

## How does the Qualifying Period work?

**The concept of the Qualifying Period is well known to employers. It is the length of time an employee must work with their employer to acquire a number of statutory rights, most notably the right to claim unfair dismissal.**

There is however, still a lot of confusion about the Qualifying Period. We often hear employers saying that it is still two years. This used to be the case, but it reduced to one year some time ago. The Government is in consultation about increasing the Qualifying Period to two years again but currently, it is still one year.

Something we have seen recently is confusion as to when the Qualifying Period is completed. One of our clients had an employee who commenced employment on 15 April 2010. They served notice to terminate the employee's employment on 30 March 2011, thinking they would be safe. However, they had decided to let the employee work his notice, which meant that his employment actually terminated on 27 April 2011. The employee is now bringing a claim of unfair dismissal. So remember: the qualifying period normally ends on the last day the employee is paid for. The simple way of avoiding this problem would have been to pay the employee in lieu of notice instead of letting him work his notice. Putting him on gardening leave would also have resulted in a claim, as an employee on garden leave is kept on the payroll and is therefore still an employee until the end of the garden leave.

Less well known is the effect of an immediate dismissal on the termination date. When an employer terminates an employee's employment without notice, with or without a payment in lieu of notice, one week is added to the termination date, unless the employer can show that they had grounds for a summary dismissal. Typically, where the employee has committed an act of gross misconduct. So with an employee commencing employment on 15 April 2010, 7 April 2011 is the date when employment needs to be terminated to avoid claims of unfair dismissals.

Even if you get the termination date right, the qualifying period only prevents a limited number of claims. Claims such as discrimination on the grounds of the nine protected characteristics, whistle-blowing dismissals, dismissals for health and safety reasons and dismissal for asserting a statutory right do not require any qualifying period. Dismissing an employee who spends his time complaining about fire exits, sexist jokes in the workplace or his holiday entitlement instead of doing his work, can be dangerous. Lured by a false sense of security, an employer relying on the Qualifying Period as their sole defence will often lack the weight of evidence to properly defend such a claim.

If you are thinking about terminating the employment of someone who has less than one year's length of service, make sure that you check the commencement date and time the dismissal to leave more than one week between the termination date and the anniversary of the commencement date. We also encourage our clients to use probationary periods. Properly used, a probationary period will give you time to assess your new employee and determine early whether the new employee will be appropriate for the role. If you use a probationary period, typically three to six months, hopefully you will be making decisions about the employee sufficiently early to avoid this pitfall completely. Finally, if you thinking of dismissing a "difficult" employee, take legal advice before the termination, irrespective of his or her length of service.

We are always interested in feedback and wondered whether anyone else has come across this problem and what you did about it.

For more specific information or to discuss your requirements please call either Amanda Galashan or Julie Calleux at EmployEase on 0845 123 3741, or email us at [info@employease.co.uk](mailto:info@employease.co.uk).

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