

## UK Employment law

In the UK, all employees have the right not to be unfairly dismissed when they have accrued 24 months continuous service with their employer.

However, there are a few exceptions that do not require any continuous employment to claim unfair dismissal. In the event that the employer breaches this right, the employee is entitled to issue a claim in an employment tribunal and can request re-engagement and/or request a compensation payment currently capped at £80,541, or 52 weeks gross pay if lower. The compensatory cap increases each year, and will increase again on 6 April 2018 (£83,682).

It is therefore vital that the employer, when considering dismissing (or even disciplining) an employee, guards against this possibility.

To fairly dismiss an employee an employer must:

1. Rely on a FAIR reason
2. Follow a FAIR procedure

## 1 A FAIR REASON

The dismissal of an employee can only be for a fair reason if:

- **It relates to the employee's conduct**

This would be relevant if an employee was persistently late and had a poor time-keeping record and a more serious example would be if it could be shown that an employee was stealing from the company/fellow colleagues.

- **It relates to the employee's capability or qualifications**

This would be invoked where the employee is not competent at their job, for example due to the fact the employee lacks the requisite skills or aptitude, or where, due to illness, the employee is unable to regularly attend work or perform their duties properly whilst at work. It is important to note, however, that if an employee is suffering from a chronic illness they may be classed as having a disability and the employer, mindful of disability discrimination, should take legal advice before instigating this process.

- **It is because of redundancy**

This includes a closure of the business in which the employee was employed; there is a closure of the place of business where the employee was employed to work or there is a reduced requirement for employees to carry out work of a particular kind.

- **Continuing to employ the employee would be illegal**

For example, as a result of their immigration status, or health and safety issues.

- **It is for "some other substantial reason" (SOSR)**

This is understood to be a fair reason that does not fall under the other categories. For example, the dismissal of a temporary employee to allow for the return of an employee who has been on maternity leave is likely to be a dismissal for SOSR.

**A dismissal for any other reason would be unfair.**

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## 2 A FAIR PROCEDURE

Even if there is a potentially fair reason for dismissing an employee, an employer must still follow an appropriate fair procedure.

In cases of misconduct or poor performance, the employer should comply with its own procedures and the *Acas Code of Practice on Disciplinary and Grievance Procedures*.

In advance of instigating a formal disciplinary procedure, it is necessary to investigate this “reason”. This may be by means of a fact-finding exercise in cases of poor performance or a formal meeting in cases of misconduct. This “meeting” should be performed by a different person than the individual who chairs the formal disciplinary process.

Once the investigatory stage has been completed a formal meeting will be necessary. The employee should be invited and informed of his/her right to be accompanied. In advance of any meeting potential sanctions should be explained to the employee. We recommend a letter including all this information is provided to the employee.

A meeting should then be conducted in which the employer sets out its concerns and gives the employee a reasonable opportunity to respond to each and every allegation. Following a meeting, the chosen sanction should be set out in writing and the employee should be informed of his/her right to appeal the decision. In the case of poor performance and misconduct, unless the act is sufficiently serious, before the sanction of dismissal is invoked, a series of warnings and improvement plans should be instigated. Failure to do so may lead to a finding of unfair dismissal and the tribunal may increase compensation by up to 25% if the failure was unreasonable.

For other types of dismissal, there is still a requirement to follow a fair procedure. It is important to give an employee sufficient information about the reasons for their possible dismissal, and the opportunity to respond at a hearing or meeting, i.e. for redundancy, a genuine information and consultation procedure including, where relevant, the provision of a selection matrix and scoring before reaching a final decision. A right of appeal is also required in all cases.

### **The employer must act "reasonably"**

Even if there is a potentially fair reason for the dismissal, the employer must be able to show that it acted reasonably in dismissing the employee for that reason. This will involve taking into consideration different factors, depending on the reason for dismissal. For example, where an employee is being dismissed because they are not capable of doing the job, an employer will usually have to give the employee a chance to improve.

All the circumstances, including the size and resources of the employer, will be relevant when determining whether it acted reasonably.

### **The employee should be dismissed in accordance with their notice period**

Except in cases of gross misconduct, i.e. extremely serious acts of misconduct (e.g. theft), employees have a right to work a period of notice (depending on their contract, a payment in lieu of notice may be possible). It is usual for the notice period to be set out in the contract. If this is not the case the statutory notice period or a “reasonable” notice period will be implied. An employer's failure to give adequate notice or payment in lieu before dismissing an employee is likely to result in a wrongful dismissal finding, for which the employee can claim loss of earnings and benefits to which they would have been entitled during their notice period.

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