

Dismissals

A dismissal is when an employer ends an employee's contract. It usually means the same as being sacked or fired.

It's important that an employer uses a fair and reasonable procedure to decide whether to dismiss someone.

If they do not, an employee could make a claim for unfair dismissal, even if the reason for dismissing them was valid.

1. Reasons for fair dismissal

By law, there are 5 potential reasons for dismissing someone fairly. These are:

- conduct – when the employee has done something that's inappropriate or not acceptable
- capability – when the employee is not able to do the job or does not have the right qualifications
- [redundancy](#) – when the job is no longer needed
- a legal reason – when the employee cannot do their job legally, for example a lorry driver who's banned from driving
- 'some other substantial reason' – a term used for a wide variety of other situations

Other substantial reasons could include things like:

- a fixed-term contract ending
- third party pressure, for example if a client refuses to work with an employee
- an employee refusing to agree to new terms and conditions of employment

Dismissing someone because of coronavirus (COVID-19)

During the coronavirus pandemic, employees have the same rights as usual to not be unfairly dismissed.

If an employer feels they need to dismiss someone because they do not have any work for them, they may need to consider other options. For example, they might be able to put the employee on 'furlough' (temporary leave) or agree to change working hours.

As a last resort, employers might need to consider redundancy.

Find out more about:

- [redundancy](#)
- [furloughing staff](#)
- [other alternatives to redundancies or dismissals](#)

Before you dismiss an employee, you should:

- believe you have a valid reason for dismissing them
- follow a full and fair procedure in line with the [Acas Code of Practice on disciplinary and grievance procedures](#)
- make a decision that's balanced, consistent and as fair as possible

If you do not, the employee could make a claim for unfair dismissal, even if the reason you dismissed them was valid.

The procedure you follow will be taken into account if a case reaches an employment tribunal.

During the coronavirus (COVID-19) pandemic, employees have the same rights as usual to not be unfairly dismissed.

2. Dismissal for conduct or capability reasons

You should handle issues of unacceptable or inappropriate behaviour ('misconduct') or performance ('capability') in line with the [Acas Code of Practice on disciplinary and grievance procedures](#).

You can use the [disciplinary procedure step by step guide](#) to help you through the process.

If the employee cannot do their job or is performing badly for a reason that's not their fault, you should still handle the issue in line with the Acas Code of Practice.

Gross misconduct

Gross misconduct is when an employee has done something that's very serious or has very serious effects.

Examples could include:

- fraud
- physical violence
- serious lack of care to their duties or other people ('gross negligence')
- serious insubordination, for example refusing to take lawful and reasonable orders from a supervisor

Your workplace might have its own policy or rules with other examples of gross misconduct.

Dismissal because of long-term illness

Dismissal should be a last resort after you've tried other ways to support the employee and help them get back to work. This could include making any [reasonable adjustments if they have a disability](#) (this includes some long-term health conditions).

It may be fair for you to dismiss someone on long-term sick leave, depending on the circumstances.

For example, you may be able to dismiss someone fairly if:

- you've considered all other options
- it's not possible for the employee to do their job
- the person not being able to work has a significant impact on your business

You must investigate fully and have a valid reason for dismissal. The employee could make a claim to an employment tribunal if they think they've been unfairly dismissed.

Dismissing someone because they're disabled (this includes some long-term health conditions) is [unlawful discrimination](#).

Giving the reasons for dismissal

If you dismiss an employee, you must tell them:

- why they've been dismissed
- when their employment contract will end
- their notice period, if there is one
- their right to appeal the decision

It's a good idea to put it in writing.

When you must put the reasons in writing

You must put the reasons in writing for an employee who's pregnant or on maternity leave, regardless of how long you've employed them.

Other employees have the right to ask you for a written statement giving the reasons for their dismissal if they have:

- 'employee' [employment status](#)
- been employed by you for 2 years

If they ask, you must give them the reasons in writing within 14 days.

Telling other people at work

You should respect the confidentiality of the person who's been dismissed when you tell colleagues and clients that they've left. For example, any outcome of a disciplinary procedure must remain confidential.

[Find out more about talking to staff after a disciplinary procedure.](#)

Settlement agreements

A settlement agreement is sometimes used when an employer and employee agree to end their employment relationship because they both agree it's no longer working. This can include some dismissal situations.

[Find out more about settlement agreements](#) (PDF, 512KB, 66 pages).

If you're thinking about using a settlement agreement, you should [get legal advice](#).

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When an employer dismisses an employee, they should give them notice of when their job will end.

