

WHAT IS DISMISSAL?

Dismissal is when an employer ends a contract of employment or sacks a worker for whatever reason. If the worker leaves by agreement or resigns this is not a dismissal.

Sometimes an employer's conduct may be so extreme that a worker is forced to resign in response to this conduct. In very limited circumstances this can count as a dismissal, however these claims rarely succeed and an employee should not in any circumstance resign without taking advice from their union.

If a worker has been verbally dismissed they should ask the employer to confirm this in writing and the reason for the dismissal. An employee who meets the eligibility criteria is entitled, within 14 days of a request, to receive written reasons for their dismissal.

WHAT IS UNFAIR DISMISSAL?

The law protects eligible employees who have been unfairly dismissed. A dismissal is unfair if the employer dismisses someone for no good reason or if they use an unfair procedure. There are some reasons for dismissal for which there is no qualifying period of employment needed for protection. (See "reason for dismissal" section below)

However, to have full protection from unfair dismissal an employee whose employment began before 6 April 2012 must have one year's continuous service with the same employer. For any employee taken on from 6 April 2012, the qualifying period has been increased to two years.

If an employee is eligible, they will need to consider the 'reason' for their dismissal and the circumstances in which they were dismissed. Any claim for unfair dismissal must be brought within three months of the date of dismissal.

THE REASON FOR DISMISSAL

In deciding if an employee has been unfairly dismissed or not, regard will be given to the following.

Were you dismissed for a "potentially fair" reason?

1. Lack of Capability (including ill health)
2. Misconduct
3. Redundancy
4. Contravention of a Law
5. Some Other Substantial Reason.

It is for the employer to show that the reason for dismissal was a potentially fair reason.

If the employer cannot establish the employee was dismissed for a potentially fair reason, the dismissal will be unfair.

The law expressly provides for certain reasons which are **always** unfair. There is no minimum service requirement before a claim for unfair dismissal if the employee has been dismissed for an automatically unfair reason. Automatically unfair reasons are:

1. Pregnancy or maternity leave
2. Health and safety issues
3. Assertion of a statutory right
4. Position as a trustee of an occupational pension
5. Selection for redundancy for one of the above reasons
6. Non-disclosure of spent convictions - (except those subject to any exception orders)
7. Dismissal either before or after a Transfer of Undertaking (TUPE) if the transfer or a reason connected with the transfer is the reason for the dismissal unless the employer can show the reason for the dismissal was an economic or technical reason entailing changes in the workforce.
8. Ground related to union recognition, membership or activities
9. Taking part in industrial action
10. Reasons connected with the Working Time Regulations
11. For performance of functions as a trustee of an occupation pension scheme
12. For making a protected public interest disclosure
13. For a reason connected with the Nation Minimum wage
14. For asking to accompany/be accompanied at a disciplinary or grievance hearing
15. For asserting the rights of part time workers
16. Where the employer has not followed the statutory dismissal procedure

However, if the employer can establish a potentially fair reason for a dismissal a Tribunal would then consider the question: Did the employer act reasonably in dismissing the worker in all the circumstances for the reason given?

In considering the fairness of any procedure followed to arrive at dismissal, an employment tribunal would consider the following factors

1. Was the employee given a fair hearing ?
2. What evidence was used at the hearing and was it all used ?
3. Did the employee have a representative at the hearing or a trade union official ?
4. If there was more than one employee involved were they all treated in the same way ?
5. Had the employee done this before ?
6. Did the employer consider warnings, were these used in the past ?
7. Did the employer consider the overall performance of the employee, such as a long record of good work and behaviour ?
8. Could the employer have disciplined the employee instead of dismissing them ?
9. Did the employee have an effective right of appeal against the decision ?
10. Was the whole procedure carried out in the same way as previous procedures, if not how did it differ and why ?

If a Tribunal finds that the employer did not act reasonably, it will find the dismissal to be unfair. However, if a Tribunal finds the employer's decision to dismiss fell within the band of reasonable responses to employee conduct, which a reasonable employer could adopt, then the dismissal will be held to be fair.

REMEDIES FOR UNFAIR DISMISSAL

If an employee is successful with their claim a Tribunal can make three types of award:

1. Reinstatement
2. Re-engagement
3. Compensation

These cannot be enforced although additional compensation can be awarded if an employer refuses to comply. Payments can take the form of a basic award (based on a formula that takes account of age, years of service and average weekly pay (up to a maximum of weekly rate of £450)) or a compensatory award set at a maximum of £74,200 from 1 February 2013.

If an employee is dismissed, they should keep a detailed record of all the jobs they have applied for and/or details of any income received from a new job. This information will assist the Tribunal in determining any compensation it awards. The employee is under a duty to mitigate their loss by doing their best to find another job. This might include taking a less well paid job than the one they were dismissed from, in which case they can still claim for the difference in earnings. If the tribunal feels the employee has not tried hard enough to get another job it may reduce the award accordingly.

FURTHER INFORMATION

Details of unison's activists course on unfair dismissals can be found [here](#).

Important: This fact sheet is a summary of the law and should not be relied upon by individual UNISON members either as a complete statement of the law or of legal rights. If after reading this fact sheet you require further advice and assistance you should contact your branch or local steward.