

Unfair dismissal

Your rights after the termination of your employment



Overview

Being dismissed from your job is often a distressing experience, but in certain circumstances you may have rights to compensation. You may be entitled to be paid through your notice period, or to compensation if your dismissal was unfair. You could be due a redundancy payment, or to be compensated for discrimination.

Wrongful dismissal is a contractual claim. This arises where you have been dismissed, and your employer has failed to fulfil their contractual obligations to give you notice of dismissal.

Your right to notice

Unless you are guilty of gross misconduct, your employer must either allow you to work out your notice, or make a payment to cover that notice period. The notice period is whatever the contract says, subject to the statutory minimum of one week for each full year of employment. Even if you have been wrongfully dismissed, you are under a duty to do your best to find alternative employment (to 'mitigate' your loss). In assessing what your losses are, you have to offset any earnings you receive during that period and any earnings you ought to have received, assuming you had made reasonable attempts to find alternative employment, from what you would have received if you had not been dismissed. Damages for wrongful dismissal are generally free from tax up to £30,000 but the measure of loss is the net pay and benefits for the notice period minus any earnings in mitigation.

Alternatively your employer may reserve the right in your contract of employment to make a payment in lieu of notice. If this is the case

you should receive a payment which reflects the length of your notice period. You are not expected to work your notice period. This payment is taxable as earnings in the usual way.

What is unfair dismissal?

If you have been employed for two years or more you have a right not to be unfairly dismissed. In order to dismiss fairly, an employer must:

- Have a fair reason for dismissal; and
- In dismissing the employee must follow proper procedures and the dismissal must be fair in all the circumstances.

Potentially fair reasons for dismissal include: lack of capability, misconduct, redundancy and some other substantial reason.

Even if it is established that the dismissal falls within one of these potentially fair reasons, the process of the dismissal must also be fair.

An assessment of the process must be made, typically covering issues such as:

For misconduct dismissals -

whether a reasonable investigation was conducted and whether the sanction of dismissal was a reasonable one. It may also be relevant to consider whether the ACAS Code of Practice on Discipline and Grievance Procedures has been followed.

For poor performance dismissals

- whether you were warned as to your performance and given a fair opportunity to improve. It may also be relevant to consider whether the ACAS Code of Practice on Discipline and Grievance Procedures has been followed.

For redundancies -

whether you were warned and consulted, whether there was an objective and Fair selection process and whether alternative employment was considered.

If you have been unfairly dismissed, you will usually be entitled to a basic award depending on your weekly pay, of up to £538 per week (as of 6th April 2020) for each year of employment multiplied by 0.5, 1 or 1.5 depending on your age (though not where a statutory redundancy payment has been

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paid) and a compensatory award based on your losses up to a current maximum of £88,519 (as of 6th April 2020). Compensation is capped at the lower of the current statutory cap or a year's pay.

An Employment Tribunal will set the compensatory award with a view to covering the time during which you are unemployed as far as it is just and equitable for it to do so. This will take into account the efforts you have made to find another job. An unfair dismissal can, however, result in a reduced or nil compensatory award if it is found unfair for procedural reasons alone and the Employment Tribunal thinks a fair procedure would have made no real difference.

There are also certain types of dismissal which are automatically unfair, like dismissal for maternity reasons or due to whistleblowing. If such matters are the reason or principal reason for dismissal there is no minimum service requirement or limit to compensation.

ACAS Code of Practice on disciplinary procedures

If your employer unreasonably fails to comply with the ACAS Code, an Employment Tribunal can increase your compensation by up to 25% if you succeed in a claim for unfair dismissal.

It is important to get advice at an early stage if you find yourself subject to a disciplinary procedure, because any award of compensation you ultimately receive via an Employment Tribunal if you are dismissed can also be reduced if you, as the employee, unreasonably fail to comply with the ACAS Code.

Redundancy

Redundancy is a potentially fair reason for dismissal. In order to satisfy the definition for redundancy,

the dismissal must be related to the fact that:

- Your employer is ceasing to carry on its business or it is ceasing to carry it on in your place of work or
- The requirements of the business for employees to carry out work of a particular kind have reduced or have ceased.

The focus on the need for employees means that if the same amount of work is to be done by fewer employees this is still a redundancy.

If you have been continuously employed for two or more years and you are made redundant, you will be entitled to a statutory redundancy payment of up to £538 per week for each year of employment (as of 6th April 2020) to a maximum of 20 years (multiplied by a factor of 0.5, 1 or 1.5 depending on your age).

Some employers may have contractual policies which provide redundancy payments over and above the statutory amount.

Where you are made redundant but are offered suitable alternative employment, you may lose your right to a redundancy payment if you unreasonably refuse that offer. For the alternative employment to be deemed 'suitable', it would normally need to be at the same or similar level of salary and benefits, status and responsibility.

You would also have to be given at least a four week statutory trial period, during which time you may decide (if reasonable) that you do not wish to continue in that employment, to leave and to accept the redundancy payment instead. Please note that the ACAS Code of Practice does not apply to redundancy situations.



Constructive dismissal

This is an unfair dismissal claim that arises when an employee resigns from their job because of a fundamental breach of contract by the employer. You should seek legal advice if you are contemplating leaving your job because of your employer's conduct. Please see our factsheet '**Constructive Dismissal**,' part of the Employment Law Series.

Discrimination

You may also be able to bring a further claim in an Employment Tribunal if your dismissal amounts to less favourable treatment because of your sex, pregnancy or maternity, race (including nationality), religion or philosophical belief, sexual orientation or age. The same applies if the dismissal was related to a disability, or where the employer had failed to make reasonable adjustments to accommodate your disability. Please see our '**Discrimination**' factsheets for further information.

Mandatory ACAS Early Conciliation

If you are thinking about making an Employment Tribunal claim, you will first need to notify details of your claim to ACAS, who will then offer early conciliation to try to resolve the dispute. The conciliation period can be up to one month. If the claim does not settle, ACAS will issue a certificate confirming that the mandatory conciliation process has concluded.

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There are changes to time periods within which to lodge claims to allow for the period during which a claim is with ACAS. The period within which a claim is with ACAS will not count for calculation of time limits; and if the time limit would usually expire during that period, or within the month after the certificate is issued, then you will have up to one month following receipt of the conciliation certificate in which to lodge a claim.

The process makes the calculation of time limits in employment tribunal cases more complicated. Claimants are advised to be aware of limitation issues and seek legal advice promptly. For further information on the ACAS early conciliation process visit: www.acas.org.uk.

You have six months from the date of termination within which to bring any claim for a statutory redundancy payment. Please note that time limits can be complicated and that you should take prompt legal advice if you think you may have a claim.

If your employer unreasonably fails to comply with the ACAS Code, an Employment Tribunal can increase your compensation by up to 25% if you succeed.

Bringing a claim

You have three months less one day from the date your employment ends to bring a claim in an Employment Tribunal for unfair dismissal and/or for breach of contract as a result of a wrongful dismissal. Lodging a grievance or being in an appeal process does not affect this time limit.

The Employment Tribunal only has jurisdiction to consider a breach of contract claim worth up to £25,000. Where a breach of contract claim exceeds that amount, a claim would need to be brought in the County or High Court, for which there is a six year limitation period from the date of the breach of contract.

You also have three months from the date of any discriminatory act (which may be the dismissal) to bring a discrimination claim in an Employment Tribunal. Again compensation can be increased or reduced by up to 25% if either side has unreasonably failed to comply with the ACAS Code's provisions.

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