

# UNFAIR DISMISSAL - CLAIMS UPON DISMISSAL

## UNFAIR DISMISSAL

The right to claim unfair dismissal is provided for by the Employment Rights Act 1996. Claims for unfair dismissal may only be brought in the Employment Tribunal.

### Who can claim?

The right to claim applies to employees only and the employee must have been dismissed.

Further the employee must have at least 1 year's continuous service to qualify for the right, unless the dismissal is for a reason to which the requirement does not apply, e.g. dismissals relating to pregnancy, childbirth or family leave. It may also be possible to extend the qualifying period if the employee has not been given the required statutory minimum notice.

It is possible that a period of employment with a previous employer could count towards the employees' total continuity of service, for example, if they have been transferred to a different employer under the TUPE Regulations.

### Time limits for claiming

Claims for unfair dismissal must generally be presented within **3 months** of the effective date of termination of employment.

### Dismissal

To succeed in a claim of unfair dismissal, the employee has to show that he was dismissed by the employer. The circumstances in which an employee is treated as having been dismissed for the purposes of an unfair dismissal claim include:

- termination of the employee's contract by the employer
- resignation by the employee, where he is entitled to do so by reason of the employer's conduct. This is known as constructive dismissal.

### Reason for dismissal

Once the employee has established that they have the right not to be unfairly dismissed and that they have been dismissed, the Employment Tribunal will generally look to the employer to show that the reason or principal reason for dismissal was one of the potentially fair reasons which are:



- Capability or qualifications
- conduct
- redundancy
- breach of statute
- some other substantial reason

If the employer does establish a potentially fair reason for dismissal, the tribunal will consider whether the dismissal was fair or unfair having regard to all of the circumstances of the case and decide whether the employer's actions fell within the range of reasonable responses of a reasonable employer.

Dismissal will be automatically unfair if the employee is able to show that the reason or principal reason for dismissal was one of a list of special reasons, including pregnancy, reasons relating to health and safety and whistle blowing



SOLICITORS

11 Church Road  
Tonbridge Wells  
Kent TN1 1JA

Tel: 01892 526344  
Fax: 01892 511223

185 High Street  
Tonbridge  
Kent TN9 1BX

Tel: 01732 355911  
Fax: 01732 355191

3 Tonbridge Road  
Maidstone  
Kent ME16 8RL

Tel: 01622 690777  
Fax: 01622 662555

Suite 100, 70 Churchill Square  
Business Centre, Kings Hill,  
West Malling ME19 4YU

Tel: 01732 897925

Email: [mail@the-solicitors.co.uk](mailto:mail@the-solicitors.co.uk) [www.the-solicitors.co.uk](http://www.the-solicitors.co.uk)

### Procedure followed by employer

Even where an employer has established that the reason for dismissal is potentially fair, the dismissal may be found to have been unfair where the employer has failed to follow a fair procedure. Employers must follow the ACAS Code of Practice on Disciplinary and Grievance procedures.

### Remedies

Where an Employment Tribunal has found that an employee has been unfairly dismissed, it will consider what remedy should be ordered.

The available orders are:

- an order for reinstatement: ordering the employer to give the employee his old job back and to make good any loss of earnings from date of dismissal to date of reinstatement.
- an order for re-engagement: ordering the employer to give the employee a job comparable to his old job and to make good any loss of earnings from date of dismissal to date of re-engagement
- an order for compensation: this is the usual remedy that is asked for and generally includes:
  - a 'basic award', the amount of which depends on the gross weekly pay of the employee, their length of continuous employment before dismissal and their age
  - a 'compensatory award', to compensate the employee for financial losses suffered as a result of the unfair dismissal and may include continuing loss of earnings and expenses in looking for alternative employment

### WRONGFUL DISMISSAL

Wrongful dismissal is dismissal in breach of contract, for example for dismissing an employee without giving them the correct notice period or before the end of a fixed term contract.

### Time limits

A claim for wrongful dismissal (breach of contract) can be brought in the Employment Tribunal (where the time limit for presenting the claim is **3 months** from the effective date of termination) or as a breach of contract claim in the county court (where the time limit is 6 years).

The procedure for bringing and responding to claims in the Employment Tribunal is much less complex than the procedure in the civil courts.

### Counterclaim by employer

The employer may make a counterclaim if the claimant has made a claim for breach of contract. This is the only jurisdiction in which this is possible in the Employment Tribunal.

### Remedies

If someone is found to have been wrongfully dismissed they may be able to recover compensation for all financial and other benefits that they would have received had they been dismissed in compliance with the contract.



SOLICITORS

11 Church Road  
Tunbridge Wells  
Kent TN1 1JA

Tel: 01892 526344  
Fax: 01892 511223

185 High Street  
Tonbridge  
Kent TN9 1BX

Tel: 01732 355911  
Fax: 01732 355191

3 Tonbridge Road  
Maidstone  
Kent ME16 8RL

Tel: 01622 690777  
Fax: 01622 662555

Suite 100, 70 Churchill Square  
Business Centre, Kings Hill,  
West Malling ME19 4YU

Tel: 01732 897925

Email: [mail@the-solicitors.co.uk](mailto:mail@the-solicitors.co.uk) [www.the-solicitors.co.uk](http://www.the-solicitors.co.uk)