

## Dismissals

### 1 . What dismissal is

A dismissal is when an employer ends an employee's contract. It usually means the same as being sacked or fired.

It's important that an employer uses a fair and reasonable procedure to decide whether to dismiss someone.

Before an employer dismisses an employee, they should:

- believe they have a valid reason – read about [types of dismissal and reasons to dismiss someone fairly](#)
- follow a full and fair procedure, usually in line with the [Acas Code of Practice on disciplinary and grievance procedures](#)
- make a decision that's balanced, consistent and as fair as possible

The procedure an employer follows will be taken into account if an employee claims for unfair dismissal and the case reaches an employment tribunal.

### Giving the reasons for dismissal

If an employer dismisses an employee, they should tell the employee:

- why they've been dismissed
- when their employment contract will end
- their notice period, if there is one
- their right to appeal the decision

It's a good idea to put it in writing.

### When an employer must put the reasons in writing

An employer must put the reasons in writing for an employee who's pregnant or on maternity leave, regardless of how long they've been employed.

Other employees have the right to ask their employer for a written statement giving the reasons for their dismissal if they have:

- ['employee' employment status](#)
- been employed for 2 years

If an employee asks, their employer must give them the reasons in writing within 14 days.

### If an employee believes the dismissal is unfair

An employee can appeal against a dismissal.

If the employer does not follow a fair and reasonable procedure the employee might be able to make a claim for unfair dismissal, even if the reason for dismissal was valid.

[Find out what employees can do if they think a dismissal is unfair](#)

## Telling other people at work

Employers should respect the confidentiality of the person who's been dismissed. For example, when they tell colleagues and clients that the employee has left. Any outcome of a disciplinary procedure must remain confidential.

[Find out more about talking to staff after a disciplinary procedure](#)

## Settlement agreements

A settlement agreement is sometimes used when an employer and employee agree to end their employment relationship because they both agree it's no longer working. This can include some dismissal situations.

[Find out more about settlement agreements](#)

If you're thinking about using a settlement agreement, you should [get legal advice](#).

## 2. Types of dismissal

By law (Employment Rights Act 1996), the following are potential reasons to dismiss someone fairly:

- conduct – when the employee has done something that's inappropriate or not acceptable
- [capability](#) – when the employee is not able to do the job or does not have the right qualifications
- redundancy – when the job is no longer needed
- a legal reason – when the employee cannot do their job legally, for example a lorry driver who's banned from driving
- 'some other substantial reason' – a term used for a wide variety of other situations

Examples of other substantial reasons are:

- a fixed-term contract ending
- third party pressure, for example if a client refuses to work with an employee
- an employee refusing to agree to new terms and conditions of employment

## Gross misconduct

Gross misconduct is when an employee has done something that's very serious or has very serious effects.

Examples could include:

- fraud
- physical violence
- serious lack of care to their duties or other people ('gross negligence')
- serious insubordination, for example refusing to take lawful and reasonable orders from a supervisor

Your organisation might have its own policy or rules with other examples of gross misconduct.

Gross misconduct will usually only be relevant in dismissals related to conduct – in other words, an employee's behaviour at work.

An employer must still follow a fair and reasonable procedure if someone is accused of gross misconduct.

## Redundancy

Redundancy is usually a type of dismissal when a role is no longer needed. Employers should only consider making redundancies if part or all of the organisation is:

- closing, or has already closed
- changing the types or number of roles needed to do certain work
- changing location

In this case, the employer must follow a full redundancy process.

If an employer has concerns about an employee's conduct or performance, they need to follow a [disciplinary](#) or [capability procedure](#).

Find out more about:

- [checking whether redundancies are needed – for employers](#)
- [redundancy rights for employees](#)

## Dismissal because of long-term illness

Dismissal should be a last resort. The employer should firstly support the employee and help them get back to work. This could include making any '[reasonable adjustments](#)' if they have a disability (this includes some long-term health conditions).

For example, an employer may be able to dismiss someone fairly if:

- they've considered all other options
- it's not possible for the employee to do their job
- the employee's inability to work has a significant impact on the business

Dismissal because of long-term illness would usually be a [capability issue](#). This means it would depend on whether or not the employee is able to do their job.

