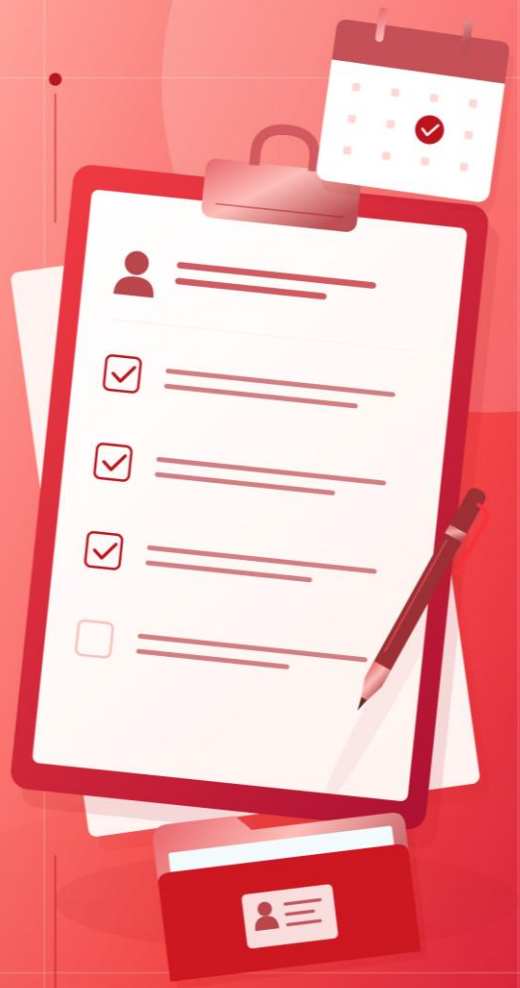
Mia earns £28,000 a year and has four months' service, with a three-month notice period. The performance concerns are present, but the Operations Director would much prefer to make Mia's role redundant as part of the regional restructuring, in approximately two months' time (instead of dealing with performance) - partly because redundancy "feels cleaner".



Variation 4

Mia earns £140,000 salary with bonus potential of 100% of salary. She has 5 months and "about 3 weeks"" service when the performance concerns are raised (January 2027). She has a six-month probation period. The Operations Director proposes dismissing her immediately with payment in lieu of notice (her notice period is just the statutory minimum, whilst in probation), on the view this will avoid her reaching the six-month threshold for unfair dismissal and because she is a "tricky character".



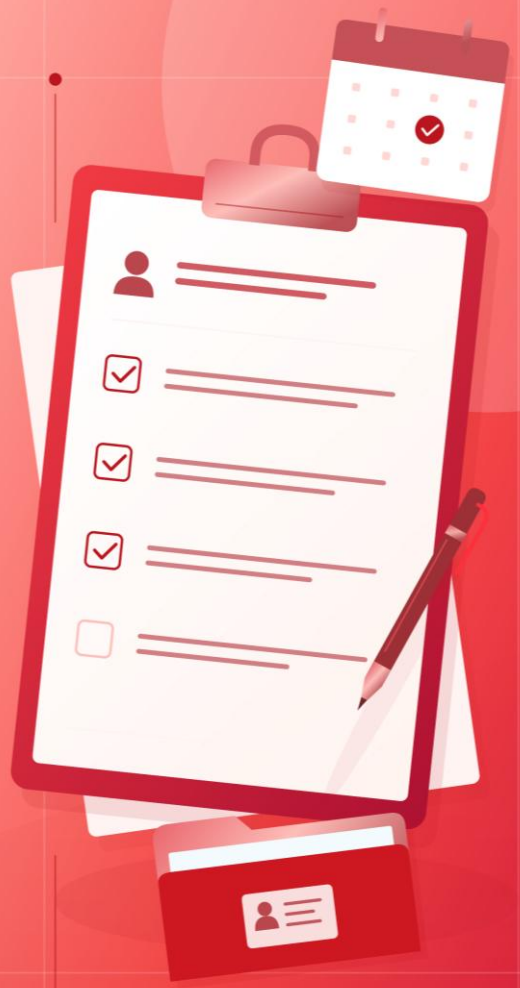


Key Actions

Document concerns early and give the employee a chance to respond. *In Mia's case, the missed deadlines and client complaint should have prompted documented conversations.*

Audit short-tenure exits. *Build a light but genuine fair process ahead of 1 January 2027.*

Reassess financial exposure, not just salary. *In variant 2 for example with Mia being a high-earner, you should work through a realistic loss assessment. Don't rely on the old cap but also don't assume uncapped means an unlimited payout!*



Key Actions

Check the dates before approving an exit.

In variant 4 for example, you should calculate Mia's exact dates before assuming PILON would keep her below six months.

Identify the real reason and follow the matching process.

Keep the business case for a restructuring separate from genuine performance concerns. In variant 3 for example, you should ask:

- *What work is disappearing?*
- *Why is Mia's role affected?*
- *How should any selection be made?*

SOLICITORS AND PARLIAMENTARY AGENTS
Arbor
255 Blackfriars Road, London, SE1 9AX
DX 156810 London Bridge 6
020 7593 5000
020 7593 5099
www.wslaw.co.uk

Winckworth Sherwood

THANK YOU

Andrew Yule
Partner
ayule@wslaw.co.uk

Aparna Sudhir
Associate
asudhir@wslaw.co.uk