



Ashdown Human Resources

Dismissal of short-serving employees



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Background

As a general rule employees with under two years service do not have the right to claim unfair dismissal. This is different for example in Northern Ireland when the time period is one year and UK legislation may also change in the future.

However this does not mean that there are no issues to consider when dismissing employees with short periods of service, for example during a probationary period. This fact sheet describes some of the more common issues to be considered.

Automatically unfair reasons for dismissal

There are some occasions when the dismissal of a short-serving employee will be automatically unfair. These reasons should never be overlooked. The most common occasions are:

- When the employee was a member of a trade union or proposed to become a member, and was dismissed for having taken part in trade union activities, including official industrial action, or was acting as an employee representative or pension scheme trustee and the individual was dismissed because of this.
- When the employee is dismissed for asserting a statutory right, for example to receive written statements of particulars of employment within the correct time period, in connection with the National Minimum Wage, statutory annual leave or for having unlawful deductions made from their wages.
- For a reason connected to their pregnancy or maternity.
- For a reason connected to health and safety, for example carrying out a task on health and safety grounds that was unpopular with other staff, bringing a health and safety risk to the attention of a third party or refusing to carry out a task on health and safety grounds.
- Similarly a dismissal on the grounds of Whistleblowing will also be automatically unfair.



Dismissal on grounds relating to a Protected Characteristic as defined by the Equality Act 2010 may also be automatically unfair and in addition give rise to a discrimination claim. In these cases there is no qualifying period of service, and claims can even be brought by someone who has not been offered a position. For example, if a job applicant is not offered a role because they are for example pregnant at the time of interview, a claim of direct sex discrimination could be made.

Dismissals close to the two year point

Sometimes an employer may dismiss an employee without notice (or with pay in lieu of notice) or without following a contractually binding disciplinary procedure in order to prevent the employee from accruing two years' service and therefore the right to bring an unfair dismissal claim. In this case the statutory minimum notice period (one week) needs to be taken into account and counted as qualifying service. This means that if an employee is dismissed with 1 year and 51 weeks service, they can still claim unfair dismissal.