

Dealing with unfair dismissal

If an employee has been with you for more than one year, he or she has the right not to be unfairly dismissed. There is a maximum award for some actions, but is unlimited in certain types of cases. It used to be that part time workers were unprotected, but they are now protected by the legislation. Are you clear on what is and isn't unfair?

Dismissal by reason of redundancy is not unfair, but dismissal for reasons connected with discrimination, trade union activities and pregnancy are automatically unfair. Further, there must be a fair selection procedure.

Dismissal on the occasion of business takeover is complicated. It will be automatically unfair, if a link can be shown between the takeover and the dismissal. However, the employer can try to prove that the dismissal was for an economic, technical or organisational reason necessitating changes to the workforce.

A dismissed employee can easily obtain from the Tribunal the necessary forms to get the application issued, but must issue the application within three months of dismissal.

There is no fee to issue an application and, generally, the Tribunal will not award costs against the unsuccessful party. There is therefore very little cost to the dismissed employee in bringing a claim, unless he or she uses lawyers.

Lawyers may be prepared to act for the dismissed employee on a conditional fee basis. The dismissed employee may have time on his hands and pursue his application personally.

An employer will devote much management time to dealing with the claim and might wish to take legal advice as to the merits. We always explore with the employer client the possibility of making a "nuisance payment" to the dismissed employee to get rid of the application, rather than to pay legal fees. One of the main considerations is the message sent out to the rest of the workforce.

If the employer has a disciplinary procedure, it is important that it is followed. If there is no specific disciplinary procedure, a statutory one is prescribed and an employer should ensure that a fair investigation is carried out prior to dismissal and that this includes giving the employee an opportunity to show why he should not be dismissed.

The Tribunal disregards any "reasons" for dismissal, discovered after the actual date of dismissal. The Tribunal considers what an employer, acting reasonably in the light of the information then known, would have done with regard to dismissal.

A dismissal will be unfair unless it was carried out because of: the employees conduct, capabilities or qualifications; redundancy; contravention of statute or some other substantial reason.

If you are in any doubt, feel free to get in touch with one of the team for an initial, no obligation discussion.