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**HR**

# Solutions

Monthly Newsletter | May 2024

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## Getting the Basics Right

### Probationary periods

Throughout the past year, we have incorporated into the monthly newsletters information surrounding key areas where prioritising the basics of employment law can serve to safeguard the interests of you as an employer. This has included.

- the importance of having Written Terms and Privacy Notices in place (May 2023),
- advocating Equality and Diversity within recruitment processes and ongoing in the working relationship (July 2023) and;
- ensuring the correct process for checking Right to Work documents are in place (Jan 2024).

We have recently advised on several instances where problems have been identified with employees during their probationary period. While these can often be attributed to poor employee performance or attitude, equally this can sometimes be symptomatic of poor induction and onboarding procedures on behalf of the employer.

Once you have a confirmed start date it is vital to consider what your new employee's onboarding experience is going to be. First impressions matter and a failure to set up a new employee could make a big difference to how successful the working relationship will be.

### Top Tips for successful onboarding

- Send a welcome email or package to the new hire prior to their start date, including essential documents, company policies and a brief overview of what to expect on their first day.
- Assign a buddy or mentor to the new hire who can help answer questions and provide support during their onboarding

### First Day:

- Begin with a warm welcome from a designated person.
- Provide a detailed introduction to the company's mission, values, and culture.
- Review essential paperwork, such as tax forms, benefits enrolment, and company policies.
- Tour the workplace or provide a virtual tour for remote employees, highlighting key areas like restrooms, break rooms, and emergency exits.
- Introduce the new hire to their team members and key stakeholders.

### Training:

- Offer comprehensive training on the tools, systems, and processes relevant to the new hire's role.
- Provide access to online learning resources or training materials to support ongoing development.
- Schedule regular check-ins with managers or mentors to provide feedback and guidance.
- Ensure that Health & Safety training takes place to include relevant elements of the legislation dependent on the type of business the new starter is joining, i.e. manual handling, desk assessments, RIDDOR, COSHH, Fire Evacuations etc.

### Integration and Socialisation:

- Organise team-building activities or social events to help the new hire get to know their colleagues.
- Encourage participation in company-wide meetings, events, and initiatives to foster a sense of belonging.
- Facilitate networking opportunities with employees from different departments or locations.

**HR Solutions can provide your clients with Induction packs to assist with the Onboarding process.**



## Evaluation

Employees with under two years of service can be dismissed for reasons of poor performance or misconduct without the risk of facing an ordinary unfair dismissal claim. However, as with any dismissal, there are inherent risks associated with terminating an employee's contract. In addition, a lot of time and effort goes into recruiting new team members and probation periods provide employers with an opportunity to evaluate the performance of new employees in a real work environment whilst following a fair process.

This evaluation period allows you to assess whether the new hire meets the expectations of the role in terms of skills, work quality, productivity, and cultural fit. Starting a new job can be a significant adjustment for employees, as they learn new processes, systems, and responsibilities. A probation period gives new hires time to acclimatise to their role and the company culture while receiving support and feedback from managers and colleagues.

Just as you are assessing the performance and fit of new hires during probation, employees also have the chance to evaluate whether the job and company meet their expectations. This mutual assessment helps both parties determine if there is a good long-term fit and can prevent issues or misunderstandings down the line.

## Set Clear Expectations:

- Define specific goals, objectives, and performance expectations for the new hire's role.
- Schedule regular meetings to discuss progress, address any challenges, and provide constructive feedback.
- Encourage open communication and ensure the new hire knows where to turn for support or assistance.
- Plan to hold probationary review meetings and confirm the outcome of these meetings in writing.

## Feedback and Continuous Improvement:

- Solicit feedback from the new hire about their onboarding experience and use it to identify areas for improvement.
- Regularly assess the effectiveness of your onboarding process and make adjustments as needed to ensure it remains relevant and impactful.

If performance issues arise during probation, you should provide feedback, guidance, and additional support to help new hires improve. This proactive approach can prevent problems from escalating and give employees a chance to succeed in their role. It also helps ensure that if an individual's performance is not meeting the required standard, you will be able to set clear expectations when extending probation, or alternatively why the probation has not been passed and the employment terminated.

## HR Solutions can advise you on how to correctly extend probationary periods.

If it is apparent during the probationary period and from review meetings that an individual is unlikely to meet the required standard, then it may result in a dismissal. It is important to ensure that any decision made to dismiss is not based on an unfair reason for dismissal, i.e.

- Dismissal based on protected characteristics under the Equality Act 2010 can be deemed automatically unfair.
- Dismissing an employee for whistleblowing is considered automatically unfair, as whistleblowers are protected by law.

It is also important that the correct notice period is given to ensure that there is no breach of contract.

**Should you need support with the onboarding of new starters, supplying induction forms, setting clear objectives, managing performance in probation or terminating employment HR Solutions can advise on these various elements and the prevailing legislation.**



## What is unfair dismissal?

By law, employees have the right not to be unfairly dismissed. Generally, only those who have been employed continuously for at least two years can bring a claim for ordinary unfair dismissal. This is known as the qualifying service requirement. Employees with less than two years of service are usually not eligible to claim.

