

Unfair Dismissals

Termination of Employment Series

Unfair Dismissals

The best protection from unfair treatment in the workplace is to become a union member as unionised employments tend to have better, fairer conditions and operate under agreed workplace procedures.

What's the difference between dismissal and redundancy?

Redundancy is not the same as dismissal or "being let go". Redundancy is where your job or position ceases to exist and your employer reduces the workforce. Dismissal on the other hand is where your employer no longer requires you to work for them and seeks to replace you with someone else. A dismissal can be considered either fair or unfair.

Does the law protect me from being dismissed from my job?

No, the law does not protect you from being dismissed but under certain conditions you may be able to bring a case against your employer for unfair dismissal. The unfair dismissals legislation essentially

allows you to appeal your employer's dismissal decision. The options for redress include re-instatement, re-engagement or compensation amounting to not more than 104 weeks remuneration.

The Acts basically places the following obligations on the employer: he must show that the dismissal was justified and he must have acted reasonably in all the circumstances of the dismissal

In order to bring an action under the Acts the employee must establish: that the Act actually applies to the employee or his employment and that he was actually dismissed.

The best protection from unfair dismissals is to become a member of a union.

In unionised employments, procedures have been negotiated and agreed between unions and management, which mean that where issues arise in the workplace, the first action should be to progress it through internal workplace procedures.

What's the difference between unfair dismissal and constructive dismissal?

Unfair dismissal is where your employer has dismissed you without due cause, a fair reason or has breached one of the necessary criteria [detailed in following sections].

Constructive dismissal on the other hand is where you have left your employment because you felt that you had no other option but to leave due to the behaviour or your employer and the treatment you experienced. The cause of a constructive dismissal could be a detrimental change in your contract of employment, intolerable working conditions, harassment or discriminatory behaviour. Where the employee feels that he has no other option available to him but to resign because his situation has become so unbearable i.e. the employee is 'forced into resigning.'

I have been dismissed from my job, do I have any rights?

Yes, if you have been dismissed from your employment you **may bring** a case of unfair dismissal provided certain conditions have been met. You must show that you are covered by the Act's provisions and that a dismissal **actually** took place.

It is advised that you contact your union representative in relation to this who will be able to directly assist you. Employers bear the onus of the Act's **regulatory** force as the burden is on them **to prove a dismissal is not unfair by establishing substantial grounds justifying the dismissal and that they followed fair procedures where they have acted reasonably.**

I was recently let go from my job with no explanation, is this an unfair dismissal?

If your employer has dismissed you, for it to be **considered fair**, it must be shown that it resulted wholly or mainly from:

- The capability, competence or qualifications of the employee
- The employee's conduct
- The redundancy of the employee
- Continuation of employment would contravene another statutory requirement
- Other substantial grounds for dismissal

For a dismissal to be **considered unfair**, it must result wholly or mainly from one of the following. An employees':

- trade union membership or activity either outside working hours or at times during working hours which were permitted by the employer
- religious or political opinions, race, colour, sexual orientation, age or membership of the traveller community
- participation as a party or witness to legal proceedings against the employer
- unfair selection for redundancy
- Pregnancy, giving birth, breast-feeding or related matters
- Exercise of rights under any of the following:
 - Maternity Protection Act
 - Adoptive Leave Act
 - Parental Leave Act
 - National Minimum Wage Act
 - Carer's Leave Act

→ Working conditions are made so difficult you feel obliged to leave, this can be considered to be constructive dismissal.

Can I be dismissed for misconduct?

Yes, you can be dismissed for misconduct. There are two types of misconduct, ordinary instances of misconduct or gross misconduct.

Ordinary instances of misconduct should be dealt with through agreed internal **disciplinary procedures**. Where agreed procedures are followed it normally involves a number of warnings (verbal or written) which are issued to you, with the objective of making you aware of your conduct, allowing you the opportunity to respond to such complaints and to ensure you have time to improve.

Gross misconduct includes behaviour such as drunkenness, assault, stealing or a serious breach of your employers policies which may lead to summary (instant) dismissal. However, behaviour which constitutes gross misconduct should be clearly outlined to every employee either in their contract, in other documentation which is easily accessible,. It is the responsibility of every employer to ensure that their employees are aware of behaviour which is acceptable or not within the organisation.

Should you receive verbal or written warnings from management you should contact immediately your union representative for advice and to accompany you to any disciplinary meeting. Management should always follow the internal disciplinary procedures when dealing with such issues.

