

# DBULLETIN

## All Change - Employment Reform

One of the proposals by the Coalition Government was to assist businesses and boost economic recovery by reforming employment legislation. In November 2011 Vince Cable announced a number of proposals and the Government have now confirmed that as of April 2012 the following changes will be implemented.

### **Unfair Dismissal**

The qualifying period for unfair dismissal will be increased from 1 year to 2 years service. However, this will only apply to employees who commenced employment with a new employer on or after 6 April 2012. Employees already in employment before this date may still claim unfair dismissal if they have 1 years' service.

At present a tribunal judge and two lay members are required to hear claims of unfair dismissal. From April 2012 a judge sitting alone may hear such claims. However this proposal will be reviewed after one year.

### **Deposit Orders**

Where a claim has little or no prospects of success an Employment Tribunal may order a claimant to pay a deposit of up to £500 in order to proceed with the claim. If the claimant fails to make the payment to the Tribunal within the stipulated time the claim will be dismissed. From 6 April 2012 the Tribunal will have the power to order claimants to pay up to £1,000 if it considers that their claim has little prospects of success.

### **Costs Awards**

Currently a Tribunal may award costs against a party if their conduct in the proceedings are deemed to be unreasonable, vexatious, abusive, or disruptive. The maximum award a tribunal may order a party to pay is £10,000 but this will be increased to £20,000 in April 2012.

### **Witness Statements**

When giving evidence a witness is normally required to read their statement at the hearing. However, from April 2012 all statements will be taken as read unless a Tribunal specifically directs that a witness is required to read their statement. This practice should substantially reduce the length of hearings and therefore save costs for the parties and the tribunal.

### **Witness Expenses**

Traditionally a witness is entitled to claim expenses from the state for attending a hearing. State funding will be withdrawn and the tribunal may now direct the parties to bear the costs of witnesses attending the hearing.

### **Outstanding Proposals**

There are still a number of other proposals that are yet to be confirmed such as Pre Claim Conciliation with ACAS. Prior to a claim being issued in the Employment Tribunal a claimant will be required to submit details of his claim to ACAS. The parties will then be invited to enter into mediation via ACAS in attempt to resolve the dispute. This conciliation period will last for 1 month. If the employer refuses to enter into conciliation or if the conciliation is unsuccessful then the claimant may proceed and issue a claim in the Employment Tribunal. The earliest date for Pre Claim Conciliation to be implemented is April 2014. However, at present there is an existing Pre Claim Conciliation service

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provided by ACAS if employers wish to explore this option but it is not compulsory.

The most contentious proposal for reform is the introduction of financial penalties for employers that lose a claim. It is proposed that the employer will be fined half of the total award made by the Tribunal but there will be a cap of £5,000 on the amount a Tribunal may order an employer to pay. The penalty will be reduced by 50% if the employer makes the payment within 21 days. At present it is proposed that the tribunal will have discretion as to whether a financial penalty will be imposed rather than the penalty being imposed automatically. It is likely that a Tribunal will only exercise this discretion if the employer is seen to be defending a 'hopeless' case.

## Conclusion

It is intended that the above proposals will allow Tribunals to deal with claims efficiently and reduce costs for all parties concerned. While it is envisaged that there will be less unfair dismissal claims due to the extended qualifying period, we are likely to see an increase in claims that do not require a qualifying period such as discrimination or protected interest disclosure claims. The increase in cost awards is a good sign as many employers spend in excess of £10,000 defending claims but it is unfortunate that the reforms have not been extended to mirror the costs rules in the civil courts. Obtaining a cost order in a Tribunal will still be as difficult as before.

It is clear that the Government is encouraging parties to attempt to resolve any disputes without resorting to issuing proceedings with the introduction of Pre Claim Conciliation. Furthermore, if financial penalties for employers are introduced this is also likely to concentrate employers minds on conciliation at an early stage rather than proceeding to defend claims.

If you require any more information or have any queries regarding this then please contact Ronnie Tong on 020 7880 4335 or [ronnie.tong@devonshires.co.uk](mailto:ronnie.tong@devonshires.co.uk) / or your usual contact from the Employment Team.