

UNFAIR DISMISSAL

The law relating to unfair dismissal can be found in the Employment Rights Act 1996.

Workers who are employees have a right not to be unfairly dismissed by their employers.

The right not to be unfairly dismissed applies, with exceptions, only to employees who have been employed continuously by their employers for one year or more.

The exceptions are dismissals of employees which are deemed by the law to be automatically unfair. Examples of dismissals which are automatically unfair are those where an employee is dismissed because she is pregnant or maternity-related; he or she has raised a health and safety issue; or made a public interest disclosure; sex/race/age/religion or belief/sexual orientation/disability reasons as well as other automatically unfair reasons.

An employee who has been dismissed for an automatically unfair reason can make a claim to a tribunal without needing to have been employed for one year or more.

Employers can fairly dismiss their employees for one or more of the statutorily fair six reasons being: (i) capability or qualification; (ii) (mis)conduct; (iii) redundancy; (iv) a restriction or breach of a duty imposed by or under statute; (v) some other substantial reason; (vi) compulsory retirement or for the reason of age where objectively justified.

Before taking action against an employee, up to 05 April 2009 the employer must use the statutory three-stage disciplinary and dismissal procedures which require the employer to (i) inform the employee of the reason for taking action against her or him, (ii) invite the employee to a DDP meeting, (iii) notify the employee of the decision and that he or she has the right to appeal. An employee will not be regarded as having completed the three-stage procedures if he or she fails to appeal against the employer's decision to dismiss. Accordingly, a tribunal will not accept an unfair dismissal claim from such an employee.

From 06 April 2009 the statutory three-stage procedures are repealed and in its place employers and employees should use the ACAS Code of Practice on Disciplinary and Grievance Procedures that is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and is in force from 06 April 2009.

An employee who wishes to raise a grievance with her or his employer, particular before terminating the contract of employment and making a claim that he or she has been constructively dismissed because of what the employer has said or done must, before 06 April 2009, use one of the two statutory grievance procedures or from 06 April 2009 he or she should use the grievance procedure under the ACAS Code of Practice.

Employees who need to make a claim to an employment tribunal to recover their financial losses from their former employers who have unfairly dismissed them must make a claim within three months of the effective date of the termination of their contract of employment.

There are three remedies that an employment tribunal can award a successful claimant:

(1) re-instatement; (2) re-employment; or (3) financial compensation.

Financial compensation consists of:

(i) a Basic Award, the current maximum of which from 01 February 2009 is £10,500 that is based on a maximum week's pay of $£350 \times 30 = £10,500$;

(ii) a Compensatory Award that has no limit on a week's pay but is capped at £66,200.

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