

Why you can't afford to get dismissals wrong anymore



New rule changes in UK law mean that firing employees is getting trickier, riskier and potentially a lot more expensive.

And small business owners are most at risk.

People running smaller businesses are more likely to have informal processes, often with gaps that they didn't even realise existed. These gaps can easily leave you exposed.

With new laws already in place, and with more to come, dismissal is not something you can afford to treat casually anymore.

Let's look at what's changing and how it impacts you now and going forward.



What has changed

From January 2027, employees will be able to make a claim for unfair dismissal after six months of employment. Previously they had to wait for two years.

This means that anyone you hire from 1 July 2026 qualifies for the rule change.

The two-year qualifying period gave small businesses a practical buffer. How you onboarded and ran probation (if at all) mattered less. You could fire someone at any point in the first 24 months without much of a formal procedure.

That buffer is going away.

At the same time, the compensation cap for unfair dismissal is being removed.

Right now, tribunal awards are limited. From January 2027, a tribunal can award whatever it considers fair in the circumstances.

For a small business, a significant award isn't just uncomfortable, it's potentially serious.



Why your process matters more than your reason

Where dismissal is most risky is around your processes, how thorough they are and how well you document things.

Tribunals don't just look at what decision you made. They look closely at how you made it.

A justified dismissal handled poorly is still an unfair one.

Here are some things we see regularly when businesses end up in difficulty:

- A decision was made before a proper investigation took place
- The employee wasn't genuinely given the chance to respond to concerns
- Notes were thin, vague or written up after the fact
- The outcome felt inevitable before the meeting even started
- Similar situations were handled differently with different employees

Any one of these can turn a defensible dismissal into an expensive one, even if the original decision was entirely reasonable.

On top of that, the new Fair Work Agency now has the power to inspect your records and audit your processes. Poor documentation isn't just a tribunal risk anymore. Your records can be reviewed independently of any claim.



Two traps that catch businesses out

Two specific risks come up again and again, with both tending to catch businesses by surprise.

The first is **SOSR**. Some Other Substantial Reason is a legitimate legal basis for dismissal. It covers situations that don't fit neatly into conduct, capability or redundancy, such as a genuine breakdown in trust or a fundamental change to a role.

The problem is that businesses reach for it when things feel uncomfortable, rather than when there is proper, evidenced justification.

It gets used as a way to end a difficult employment relationship without doing the harder work of building a case.

Without clear rationale, documented investigation and a fair process behind it, SOSR offers far less protection than most employers assume.

The second is **whistleblowing**. If an employee has raised concerns about health and safety, legal compliance or financial wrongdoing before being dismissed, you need to stop and take advice before you do anything else.

Concerns of this kind may qualify as protected disclosures.

Dismissing someone who has made a protected disclosure is automatically unfair, regardless of how legitimate your reasons were and regardless of how clean your paperwork looks.

This is one of the most expensive mistakes a business can make and it's almost always made without realising.

The enforcement picture

Looking at the figures, employees are making a lot more claims.

For Q3 2025/2026, the number of newly filed cases accepted by a judicial tribunal increased by a huge 54% compared to the same period the year before.

The open caseload (the number of cases currently ongoing) is at its highest level since Q3 2013/14, at a whopping 831,000.

At the end of December 2025, there were 58,000 single claim cases in the open caseload.

What do these numbers tell us?

That we can no longer safely assume that most employees won't bother pursuing a claim.

What to do now

The businesses most exposed to these changes are the ones running on informal processes that haven't kept up with how much the team has grown.

You don't need a complete overhaul. But the first six months of any employment relationship matters far more now and your processes need to reflect that.

Start with your probation process.

If you're not holding structured reviews, documenting concerns in writing and giving employees a genuine opportunity to respond, you don't have a defensible process. Fix that before you hire anyone else.

Write up every performance or conduct conversation at the time, not afterwards.

A verbal warning that wasn't recorded didn't happen as far as a tribunal is concerned.

Check that your managers know what a fair dismissal process looks like in practice.

Most don't. If the person most likely to handle a people issue in your business has never been through a disciplinary procedure, that's a gap worth closing now.

Review your contracts and probation clauses.

Specifically, check that your probation period is set at less than six months, that it includes a clear review process and that you have the right to extend it if needed.

A six-month probation that runs right up to the point where an employee gains unfair dismissal rights leaves no room to act if concerns emerge late.

And, if you're already thinking about dismissing someone, get advice before you act.

The earlier you bring in support, the more options you have. By the time a process has gone wrong, the options narrow considerably.

If you're not sure whether your current approach would hold up, get in touch.

We'll tell you quickly whether your process is defensible and what to do if it isn't.

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