



Employment and related matters

Dismissal Procedures

There have been many changes to employment law and regulations in the last few years. A key area is the freedom or lack of freedom to dismiss an employee.

An employee's employment can be terminated at any time but unless the dismissal is fair the employer may be found guilty of unfair dismissal by an Employment Tribunal.

We set out below the main principles involved concerning the dismissal of employees. We have written this factsheet in an accessible and understandable way but some of the issues may be very complicated.

Professional advice should be sought before any action is taken.

The Right to Dismiss Employees

Reasons for a fair dismissal would include the following matters:

- the person does not have the capability or qualification for the job (this requires the employer to go through consultation and/or disciplinary processes)
- the employee behaves in an inappropriate manner (the company/firm's policies should refer to what would be unreasonable behaviour and the business must go through disciplinary procedures)
- redundancy, providing there is a genuine business case for making (a) position(s) redundant with no suitable alternative work, there has been adequate consultation and there is no discrimination in who is selected
- the dismissal is the effect of a legal process such as a driver who loses his right to drive (however, the employer is expected to explore other possibilities such as looking for alternative work before dismissing the employee)
- some other substantial reason.

Claims for Unfair Dismissal

After one year's service employees can make a claim to an Employment Tribunal for unfair dismissal within three months of the date of the dismissal and if an employee can prove that he/she has been pressured to resign by the employer he/she has the same right to claim unfair dismissal or constructive dismissal.

If the employee wins his/her case the Tribunal can choose one of three remedies which are:

- re-instatement which means getting back the old job on the old terms and conditions
- re-engagement which would mean a different job with the same employer
- compensation where the amount can be anything from a relatively small sum to an unlimited amount if the dismissal was due to some form of discrimination.

If the dismissal is demonstrated as being due to any of the following it will be deemed to be unfair regardless of the length of service:

- discrimination for sex, race or disability
- pregnancy, childbirth or maternity leave
- refusing to opt out of the Working Time Regulations
- disclosing certain kinds of wrong doing in the workplace.

Good Disciplinary Procedures

On many occasions a dismissal which seems quite justified to the employer will be found to have been unfair if correct disciplinary proceedings were not followed. ACAS (the Advisory, Conciliation and Arbitration Service) has developed a minimum Code of Practice on Disciplinary and Grievance Procedures and it is recommended that employers should follow this code.

The Code of Practice, which can be obtained from ACAS on 08457 474747 or direct from their website (www.acas.org.uk), covers:

- disciplinary practice and procedures in employment, including:
 - why have disciplinary rules and procedures
 - formulating policy
 - rules
 - essential features of disciplinary procedures
 - the procedure in operation
 - dealing with absence
 - dealing with poor performance
 - dealing with special situations
 - appeals
 - records
 - further action
- grievance procedures
- the statutory right to be accompanied at disciplinary and grievance hearings.

How We Can Help

We will be more than happy to provide you with assistance or any additional information required.