

Unfair Dismissal

The laws surrounding the dismissal of employees often cause difficulties for employers and it is crucial that employers know when they can dismiss an employee and what procedures should be followed in order to avoid claims for unfair dismissal.

Can all employees submit claims for unfair dismissal?

There is usually a requirement that an employee must have worked for their employer continuously for more than two years to gain the right to claim unfair dismissal. However, there are several reasons for dismissal which are deemed to be automatically unfair and employees dismissed for one of those reasons do not need to have accrued two years of service to make a claim.

If the dismissal is automatically unfair, it does not matter how long the employee has been employed by the employer in order to bring a claim for unfair dismissal.

Employees under fixed term contracts can also claim for unfair dismissal if their contract is not renewed but 'temporary' workers cannot. The legal definitions relating to these types of employees are complex and legal advice should be sought if in doubt.

Why would a dismissal be deemed to be automatically unfair?

There are several reasons why a dismissal would be deemed automatically unfair, the majority of which relate to statutory rights which employees have. The reasons include (but are not limited to):

- Pregnancy
- Membership of a Trade Union
- Health and Safety Issues

- Asserting or attempting to assert a statutory right i.e.; the right to be paid the minimum wage.

The Five Potentially Fair Reasons

There are five potentially fair reasons for dismissing an employee:

1. **Conduct** - this would include theft, bullying of staff, being intoxicated at work and other reasons relating to the actions of the employee. Misconduct must be serious or repeated on several occasions to be a fair reason for dismissing an employee.
2. **Capability** - this section would cover circumstances in which an employee is unable to do the job, for example by reason of long term illness, being unable to keep up with the requirements of the job or being unable to work within a team. Employers should be cautious where dismissing employees for reason of illness and bear in mind the Equality Act 2010.
3. **Illegality** - This covers situations where it would be illegal for the employer to allow the employee to continue doing their job. An obvious example of this is if a delivery driver loses his driving license.
4. **Redundancy** - Redundancy is potentially a fair reason for dismissing employees if the employer relocates, needs fewer workers or restructures. There are specific procedures which must be followed in cases of redundancy. For further information see our factsheet on redundancy.
5. **Some other substantial reason** - This section is much wider and allows employers to dismiss employees where there is a very good

reason but which is not covered in any of the four sections above.

The employer's actions in choosing to dismiss an employee for one of the fair reasons must be considered to be a reasonable response to the situation and procedures must be followed.

What are the consequences of dismissing someone unfairly?

If an employee successfully claims unfair dismissal there are several remedies that the Tribunal can order, the most common of which is compensation.

Awards for compensation may include the following elements:

- a) The Basic Award - usually calculated in the same way as redundancy pay and is based on length of service and pay at the time of dismissal (see our factsheet on redundancy pay). The maximum basic award is currently £14,250 (as from 6th April 2015)
- b) The Compensatory Award - this element will cover the employee's loss arising from the dismissal and can include lost earnings (past and future), loss of reputation, loss of pension,

loss of accrued statutory rights and loss of benefits. Compensatory awards are usually limited to a maximum figure which is presently £78,335 (£76,574 for dismissals before 6th April 2015).

- c) An Additional Award for failure to reinstate may be awarded in cases where the Tribunal orders the employer to reinstate the employee but they refuse to do so.

The above information is not intended to be a complete or definitive statement of the law. For more information or advice please contact our Employment Law team.