

UNFAIR DISMISSAL

Unfair dismissal as the name suggests is a **dismissal that is unfair**, which means the termination of a contract without a fair reason and without a fair process. For it to be 'fair' it needs both.

In Jersey, employees with 52 weeks' continuous service have a right to not be unfairly dismissed. Employers need to be aware of this right, the protection offered to employees, the risks to employers and how to mitigate those risks. This advice guide will explain what you need to know and what you need to do.

What you need to know...

TYPES OF DISMISSAL



- **Fair dismissal** – reasonable and justifiable dismissal, following a fair process (examples provided later in this guide)
- **Unfair dismissal** – where a proper process was not followed
- **Automatic Unfair dismissal** – if the dismissal is a result of joining a trade union, asserting statutory rights (e.g. minimum wage) or if they are dismissed on discriminatory grounds
- **Constructive unfair dismissal** (more detail below)
- **Wrongful dismissal** – where the way that the dismissal happens is in breach of the employment contract (e.g. not paying notice)

Constructive Dismissal is where an employee considers it is necessary to leave their job because of their employer's misconduct, for example because the employer is in breach of the employee's contract of employment.

The following criteria must be met for this to be considered a Constructive Dismissal by Tribunal:

- The employer must be in breach of the contract of employment
- The breach must be fundamental i.e. a repudiatory breach
- The resignation must be a response to that breach
- The employee must not delay too long in resigning following the breach

Examples of reasons why an employee may try and claim constructive dismissal include:

- Forcing a cut in salary or benefits
- Changing their role without good reason
- Suspending without good reason
- Imposing an unfair disciplinary or capability process

CONSTRUCTIVE DISMISSAL



RISKS OF UNFAIR DISMISSAL



- **Financial:** the employer may face compensation and penalty costs, legal costs, lost opportunity costs
- **Reputational:** the employee tribunal is open to the public and the press
- **Time:** lost management time
- **Employee morale:** can lead to low productivity and increased sickness absence amongst other employees

The employee will be eligible for unfair dismissal claims if:

- They have 52 weeks' continuous service
- They are over the age of 16 at the time of dismissal
- They were dismissed for one of the following reasons, this would be considered an automatic unfair dismissal:
 - Being or proposing to be a member of a Trade Union
 - Asserting a statutory right or claim for minimum wage
 - Representing another employee
 - Discrimination (due to a 'Protected Characteristic', e.g. pregnancy)
 - Being selected for redundancy on criteria applied unequally to others

ELIGIBILITY FOR UNFAIR DISMISSAL



The complaint must be brought to Tribunal within 8 weeks of the effective date of termination.

FAIR REASONS FOR DISMISSAL



The following are potentially fair reasons for dismissal, provided that a fair process is followed:

- Unsatisfactory performance
- Misconduct
- Redundancy
- Change to capability or qualifications in relation to the work they do e.g. a driving ban
- Some other substantial reason
- Justified retirement

Should the claim be successful, the Tribunal may impose one of the following:

- Compensation award based on a multiple of base salary times length of service (e.g. 12 weeks' pay for 24 months' service).
- Plus up to £10,000 for any breach of contract not already compensated for, minimum notice pay and contractual rights e.g. Holiday pay.
- Reinstatement - treating the complainant as if the dismissal had not taken place.
- Re-engagement - restoring the employee to an equivalent position.

AWARDS FOR SUCCESSFUL CLAIMS OF UNFAIR DISMISSAL



If the dismissal was discriminatory, this may result in further compensation payment of up to £10,000 for each discriminatory act and for hurt and distress.

The Tribunal has the power to reduce the amount of compensation if the employee has unreasonably refused reinstatement or they found that the employee contributed to their dismissal.

A TRIBUNAL WILL CONSIDER



- The size and administrative resources of your business
- Contractual rights and duties
- Consistency of treatment
- Whether procedures were followed fairly and reasonably
- Whether you carried out proper investigations

What you need to do...

HOW TO AVOID AN UNFAIR DISMISSAL CLAIM



- Follow procedure - failure to follow do so will turn what may have been a fair dismissal into an unfair one.
- Define 'reasonable' work standards clearly.
- Explain the consequences of failing to meet standards, and what you consider serious misconduct.
- Deal with any issues during probation and set performance goals.
- Explain the consequences of continued failure and set time limits for improvement.
- Have clear policies (disciplinary, capability, grievance) and sure they are accessible.
- Provide training and guidance to employees to give them every reasonable chance to do their role effectively.
- Arrange lighter duties if health is an issue.
- Counsel employees, discuss options, listen to feedback.
- Document / evidence conversations.

to find out more contact hello@hrnow.je