



# COVENTRY LAW CENTRE

## EMPLOYMENT

## DISMISSAL AND REDUNDANCY

Although every effort is made to ensure the information in this leaflet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law and does not constitute legal advice - we cannot be held liable for any inaccuracies and their consequences. The information in this leaflet is written for people resident in, or affected by, the laws of England and Wales only.

## **Dismissal from work**

People are dismissed from work for a variety of reasons and many of those reasons are fair and unavoidable, some leave through mutual agreement but unfortunately, some people are unfairly dismissed from work or unfairly selected for redundancy.

With some limited exception you will not be able to make the claim for unfair dismissal unless you are an employee with at least one year's continuous service of employment. An employee is someone who works under a contract of employment. The majority of working people are employees (although some people don't have a written contract of employment). The types of people who are not covered by this area of law are self-employed or other people who provide a service without actually being employees. If you are not sure if you are covered you should seek further advice.

Dismissal can occur if an employer ends the contract and tells the employee they are dismissed, or if the employer breaches the contract in such a way that it gives the employee no alternative but to resign. When a fixed term contract comes to an end this is also a dismissal and if you are in any doubts you should seek advice to determine whether this dismissal was unfair. Unless you are guilty of gross misconduct you should receive notice of dismissal or pay in lieu of notice.

### **Potentially fair reasons for dismissal**

The employer may attempt to justify the dismissal by saying it was for a potentially fair reason such as the employee was not capable of doing the work they were employed to do, or they had committed an act of gross misconduct or there were less serious incidents of misconduct which the employee had been warned about, there was a genuine redundancy situation or there was some other legitimate reason.

The employer must be able to show that they acted reasonably in taking the decision to dismiss. However, a smaller employer with limited resources will not be expected to take the same procedural steps as a much larger organisation although both would be expected to be fair and consistent in their treatment of employees.

If an employee is dismissed on the basis of capability it is expected that a reasonable employer would discuss the problem with the employee beforehand and give them necessary support and appropriate training.

If an employee is dismissed because of their conduct, the employer will be expected to have carried out an investigation of the alleged conduct before taking the decision to dismiss. If the employee is accused of gross misconduct then the employer is entitled to dismiss without notice, but this only occurs in circumstances where the conduct is sufficiently serious, for example, if the employee has been caught committing an act of theft or has been fighting on the company's premises.

If it is necessary for an employer to make redundancies then the employees should be warned and consulted before hand, a fair selection criteria should be used and reasonable steps should be taken to find the employee alternative work within the organisation.

### **Constructive Dismissal**

A case of constructive dismissal occurs when the employer has breached a term of the employee's contract to such a serious degree that the employee is left with no alternative but to resign. This is a very difficult area of law and the success rate is quite low for employees

claiming constructive dismissal. The resignation has to be in response to the breach, but if you are in any doubt about resigning you should take further advice first.

### **Written reasons for dismissal**

If you have worked in a job for one year then you will be also entitled to receiving written reasons for your dismissal. A pregnant worker is always entitled to written reasons for their dismissal regardless of length of service.

If you believe you have been unfairly dismissed then the correct course of redress is before an Employment Tribunal. You have 3 months to bring a claim of unfair dismissal and it is an area of law that you are advised to seek further advice on.

If you do not have one year's service necessary to bring an unfair dismissal claim you may be able to bring a breach of contract, or wrongful dismissal claim to recover any outstanding money that is owed to you on termination of your employment, for example, holiday pay, payment in lieu of notice, or any other outstanding money that is owed to you. There may also be limited circumstances in which you could claim unfair dismissal if, for example, you were sacked for whistle blowing or making a complaint about health and safety.

### **Redundancy**

You may feel that there was inadequate consultation with you before the decision to make you redundant was taken; that you were unfairly selected; that there was alternative work which you should have been offered or that there was not a genuine redundancy situation. If so, you should get advice about a possible claim for unfair dismissal.

If you think that you were selected for redundancy for a reason connected with your sex, race, disability, trade union membership, health and safety activities or part time working you should get further advice.

Even if you have been made legitimately redundant from work there are still a number of issues to consider:-

#### **1. Redundancy Pay**

You should check that you have received the correct redundancy pay. First check whether your employer has any contractual scheme for paying enhanced redundancy payments. If there isn't such a scheme then the statutory scheme may apply if you have been employed for 2 years and redundancy was the reason for dismissal. The amount of the redundancy payment is based on your age, length of continuous employment and gross average wage. You are entitled to 1½ weeks pay for each complete year in which you were 41 or over; 1 week's pay for each complete year in which you were 22 or over and under 41 and ½ a week's pay for each year when you were under the age of 24. Years you have worked under the age of 18 are not counted, so because of the 2 years requirement

The maximum number of years to be counted is 20 and a week's pay is your gross average wage (not including overtime unless contractual) up to a maximum of £380.00 per week.

#### **2. Notice**

Your employer should have consulted with you before making you redundant and should have given you notice to terminate your employment. You are entitled to a week's notice for every full year which you have worked up to a maximum of 12 weeks (if you have worked for less than 2

years you may not qualify for a redundancy payment but you should get at least 1 week's notice).

If you are not given enough notice you may be entitled to a payment in lieu of notice.

You may be entitled to take reasonable time off to look for other work or arrange training.

### **3. Other Payments**

You should also check that you have received all other payments owed to you by the employer such as holiday pay, outstanding wages, bonus payments etc.

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