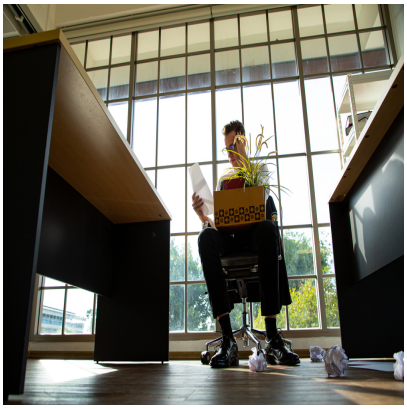
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Unfair dismissal: Employee guide

Description

Introduction

In this guide I cover the right to be able to bring an **unfair dismissal** claim, automatically unfair reasons, fair reasons, fairness, constructive **unfair dismissal** and how to bring a claim.

The right

Generally, currently, employees need to have at least two yearsâ?? continuous service with their employer to be able to bring an **unfair dismissal** claim, although there are some exceptions. The new employment legislation will reduce the qualifying period from two years to six months. The six month qualifying period will apply for employees with employment end dates on or after 1 January 2027.

Automatically unfair

Dismissals for some reasons are automatically unfair and in most cases the employee does not need the minimum qualifying period. Reasons include, among others, a reason connected with pregnancy or childbirth, for a health and safety reason, for making a protected disclosure (whistleblowing) and for asserting a statutory right.

Fair reasons

An employer can defend an unfair dismissal claim by showing that the reason or principal reason for the dismissal was one of the potentially fair reasons for dismissal. Potentially fair reasons are:

- Conduct;
- Capability;
- Redundancy;
- Contravention of a statutory restriction, such as continued employment breaching immigration rules; or

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- Some other substantial reason, such as pressure from a client.



Fairness

Once the employer has established a fair reason for the dismissal the employment tribunal has to decide whether the employer acted reasonably in dismissing the employee for that reason. What is reasonable will depend on the reason for dismissal and the particular case.

Constructive unfair dismissal

Employees in certain cases could resign and claim constructive **unfair dismissal**. To succeed in the claim an employee would need to have resigned swiftly as a result of a fundamental breach of the employment contract, such as a breach of a key express term or a key implied term.



Bringing a claim

Before bringing a claim you would need to follow the Advisory, Conciliation and Arbitration Services (Acas) early conciliation process.

A claim for **unfair dismissal** must usually be filed with the employment tribunal within three months (less a day) from when the employment ends and that is subject to the rules for extending time for early conciliation.

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The maximum compensation award in most cases is, currently, the lower of 52 weeksâ?? pay or the fixed current cap, currently being Â£123,543. The new employment legislation will abolish the 52 week and financial cap. The removal of the cap will take effect from 1 January 2027.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **unfair dismissal** or have queries relating to other employment law matters please do not hesitate to contact me on 020 3797 1264.

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