



# Department for Business & Trade

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Dear all,

I am writing to thank you for all your continued input, valuable insight and support as we continue to deliver the Plan to Make Work Pay through the Employment Rights Bill. I would like to invite you to participate as we hold a series of roundtables, ahead of formal consultation, to discuss development of the policy detail underpinning protection against unfair dismissal as a day one right (as set out in Clause 23, Schedule 3 of the Bill).

Around nine million employees have been working for their employer for less than two years, and are therefore set to benefit from new unfair dismissal protections. The government recognises that for many employers, hiring the talent, skills and expertise they require is a fundamental step to grow their business and therefore the economy. The statutory probation period will set out a new balance for the early months of a job – providing new legally binding rights for employees from day 1, while also delivering a lighter-touch and less onerous approach for businesses to follow to dismiss someone who is not right for the job. This is a substantial change to employment law, so I want to continue working with you to inform the government's implementation of a critical manifesto commitment.

## Key Principles

The government's development and implementation of day one rights to unfair dismissal protections are guided by the following principles:

1. Giving employees meaningful safeguards and a genuine right against unfair dismissal from day one of employment. We are committed to ensuring that jobs provide a baseline of security from day one of employment and that employees have protection against being fired unfairly. We recognise that this represents a big change for employers, and we are committed to working together to get the details right and support a smooth transition.
2. Ensuring that employers are still able to hire with confidence. The government believes that it is necessary to consider carefully, with input from businesses, what the right approach is to probationary dismissals so that employers can assess new hires effectively, operate effective probationary periods and fairly dismiss employees where necessary.
3. A reduced compensation cap for unfair probationary dismissal claims. We want employers to pause and make considered decisions about dismissing during

probation, but we do not think it is appropriate for employers to be facing the full potential liabilities of unfair dismissal remedies during this period, when dismissing for one of the 'probationary reasons'. We anticipate that employment tribunals would be unlikely in any event to make compensation awards close to the current compensation cap for a dismissal during an employee's initial months of employment, other than in exceptional circumstances. As the Minister for Employment Rights set out during the Commons Committee stage and as set out in the Next Steps to Make Work Pay, we intend to consult on what the maximum compensatory award for successful claims arising from probationary dismissals should be, with consideration given to tribunals not being able to award the full compensatory award currently available.

4. Minimising the impact of the changes on the employment tribunal system. We know that employment tribunals are already under a great deal of pressure with an outstanding backlog of cases and lengthy wait times. So in developing light touch standards, we need to consider the impact that alternative options might have on employees' ability to enforce their rights, on employers and on the tribunal system as a whole.
5. Reasons for dismissal under the light touch standards are related to the employee's performance and/or conduct. The government has designed the scope of the statutory probation period to focus on reasons related to the employee. We have specifically ruled out providing a light touch standard for business or economic reasons for dismissal. For example, the usual processes which underpin a fair dismissal for redundancy will be required from day one of employment.
6. Standard test for unfair dismissal after the statutory probationary period and for non-probationary dismissals at any time. The government is committed to maintenance of the current standard test for fair dismissal after the statutory probation period. Accordingly, the Acas Code of Practice on disciplinary and grievance procedures will still apply for dismissals relating to misconduct and/ or poor performance after the statutory probation period.
7. Current day one protection against automatically unfair reasons for dismissals will be unaffected. We anticipate that Acas is likely to continue recommending employers follow their disciplinary and grievance Code from the first day of employment as a way of providing assurance that there are no underlying 'prohibited' reasons contributing to a decision to dismiss, which would make a dismissal automatically unfair.

## **Consultation**

We intend to consult formally on unfair dismissal later this year before making any final policy decisions. As set out in Next Steps to Make Work Pay, we have committed to consult upon the duration of the statutory probation period (with the government's preference being for 9 months), how the light touch standards should operate, the level of compensatory awards available for probationary dismissals, and the fair reasons for dismissal which 'relate to the employee'.

So, before we reach that formal consultation stage and as we continue to make progress, I am keen to hear your perspectives on how the light touch standards should operate. I am proposing a series of detailed roundtables led by officials developing the policy culminating

in a session led by the Minister for Employment Rights. I look forward to hearing your views and expertise as we continue to collaborate on delivering the Plan to Make Work Pay.

Yours sincerely,



**Rt Hon Jonathan Reynolds MP**

Secretary of State for the Department for Business and Trade  
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