

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 (6 months from 1 January 2027) 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 (6 months from 1 January 2027); 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 - 6 months from 1 January 2027): 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!

After much Parliamentary debate, the Government has reversed its original plan for day-one unfair dismissal rights. Instead, the qualifying period for unfair dismissal claims will change to 6 months from the current two years, effective from 1 January 2027.

This remains a massive change and re-set for the employment relationship as the change from two years to six months remains a big one that will impact almost all employers, particularly in combination with the changes to time limits for bringing a claim that precede it. Looking at that more closely:

- The 6-month qualifying period will apply to all new starters from 1 January 2027 meaning that employees dismissed after completing 6 months' service will be able to claim unfair dismissal, subject to the usual statutory requirements.
- The limitation period will jump from 3 to six months from October 2026.
- ACAS early conciliation has already been extended from 6 to 12 weeks. The combination of these two changes will mean a total of 9 months during which a claim could be brought.
- The cap on unfair dismissal claims (currently the lower of one year's pay or £118,223 increasing – for now - to £123,54) will be lifted from 1 January 2027.

What does this mean for employers? Essentially, employers need to pay more attention because time will be short and changes may well need to be made. What about recruitment, onboarding, and probationary practices in light of the new timeframes? Employees who might have been allowed to improve on the job may not have the same chances in future, as managers become more diligent in performance management and documentation during the initial period of employment, because claims for unfair dismissal will become possible much sooner than before.

Potential action points:

- Review contracts, handbooks, and induction materials to reflect the new qualifying period. This could include using shorter probationary or notice periods so that fair dismissals can be implemented before the six months elapses.
- Ensure that managers are aware of the changes and are trained to assess performance and conduct sooner, and to follow fair procedures if ending employment during or after probation.
- Consider whether there are workforce changes that need to be made before the new regime takes effect.

While a 6-month qualifying period is an enormously better outcome than the anticipated day-one unfair dismissal rights, this change will still require a cultural and procedural shift. One can easily see that unexpected consequences may ensue as a result of this marked change in direction.

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