



What Constitutes Unfair Dismissal? - Employment Tribunal Claims

The Employment Rights Act sets out the **6 potentially fair reasons** that an employer may use to lawfully **dismiss an employee**. However even where one or more of these reasons have been used **it does not mean that the dismissal is fair** and you may be able to make an **Employment Tribunal claim**. The potentially fair reasons for dismissal and what your employer must consider when relying on one of those reasons are listed below:

Capability

Poor performance – were you offered extra training or support so that you could improve? Were you offered a less demanding job? Were you given any warnings? Are the same standards applied to everyone?

Ill health – are you disabled within the definition of the Disability Discrimination Act? If so, did your employer offer to make reasonable adjustments to accommodate your disability or offer you a more suitable role? Were you offered ill-health retirement? (Usually where you are seriously ill

and permanently incapable of any work.) Are there any other jobs that you could do?

Conduct

If you have been dismissed for misconduct at work your employer must have a genuine belief that you are guilty of the deed, usually following an investigation. Check your contract of employment to see what constitutes misconduct. Are these rules applied fairly and consistently across the workplace? Are there any mitigating circumstances and were you given any warnings? Warnings must have a time limit and expired warnings cannot be taken into account when considering dismissal.

Redundancy

A position is made redundant, not a person. The redundancy process should be fair and unbiased. You should have been offered any alternative positions available. Check the selection criteria and how you compare with colleagues who have retained their jobs. Special protection applies to women on maternity leave.

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Retirement

If you had wanted to continue working beyond retirement age your employer should have asked you of your intention to do so between 6 months and a year before your retirement date. If your employer refused that request you should have been offered an appeal. If your employer acted within the rules and still refused your request, it will be difficult to claim unfair dismissal.

Illegality

This is where illegality prevents you from doing your job, such as working as a lorry driver when you have lost your driving licence. Your employer should discuss any alternatives to dismissal with you, but if you are at fault and no alternative roles are available this would probably be classed as a fair dismissal.

Some Other Substantial Reason (SOSR)

This is a 'catch all' category which allows employers to dismiss people for other reasons. The employer must follow a fair procedure and the Employment Tribunal must agree that the reason was 'substantial' based on the facts of the particular case. If you have been dismissed for SOSR we strongly urge you to seek legal advice about your Employment Tribunal claim.

Automatically unfair dismissals

If you believe your dismissal was related to any of the reasons below you should have a strong case to make an Employment Tribunal claim. With specialist legal support you would win the best financial outcome.

- Pregnancy and childbirth
- Parental leave

- Health and Safety reasons
- Acting as a representative in certain situations
- Whistleblowing
- Victimisation
- Seeking flexible working
- Being summoned or absent from work for jury service
- Taking part in protected industrial action

There are many more automatically unfair reasons so please seek legal advice if you have been dismissed.

If you are thinking about bringing an employment tribunal claim and are looking for a solicitor call our freephone helpline on:

T: 0808 129 3320

Got Legal Expenses Cover on your Home Insurance Policy?

It is important to note that if you have legal expenses cover on your home insurance policy you may be able to use this to fund the cost of instructing an employment law solicitor.

This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated in to the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice. For further information on how we can help you please contact:

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