Employers must investigate fully and have a valid reason for dismissal. The employee could make a claim to an employment tribunal if they think they've been unfairly dismissed.

Dismissing someone because they're disabled (this includes some long-term health conditions) could be discrimination.

[Find out more about disability discrimination](#)

## 3. Dismissals with and without notice

When an employer dismisses an employee, they should give them notice of when their job will end.

[Find out more about notice periods](#)

## Notice pay

In most cases, the person who's been dismissed is entitled to the same pay they'd normally get if they work their notice period.

The employee's final pay may be different from their usual monthly or weekly pay because of things like:

- how much holiday they've taken
- money being deducted for training courses
- being off work

They may need to get paid other outstanding money, for example bonuses or pay for working overtime.

[Find out more about final pay when someone leaves a job](#)

## Dismissal without notice for gross misconduct

An employer can dismiss an employee without giving notice if it's because of gross misconduct (when an employee has done something that's very serious or has very serious effects). The employer must have followed a fair procedure.

When an employee is dismissed for gross misconduct, they:

- leave immediately
- do not have a notice period
- do not get paid notice pay

There are some things the employer must still pay them for. These include:

- any work they have not been paid for yet
- any holiday they have built up ('accrued') but not used by the date they leave
- any expenses they're owed

The employer may also need to pay them for other work benefits, unless their contract says something different.

## 4. Unfair dismissal

It's important to understand what unfair dismissal is by law. This is because different rights might apply depending on the circumstances.

It might be unfair dismissal if an employee worked for their employer for at least 2 years and any of the following apply:

- there was no [fair reason](#) for the dismissal
- the reason was not enough to justify dismissing them
- the employer did not follow a fair procedure

The fair procedure must follow the [Acas Code of Practice on disciplinary and grievance procedures](#), if it's to do with:

- unacceptable or inappropriate behaviour ('misconduct')
- performance ('capability'), unless it's about illness

If the dismissal is because of another reason, it's a good idea to use the Code of Practice to inform the fair procedure.

## Dismissal before someone has worked 2 years

If someone is dismissed before they have worked for their employer for 2 years, they will need to check what rights are available to them. This is sometimes known as 'short service dismissal'.

Depending on the reason for the dismissal, one of the following might apply:

- automatically unfair dismissal
- wrongful dismissal

## Appealing a dismissal

If an employee thinks their dismissal was unfair and wants to challenge it, they can appeal through their employer's appeal process. The employer should tell them how to appeal.

Being able to appeal a dismissal is also part of the Acas Code of Practice.

The employee may want to speak to their trade union if they have one or [get legal advice](#).

[Find out more about appealing a dismissal](#)

## Automatically unfair reasons

Some things are 'automatically unfair' if they're the main reason for dismissing an employee.

These include:

- [making a flexible working request](#)
- being pregnant or on maternity leave
- wanting to take family leave, for example parental, paternity or adoption leave
- being a trade union member or representative
- taking part in legal, official industrial action for 12 weeks or less, for example [going on strike](#)
- asking for a legal right, for example to be paid the National Minimum Wage
- doing jury service
- being involved in [whistleblowing](#)
- being forced to retire (known as 'compulsory retirement')
- taking action, or proposing to take action, over a health and safety issue

An employee does not need 2 years' service to claim automatically unfair dismissal.

## Unfair dismissal because of a health and safety issue

An employer must not cause someone 'detriment' if they:

- reasonably believe being at work or doing certain tasks would put them in serious and imminent danger
- take reasonable steps over a health and safety issue, for example complaining about unsafe working conditions
- inform their employer about a health and safety issue in an appropriate way

Detriment means you experience one or both of the following:

- being treated worse than before
- having their situation made worse

Examples of detriment could be:

- their employer reduces their hours
- they experience [bullying](#)
- they experience [harassment](#)
- their employer turns down their training requests without good reason
- they are overlooked for promotions or development opportunities

If an employee is dismissed and one of these health and safety issues is the main reason, it might be classed as 'automatically unfair'.

