

What is Unfair Dismissal?

If you are an employee and have two years continuous service, you are entitled to certain statutory rights and are protected from unfair dismissal. Unfair dismissal is where your employer terminates your employment unfairly, either because of the reason for the dismissal or the process used was unfair.

Under the Employment Rights Act 1996, a dismissal will normally be considered fair if your employer can show that the dismissal is related to:

- Your misconduct
- Your capability for the role
- A genuine redundancy situation
- A statutory requirement (e.g. a delivery driver who receives a permanent driving ban)
- Some other substantial reason (SOSR)

If a dismissal does not fall within one of the above categories, it could potentially be considered unfair.

Automatic Unfair Dismissal

In certain circumstances, a dismissal will be considered automatically unfair. In these situations, a dismissal has occurred for a specific reason which violates your protected statutory employment rights. Automatically unfair dismissals include:

- Asserting a statutory right
- Maternity/ paternity leave
- Parental/ adoption leave
- Pregnancy
- Trade union activities
- Request for flexible working
- Asking to be paid the minimum wage
- Making a protected disclosure (i.e. whistleblowing)
- Taking action in respect of a health and safety issue
- Obligation to attend jury service

You do not have to have worked for your employer for a particular length of time to make a claim for automatic unfair dismissal.

A Fair Procedure

To ensure that a fair procedure has been followed leading to your dismissal, your employer should follow

the ACAS Code of Practice on Disciplinary and Grievance Procedures. Even if your employer can justify a fair reason for the dismissal, the dismissal could still be considered unfair if your employer failed to follow the correct and fair procedure.

Your employer should check contracts of employment and company policies and procedures to ensure that they are also complied with.

Consequences of Unfair Dismissal

If you believe that you have been unfairly dismissed and want to challenge it, you can appeal through your employer's appeal process. If an appeal is unsuccessful and you wish to take the matter further, you may want to make a claim to the Employment Tribunal. You must bring your complaint to the Employment Tribunal within three months less one day from the date your employment ended, which could be either the last day of your notice period or the day you were dismissed if you were not given notice by your employer.

You must first notify ACAS that you want to make a claim. ACAS offer an early conciliation service to reach a resolution between you and your employer.

If the Employment Tribunal find that you have been unfairly dismissed, they could award you financial compensation, order that your employer give you your job back (reinstatement) or re-employ you in a different job similar to your old one (re-engagement).

Due to the complexity of the law in this area, we recommend seeking professional advice from our Employment Team if you believe that you have been or may be unfairly dismissed on 01384 371622.

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