In most cases, the employee will carry on working until the end of their notice period. How much notice they get depends on:

- how long they've worked for their employer
- what's in their employment contract

3. How much notice an employee should get

The employee should get at least the statutory notice period (the legal minimum notice period) if:

- they have 'employee' [employment status](#)
- they've worked for the employer for more than a month

Statutory notice

If you've worked for your employer for:

- 1 month to 2 years – the minimum notice is 1 week
- 2 to 12 years – the minimum notice is 1 week for each year you've worked
- 12 years or more – the minimum notice is 12 weeks

For example, if an employee's worked for their employer for 4 years and 9 months, they're entitled to at least 4 weeks' notice.

Contractual notice

The employee's contract or a staff policy might say a different amount of notice. This is called 'contractual' notice.

An employer can give more than statutory notice, but they cannot give the employee less.

This means that:

- if the contractual notice is less than statutory notice, the employee must get statutory notice
- if the contractual notice is higher than the statutory amount, the employee should get the contractual notice

Employees should talk to their employer if they're not sure how much notice they'll get.

When the notice period starts

It's a good idea to check the employee's contract as it might say when a notice period starts.

If an employer gives an employee notice in person, their notice period should start from the next day.

If they're only given the notice by email or post, the notice period should start when they've had a reasonable amount of time to read it.

Examples

If the employee is only told in a letter sent by registered post, their notice period might start the day after they've received the letter so they've had time to read it.

If the employee is on holiday and is only told by letter, their notice period might start after they've returned home and had time to read it.

Leaving during a notice period

The employee can ask if they can leave before their notice period ends, for example if they have another job to go to.

They should get agreement from their employer in writing.

If the employee leaves early, the employer does not have to pay them for the full notice period.

Notice pay

In most cases, the person who's been dismissed is entitled to the same pay they'd normally get if they work their notice period.

The employee's final pay may be different from their usual monthly or weekly pay because of things like how much holiday they've taken.

They may need to get paid other outstanding money, for example bonuses or pay for working overtime.

[Find out more about final pay when someone leaves a job.](#)

If the employee is off work

An employee may be off work during their notice period if they're:

- on holiday (annual leave)
- on sick leave
- on maternity, paternity, adoption or Shared Parental leave
- temporarily laid off or on short-time working

They're entitled to full pay if either:

- their employer's notice period is the legal minimum
- their employer's notice period is 1 to 6 days longer than the legal minimum

They're not entitled to full pay if:

- their employer's notice period is 1 or more weeks longer than the legal minimum

Employees should check their contract or talk to their employer to find out how much they'll be paid.

Furlough and notice pay

If an employee's dismissed while they're on ['furlough' \(temporary leave\)](#), their employer can still claim payments from HMRC's Coronavirus Job Retention Scheme during the notice period.

If they have a statutory notice period, notice pay must be the employee's full normal pay, even if they've been getting paid recently at a reduced rate due to furlough.

[Find out more about notice pay and furlough.](#)

Payment in lieu of notice

An employer can give an employee 'payment in lieu of notice' (or PILON). This means they get paid instead of having a notice period and stop working for their employer straight away.

It might say in the person's contract what the payment should be, for example if they should get any work benefits they'd normally get, such as pension contributions.

An employer can still offer payment in lieu of notice if it's not in the contract. It should be agreed between the employer and employee in writing.

When it's not in the contract, it's a good idea for the employer to offer full pay including any usual work benefits. If the employer does not do this it could be seen as a breach of contract.

The employer should tell the person in writing the date their job ends. This is particularly important if there's nothing about payment in lieu of notice in their contract.

Garden leave

Garden leave (or gardening leave) is when an employer tells an employee not to work for all or some of their notice period.

This could be because the employer does not want the employee to have access to sensitive or confidential information they could use in a new job.

The employee must get paid as usual during their notice period, including for any work benefits in their contract.

The person is still employed during garden leave, even if they're not working.

Dismissal without notice for gross misconduct

An employer can dismiss an employee without giving notice if it's because of gross misconduct (when an employee has done something that's very serious or has very serious effects). The employer must have followed a fair procedure.

If this happens, the employee would leave straight away. They would not have a notice period and would not get paid any notice pay.

The employer will still need to pay them for:

- any work they've not been paid for yet
- any holiday they've built up ('accrued') but not used by the date they leave
- any expenses they're owed

The employer may also need to pay them for other work benefits, unless their contract says something different.

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If an employee thinks their dismissal was unfair they might be able to challenge it.

It's important to understand what unfair dismissal means. It depends on the individual situation but the employee might have been dismissed fairly if:

- [there was a fair reason](#)
- the reason was enough to justify dismissing them
- the employer followed a full and fair procedure

During the coronavirus (COVID-19) pandemic, employees have the same rights as usual to not be unfairly dismissed.

