UNFAIR DISMISSAL FACTSHEET

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 in England, Scotland or Wales, this qualifying period has been increased to two years. In Northern Ireland, the qualifying period remains one year.

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 include:

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 on any ground that would make dismissal automatically unfair (as listed here)
6. Spent convictions or 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, technical or organisational 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 National Minimum Wage
14. For asking to accompany/be accompanied at a disciplinary or grievance hearing
15. For asserting the rights of part time/fixed-term employees
16. Where the employer has not followed the statutory dismissal procedure
17. In Northern Ireland only, a breach of the Statutory Disciplinary and Dismissal Procedure (outlined below).

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 employer undertake an objective and thorough investigation into the incident before dismissing?
4. Did the employee have a representative at the hearing or a trade union official?
5. If there was more than one employee involved were they all treated in the same way?
6. Had the employee done this before?
7. Did the employer consider the overall performance of the employee, such as a long record of good work and behavior?
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:

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<td>Re-engagement</td>
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<td>3</td>
<td>Compensation</td>
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These cannot be enforced although additional compensation can be awarded if employer refuses to comply. Payments can take the form of basic award (based on a formula that takes account of age, years of service and average weekly pay (up to a maximum weekly rate of £479) or a compensatory award set at a maximum of £78,962 from 6 April 2016. The minimum basic award for certain instances of unfair dismissal including trade union membership or activities is £3,830. The minimum amount of basic award of compensation where dismissal is unfair by virtue of sections 152 (1) or 153 of the 1992 Act is £5,853.

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.

For guidance on dealing with dismissal and re-engagement policies click here.

For an outline of dismissal regulations in England, Scotland and Wales click here.

For an outline of disciplinary procedures in Northern Ireland click here.

For the ACAS code of practice relating to dismissal click here.

For the Northern Ireland code of practice click here.

The Northern Ireland equivalent to the ACAS Code of Practice is prepared by the Labour Relations Agency and is broadly similar to that of ACAS, save for the significant difference of the requirement on employers to comply with the Statutory Disciplinary and Dismissal Procedure (SDDP).

In Northern Ireland, the SDDP must be followed or else the dismissal will be automatically unfair. This is a three-step process:

**Step 1** requires the employer to set out, in writing, to the employee, the reasons why dismissal or disciplinary action against the employee is being contemplated. This statement must be sent to the employee inviting them to attend a meeting to discuss the matter.

The **Step 2** meeting must take place before any disciplinary action is taken and only after the employer has explained to the employee the basis of the statement given under Step 1 and the employee has had a reasonable opportunity to consider their response. The employee must take all reasonable steps to attend the meeting. After the meeting, the employer must inform the employee of the decision and advise the employee of the right to appeal.

**Step 3** occurs where the employee advises the employer that they wish to appeal. The employer must then invite the employee to another meeting which the employee must take all reasonable steps to attend. The appeal meeting need not take place before the dismissal or disciplinary action takes effect. After the appeal, the employer must inform the employee of the final decision.

The Northern Ireland Employment Bill which is currently waiting for Royal Assent later this year will contain some changes to early resolution of workplace disputes. The changes will make it obligatory for tribunal claims to be routed ‘initially’ through the Labour Relations Agency before they can be issued in an Employment Tribunal. It is important to note that the claimant only has to make contact with the Labour Relations Agency to have complied with the new Regulations. It is hoped that the early intervention of the Labour Relation Agency may help to resolve more disputes before they reach Tribunal. A similar system has been in force in the rest of the UK and this will bring Northern Ireland in line.

**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.