There are significant exceptions to the two-year rule. Employees dismissed for certain statutory reasons classified as automatically unfair are protected regardless of their length of service. Automatic unfair dismissal occurs when the decision to dismiss violates one or more of an employee's statutory rights. Examples include:

- Asserting rights under the National Minimum Wage or Working Time Regulations.
- Acting as an employee or trade union representative.
- Reporting health and safety concerns at work.
- Making a protected disclosure (whistleblowing).

It is also automatically unfair and unlawful to dismiss an employee due to a protected characteristic, regardless of their length of service. Protected characteristics under the Equality Act 2010 include age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, sex, sexual orientation, race, religion, or belief.

## Implications of Unfair Dismissal Claims

Unfair dismissal claims can have several adverse consequences for you and your business, even if they do not result in an award for damages or an order for reinstatement. The time and cost of defending a tribunal claim can be substantial. Allegations of unfairness can negatively impact workforce morale, especially if they lead to litigation.

When a tribunal finds in favour of an unfair dismissal claim, the employer is typically required to compensate

the employee. This compensation, known as an award of damages, includes a basic award and a compensatory award.

**Basic Award:** A fixed sum calculated using a statutory formula based on the employee's age, gross weekly pay, and length of service. As of April 6, 2024, the weekly pay is capped at £700, with a maximum length of service of 20 years. The formula grants 0.5 weeks' pay for each year of employment under age 22, 1 week's pay for each year between ages 22 and 40, and 1.5 weeks' pay for each year over age 41. The maximum basic award is £21,000.

**Compensatory Award:** Compensates the employee for financial losses resulting from the dismissal, including loss of earnings and loss of statutory rights. This amount is capped at the lower of 52 weeks' pay or £115,115 (as of April 6, 2024.) In some cases of automatic unfair dismissal, the compensatory award may be uncapped.

## Proving Unfair Dismissal

In an unfair dismissal claim, the employer must prove that the dismissal was fair and that they acted reasonably in carrying it out. This places a significant burden on the employer to defend the claim, even if the allegations are unfounded.

Defending against an automatic unfair dismissal claim is more challenging. If an employee proves they were dismissed for a reason prohibited by law, the reasonableness of the dismissal and procedural fairness are irrelevant. Once it is established that an employee was dismissed for an automatically unfair reason, the employer cannot justify the dismissal or escape liability by arguing the dismissal was reasonable.

**HR Solutions can correctly advise you on how to conduct short service dismissal proceedings in order to avoid costly claims of unfair dismissal.**

## Please see below some examples of the work that we have completed recently.

 **Maidenhead**

Advice and support with an Employment Tribunal claim. Resolved successfully through early conciliation

 **London**

Advice and support with a Redundancy consultation process; templates and letters and calculation of redundancy payments

 **Peterborough**

Advice and Support with potential dismissal leading to completion of a Settlement Agreement and liaising with Solicitors

 **Milton Keynes**

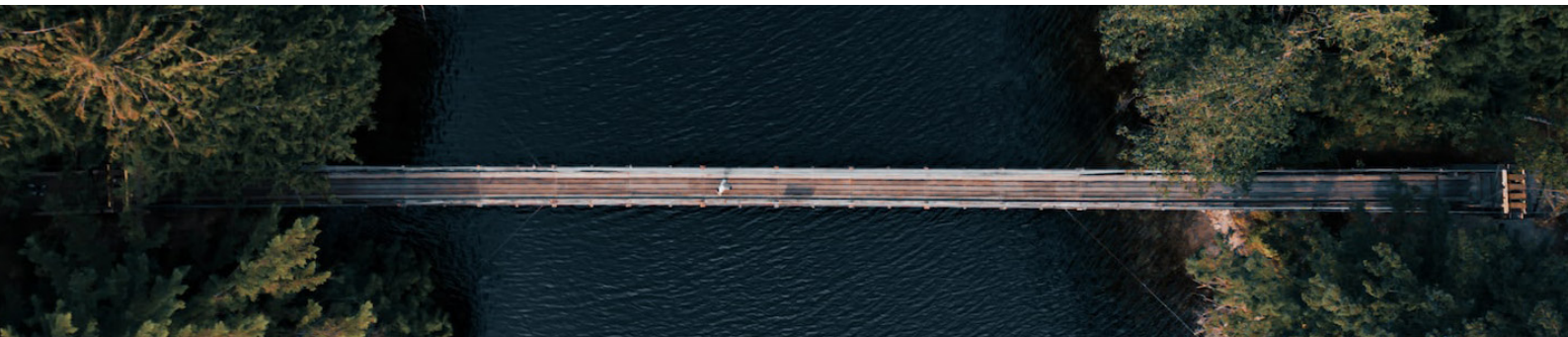
Completion of the Modern Slavery Statement

 **London**

Advice and support with the application process for a Sponsor Licence and assigning a Certificate of Sponsorship

 **Birmingham**

Advice on the TUPE transfer of employees working under Service Agreements



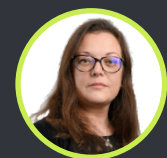
### How we can help?

If you require HR support, please contact us at [HRsolutions@mha.co.uk](mailto:HRsolutions@mha.co.uk) to discuss how we could assist you.

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available according to your needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.



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Now, for tomorrow