Remember, in the interests of natural justice and fairness, you are entitled to be made aware of the breach of conduct, given the opportunity to respond to such alleged breaches and to be accompanied by your union representative.

For what reasons other than misconduct can I be dismissed?

You can be dismissed for incompetence, lack of capability to do your job or if you are under qualified (where the qualification criteria is justified). Examples include:

Under performance – however you should be made aware of the standards of performance which are expected of you. It is management's responsibility to ensure you are made aware of what is acceptable company practice and what is not. This should be part of your job description and later updated if there are any changes. Failure to do so, on the part of management, may result in the dismissal being considered unfair.

Continued lateness or absenteeism – your employer will also have to prove that you have been late on a continuous basis or that your absences have not been authorised or been medically certified. For instance, clocking-in information or proof that absences were not medically certified sick leave, would have to be provided by your employer.

Qualifications – there are 2 ways in which a dismissal can be related to qualifications. The first is where you deliberately misled your employer about the qualification requirements for the position. The other is that your employment is conditional on obtaining further qualifications and you neglected to do this.

In all instances, there would have to be proof by your employer that you were made aware of the situation and knew the consequences of continuing with this type of behaviour.

If you are the subject of any disciplinary action in your workplace, **you should contact your union representative immediately** for further information, advice and representation.

I was dismissed from work, can I ask for a reason?

Yes, you can ask your employer, in writing, to provide you with written notice of the reason for dismissal. This must be given within 14 days of your request.

It is not against the law for your employer not to provide you with a written reason for your dismissal. However, if you have requested a reason in writing, that and the absence of any response from your employer will be taken into account at any subsequent hearing which may take place.

If you feel you have been unfairly dismissed from your employment, it is crucial that you notify your union official as soon as possible.

I am an agency worker, am I protected against unfair dismissals?

Yes. In this instance, your employer is considered to be the party who hires you from the employment agency. The same criteria and conditions apply as detailed in earlier sections.

How long do I have to be working to take an unfair dismissals case?

The provisions of this act apply to employees (**with exceptions**) who have 1 years continuous service with their employer. If you do not have one year's continuous service you will not qualify to take a case under the Unfair Dismissals Act. However, in this instance you can refer the issue to a Rights Commissioner under the **Industrial Relations Act 1969**.

Alternatively, in the case of dismissal or other workplace issue you should speak immediately to your union representative who will advise you.

If I feel I have been unfairly dismissed, what should I do?

You can notify a **Rights Commissioner** formally in writing if you wish to make a claim of unfair dismissals.

You can also bring a claim directly to the **Employment Appeals Tribunal**. However, in this case either you or your employer must indicate on the complaint form the objection to the claim being referred to a Rights Commissioner.

Alternatively, you can seek help from your union representative who will assess your case and provide you with advice and guidance on the best approach to take in your particular situation.

It is important that you seek advice from your union as soon as the dismissal takes place as there are **time limits** in which you must notify of your intention to take a case.

Is there a time limit for taking a case of unfair dismissals?

Yes, the normal time for taking a case of unfair dismissals to a Rights Commissioner is **6 months**. Only in exceptional cases which prevented the case being lodged within the normal time period will it be extended to 12 months.

I have a specific purpose contract and have been let go, can I take a case under the legislation?

If you have a fixed term or specific purpose contract and it is:

- Written
- Signed by yourself and your employer
- Contains a clause stating that the Act shall not apply in the case of a dismissal arising only on the expiration of the fixed term contract or the completion of the specific purpose

then you will be excluded from taking a case under the unfair dismissals act.

If this is not the situation you may have grounds to take a case of unfair dismissals. In this instance you should contact your union representative and provide them with the details of your case. They will be able to give you the best advice in this situation.

Redundancy & Unfair Dismissals

Can a person be paid both a redundancy lump sum and compensation for unfair dismissals on foot of a taking a case to the Employment Appeals Tribunal?

No, both cannot be claimed. You are either made redundant or you are dismissed.

In a redundancy situation, the actual job disappears, see factsheet on redundancy. The Redundancy Payments Act 2003 emphasises the objective nature of redundancy as being work-related by using the phrase redundancy “for one or more reasons not related to the employee concerned”.

In a dismissal situation, an employee is asked to leave, whether fairly or unfairly, and is simply replaced by another person doing exactly the same job.

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