

UNFAIR DISMISSAL FACT SHEET

In order to bring a claim for unfair dismissal:-

1. **You must be an employee.** The legal definition of employee is “an individual who has entered into or works under (or, where the employed has ceased, worked under) a contract of employment.”
2. **You must have been continuously employed for a period of not less than two years.** There are exceptions to this, some of which are:-
 - Dismissal for reasons related to pregnancy, childbirth or maternity;
 - Dismissal for certain health and safety reasons;
 - Dismissal for making a “protected disclosure”;

Potentially fair reasons to dismiss include:-

Capability or qualifications

Capability in law means “capacity assessed by reference to skill, aptitude, health or any other physical or mental quality” – a distinction is drawn between incapability due to incompetence and incapability due to ill health.

Misconduct

This is a ground often relied upon by employers to justify dismissal. Whether or not the dismissal is fair or unfair will depend on whether the Tribunal considers that the employer has acted reasonably.

Redundancy

Redundancy is potentially a fair reason for dismissal; however the employer must have gone through a process of consultation with the employee(s) and selected employees using objective selection criteria.

Dismissal for some other substantial reason

This is a general provision and examples would include reorganisation of a business or business disruption for example in one case there was antagonism between an employee and a fellow worker which caused disruption to the business.

Although the above are potentially fair reasons for dismissal, the employer must have acted reasonably. There are also a number of dismissals which are automatically unfair, for example, refusal to allow an employee to return to work after parental/maternity leave or assertion of statutory rights.

It is important to act quickly as proceedings for Unfair Dismissal must be issued within 3 months less one day, of the Effective Date of Termination of employment (the “EDT”). Determining the EDT can be complicated – if in doubt seek legal advice.