

Unfair Dismissal - an overview



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.

Employees must have completed two years' service before they are able to bring an unfair dismissal claim.

There are, however, some dismissals which are deemed to be "automatically unfair". These cases have no qualifying period.

When is a dismissal fair?

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

- Misconduct at work
- Lack of capability (or qualifications) to do the job
- Redundancy
- Illegality
- 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.

When do I need to bring 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. So, for example, if an individual was dismissed on 10th January, they would have until 9th April to bring a claim.

This time limit is strictly applied.

What remedies are available?

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

- Reinstatement – a return to the original job 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

If an employee has been unfairly dismissed, they will usually be entitled to a basic award depending on their weekly pay, capped at £479 per week for each year of employment and adjusted for age (no Basic Award is payable where a statutory redundancy payment has been paid) and a compensatory award based on their losses up to a current maximum of £78,962 – but limited also to a year's pay.

Unless the employee is a very high earner, it is rare for Tribunals to award the maximum amount. Most will award compensation for loss of earnings to the date of the hearing plus a limited amount to compensate for future loss.

A Tribunal will set the compensatory award with a view to covering the time during which someone is unemployed. This will take into account the efforts they have made to find another job. An unfair dismissal can, however, result in a reduced or nil compensatory award if it is found unfair for procedural reasons alone and the Tribunal thinks a fair procedure would have made no real difference. It is also important to note that the Tribunal will consider whether the Claimant has made genuine attempts to mitigate their loss by, for example, applying for alternative work or seeking benefits.

Reinstatement and re-engagement are rarely ordered by Tribunals.

Tribunals can adjust awards up or down by up to 25% if they think that either the employer or employee unreasonably failed to follow the Acas Code of Practice (www.acas.org.uk). Employees might lose out, too, if they were partly to blame for their dismissal.

What is constructive dismissal?

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

Again, Tribunals can adjust awards up or down by up to 25% 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. Typically an employer wrongfully dismisses 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 for unlawful deduction from wages.

Unless an employee is guilty of gross misconduct, an employer must either allow them to work out their notice, or make a payment to cover that notice period. The notice period is whatever the contract says, subject to the statutory minimum. Even if an employee has been wrongfully dismissed, they are under a duty to do their best to find alternative employment (to 'mitigate' their loss). In assessing what their losses are, they have to offset any earnings they receive during that period and any earnings they ought to have received, assuming they had made reasonable attempts to find alternative employment.

This Fact Sheet is for information only and is not intended to be a substitute for legal advice.

For further information on unfair dismissal and other Employment Rights, please call our Employment Rights team on 033 3344 9603 or email David Sorensen - david.sorensen@morrishsolicitors.com

Sign up to our monthly employment email update by emailing clair.watmore@morrishsolicitors.com