



## UNFAIR DISMISSAL

An employee has the right not be unfairly dismissed by his employer. He can bring a complaint to the Employment Tribunal (ET) for unfair dismissal if he has been continuously employed for one year and is employed under a contract of employment. Any such claim must be made to the ET within 3 months of the effective date of termination, which is the date of dismissal or the date that the notice period expires.

Once the claim has been accepted by the ET, a copy of the claim will be sent out to the employer (Respondent) notifying them of the claim against them. The employer then has 21 days within which to lodge their defence (Response) to the ET.

Once the fact of dismissal has been established, an employer then has to show what the reason was for the dismissal and that it was one of the listed potentially fair reasons for dismissal which are:-

1. Capability
2. Conduct
3. Redundancy
4. That the employee could not continue to work in the position he held without contravention of a duty or restriction imposed under an enactment (i.e., a driver losing his driving licence)
5. Some other substantial reason

It used to be the case that the ET would then go on to see if the employer had acted reasonably in the circumstances, which can still be the case, but with an additional factor for the ET to now decide.

Since the Employment Act 2002 (Dispute Resolution) Regulations 2004 came into force in October 2004, an employer also now has a duty to follow a statutory disciplinary procedure before dismissing the employee. In general terms, this is a 3 step process which involves the following:-

1. Send the employee a letter asking them to attend a disciplinary meeting, setting out the reasons for this;
2. Hold a disciplinary meeting;
3. Give the employee the right to appeal.

This sets out the very basics of the statutory procedure, and if you are considering carrying out disciplinary action, you should also read our 'Disciplinary and Grievance Procedures' factsheet.

If the statutory procedure is not fully complied with, and the reason for non-compliance is the employer's failure to comply, then any dismissal will be automatically unfair. In this instance, the ET would not need to hear any further evidence and would move straight to the issue of compensation. The Tribunal would not even consider the reason for the dismissal in this instance.

If the employer establishes that the reason for the dismissal is a potentially fair reason, and the dismissal is not automatically unfair, then the ET will go on to decide whether the dismissal was fair or unfair in all the circumstances of the case.

The ET will consider whether the decision to dismiss was a decision that a reasonable employer would reach and if they conclude that it was not, the dismissal will be unfair.

If an employee is found to have been unfairly dismissed, then the ET can make the following orders:-

1. Reinstatement
2. Re-engagement
3. Compensation

Employers should also be aware that a Tribunal also has the power to increase any compensation by up to 50% if an employer fails to comply with the statutory disciplinary procedure.

If you have any concerns about the above, you can contact our Employment Law team for some free advice.

**Should you require further information about how our Employment Law team can help you - just call 0800 040 73 99 – and one of our specialist advisors will be pleased to assist.**

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