

Unfair Dismissal Guide For Employees

The general rule is that if you have been employed with two years continuous service and are dismissed without your employer having a fair reason you have the right to claim unfair dismissal. In this guide we highlight what constitutes an unfair dismissal and provide useful information for employees who are looking to make an unfair dismissal claim to an Employment Tribunal.



Employment rights

The Employment Rights Act sets out 5 potentially fair reasons that an employer may use to lawfully dismiss an employee within the workplace. However if an employer wants to use one or more of these reasons it does not automatically mean that the dismissal is fair and you may still be able to make a claim to an Employment Tribunal for unfair dismissal. An employee who wins an unfair dismissal claim can seek reinstatement, redeployment or sometimes compensation. In addition an employer may also be liable to pay a successful employee a basic award (the equivalent of a statutory redundancy payment) and notice pay. The potentially fair reasons for dismissal and what any employer must consider when relying on one of those reasons is listed below.

Capability

Poor performance:

If your performance has dropped to a level that is lower than what is expected of you this could be a fair reason for dismissal. Were you offered any additional training or support from your employer so that you could improve your performance? Were you offered a job that demanded less, allowing you to prove that you are capable and suited to the job role? Were you given any warning previously by your employer? Are the same standard and expectations applied to other employees within the workplace?

Poor health:

Do you have a disability within the definition of the Equality Act? If so, did your employer make any adjustments to your job or within the workplace itself to accommodate your disability and allow you to do your job? Did your employer find another role which you would be more suited to? Did your employer offer you ill health retirement (this generally applies to individuals that are seriously ill and are unable to carry out their job on a permanent basis)? Are there any other jobs within the workplace that you are capable of doing?

Conduct

Gross misconduct is not a very precise term and therefore is often misused by employers who often abuse it. Employment Tribunals find that gross misconduct is a term used by an employer in an attempt to justify summary dismissal (this means dismissal without payment of notice). If your employer has dismissed you due to misconduct your employer must have a genuine belief that that you are guilty. Usually a full investigation is carried out internally as genuine gross misconduct is taken very seriously and entitles an employer to dismiss AN employee immediately without notice and without going through the process of giving warnings first. As an employee you should check your contract to see what constitutes misconduct. Are these rules applied fairly and to all employees within the workplace? Are there any mitigating circumstances?

Below we have listed some examples of gross misconduct:

- Theft
- Sexual harassment
- Physical violence
- Serious bullying
- Fraud
- Deliberate damage to any property

Redundancy

When employers make decisions on redundancy they should keep in mind that a position is made redundant, not the person. Employers must carry out a fair and unbiased redundancy process. As an employee you should have been offered any alternative positions if they were available. You should check the selection criteria that has been used and compare this to colleagues that have kept their job. If you are on maternity leave special protection is given when the redundancy process is carried out and you should be offered a suitable role in preference to any other employee.

Illegality

This is where illegality prevents you from doing your job. A working example of this would be a lorry driver who has lost his/her driving licence and therefore is legally unable to carry out their job. If this is the case your employer should discuss any other job roles and opportunities that you may be suited for 'as an alternative to dismissing you. However, if you are to blame and there are no alternative roles available this is likely to be classed as a fair dismissal.



Some other substantial reason

This category is fairly vague and seeks to catch any other reason which would allow employers to fairly dismiss an employee. The employer must follow a procedure that is fair and unbiased and an Employment Tribunal must agree that the reasoning behind the dismissal was substantial, based on the circumstances of the case. If you have been dismissed on the grounds of some other substantial reason we would advise you to seek legal advice. A specialist employment solicitor would be able to offer advice on your Employment Tribunal claim and discuss your options.

Automatically unfair dismissals

There are circumstances where, if your dismissal was related to any of the reasons below, you should have a strong case to make to an Employment Tribunal.

- Pregnancy and the birth of a child
- Health and Safety reasons
- Being summoned for jury service and therefore are absent from work
- Acting as a trade union representative or participating in trade union activities
- Discrimination
- Seeking flexible working hours
- Whistleblowing
- Dismissal because of TUPE

If you are contemplating an employment tribunal proceeding we would highly recommend and believe you should seek expert unfair dismissal advice. It is essential to be guided through the correct procedural steps before making an unfair dismissal claim to an employment tribunal.

Don't hesitate to get in touch with one of our expert employment law solicitors for specialist advice:
Drop us an email on info@bannerjones.co.uk, or call us on 0330 017 6309.

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