

Summary of the law on UNFAIR DISMISSAL AND REDUNDANCY



Workers are protected under the Employment Rights Act 1996 from being sacked or chosen unfairly for redundancy.

This booklet provides a basic outline of the law covering unfair dismissal and redundancy.

- UNFAIR DISMISSAL
- TRIBUNAL CLAIMS
- REMEDIES
- CONSTRUCTIVE DISMISSAL
- WRONGFUL DISMISSAL
- REDUNDANCY



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Unfair dismissal?

What is unfair dismissal?

Unfair dismissal is a statutory right available to employees who believe they have been dismissed unfairly or unreasonably by their employer.

However, there is a qualifying period before they can claim the right. That period increased from one year to two on 6 April 2012 for employees who started their job on or after 6 April 2012.

So, for instance, employee X started working for company Y on 21 March 2011. She was dismissed on 4 April 2012 and therefore can bring a claim of unfair dismissal as she only needs one year's service to qualify.

However, employee Z, who started working for company Y on 21 April 2012 and was dismissed on 28 April 2013 cannot bring a claim as he doesn't have the necessary two years' service.

What is an automatically unfair dismissal?

Certain dismissals are "automatically unfair" in which case the employee just has to show that the dismissal was for one of the following reasons:

- Membership (or non membership) of a trade union or for trade union activities.
- Health and safety.
- Bringing proceedings against the employer for breaking certain statutory employment rights.
- Unlawful discrimination on grounds of one of the protected characteristics.



- When the employee's work is transferred to another employer, under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).
- Refusing to forego a right under the Working Time Regulations.
- Seeking to enforce rights under the National Minimum Wage Act.
- Making a protected disclosure under the whistle blowing legislation.
- Trying to obtain (or prevent) recognition of an independent trade union.
- Seeking to exercise the right to be accompanied at a grievance or disciplinary hearing.
- Taking part in lawful industrial action.
- In connection with the employee's rights with regard to parental, paternity or adoption leave, time off for looking after dependants, maternity leave or the right to ask to work flexibly.
- Taking action in connection with part-time workers' or fixed-term workers' rights.
- Refusal by a shop worker to work on Sunday.
- Connected with an employee's function as a pension fund trustee.
- In breach of the Information and Consultation Regulations 2004.



When is a dismissal fair?

The law says that it is fair for employers to dismiss an employee for one of the following reasons:

- Misconduct at work.
- Lack of capability (or qualifications) to do the job.
- Redundancy.
- A statutory requirement.
- Some other substantial reason.

However, even if the employer convinces a Tribunal that they dismissed their employee for one of those reasons, they still have to show that they followed a reasonable procedure as set out in the Acas (Advisory, Conciliation and Arbitration Service) code of practice. They must also show that the decision to dismiss fell within the range of reasonable responses open to an employer.



What about strikes and lock outs?

To be protected against unfair dismissal in connection with a strike or lock out, one of the following conditions needs to be fulfilled:

- The dismissal was within 12 weeks of the start of the protected industrial action.
- The dismissal took place more than 12 weeks after the start of the protected industrial action and the employee had ceased taking part in it within the 12 week period.
- The dismissal took place more than 12 weeks after the start of the protected industrial action, the employee had continued to take part in that industrial action but the employer had failed to take such procedural steps as would have been reasonable to resolve the dispute.

There is also a right to bring a claim for unfair dismissal if all or some employees are dismissed during an official strike or lockout but only a selected few are re-engaged within three months.



What is the procedure for bringing a claim for unfair dismissal?

The time limit for lodging a claim for unfair dismissal at the Employment Tribunal is three months, less one day, from the effective date of termination of the contract of employment. This time limit is strictly applied.



What remedies are available?

If a Tribunal finds in favour of the employee it can order:

- Reinstatement - getting their job back with no loss of money or security.
- Re-engagement - getting another job with the same employer.
- Compensation - a basic award calculated in a similar way to a redundancy payment plus a compensatory award to compensate the employee for the financial losses incurred as a result of the dismissal.

The maximum compensatory award is currently £72,300.00 (and is updated every year), but unless the employee is a very high earner, it is rare for Tribunals to award this amount. Most will award for loss of earnings to the date of the hearing plus a limited amount to compensate for future loss.

