

# How to dismiss staff fairly

Your complete guide



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# How to dismiss staff fairly

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## The employer's guide on dismissals

### Introduction

This guide explores employment law on unfair dismissals. And offers employer advice on how to avoid common risks.

One of the most used and heard terms in employment law is unfair dismissal.

It's important that you know what unfair dismissals are. You don't want a case going to a costly employment tribunal.



# What is an unfair dismissal?

An unfair dismissal happens when an employer makes an employee leave their job. This is when it is without a legitimate reason or warning. Unless it's for gross misconduct.

Even if you have a fair reason for dismissing an employee you can still unfairly dismiss them.

You must follow a fair procedure when leading up to a dismissal. All your employees must receive the same procedure.

## Cases of unfair dismissals include:

- You dismiss for a reason that is not included in potentially fair reasons for dismissal.
- You dismiss for a fair reason but don't follow a fair procedure.



# What is a tribunal?

## Tribunals

A tribunal will decide whether a dismissal is fair or not. That's if your employee claims unfair dismissal.

A tribunal will look at the following:

- The reason for dismissal and whether it's a potentially fair reason.
- Have you followed a fair and reasonable procedure?
- Have you acted reasonably in relation to the employee's case?

## Who can claim unfair dismissal?

Your employee must have two years of service to claim unfair dismissal. Unless the case is an automatic unfair dismissal.

Anyone who doesn't is a 'short service' employee. For example, a worker or a self-employed person. They are not eligible to make a claim.



# What are the potentially fair reasons for dismissal?

## Potentially fair reasons

These are five potentially fair reasons you can dismiss an employee for:



- **Capability** – the employee is incapable of doing their job. This could be because they have inadequate performance.
- **Misconduct** – the employee behaves badly. This could be because they are persistently late or have many unauthorised absences.
- **Legal reasons** – you can't legally keep the employee on. For example, an employee has lost their driving licence when they need it for their job.
- **Redundancy** – the job role has become redundant.
- **Some other substantial reason** – this isn't set out in the law. It means that as the employer you must show a good reason for dismissing the employee. For example, if their contract was for maternity cover and that contract has now finished.

# What is an automatic unfair dismissal?

## Automatic unfair dismissal

Some reasons for dismissals are automatically unfair. A tribunal is not needed to decide if your actions were reasonable in these cases.

There are lots of automatically unfair reasons for dismissal. These are a few of them:

- Employees wanting to take family leave. Such as parental, paternity or adoption leave.
- Submitting a flexible working request.
- An employee that's part of a trade union or a union representative.
- Going on strike. It must be a legal official industrial action that is 12 weeks or less.
- Acting on or planning to act on health and safety issues within the workplace.
- Requesting for a legal right, such as pay that is the National Minimum Wage.
- Participating in jury service.
- Whistleblowing.
- Compulsory retirement. When an employee is forced to retire.

These claims can be made from day one of employment. The two years length of service does not apply to automatic unfair dismissals.



# How to follow a fair procedure



As an employer, you may have a potentially fair reason for dismissal. But you must still follow a fair procedure. If you fail to do this, the tribunal may still find the dismissal unfair.

Your disciplinary procedure might be different from other employers. But, a tribunal would expect that you do the following:

- The employee is informed of your concerns.
- You invite the employee to a hearing so they may put their case forward.
- You give them the time to appeal.

The discipline used should suit the level of an employment breach. You should give the employee time to improve.

Even in gross misconduct circumstances, you are expected to follow a procedure in terms of holding a hearing and providing an appeal.

You must ensure you follow the correct practice of disciplinary and grievance procedures. Failure to follow the code could mean compensation at the tribunal is changed.

