



Unfair Dismissal

A guide for employees

We know what you are going through, and we are here to help.



What is an unfair dismissal?

All employers can dismiss their employees. However, the Employment Rights Act 1996 says that for a dismissal to be fair, there must be a fair reason, and a fair process must be followed. The general rule is that you need two years continuous service in order to be able to ask an Employment Tribunal to consider whether your dismissal was unfair.

Employment rights

The Employment Rights Act 1996 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 including a basic award (the equivalent of a statutory redundancy payment), notice pay and payment for loss of earnings and benefits.

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 standards and expectations applied to other employees within the workplace?

Poor health:

- Do you have a disability within the definition of the Equality Act 2010? 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 under any benefits that they offer to employees (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 with immediate effect and without payment of notice).

If your employer has dismissed you due to misconduct your employer must have a genuine belief 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 gross misconduct and misconduct. Are these rules applied fairly and to all employees within the workplace? Are there any mitigating circumstances?

Some examples of gross misconduct:

- Theft
- Physical violence
- Fraud
- Sexual harassment
- Serious bullying
- 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 it would be illegal to allow you to continue to do your 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.

A working example of this could be a lorry driver who has lost their driving licence and therefore is legally unable to carry out their job.

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, this will vary depending on what the circumstances of the case are.

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 may still have a claim for unfair dismissal even though you don't have two years' continuous service.

These include:

- Pregnancy and the birth of a child
- Acting as a trade union representative or participating in trade union activities
- Taking family leave, including parental leave, paternity leave and time off for dependants
- Whistleblowing

If you are considering making a claim for unfair dismissal, we would recommend that you **seek expert advice** from an employment law specialist.



We know that being dismissed from your job can be hard to face. Our expert Employment Law specialists not only offer you compassionate legal advice, but they will also guide you through the process step by step.

Talk to Banner Jones - **We are ready to help you**



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