



# *GUIDANCE ON* **DISMISSALS**

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# Overview

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.

## **Reasons for fair dismissal**

By law, there are 6 potential reasons for dismissing someone fairly. These are:

capability – when the employee is not able to do the job or does not have the right qualifications

conduct – when the employee has done something that's inappropriate or not acceptable

a legal reason – when the employee cannot do their job legally, for example a van driver who's banned from driving

redundancy – when the job is no longer needed

retirement – in accordance with the terms of the contract of employment

'some other substantial reason' – a term used for a wide variety of other situations including a fixed-term contract ending

# Dismissing someone fairly

Before an employer dismisses an employee, they should:

- i. believe they have a valid reason for dismissing the employee
- ii. follow a full and fair procedure in line with the Labour Regulating Authority Code of Practice on disciplinary and grievance procedures
- iii. make a decision that's balanced, consistent and as fair as possible

If this is not done, the employee could make a claim for unfair dismissal, even if the reason for dismissal was valid.

The procedure followed will be taken into account if a case reaches the Labour Regulating Authority.

## Dismissal for conduct or capability reasons

Issues of unacceptable or inappropriate behaviour ('misconduct') or performance ('capability') should be handled in line with the Labour Regulating Authority Code of Practice on disciplinary and grievance procedures.

The employer can use the disciplinary procedure guide in this document to help them through the process.

If the employee cannot do their job or is performing badly for a reason that's not their fault, the employer should still handle the issue in line with the Labour Regulating 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:

- i. fraud
- ii. theft
- iii. violence

A 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 the employer has 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 an employer to dismiss someone on long-term sick leave, depending on the

circumstances.

For example, it be possible to dismiss someone fairly if:

- i. all other options have been considered
- ii. it's not possible for the employee to do their job
- iii. the person not being able to work has a significant impact on the business

An employer must investigate fully and have a valid reason for dismissal. The employee could make a claim to the Labour Regulating Authority if they think they've been unfairly dismissed.

Dismissing someone simply because they're disabled (this includes some long-term health conditions) is likely to be considered unfair by the Labour Regulating Authority.

### **Giving the reasons for dismissal**

If an employer dismisses an employee, they should tell them:

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

The reason for dismissal should be put it in writing.

### **Telling other people at work**

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

### **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.

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

## Notice periods and pay

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 what's in their statement of initial employment particulars

### **How much notice an employee should get**

The employee must get at least the notice period in the statement of initial employment particulars but in some circumstances an employer will allow more, for example for an employee who has worked for the business for a very long time

### **When the 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 overseas 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.

## **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:

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

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

# Unfair Dismissal

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:

- i. there was a fair reason
- ii. the reason was enough to justify dismissing them
- iii. the employer followed a full and fair procedure

## **Automatically unfair reasons**

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

These include:

- i. pregnancy, childbirth or maternity
- ii. taking action, or proposing to take action, over a health and safety issue
- iii. whistleblowing
- iv. asserting a statutory right of the employee

## **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 the Labour Regulating Authority.

## **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 unfair dismissal, even though it was the employee that chose to leave.

Examples could include:

- i. regularly not being paid the agreed amount without a good reason
- ii. being bullied or discriminated against
- iii. raising a grievance that the employer refuses to look into
- iv. 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.



Resigning is a big step to take, and a constructive dismissal claim can be difficult to prove.

It's important for the employee to try to sort out any issues with their employer first. The employee can raise a problem informally or raise a formal grievance.

If there's been a serious breach of contract the employee may want to leave their job straight away instead of working their notice period. Doing this could be a breach of their employment contract but it can be justified sometimes.

An employee intending to resign should get legal advice first.

### **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 employee representative committee if they have one or get legal advice.

### **Making a claim to the Labour Regulating Authority**

If the employee has tried to appeal and wants to take it further, they may want to make a claim to the Labour Regulating Authority

An employee usually has the right to make an unfair dismissal claim to the Labour Regulating Authority if:

- i. they have 'employee' employment status
- ii. they've worked for their employer for at least 12 months

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 of the dismissal, this can be extended for good reason.

The employee should seek legal advice before commencing a claim, or alternatively speak to a Lay Advocate. It gives them the chance to come to an agreement without having to go to the Authority.

### **Wrongful dismissal**

A 'wrongful dismissal' is when an employer has breached an employee's contract.

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.