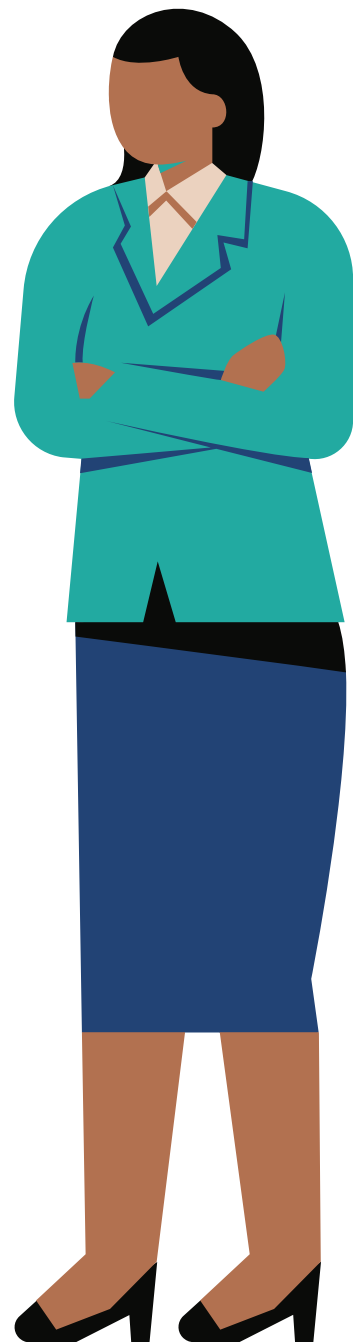


# What is constructive dismissal?

## Constructive Dismissal

Constructive dismissal is when an employee resigns because their employer has breached their employment contract.

The reason for the employee leaving must be serious. For example, if you reduce an employee's pay for no good reason. The two-year length of service rule still applies to a claim of constructive dismissal.



# Unfair dismissal compensation

## Compensation for employees

Compensation is different depending on the employee's circumstances. Employers could pay a basic and a compensatory award.

The basic award is to compensate for the employee being unfairly dismissed. It is based on the employee's gross weekly pay when you dismissed them.

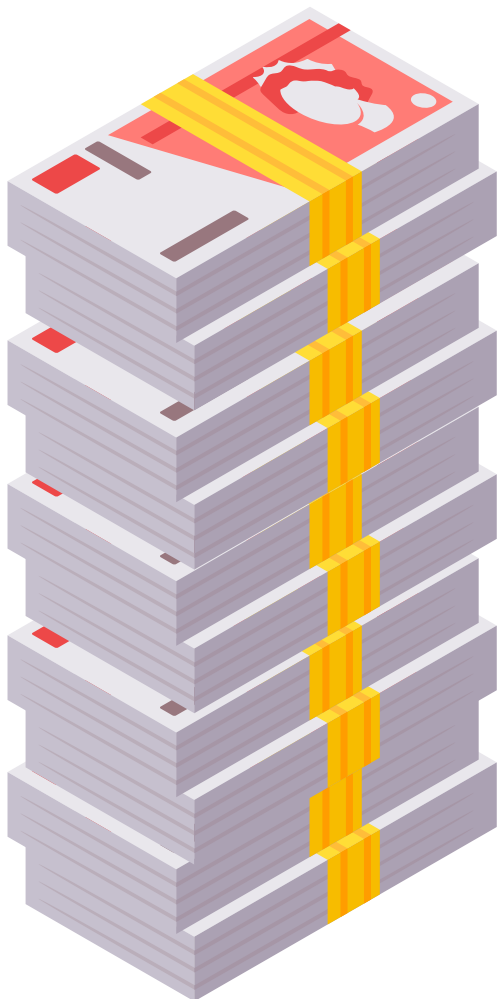
The amount will depend on the length of service and the employee's age. One week's pay is capped at £571. This amount is reviewed annually.

The compensatory award looks to compensate the employee for their job loss. Some examples include:

- Wage.
- Loss of pension payments.
- Medical insurance.
- Company car.

The award for unfair dismissal is currently capped at one year's salary, or £93,878, whichever is lower.

The employee may not receive any compensatory award if they start a new job at once, with the same or more pay. This is because they must mitigate their loss.



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