

Unfair Dismissal Guide

Overview

Composite Legal Expenses Insurance provides advice to thousands of businesses and individuals each year through its legal advice helpline. The vast majority of calls to the helpline come from businesses seeking help on employment related matters.

Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool.

The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.

If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.

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UNFAIR DISMISSAL

Generally

Unfair dismissal is the most well-known statutory right that applies to employees. It is also the most common claim brought before employment tribunals. If you are facing a potential unfair dismissal claim, then you should seek legal advice from our Helpline as soon as possible. In order for an employee to pursue a claim, their employment must have first come to an end.

Termination

An employment relationship can be brought to an end in a number of different ways. The most common ways are:

- **Termination by the employer with or without notice**
Notice may be express or implied, but must never be less than the statutory minimum. Failure to give adequate notice could give rise to a wrongful dismissal or breach of contract claim from the employee. An employer may decide to dismiss without notice where they consider, following a fair procedure, an employee has committed an act of gross misconduct.
- **Resignation by the employee with or without notice**
Notice again may be express or implied, but must never be less than the statutory minimum. Failure to give adequate notice could give rise to a breach of contract claim from the employer. An employee may decide to resign without notice where they feel the employer has already breached the contract, this could be referred to as a “*constructive*” dismissal.
- **A fixed term contract expires**
If an employee works under a fixed term contract that is not renewed, a dismissal will occur. In certain circumstances employees will be entitled to a redundancy payment.
- **Termination by mutual agreement**
The relationship can end when both parties agree, they may decide to waive notice periods and sometimes this will be done with a settlement agreement, whereby an employee may waive one or a number of rights.

It is important that whenever considering termination, the correct procedures are followed and specific legal advice is taken.

Unfair Dismissal

Under **Section 94** of the Employment Rights Act 1996 (“**ERA**”) an employee has the right not be unfairly dismissed. If, as an employer, you have to terminate an individual’s employment, a tribunal may have to consider if the dismissal was fair or not. A tribunal would generally consider the following:

- **Has there been a dismissal?**

(See termination above, or **Section 95 ERA**)
- **Does the employee qualify for unfair dismissal?**

(**Section 108 ERA**, generally 2 years’ service, but there are a number of exceptions)
- **Did the employer have a potentially fair reason to dismiss the employee?**

(The potentially fair reasons are detailed in **Section 98 (1) and (2)** of the ERA)

The potentially fair reasons are:

- Conduct
 - Capability
 - Redundancy
 - Illegality or Statutory Restriction
 - Some Other Substantial Reason
- **Did the employer act reasonably or unreasonably in treating the potentially fair reason as a sufficient reason for dismissing the employee?**

(**Section 98 (4) ERA**, this question has to be considered taking into account all the circumstances, including the size and resources of the employer, and must be determined in accordance with equity and the substantial merits of the case.)

Usually the final question involves looking at the procedures that have been followed (was the dismissal procedure fair?) and considering if the decision to dismiss was reasonable in all the circumstances.

The tribunal will decide whether the employer's decision to dismiss fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted.

Compensation

If an employment tribunal decides a dismissal was unfair it can award an employee:

- A **basic award** of up to £14,670 (as at 1st April 2017)
- A **compensatory award** of up to £80,541 or 52 weeks' actual gross pay if lower (as at 1st April 2017)

A tribunal has the power to issue other remedies and sanctions and a claim for unfair dismissal may be accompanied by any number of other claims including wrongful dismissal and discrimination.