## Unfair dismissal because of industrial action

Employees cannot be dismissed for taking part in industrial action if:

- it's called as a result of a properly organised ballot
- it's about a dispute between them and their employer (for example, about terms and conditions)
- the employer receives a legally required, detailed notice about the industrial action at least 7 days before it begins
- they take part in the action at any time within the 12 weeks from when it began

Non-union members have the same rights as union members not to be dismissed if they take part in legal, official industrial action.

After 12 weeks, employees could be dismissed for taking part in industrial action if the employer has tried to settle the dispute. For example, the employer may have asked Acas to help find a solution.

[Find out more about collective conciliation](#)

## Constructive dismissal

If an employee feels they have no choice but to resign because of something very serious their employer has done, they might be able to claim for 'constructive dismissal'.

The legal term is 'constructive unfair dismissal'.

[Find out more about constructive dismissal](#)

## Making a claim to an employment tribunal

If the employee has tried to appeal and wants to take it further, they may want to make a claim to an employment tribunal.

An employee usually has the right to make an unfair dismissal claim to an employment tribunal if:

- they have '[employee](#)' [employment status](#)
- they've worked for their employer for 2 years

If they've been dismissed for an 'automatically unfair' reason it does not matter how long they've worked for their employer.

## If someone thinks they've been discriminated against

If someone thinks they've been unfairly dismissed because of race, sex or another 'protected characteristic', this could be discrimination. They could make a claim to an employment tribunal for both discrimination and unfair dismissal.

For the discrimination claim, they do not need to have worked for their employer for 2 years.

[Find out more about discrimination and the law](#)

## When to make a claim

There are strict time limits for making a claim to an employment tribunal. Someone has 3 months minus 1 day from the date their employment ended.

In almost all cases, the date someone's employment ends is either:

- the last day of their notice period
- the day they were dismissed if the employer did not give notice

Find out more about:

- [making a claim to an employment tribunal](#)
- [employment tribunal time limits](#)

## Wrongful dismissal

A 'wrongful dismissal' is when an employer has breached an employee's contract. It's usually to do with notice or notice pay.

Examples of wrongful dismissal can include:

- dismissing an employee without giving them a notice period or notice pay
- not giving someone the full notice period they're entitled to

If an employee wants to make a claim for wrongful dismissal, it does not matter how long they've worked for their employer.

## Contact the Acas helpline

If you have any questions about unfair dismissal, you can [contact the Acas helpline](#).

Related content

[/disciplinary-and-grievance-procedures](#)

[/appealing-a-disciplinary-or-grievance-outcome](#)

## 5. Constructive dismissal

If an employee feels they have no choice but to resign because of something their employer has done, they might be able to claim for 'constructive dismissal'.

The legal term is 'constructive unfair dismissal'.

## What constructive dismissal is

An employee can make a constructive dismissal claim if they resign because they think their employer has seriously breached their employment contract.

Examples could include:

- regularly not being paid the agreed amount without a good reason
- being bullied or discriminated against
- raising a grievance that the employer refuses to look into

- making unreasonable changes to working patterns or place of work without agreement

It could be because of one serious incident or a series of things.

## If you're in this situation

Resigning is a big step to take, and a constructive dismissal claim can be difficult to win at an employment tribunal.

You can raise a problem informally by [talking to your employer](#).

If you've already tried to resolve things informally you can [raise a grievance](#). This is where you make a formal complaint to your employer.

If you're going to resign, you should [get legal advice](#) first.

## Settlement agreements

A settlement agreement is sometimes used to end an employment relationship in a way the employer and employee both agree with.

If you sign a settlement agreement, you cannot make a constructive dismissal claim to an employment tribunal.

[Find out more about settlement agreements](#)

## If you resign

In your resignation letter you should explain clearly your reasons for leaving.

If there's been a serious breach of contract you may want to leave your job straight away instead of working your notice period.

Doing this could be a breach of your employment contract but it can be justified sometimes. You should [get legal advice](#).

## Making a constructive dismissal claim

You usually have the right to make a constructive dismissal claim to an employment tribunal if:

- you have ['employee' employment status](#)
- you've worked for your employer for 2 years

There are strict time limits for making a claim to an employment tribunal. In most cases, you have 3 months minus 1 day from either:

- the last day of your notice period
- the day you resigned, if you did not give your employer notice

Find out more about:

- [making a claim to an employment tribunal](#)
- [employment tribunal time limits](#)