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Unfair Dismissal ^[1]

Have You Been Unfairly Dismissed From Your Employment?



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What is Unfair Dismissal?

Unfair dismissal occurs when an employee has been dismissed by his/her employer and believes that dismissal was unfair in some way.

Can I make an Unfair Dismissal Claim?

If you think that you have been unfairly dismissed there are certain criteria you need to meet in order to pursue an unfair dismissal claim in an Employment Tribunal:

- You must be an employee (not self-employed or working through an agency)
- You must show you were dismissed
- You must have at least two year's continuous employment
- You are in employment in Great Britain
- You submit the claim to an Employment Tribunal within 3 months less one day of the dismissal date

I have less than the continuous service requirement - Can I make a claim?

*There are some unfair dismissal claims that do not require a year's service. They fall into a category called automatically unfair dismissals. This means that the employer has a bigger hurdle to overcome when defending the claim. Common examples of automatic unfair dismissals are those relating to pregnancy or maternity, reasons connected with health and safety, whistleblowing and asserting a statutory right.

Once your claim is submitted, your employer will have the opportunity to respond to the claim within 28 days of receipt of the claim form from the Employment Tribunal.

During a very stressful unfair dismissal case that lasted 12 months I must

emphasise that the professionalism and excellent communication that was given to me by the Sydney Mitchell employment team was second to none. It gave me peace of mind to know that all of all of the legal matters connected with the case were being dealt with in a thorough and efficient manner which ultimately resulted in an emphatic victory at the tribunal in Birmingham. Due to the service that I received at all times I would not hesitate to recommend this legal practice to anyone who requires any form of legal assistance.

Steve Cooke, Birmingham

Employment Tribunal for Unfair Dismissal - the process

If a claim progresses to a final hearing, the employer will need to prove two things - that the reason for dismissal was a fair one and that it acted reasonably.

1. Potentially Fair Reasons

- Capability
- Conduct
- Redundancy
- Illegality e.g. you have lost your driving licence and your role requires you to drive
- Some other substantial reason (SOSR), e.g. business reorganisation, clash of personalities, third party pressure.

2. Reasonableness

If a fair reason can be established the Tribunal will then consider whether the employer acted reasonably in relying on that reason to dismiss. They will consider the size and resources of the employer and will evaluate how other employers in the same or similar circumstances would have dealt with the situation. This is called checking the "band of reasonable responses".

In cases of alleged automatic unfair dismissal the second part of the test (reasonableness) is not considered by the Tribunal therefore making it harder for the employer to show the dismissal was fair.

Unfair Dismissal Compensation - what compensation will I receive?

If after analysing all the facts and applying the relevant law the Tribunal thinks that no reasonable employer would have dismissed the employee for the reason provided, the dismissal will be unfair in law and the employee will be entitled to compensation.

However, if the Tribunal decides that some employers might have dismissed in those circumstances, the dismissal will be fair and the employee will have lost his/her claim.

Successful Unfair Dismissal claims

If successful a claim for unfair dismissal will lead to compensation being awarded by the Employment Tribunal. The maximum award for unfair dismissal is currently the lower of £76,574 or 12 months gross pay. 52 weeks gross pay for the purposes of the statutory cap excludes pension contributions, benefits-in-kind and discretionary bonuses. Dismissals for whistle blowing or related to certain health and safety reasons remain uncapped as do dismissals relating to unlawful discrimination.

An uplift or a decrease in the compensation may also be awarded in accordance with the ACAS Code of Practice depending on the circumstances of the case.

If you feel you have been unfairly dismissed talk to our established employment team today. We will talk through the details of your employment with you and advise on the best course of action to take.

[Contact us today](#) ^[2]

Links

[1] <https://www.sydney Mitchell.co.uk/services-individuals/employment-law/dismissal/unfair-dismissal>

[2] <https://www.sydney Mitchell.co.uk/unfair-dismissal-claim-form>