

# Employment Law Fact Sheet No. 7

## LEGAL REASONS FOR DISMISSAL



An employer must have a fair reason for dismissal. The six potentially fair reasons for dismissal are:

- Misconduct;
- Redundancy (e.g. less work available or reduced need for staff);
- Incapability and ill-health (e.g. no good at job or too sick to do it);
- Illegality; (e.g. continuing to employ a box driver with a driving ban);
- Some other substantial reason. This is not a “catch all” category and still has to amount to a valid reason.

If there is no fair reason for dismissal or if it is procedurally unfair, an employee with more than two years' service will have a right to bring a claim in the Employment Tribunal for unfair dismissal.

Some dismissals are automatically unfair – for example where the employee has raised a health and safety concern and is dismissed as a result, if an employee is dismissed for reasons connected with pregnancy or maternity leave, or for “blowing the whistle” on alleged malpractice. For most dismissals falling within the “automatically unfair” category there is no need for a minimum period of service to bring a complaint for unfair dismissal.

There is also no need for a minimum period of service if bringing a claim for discrimination (see Action Points below).

### Procedural Fairness

As a minimum the employer should, undertake the following procedure:

- Send the employee a written invitation to a meeting/disciplinary hearing and advise the employee what this meeting will be about;
- Hold the meeting/hearing; and
- Give the employee the right to appeal.

Dismissals must be fair in all the circumstances. Certain other steps may also need to be taken, depending on the situation. For example, dismissals due to capability are likely to be deemed fair only if the employer has given the employee the chance to improve.

Further detail is set out in the ACAS Code of Practice. Whilst this code is not legally enforceable it should be adhered to because an Employment Tribunal will take this into account.

[Link to ACAS Code of Practice](#)

## When written reasons for dismissal are required

Written reasons for dismissal are required:

- When requested by an employee with more than two years' service; and
- Automatically for any employee dismissed whilst on maternity leave regardless of length of service.
- Failure to provide the reasons in these circumstances is likely to result in further compensation in the Employment Tribunal.

## Further Information

See the TBA's sample Discipline and Grievance Procedures Fact sheet on "Dealing with disciplinary sanctions"

[ACAS on dismissal with links to further useful guidance](#)

## Action points

- For those without qualifying service:
- Ensure there are no potential claims for discrimination. For example, on grounds of sex, race, disability, marital status sexual orientation or age; and
- Consider the need to follow the ACAS Code
- For those with qualifying service (two years): Follow the ACAS Code; and ensure that there is a fair reason for dismissal not connected to sex (e.g. pregnancy), race, religion/belief, disability, marital status, sexual orientation or age.
- Do not contemplate dismissing pregnant women or carrying out age related dismissals without taking advice first.
- Remember that retirement is no longer a potentially fair stand-alone reason but may fall within 'some other substantial reason' if the particular retirement can be validly justified on business grounds. See TBA guide on retirement for further important information.

## Be Aware!

Among other changes, the proposed Employment Rights Bill (not yet law) introduces the concept of day one unfair dismissal rights. While these will not be in force until Autumn 2026, they promise to transform the way in which employers deal with workforce management in early-stage employment.

There will be no more two-year qualifying period. Instead, the Bill introduces the new concept of an "initial period of employment" (IPE), during which a modified version of the right to unfair dismissal will apply. The IPE seems likely to be a nine-month period.

The standard of 'reasonableness' for dismissals during the IPE will be modified to require employers to 'show' that the reason for dismissal is 'related to the employee's conduct, capability, statutory restriction, or some other substantial reason (SOSR) related to the employee'. Note that redundancy is excluded from this list, meaning that employees made redundant during the IPE have the full right to claim unfair dismissal from day one. A complete change if it comes into law.

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