

Qualifying for Unfair Dismissal

If you are unfairly dismissed, you are entitled to compensation. In order to claim unfair dismissal, you must have been employed by your employer in the UK for 2 years or more (there are a few cases where you do not need to be employed for at least 2 years, for example, if you are dismissed for asserting a statutory right or for a pregnancy-related reason).

What is an Unfair Dismissal?

In order to claim for unfair dismissal, you must have been dismissed. This means that you must have been either (1) an actually dismissed (given “the sack”), (2) been constructively dismissed (see Factsheet on Constructive Dismissal), or (3) been employed under a fixed-term contract which has expired. In order for a dismissal to be fair, it must be for a specified reason (e.g. redundancy, misconduct or ill-health) and your employer must act fairly in carrying out the dismissal. This means that your dismissal is likely to be unfair if for example:

- You are denied the right to be accompanied by a Trade Union representative or a work colleague to a hearing. If you are required to attend a disciplinary or grievance interview or hearing, you are entitled to be accompanied by either a work colleague or a Trade Union representative. If your work colleague or Trade Union representative cannot attend the hearing but proposes a reasonable alternative within the next 5 working days, your employer must postpone the hearing to that time.
- Your employer does not consider reasonable alternatives to dismissing you, such as demotion, redeployment, warnings, etc.
- Your employer does not treat you consistently with other employees, for example if you are dismissed for poor time-keeping but other colleagues are not.
- Your employer does not follow a fair procedure. This means that your employer must comply with its own policies and procedures (e.g. disciplinary/redundancy/capability procedures) before dismissing you. In addition, as an absolute minimum, you are entitled to:
 1. written details of the reason your employer is considering dismissing you.
 2. a hearing so that you can state your case before any decision is taken to dismiss you, and
 3. a right to attend an appeal hearing. You should also be treated consistently with other similar cases and you are entitled to be accompanied to any formal disciplinary hearing.

Remedies

If you are unfairly dismissed, you will be entitled to either reinstatement (i.e. being taken back into your old job), re-engagement (being taken back by your employer to a different job), or compensation.

The most common remedy is compensation. Overall, the total available amount of compensation is £76,700. Sometimes, for example if you are dismissed for a pregnancy-related reason, the limit on the Compensatory Award does not apply and so the potential overall compensation is unlimited.

To make sure that you are compensated fully for these losses, you need to be able to show that you have kept your losses to a minimum by applying to the Benefits Agency for any benefits you may be entitled to and you must take reasonable steps to apply for further work. This is called mitigating your losses.

You should therefore make sure that you keep written records of all applications you make for benefits and for further work. For example, this will mean keeping copies of job advertisements, application letters and application forms and letters from employers telling you of the outcome of your applications.