4. Automatically unfair reasons

Some things are 'automatically unfair' if they're the main reason for dismissing an employee.

These include:

- being pregnant or on maternity leave
- wanting to take family leave, for example parental, paternity or adoption leave
- being a trade union member or representative
- asking for a legal right, for example to be paid the National Minimum Wage
- doing jury service
- being involved in [whistleblowing](#)
- taking action, or proposing to take action, over a health and safety issue

Unfair dismissal because of a health and safety issue

Employees have the right not to be dismissed or treated unfairly ('suffer a detriment') because they've taken action over a health and safety issue, for example complaining about unsafe working conditions.

The dismissal might be classed as 'automatically unfair' if this was the main reason the employee was dismissed.

Taking action over a health and safety issue can include:

- raising a reasonable health and safety concern with an employer
- refusing to work in situations where the employee believes they or other people are in serious danger
- carrying out reasonable tasks as a workplace health and safety representative, for example advising others at work not to use a piece of equipment until adequate safety measures are in place

Other reasons for unfair dismissal

If the employer does not follow a full and fair procedure, an employee could have a case for unfair dismissal, even if the reason for dismissing them was valid.

The procedure the employer follows will be taken into account if the employee claims for unfair dismissal and the case reaches an employment tribunal.

Constructive dismissal

If an employee feels they have no choice but to resign because of something very serious their employer has done, they might be able to claim for 'constructive dismissal'.

The legal term is 'constructive unfair dismissal'.

[Find out more about constructive dismissal.](#)

Appealing a dismissal

If an employee thinks their dismissal was unfair and wants to challenge it, they can appeal through their employer's appeal process. The employer should tell them how to appeal.

The employee may want to speak to their trade union if they have one or [get legal advice](#).

Making a claim to an employment tribunal

If the employee has tried to appeal and wants to take it further, they may want to make a claim to an employment tribunal.

An employee usually has the right to make an unfair dismissal claim to an employment tribunal if:

- they have 'employee' [employment status](#)
- they've worked for their employer for 2 years

If they've been dismissed for an 'automatically unfair' reason it does not matter how long they've worked for their employer.

A claim must be made within 3 months less one day of the dismissal.

The employee must tell Acas first that they want to make a claim. Acas will offer them the option of 'early conciliation', a free service where Acas talks to both the employee and employer. It gives them the chance to come to an agreement without having to go to tribunal.

[Find out more about early conciliation and making a claim to an employment tribunal.](#)

Wrongful dismissal

A 'wrongful dismissal' is when an employer has breached an employee's contract. It's usually to do with notice or notice pay.

Examples of wrongful dismissal can include:

- dismissing an employee without giving them a notice period or notice pay
- not giving someone the full notice period they're entitled to

If an employee wants to make a claim for wrongful dismissal, it does not matter how long they've worked for their employer.

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If an employee feels they have no choice but to resign because of something their employer has done, they might be able to claim for 'constructive dismissal'.

The legal term is 'constructive unfair dismissal'.

5. What constructive dismissal is

An employee can make a constructive dismissal claim if they resign because they think their employer has seriously breached their

employment contract.

Examples could include:

- regularly not being paid the agreed amount without a good reason
- being bullied or discriminated against
- raising a grievance that the employer refuses to look into
- making unreasonable changes to working patterns or place of work without agreement

It could be because of one serious incident or a series of things.

If you're in this situation

Resigning is a big step to take, and a constructive dismissal claim can be difficult to win at an employment tribunal.

It's important to try to sort out any issues with your employer first. You can raise a problem informally or raise a formal grievance.

[Find out how to raise a problem at work.](#)

If you're going to resign, you should [get legal advice](#) first.

Settlement agreements

A settlement agreement is sometimes used to end an employment relationship in a way the employer and employee both agree with.

If you sign a settlement agreement, you cannot make a constructive dismissal claim to an employment tribunal.

[Find out more about settlement agreements](#) (PDF, 512KB, 66 pages).

If you resign

In your resignation letter you should explain clearly your reasons for leaving.

If there's been a serious breach of contract you may want to leave your job straight away instead of working your notice period.

Doing this could be a breach of your employment contract but it can be justified sometimes. You should [get legal advice](#).

Making a constructive dismissal claim

You usually have the right to make a constructive dismissal claim to an employment tribunal if:

- you have 'employee' [employment status](#)
- you've worked for your employer for 2 years

You must make the claim within 3 months less one day of when you resigned.

The employee must tell Acas first that they want to make a claim. They will be offered the option of 'early conciliation'.

[Find out more about early conciliation and making a claim to an employment tribunal.](#)

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