

Co-op Legal Services: Can my employer dismiss me because of ill health?

In some situations, ill health could be a fair reason for dismissal if it relates to the employee's ability to carry out their role, but in other cases it could amount to discrimination and/or unfair dismissal.

If you've been dismissed from work following an absence due to ill health, there are several factors to consider.

Was this absence linked to an underlying condition, relating to a disability or age?

If so, this could amount to discrimination.

Did your employer follow a fair procedure before the dismissal?

This includes:

- adhering to their own absence procedure
- keeping in contact with you during your absence
- carrying out a medical investigation and obtaining a medical report if necessary
- carrying out a fair review of the attendance record and reasons for the absences, and providing you with a copy of this review
- holding back-to-work meetings with you upon your return to work
- inviting you to a meeting (with the option to be accompanied) when you hit an absence trigger
- issuing improvement notices / warnings, making the risk of dismissal clear if your absence levels do not improve
- allowing you an opportunity to improve, making it clear what is expected
- taking into account your performance and length of service
- considering the likelihood of a change in your attendance

If you've been absent long-term through ill health, should your employer have been expected to wait any longer for you to return?

This will depend on:

- the nature of your illness
- the likely length of your absence
- whether other staff could carry out your work
- the cost of continuing your employment
- the size of your employing organisation
- the impact on the organisation of having an employee on long-term absence
- whether the employee is entitled to enhanced ill health benefits

Did your employer consider alternative employment before dismissal?

- if ill health means you can no longer carry out some or all of your duties, your employer has a duty to consider redeploying you if there's alternative work that you could do
- if your ill health has been caused by your job and the nature of your work, your employer should consider taking steps to remove the problem
- while there's no obligation on your employer to create a new role for you, they should consider available vacancies, including demotion, a role with lower pay or a different role altogether
- in addition to the above, your employer also has a duty to make reasonable adjustments if you suffer from a physical and/or mental disability

For further information visit co-oplegalservices.co.uk/unfair-dismissal/