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Breaking News: Government confirms that the qualifying period for unfair dismissal will increase to two years from April 2012

The Government has committed itself to reforming employment law as part of its bigger ‘Plan for Growth’ which aims to boost business confidence and growth in spite of the UK’s troubled economic climate. In January 2011, the Government commissioned its consultation paper, *Resolving Workplace Disputes*, which focused on measures to encourage early resolution of employment disputes, speeding up the Employment Tribunal process and tackling weak and vexatious claims.

Following on from that, it has been confirmed that the qualifying period for protection from unfair dismissal will increase from the current one year to two years as of April 2012. The Government’s rationale is that with less employees being able to bring a claim for unfair dismissal, the Tribunal’s workload will be eased. It is also presumed that the time and money employers waste on defending employment claims can be freed up and invested valuably back into the economy to drive business development.

But could an increase in the qualifying period have some hidden and unintended consequences that leave businesses in an altogether more vulnerable position? Employees obtain certain rights from day one of their employment, such as protection from discrimination. Employees are also entitled claim unfair dismissal from day one in certain circumstances, such as where the reason for dismissal is related to an employee’s pregnancy or a health and safety reason. Will there suddenly be an increase in these claims where employees simply rely on alternative claims? Such claims are more complex in their nature and are likely to be more expensive and time consuming to defend than a straightforward claim for unfair dismissal.

It is envisaged that employers will be encouraged to recruit as there will be less fear of reprisal in the event that the working relationship turns sour. But how many employers actually curtail recruitment because of the risk of an unfair dismissal claim? Recruitment is usually driven by

business demands. In any event, there are other market constraints which are far more likely to present hurdles to business growth. In times when financial institutions remain unwilling to lend, businesses will be unable to recruit if there is no financial backing available to support its growth.

Whilst the clear priority of the Government is to increase growth in our economy, the change has been criticised for being made at the unnecessary expense of employees. Employers currently have one year in which to assess an employee's suitability to do a job and this is seen by many as being plenty of time in which to make a meaningful assessment whether to keep an employee or not. What more can an employer hope to learn of their employee from an additional year's employment?

The Government has also confirmed its intention to introduce fees for bringing a claim in the Employment Tribunal from April 2013. The details have not been confirmed, but it is rumoured that the fee for filing could be in the region of £250 with an additional fee of £1,000 payable upon the claim being listed for hearing. This is undoubtedly a measure that will be embraced by businesses but resisted by employees and workers. Other proposals include extra powers for Judges to make costs awards, a formal settlement scheme with financial implications for failing to accept reasonable offers and penalties for employers who fail to comply with their employment law obligations.

There is no doubt that employment law as we know it will undergo some drastic changes in the coming future, starting with an overhaul of the Employment Tribunal system. Whether it achieves its objectives is a matter only to be determined over time as the story continues to unfold. The hidden pitfalls in the proposals could shape the future of employment claims but in a manner unintended by the Government and in stark contrast to its original intentions. Watch this space!

If you would like to talk to us about the issues raised by this note, please contact:

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