

The Sunday Business Post

Employment matters

Dismissing staff who have less than a year's service

If you run a business, don't assume that your newer workers are without legal protection in their first 12 months of employment



Joanne Hyde

It is unwise for employers to assume that newer employees have no legal protections until they have a certain level of service. There are an increasing number of legal avenues open to employees, even those with very short service.

Regardless of length of service, it is prudent to actively manage employees through a probation period, flag any concerns and, if appropriate, extend the probation.

While employees with less than 12 months' service do not typically have any protection under the Unfair Dismissals Act, there are potential actions open to employees with less service who wish to make a claim against a company.

In certain limited situations, there is no requirement to have twelve months' service or indeed any level of service in order to be protected by the Unfair Dismissals Act.

These include where the employee alleges that the reason for termination is for an exceptional protected status, such as pregnancy or trade union

membership. In such cases, the protection applies from the first day of employment.

There is also the risk of an unfair dismissal claim and a possible injunction, if the employee can show that the termination arose from their having made a disclosure of breach of a law or a wrongdoing which would bring them within the Protected Disclosures Act, 2014.

Again, there is no minimum service requirement, and the legislation provides for a statutory remedy of an injunction to restrain the termination from taking effect.

In addition, if an employee proves that the dismissal arose from having made a protected disclosure, they can be awarded compensation of up to five years' remuneration (rather than the usual limit of two years' remuneration).

An employee can bring an employment equality claim if they can show that the reason for dismissal was related to one of the nine prohibited grounds under the Employment Equality Act – gender, marital or civil status, family status, sexual orientation, age, disability, race, religion or membership of the Travelling community.

There is no minimum

service threshold to get the protection of the Employment Equality Act. Candidates for a job who allege that they were unsuccessful because of discrimination on one of these grounds can bring a claim even though they never became employees at all.

There may be a risk of an injunction from the civil courts to restrain the termination for failure to follow any disciplinary process. That risk is highest where there is any allegation of misconduct because, in those cases, employees should have a right to defend themselves against allegations.

An employee may bring a claim under the Industrial Relations Act, 1969. While this can only result in a non-binding recommendation, in some workplaces (particularly those where there is a strong trade union presence) such recommendations have significant moral authority.

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