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

Redundancy

Redundancy is usually a type of dismissal when a role is no longer needed. Employers should only consider making redundancies if part or all of the business or organisation is:

- closing, or has already closed
- changing the types or number of roles needed to do certain work
- changing location

In this case, the employer must follow a full redundancy process.

If an employer has concerns about an employee’s conduct or performance, they need to follow a disciplinary or capability procedure.

Find out more about:

- checking whether redundancies are needed – for employers
- redundancy rights for employees

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.

If you’re thinking about using a settlement agreement, you should get legal advice.

Related content
/disciplinary-and-grievance-procedures
/manage-staff-redundancies
/dealing-with-a-problem-raised-by-an-employee

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

Find out more about notice periods

### 3. 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
- money being deducted for training courses
- being off work or on furlough

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

### 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.

When an employee is dismissed for gross misconduct, they:

- leave immediately
- do not have a notice period
- do not get paid notice pay

There are some things the employer must still pay them for. These include:
• any work they have not been paid for yet
• any holiday they have 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.

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.

Related content
/disciplinary-and-grievance-procedures
/appealing-a-disciplinary-or-grievance-outcome
/making-a-claim-to-an-employment-tribunal

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
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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