

Breach of Employment Contract ^[1]

Unfair dismissal

Unfair dismissal occurs when an employer dismisses an employee for reasons that the employee claims to be unfair, i.e. breaches the contract. If an employee wants to take his/her claim of unfair dismissal to the Employment Tribunal there is a set of criteria that the employee must meet, these include:

- The employee must have been working for their employer for at least two years continuously*
- The claim must be submitted to the Tribunal within 3 months minus one day from the dismissal date

* The service period that has to be gained in order to be able to claim unfair dismissal increased from one to two years on 6th April 2012. Any employee commencing employment on or after that date will have to work for their employer for two years continuously before they will have the right to claim. Any employee already in employment before 6th April 2012 will only need one year's service to claim.

Proving unfair dismissal

If a case goes to Tribunal, the employer would need to prove that the reason for dismissal was a fair one. There are five potentially fair reasons:

- The employee's conduct in the workplace
- Redundancy ^[2]
- Capability
- Legal obligation to end employment (for example, where a driver loses his driving license)
- Some other substantial reason (SOSR), such as a clash of personalities or business re-organisation

On the assumption that the employer could rely on one of the above reasons, the Tribunal would then have to decide whether it acted reasonably in relying on that fair reason as a

sufficient reason for dismissing the employee. When deciding this the Tribunal would look at different issues such as the size of the employer and its resources. It would also consider the “band of reasonable responses” test, which looks at whether the response of the employer fell within a band of reasonable responses of a reasonable employer having carried out a reasonable investigation.

If after analyzing all the facts and applying the relevant law the Tribunal thinks that no reasonable employer would have dismissed for the offence, the dismissal will be unfair. However, if the Tribunal decides that some employers might have dismissed in those circumstances, the dismissal will be fair.

Successful claim

If successful a claim for unfair dismissal will lead to damages being awarded by the Employment Tribunal. The maximum award for unfair dismissal is currently £72,300 as of 1st February 2012.

If you have any queries on breach of contract, [contact us](#) ^[3] today for advice.

Links

[1] <https://www.sydney Mitchell.co.uk/business-services/employment-law/employee-dismissal/breach-contract>

[2] <https://www.sydney Mitchell.co.uk/business-services/employment-law/redundancy-procedure>

[3] <https://www.sydney Mitchell.co.uk/contact>