



Finally... Good news for Employers

James Johnson, Head of the Employment Team at Smith Partnership, explains recent developments which may finally signal a change in tide in the favour of the UK's beleaguered employers.



**James Johnson,
Partner, Employment**

After months of speculation, the Business Secretary Vince Cable has confirmed that the government plan to carry out a major shake-up of employment laws which he has described as "the most radical reform package for decades". The primary proposals are that the qualifying period for employees to claim unfair dismissal will increase from one year to two years; that all claims by employees will have to be lodged with ACAS for mediation before being issued to the employment tribunal; that there will be a reduction in the minimum periods of consultation for large scale redundancies; and there will be the introduction of "protected conversations" to attempt to enable employers to discuss compromising out underperforming or troublesome employees on a "without prejudice" basis.

It is believed that the changes will start to be implemented from 6 April 2012, but their final implementation will be subject to consultation with affected parties.

With regard to the headline grabbing change of increasing qualifying service for unfair dismissal, James explains that *"On the one hand, the change should result in employers finding it much easier to dismiss employees in their first two years of service, without going through extensive procedures and with a significantly reduced risk of claims. The change could, in essence, result in employers using the first two years of service as a 'probationary period'."* However, James does warn that *"employers should be aware of the likely consequential increase in 'creative' contractual and discrimination claims, where employees do not require minimum lengths of service to claim. It is inevitable that stand-alone claims based on "protected characteristics" such as age, disability, race and sex will increase as employees attempt to bring in claims following a dismissal through 'the back door'."*

James also warns that the success of the plan to enforce mediation through ACAS will be largely dependent on ACAS receiving significant investment in its resources to cope with the significant increase in its powers.

In a further highly positive attempt to weed out weak but time-consuming and costly claims, the government is likely to introduce a fee structure for employment tribunal claims. It has been reported in the last few weeks that the government wishes to charge a standard issue fee of £250 per case, with a "listing" fee of £1,000 or more paid when the case is listed for hearing. Currently, there is no fee structure in place for employment tribunal proceedings. The proposal to introduce fees will be considered within a fundamental review of employment tribunal practice and procedures set to be undertaken in the early part of 2012.

James concludes that *"this all sounds very positive for the UK's employers. The government is well intentioned in its proposals to assist employers in running their businesses by cutting the amount of 'red tape' experienced in employing, and indeed dismissing, employees. The biggest test of the government's plans will, however, be in the fine print and at this stage there is a feeling that the proposals lack defined substance and that they may well ultimately become diluted. What is hoped is that the final legislation when implemented will follow through on the government's bold headline intentions. Watch this space....."*

For further information on the above or advice regarding any employment matters please contact James Johnson, Partner and Head of Employment, james.johnson@smithpartnership.co.uk.

