



To visit our website
... [click here](#)

For more information on
running your business
... [click here](#)

employee dismissals

This briefing explains the key legal points to take into account if you are considering dismissing an employee.



Why is it important to follow the law when dismissing an employee?

Dismissing an employee for a reason other than one allowed by law, without following the correct procedure or giving adequate notice, may lead to a claim for unfair or wrongful dismissal against the business. Compensation for a successful claim can potentially be substantial. Regardless of whether a claim succeeds, the costs of defending it, in terms of management time and legal expenses may be significant and are not usually recoverable.

Overview

Generally the dismissal of an employee will be unfair unless the employer can show there was:

- A potentially fair reason for the dismissal;
- The employer acted reasonably in treating that reason as sufficient for dismissal as opposed to some other form of sanction; and
- The employer followed a fair procedure leading up to the dismissal.

In many cases an employee must have completed a qualifying period of service before they can bring a claim for unfair dismissal. The qualifying period is two years or one year if their employment started before 6 April 2012.

However, certain dismissals are deemed to be automatically unfair and an employee is protected as soon as they start work. These include dismissals connected with:

- Pregnancy;
- Parental leave;
- Requests for flexible working;
- Whistleblowing; or
- TUPE transfer.

More information

If you have any queries about the content of this checklist, please contact Amanda Doyle on amanda@doylelaw.co.uk.

The information in this checklist does not constitute legal advice and is provided for general information purposes only. No warranty, whether express or implied is given in relation to this checklist.

Fair grounds for dismissal

The Employment Rights Act 1996 sets out several potentially fair reasons for dismissing an employee:

- Conduct at work (for example, they have filed a fraudulent expenses claim or persistently arrive late at work);
- Inability to carry out their job because they lack the necessary skills required (for example, a sales manager has consistently failed to meet reasonable sales targets despite receiving additional support and training);
- Absence on long-term sick leave and inability to return to their job;
- Their job is redundant (for example, if the business is declining or the workplace is facing closure). Do not use redundancy as an easy alternative to dismissing an employee for poor performance as the "redundant" employee could make a claim for unfair dismissal;
- Their continued employment would be illegal (for example, the business has discovered that an employee's immigration status does not permit them to work);
- They are being dismissed for what is known as "some other substantial reason".

Common examples of some other substantial reason are where the relationship between the parties has broken down, there is a conflict of interest or a serious personality clash or a major customer threatens to remove their business unless an employee is removed. However, care should always be taken, as the circumstances must be serious enough to warrant dismissal.

Fair procedure

Always follow a fair procedure in any disciplinary/grievance situation. Even if you have established a potentially fair reason for dismissing an employee, dismissing them without following a fair procedure will be unfair.

ACAS has a very helpful Code of Practice in relation to discipline and grievances see:

[http://www.acas.org.uk/media/pdf/s/o/Acas-Guide-on-discipline-and-grievances-at-work-\(April-11\)-accessible-version-may-2012.pdf](http://www.acas.org.uk/media/pdf/s/o/Acas-Guide-on-discipline-and-grievances-at-work-(April-11)-accessible-version-may-2012.pdf).

You are not required to follow the Code to the letter but the Employment Tribunal is required to consider the Code in deciding whether any disciplinary process was fair. The Tribunal is also permitted to increase an ex-employee's compensation if it considers you unreasonably failed to follow the Code.

Many businesses adopt their own disciplinary policy and process, which is acceptable, as long as they are broadly consistent with the Code but drawing up policies and processes can be tricky. The Code itself contains some very good samples of disciplinary processes/policies, including those addressed specifically at small business, and also various letters/notices that might be used as part of the process.

Always check the employee's contract

It is possible to dismiss an employee fairly but still be in breach of contract if you have not given them the correct notice under their contract. This could lead to a claim for wrongful dismissal (for example, you failed to give them their contractual notice period or pay a contractual bonus. It might also mean you lose the right to enforce valuable protections in the contract such as post-employment restrictions (for example, stopping an employee going to work for a competitor).

More information

If you have any queries about the content of this checklist, please contact Amanda Doyle on amanda@doylelaw.co.uk.

The information in this checklist does not constitute legal advice and is provided for general information purposes only. No warranty, whether express or implied is given in relation to this checklist.