

Uncapped unfair dismissal – a game changer for employers

The Employment Rights Bill completed its passage through Parliament on 16 December 2025 and is expected to receive Royal Assent in the coming days. Controversially, the Bill was amended at a late stage to abandon Labour's flagship manifesto pledge to make unfair dismissal a Day 1 right. In its place came a six-month qualifying period and the abolition of the statutory cap on compensation for unfair dismissal. In this briefing we consider the impact of lifting the cap on compensation for employers.

A shift in the types of claims brought

The removal of the cap on compensation for ordinary unfair dismissal means the risk profile of many employment disputes will change dramatically. While unfair dismissal will not become identical to discrimination or whistleblowing claims, the financial exposure could be very similar. For HR, this means more expensive claims, more complex cases, and far greater scrutiny of dismissal decisions.

Claimants may increasingly rely on straightforward unfair dismissal claims rather than bolting on weaker discrimination or whistleblowing allegations. These claims are cheaper, simpler, and will be potentially much more valuable.

Some dismissal scenarios will also take on a new seriousness. Cases involving an employee's personal beliefs or expression,

for example, may involve arguments about freedom of speech under human rights law. With uncapped compensation at stake, tribunals will expect employers to clearly justify any dismissal in these areas. Legal advice is likely to be needed at an early stage.

Higher earners: expect more claims and bigger numbers

Removing the cap opens the door to very substantial awards for employees with high salaries or valuable benefits such as bonuses, LTIPs, share options, carried interest, or final salary pensions. Once tribunals can award full financial loss, the numbers escalate fast – especially if the employee takes time to find a new job.

Expect to see larger and more sophisticated claims for financial loss, regular use of expert evidence and longer and more complex remedy hearings.

Multi-year loss claims on the table

With no cap on future loss, some claimants will push for multi-year or even career-long compensation. These may include:

- Older workers struggling to re-enter the labour market.
- Disabled workers whose prospects are limited (but where the case isn't a discrimination claim).

- Regulated professionals whose dismissal harms their ability to continue in their profession.

HR teams will need to gather strong evidence on mitigation and future employability to challenge these claims.

Tribunals will come under greater pressure

More complex, higher-value claims will stretch limited tribunal resources even further. HR should expect:

- More prescriptive case management.
- Longer waits for hearings (which, turn, may adversely affect witness evidence).
- Increased use of experts.
- Longer hearings at both liability and remedy stages.

This may affect access to justice for lower-income workers and may also prolong litigation for employers.

Settlement dynamics will change

Without a cap, claimants may feel they have more leverage, and some may push for very high settlements, or refuse to

negotiate at all. Expect higher claimant expectations and tougher negotiations.

Employers will need to rely more heavily on tools like contributory fault, failure to mitigate, and *Polkey* reductions to reduce compensation risk.

Employer behaviour will need to change

Procedural mistakes could become far more costly, meaning that HR teams will need to tighten up dismissal processes significantly. Key changes should include:

- Longer and more strictly monitored probation periods.
- More terminations before the new 6-month qualifying period.
- Greater procedural rigour in performance and conduct cases.
- Much closer attention to the Acas Code (since uplifts could be huge in uncapped cases).

Next steps and final thoughts

As yet, it is unclear exactly when the cap will be removed. Although the Act contains the provision to abolish the cap, separate regulations are needed to bring that provision into effect. Separately, the Government has stated that it intends the new six-month qualifying period to come into force on 1 January 2027, but it has not said whether the compensation cap will be removed at the same time. For now, we think it would be sensible for employers to work on the assumption that it will be removed on 1 January 2027.

When the cap goes, ordinary unfair dismissal stops being a mid-range statutory claim and becomes a major financial threat on par with discrimination and whistleblowing in many cases. For HR, this means more careful planning, more documentation, more robust processes, and more strategic decision-making from the very start of any dismissal. This is the biggest shift in dismissal risk for employers in decades – HR leaders will need to adapt quickly.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.