

EMPLOYMENT LAW – UNFAIR DISMISSAL

What is unfair dismissal?

A dismissal is unfair, and the employee has the right to make a claim of unfair dismissal to the Employment Tribunal, when the employer dismisses an employee without having a fair reason to do so, or if the employer uses an unfair procedure to dismiss the employee. “Fair reasons” are restricted to those defined in the legislation.

Who is eligible to make a claim for unfair dismissal?

An employee who has at least one year’s continuous employment. Very few categories of employee are excluded, but self-employed people are not eligible. However, there are some cases where the employee does not have to have a year’s employment, such as where the dismissal is related to Trade Union activities, a health & safety issue, pregnancy or maternity rights. Any employee who believes he or she has been unfairly dismissed, should take legal advice about eligibility for a claim.

What is the time limit for an unfair dismissal claim?

A claim must be made within three months of dismissal. It is very rare for this time limit to be extended. Failure to apply within the time limit will mean the right to claim is permanently lost. An employee who has been dismissed should therefore seek legal advice as soon as possible, to give their solicitor time to investigate the case and make the application.

How is a claim for unfair dismissal decided?

There are two stages – firstly the Employment Tribunal decides whether the dismissal was for a “fair reason”. The fair reasons are defined in the legislation, and include that the employee is not capable of doing the job; the employee’s misconduct e.g. theft; redundancy; or some other valid reason e.g. failure to fit in with a necessary reorganization of the business. The second stage is to consider whether the dismissal was dealt with in a fair way. This is a requirement even if the reason for dismissal was fair. This requirement covers things like allowing an employee to have fair notice of the employer’s dissatisfaction with his/her performance, or allowing the employee to be accompanied at disciplinary hearings by a colleague or trade union representative.

What is constructive dismissal?

This happened where an employee leaves their job because they have been forced into it by the employer’s behaviour amounting to a fundamental breach of contract. For example, if an employer harasses, victimises or humiliates an employee, or allows other employees to do so, and the employee feels that they cannot remain in their job. The employee’s resignation may be treated by an Employment Tribunal as if they had been dismissed by the employer. They may then be eligible to claim unfair dismissal. Constructive dismissal is hard to prove and professional advice will be necessary. Contact one of our employment law solicitors.