

UNFAIR DISMISSAL

Qualifying for Unfair Dismissal

If you are unfairly dismissed, you are entitled to compensation. In order to claim unfair dismissal, you normally have to have to be aged 65 or less and you must have been employed by your employer in the UK for 1 year or more (there are a few cases where you do not need to be employed for at least 1 year, 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 our 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 (eg. 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 disciplinary hearing. 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. A letter from your employer setting out written details of the reason your employer is considering dismissing you. This covers, for example, written details of any disciplinary allegations, details of any possible redundancy situation or (if you are a fixed-term employee) written details that your contract is due to expire and reasons why you cannot be kept on.
 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.

Many employers will already have these 3 stages built into their own procedures governing discipline, redundancy, sickness-management absence etc, but even if this is not the case, you are entitled to the 3-stage process anyway. **Every employee is entitled to this 3-stage procedure and if your employer does not follow it, your dismissal will be automatically unfair (as long as you have been employed for more than 1 year, etc) and you will be entitled to an increase of between 10 and 50% on any compensation (subject to the maximum amount of £65,200).**

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 maximum available amount of compensation is £65,200. However, under some exceptional circumstances (e.g. if you are dismissed for a pregnancy-related reason) 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.