

Employers: How to lawfully dismiss an employee

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If you are considering the possibility of terminating a member of staff's employment, it is important to ensure that there are internal procedures in place which are fair and reasonable and that those procedures are followed. A careful approach reduces your exposure to claims before an Employment Tribunal.

Employment claims are complex, with little prospect of recovering the legal costs incurred in defending them. Awards to employees can often be substantial. It's therefore worth taking the time to get things right.

You must act fairly and reasonably, whilst ensuring compliance with any relevant terms of the employment contract and likewise make sure you do not discriminate unlawfully when dismissing an employee.

What are the fair reasons for dismissal?

1. Conduct
2. Capability
3. Illegality
4. Redundancy
5. Some other substantial reason (SOSR)

SOSRs are a "catch all" category capturing any reasons that don't fall within the other categories. For instance, they can cover scenarios where there is a personality clash or irretrievable breakdown in the working relationship.

Automatically unfair reasons for dismissal

- Pregnancy & maternity
- Family reasons
- Representation
- Trade union grounds
- Part-time and fixed-term employees

- Pay and working hours
- Pension scheme trustee
- Whistleblowing

Lawfully dismissing an employee with two or more years' service

The first hurdle is to ensure there is a fair reason for dismissal (as above). It's vital you:

- adopt a fair procedure;
- act reasonably in treating the reason as a sufficient reason for dismissal;
- act in accordance with the employment contract;
- do not discriminate; and
- provide reasons for the dismissal in writing.

Guidance on the procedure for dismissal is set out in the ACAS [Code of Practice](#).

"Employers failing to adhere to the ACAS Code of Practice can face uplifts of up to 25% on any compensation award ordered by an Employment Tribunal in deciding an unfair dismissal claim"

Employees with less than two years' service

Generally, employees must have been employed for two years, known as the 'qualifying period', before they are eligible to bring a claim for unfair dismissal. As such, and with the correct legal advice, it can be a relatively straightforward process to lawfully dismiss an employee with less than two-years' service - if the reason for

dismissal is not automatically unfair and/or discriminatory. Importantly, there is no qualifying period for either of these claims. You must take great care as successful claims will be deemed unfair regardless of the employee's length of service.

Discrimination and the protected characteristics under the [Equality Act](#)

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

There is no need to demonstrate that an employer acted unreasonably in any of these claims.

Time limits

There are strict time limits that preclude certain claims being brought with extensions being granted to employees when they begin the ACAS [early conciliation](#) process.

We can advise you of the relevant time limits depending on what stage the potential claim is at. It may be that the employee's claim is out of time regardless of its merits. There are occasions whereby an employee can obtain an extension of time by applying to the Employment Tribunal.

Contractual claims also known as “wrongful dismissal claims”

Employees who are unable to claim unfair dismissal can still claim for breach of contract (regardless of the length of the employment relationship), if you, as the employer, breach a term of the employment contract. For such claims, fairness is not an issue; with the remedy being limited to putting an employee in a position they would have been if the employer had not breached the employment contract.

In any dismissal, it is crucial that you give notice or notice pay to the employee - unless it is a summary dismissal and all accrued but untaken holiday is accounted for as at the date of dismissal.

When to seek legal advice

You should seek legal advice as early as possible to stay on the right side of the law and protect your business from potential claims.

Some practical steps to avoid potential pitfalls

- Good and consistent record-keeping;
- regular employee appraisals;
- have a compliant grievance procedure in place;
- keep an up to date staff handbook which is accessible by staff;
- investigate claims fairly to avoid victimisation claims; and
- depending on what stage of the procedure you are at and the business' exposure to risk, it may be both practical and commercial to come to a mutual settlement agreement to protect the business from future claims.

Whether you are looking to protect your business from claims, or need assistance with a new or existing claim, or require a review of your current policies and procedures, speak to employment lawyer [Karen Cole](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