Reinstatement and re-engagement are rarely ordered by Tribunals.

Tribunals can adjust awards up or down by 25 percent if they think that either the employer or employee unreasonably failed to follow the Acas code of practice (www.acas.org.uk).



What is interim relief?

In some special cases, employees can apply urgently for an order for interim relief to reinstate them pending the main hearing. This might happen, for instance, if the reason for dismissal was because of trade union or health and safety activities; as a pension fund trustee; acting in relation to union recognition; or exercising rights to be accompanied to a disciplinary or grievance hearing.

An application for interim relief has to be made within seven days of the dismissal.

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What is constructive dismissal?

Constructive dismissal is when an employee resigns in response to a significant and fundamental breach of their contract of employment by their employer. These cases are hard to win.

Not every breach of contract will entitle an employee to resign and claim constructive dismissal as the breach (which could stem from a single event or an accumulation of them) must be a fundamental breach of contract (e.g. a breach of the implied term of mutual trust and confidence). To rely on the breach, the employee needs to resign fairly soon after it occurred.

Claims for constructive dismissal must be lodged in the Tribunal within three months less one day of the last day of employment.

Tribunals can adjust awards up or down by 25 percent if they think that either the employer or employee unreasonably failed to follow the Acas code of practice (www.acas.org.uk).



What is wrongful dismissal?

Unlike unfair dismissal, which is a statutory right, wrongful dismissal is a contractual right. It comes about if the employer terminates the employment contract contrary to the terms contained in it - for instance, by failing to give the correct notice. In those circumstances compensation is usually loss of earnings for the notice period.

The minimum statutory periods of notice required from an employer are:

1 month to 2 years of employment = 1 week's notice

2 years to 12 years of employment = 1 week for each year
worked

12 years plus of employment = 12 weeks' notice

Failure to pay statutory notice may give rise to a claim of unlawful deduction from wages.

What is pay in lieu of notice?

If an employer dismisses an employee without payment, then the employer is in breach of contract and the employee can sue for the wages they would have received if notice had been given.

Some employers are prepared to pay this sum gross, rather than net, but entitlement depends on the contract of employment.



What is redundancy?

The law says there is a genuine redundancy situation if an employee is dismissed because the business as a whole, or the particular workplace where the employee worked, has closed down. Likewise, if the employer decides to reduce the size of the workforce to do work of a particular kind.

If the employee can show that their dismissal fell into one of these categories, they may be entitled to a statutory redundancy payment, or possibly a contractual one, but only if they have two or more years continuous service since the age of 18.

For each full year of continuous employment up to a maximum of 20 years, an employee is entitled to:

age 41 and over: one and a half week's pay per year of service

age 22 to 40: one week's pay per year of service

up to age 21: half a week's pay per year of service

There is a limit to the basic weekly pay which can be claimed and which is updated every year. Currently it is £430.00.



Employees can lose their right to a statutory redundancy payment if:

- They are offered their old job back or a suitable alternative and they unreasonably refuse.
- They are dismissed for gross misconduct during the redundancy notice.
- They resign before the end of the notice period.

A contractual redundancy payment is only payable if there is a contractual right to an enhanced payment. A policy which is expressed to be discretionary will not usually be contractual unless very specific conditions apply.



What happens if the employer does not pay?

Employees have three months less one day to bring a claim for the employer's failure to pay their contractual redundancy payment and six months less one day of the failure to pay their statutory redundancy payment.

If a contractual redundancy entitlement is more than £25,000.00 the Employment Tribunal cannot deal with the claim, it has to be brought in the County Court where the time limit is six years.

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What are protective awards?

Before making 20 or more employees redundant, employers have to consult in good time with any independent trade union which is recognised for collective bargaining or, where no union is recognised, with elected representatives.

The consultation must be at least 90 days where it is proposed to make 100 or more employees redundant or 30 days where there are 20 to 99 employees.

Appropriate information must be provided to the union and the employer has to consult with a view to reaching an agreement. If the employer fails to do so, the union can apply for a “protective award”. This is anything up to 90 days pay, according to the circumstances, for each employee affected.

The time limit for these claims is normally three months from the date the dismissals take effect.





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