



Are you a non unionised worker?

Have you been unfairly dismissed and need advice?

Overview

An unfair dismissal arises where an Employer dismisses an employee for a reason other than one of the fair reasons set out in the Employment Rights Act 1996 and/or fails to follow the proper procedures in effecting the dismissal.

In certain circumstances if you have been unfairly dismissed you may have rights to compensation. If your dismissal was unfair you could be compensated for discrimination or awarded a redundancy payment.

Fair and Unfair Dismissal

Eligible employees have the statutory right not to be unfairly dismissed. (ERA 1996 s.94.)

To be eligible they need 2 years' continuous employment (ERA 1996 s 108.)

There are exceptions where the dismissal is for certain specified reasons, for instance pregnancy or discrimination based on a protected characteristic. In those circumstances, there is no qualifying period.

Know your rights

Your employer must allow you to either work out your notice or compensate you to cover that notice period. In determining your notice period you must look at the Contract which was provided to you with the statutory minimum of one week for each full year of employment.



What is unfair dismissal

If you have been employed for over two years you have a right not to be dismissed unfairly. In order for the dismissal to be deemed fair the employer **MUST**

- Have a fair reason for the dismissal **AND**
- In dismissing the employee must follow the proper procedure ensuring the dismissal is fair in all circumstances.

Wrongful and unfair dismissal

You may have a case for unfair dismissal if your employer has let you go and you feel the reasons are unfair such as because you are pregnant.

In these circumstances, you are entitled to challenge the dismissal. It is important to seek legal advice before taking action, as there are certain checks that will need to

be made to establish that your dismissal is unfair, such as your employment status and if the law deems the reason for your dismissal as unfair.

When is dismissal unfair?

Common examples of unfair dismissal.

- Dismissals related to maternity and paternity
- Dismissals related to union membership
- Dismissals related to health and safety representatives
- Dismissals for refusal to work over 48 hours on average
- Dismissals for insisting on being paid the National Minimum Wage
- Dismissals for whistleblowing

Fair reasons include:

- Lack of capability
- Misconduct
- Redundancy

Even if the dismissal falls within one of these reasons the employer must still ensure the process of dismissal is fair.

Poor performance

It is essential you were given a warning as to your performance and given an opportunity to improve. ACAS code of practice on discipline and grievance must be adhered to.

Misconduct

A reasonable investigation should be conducted to consider whether the dismissal was reasonable again adhering to the codes of practice as set out by ACAS. This is a ground often relied upon by employers to justify dismissal whether or not it is unfair will depend on if the Tribunal finds your employer has acted reasonably.

Redundancy -

Was redundancy the real reason for the dismissal?

Redundancy must be a fair and objective process with the employer considering if an alternative employment was an option.

In order for the redundancy to be fair the dismissal must relate to:

- Your employer ceasing to carry on its business or is ceasing to carry it on in your place of work
- The requirements of the business for employees to carry out work of a particular kind have been reduced or ceased.

If you have been made redundant and are offered alternative employment if you refuse this alternative employment you may lose your right to redundancy payment. This alternative employment must be the same or similar level of benefits, salary, status and responsibility.

If you have been employed for more than 2 years and you are made redundant you are entitled to a statutory redundancy of up to £464.00 a week for each year of employment.



Has your employer failed to comply??

If your employer fails to comply with the ACAS Code the Employment Tribunal can increase compensation in cases up to 25% should you succeed.

It is important to get advice early should you find yourself facing a disciplinary procedure as an award of compensation can also be reduced if you fail to comply with the ACAS Code.

What to do if you are dismissed?

If you have been verbally dismissed you should ask your employer to confirm this in writing and the reason for the dismissal.

If you meet the eligibility criteria you are entitled, within 14 days of a request, to receive written reasons for your dismissal.

Getting your dismissal in writing

You have the right to ask for a written statement from your employer giving the reasons why you've been dismissed if you're an employee and have completed 2 years' service (1 year if you started before 6 April 2012).

Your employer must supply the statement within 14 days of you asking for it.

Your employer must give you a written statement if you're dismissed while you are on Statutory Maternity Leave.



Make a claim

Find out how to start the claim process...

Bringing a claim

Claims of unfair dismissal are brought in the Employment Tribunal and must be brought within 3 months (less a day) of the dismissal date. Employees should normally use the Employer's internal appeals procedure first.

Eligibility to bring a Claim

In order to claim a redundancy payment or to pursue a complaint of unfair dismissal, a person must:

- (a) be an employee;
- (b) have been dismissed;
- (c) have been continuously employed for the requisite period; usually two years
- (d) not be within an excluded class. Such as a police officer, member of the armed forces, certain church ministers.

The Tribunal may award:

- re-engagement
- reinstatement
- compensation

The Employment Tribunal can only consider breach of contract claims worth up to £25,000.00

The tribunal will look at whether:

- there was a genuine need to make redundancies in your workplace
- your employer followed a fair procedure for consulting the workforce and selecting people for redundancy
- the decision to select you was fair
- your employer made reasonable efforts to find you alternative employment elsewhere in the company.