


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. All employees can bring a claim of unfair dismissal after one year of continuous service and a claim for redundancy pay after two years' service.

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 giving employees with one year's service the right to complain to a Tribunal that they have not been treated fairly or reasonably by their employer.

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
- Something to do with health and safety
- Bringing proceedings against the employer for breaking certain statutory employment rights
- Unlawful discrimination on grounds of race, sex, disability, religion or belief, sexual orientation or age
- Pregnancy or any other reason connected with the pregnancy
- 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
- In connection with retirement when the employer has not informed the employee of their right to request to continue working; or while the "duty to consider" procedure is ongoing



When is a dismissal fair?

The law says that 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
- Retirement
- 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 conduct. They must also show that the decision to dismiss fell within the range of reasonable responses open to an employer.



Are employees protected if they go on strike or are locked out?

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 3 months.

There is no right time to bring a claim for unfair dismissal if the industrial action was unofficial.



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

With effect from 6 April 2009, the time limit for lodging a claim for unfair dismissal at the Employment Tribunal is 3 months, less one day, from the effective date of termination of the contract of employment. There is no extension of time to this timescale for a dismissal by the employer on or after 6 April 2009 or where the disciplinary proceedings started on or after 6 April 2009. The time limitation of 3 months less one day is strictly applied by the Employment Tribunals.

If you are complaining about an action by the employer which took place on 5th April 2009 or earlier, please seek advice from your Trade Union.



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. However, Tribunals rarely order reinstatement
- Engagement - getting another job with the same employer
- Compensation - a basic award calculated in a similar way to a redundancy plus a compensatory award to compensate the employee for the financial losses incurred as a result of the dismissal

The maximum compensation award is currently £66,200.00 (and 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 hearing plus a limited amount to compensate for future loss.

Reinstatement and re-engagement are rarely ordered by Tribunals.

Compensation may be increased or reduced if either party failed to follow the new ACAS Code of Practice 1: Disciplinary and Grievance Procedures. Visit www.acas.org.uk for the Code of Practice.



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, when 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.

Compensation may be reduced if the employee failed to follow the new ACAS Code of Practice 1: Disciplinary and Grievance Procedures. Visit www.acas.org.uk for the Code of Practice.



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. To amount to constructive dismissal, the breach (which could stem from a single event or an accumulation of them) must be a serious and repudiatory one. That is, it must be a fundamental breach of contract (e.g. a breach of the implied term of mutual trust and confidence). In order to be able to rely upon the breach, the employees resignation would need to follow fairly soon after it occurred otherwise they may be construed to have waived it.

With effect from 6 April 2009, a claim for constructive unfair dismissal must be lodged in the Employment Tribunal within 3 months less 1 day of the last day of employment. No extension to this timescale is available for any act complained of which dates from 6 April 2009.

Compensation may be reduced if the employee failed to follow the statutory grievance procedure new ACAS Code of Practice 1: Disciplinary and Grievance Procedures.

Visit www.acas.org.uk for the Code of Practice.



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 periods of notice required from an employer are:

1 month to 2 years of employment = 1 weeks' notice

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

12 years plus of employment = 12 weeks' notice

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 there has been a reduction in the size of the workforce needed 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.

Employees are eligible for statutory redundancy payments if:

- they have two or more years continuous service since the age of 18
- they are below “normal” retirement age (which depends on the employer’s normal practice on retirement)

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

age 41 to 64: 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 £350 rising to £380 with effect from 1 October 2009.



Employees can lose their right to a 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



What happens if the employer does not pay?

Employees have 3 months less one day to bring a claim for the employer's failure to pay their contractual redundancy payment and 6 months less one day of the failure to pay their statutory redundancy payment.

Compensation may be reduced if the employee failed to follow the new ACAS Code of Practice 1: Disciplinary and Grievance Procedures. Visit www.acas.org.uk for the Code of Practice.



What are protective awards?

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

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 3 months from the date the dismissals take effect.





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