

UNFAIR DISMISSAL

WHAT YOU NEED TO KNOW

TYPES OF DISMISSAL

- Fair dismissal
- Unfair dismissal
- Unfair dismissal that is automatically unfair
- Constructive unfair dismissal
- Wrongful dismissal

Constructive dismissal

Constructive dismissal is when an employee considers it is necessary to leave their job because of their employers misconduct, for example because the employer is in breach of the employee's contract of employment. Examples of reasons why an employee may try and claim constructive dismissal include:

- Forcing a cut in your employee's salary or benefits
- Changing the employees role without good reason
- Suspending your employee without good reason
- Imposing an unfair disciplinary or performance process

RISKS OF UNFAIR DISMISSAL

- Financial: compensation and penalty costs, legal costs, lost opportunity costs
- Damage to your company's reputation – the employee tribunal is open to the public and the press
- Lost management time
- Lowered staff morale
- Increase in sickness absence

ELIGIBILITY FOR UNFAIR DISMISSAL

An employee had the right not to be unfairly dismissed by their employer. The employee will be eligible for unfair dismissal claims if:

- They have worked 52 weeks continuous service
- They have a working contract of more than eight hours per week
- If the employee was over age 16 and under states pensionable age
- If they were dismissed for one of the following auto unfair reasons:
 - Being or proposed member of a Trade Union
 - selected for redundancy
 - asserting a statutory right or claim for minimum wage
 - representing another employee
 - being pregnant or discriminated against
 - selected for redundancy on a criteria applied unequally to others

The complaint must be brought to Tribunal within 8 weeks after the effective date of termination, unless the Tribunal agrees exceptional circumstances.

WHAT IS UNFAIR DISMISSAL?

When an employee's contract is terminated for unfair or inadmissible reasons.

An employee has a right not to be unfairly dismissed when they have accrued 52 weeks continuous service.



VALID REASONS FOR DISMISSAL

- The employee's performance is unsatisfactory
- The employee commits an act of misconduct
- The employee's role becomes redundant
- The employee is unable to perform their role e.g. a driving ban
- Some other substantial reason
- Justified retirement

AWARDS FOR SUCCESSFUL CLAIMS OF UNFAIR DISMISSAL

Where the Tribunal finds that the grounds for complaint of unfair dismissal are well-founded, it shall consider one of the following:

- Reinstatement - where you will be required to treat the complainant as if the dismissal had not taken place.
- Re-engagement - where you will be required to restore the employee to an equivalent position.
- Compensation award based on a multiple of base salary times length of service.
- Plus up to £10,000 for any breach of contract not already compensated for plus minimum notice pay and contractual rights e.g. Holiday pay.

The Tribunal has the power to reduce the amount of compensation if the employee has unreasonably refused a reinstatement offer or the Tribunal found contributory faulty on part of the employee.

A TRIBUNAL WILL CONSIDER

- The size and administrative resources of your business
- Contractual rights and duties
- Consistency of treatment
- Whether procedure was followed fairly and reasonably
- Whether you carried out proper investigations where appropriate

WHAT YOU NEED TO DO

HOW TO FAIRLY DISMISS SOMEONE

- Follow procedure - failure to follow procedure will turn what may have been a fair dismissal into an unfair one.
- Define clearly what are considered 'reasonable' work standards
- Explain specific failures to meet standards, and what you consider to be serious misconduct in your disciplinary rules
- Deal with any issues during probation and set performance goals
- Explain the consequences of continued failure and set time limits for improvement
- Provide reasonable training and guidance
- Arrange lighter duties if health is an issue
- Counsel, discuss, listen and document evidence of conversations
- Keep good file notes

For further information call 747559 or contact becky@hrnow.je

