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Dismissal

This page details your statutory rights when being dismissed from employment, and your employer's responsibilities.

It also provides information about valid reasons for dismissal, claiming unfair dismissal and constructive dismissal.

Your rights

If you are dismissed after being continuously employed for at least one year, whether on a full- or part-time basis, you are entitled to a written explanation of the reason for the dismissal. Section 92 of the Employment Rights Act

1996 says you have such a right when you have been: · dismissed without notice

- given notice of dismissal
- employed on a fixed-term contract which has expired, without being

the employee has made a request orally or in writing. A request can be made at any time after dismissal or within the notice period if the employee has been given notice of dismissal. If you are dismissed while pregnant, or on maternity or adoption leave, you

An employer is not obliged to provide written reasons for dismissal unless

are entitled to receive written reasons, irrespective of length of service and without having to make such a request The employer's responsibilities

Once requested, the employer has to provide written reasons within 14 days.

The employer is not required to go into great detail as to the reasons for dismissal. However, the underlying reasons need to be made clear. It is

good employment practice for the employer to let the employee know in writing the reasons for dismissal, without being specifically requested to do The employee has the right to bring a claim in the Employment Tribunal if the employer fails to provide written reasons for dismissal once they have

been requested. Claims must be lodged within three months of the date on which the employment ended. Where an employment tribunal has ruled in favour of the employee, it can make a declaration as to what it considers were the employer's reasons for the dismissal. The employment tribunal can also order the employer to pay the employee a sum equal to two weeks' pay. Reasons for dismissal

set out below

Capability

Valid reasons for dismissal can fall under five possible categories, which are

This concerns the employee's ability to perform the kind of work he or she was employed to do, having regard to 'skill, aptitude, health or any other

Conduct

physical or mental quality'. Most of ATL's cases involve members dismissed following invocation of the capability procedure or who have been absent on long-term sick leave. The employer must produce evidence of poor performance, but need not prove that the employee was incapable of performing all their duties. The

employer is expected to conduct a proper investigation/appraisal of the employee's performance, identify the problem, provide training, supervision and encouragement, monitor progress, give them a reasonable chance to

improve, and warn them of the consequences of not doing so. In cases of long-term ill-health, the employer should discuss matters with the employee at the start of the illness and periodically throughout it, and consider their opinions on their condition. A medical investigation should be undertaken and alternative employment should also be considered.

The employer is expected to be fair and to inform the employee of what is being said against them by others, of the evidence available, and give them

Before dismissing for misconduct, the employer should conduct a thorough investigation into the allegations, as a result of which it is reasonable to believe that on the balance of probabilities the employee committed the

procedures. Redundancy

For more information, see the section on misconduct and disciplinary

the opportunity to respond to the allegations.

A redundancy situation occurs where there is closure of a business or the employee's workplace, or a diminishing need for employees to do the

available work. Employers are expected to • warn the workforce of the possibilities of redundancy and consult recognised trade unions as early as possible

- · apply these objectively so that fair selections are made
- · take reasonable steps to find alternative employment for staff.

establish objective criteria for selecting staff for redundancy

Statutory ban This arises where the employer dismisses the employee because the law

For more information, see the redundancy section of this website.

makes it impossible for them to carry on in the same job. Cases frequently involve loss of a driving licence, when the worker's job involves driving.

However, consideration should be given to the duration of the ban, whether it affects the whole or only part of the employee's work, and redeployment, before a decision is taken to dismiss. Some other substantial reason This is a 'catch-all' category. The employer should show what the reasons

were and that they were substantial. Whatever the reason, the employer must follow a fair procedure before

handbook on discipline at work.

reminded of the right of appeal.

dismissing. Failure to do so could lead to a ruling of unfair dismissal. Claiming unfair dismissal

If you are dismissed and decide to challenge the decision at an Employment Tribunal, your employer must establish that there was a fair reason. Before dismissing an employee, employers must currently follow statutory disciplinary procedures, which involve a disciplinary hearing and an appeal.

ACAS Code of Practice on Disciplinary Practice and Procedures in Employment taking their place. ACAS has also published an advisory

from all concerned, consider mitigating circumstances and invite the employee to bring forward any further evidence that might be relevant

At the disciplinary hearing, the employer will explain the purpose and nature of the meeting, identify everyone present, invite representations on the part of the employee, tell the employee of the allegations, identify the evidence relied upon, invite the employee to call witnesses, permit the employee (or the employee's representative) to address the employer, listen to arguments

The statutory disciplinary procedures will be repealed for April 2009, with the

If you win People have a variety of expectations from employment tribunals, but the

The employee should get written confirmation of the decision and should be

reality is that the tribunal has limited powers as to the remedies it can

Even if you win your case, you will not necessarily get an apology from your governors or headteacher. The only 'vindication' you will get from the tribunal is the piece of paper confirming the tribunal's decision that you were unfairly dismissed, together with the reasons.

The remedies that a tribunal has power to award for unfair dismissal are reinstatement, re-engagement or compensation. While it is possible to ask for re-instatement or re-engagement (they are broadly similar), tribunals are generally loath to make an order for either.

instatement or re-engagement impractical. Monetary compensation is, in almost every case, all you can expect from an unfair dismissal claim. Compensation There are restrictions on the amount of compensation you can recover and

The reality is that by the time the parties have reached a tribunal hearing, the relationship between them has deteriorated so far as to make re-

what you can be compensated for. Compensation is calculated under two separate headings: a basic award which is calculated in the same way as a statutory redundancy payment and a compensatory award which is designed to put the employee back in the same financial position they were in before

Compensation is awarded only for actual financial loss resulting from the dismissal, so it will include loss of salary and pension contributions and expenses incurred because of the dismissal (possibly removal expenses if you have had to move house to take up a new post). Thus an award may be reduced by any earnings since dismissal or any social security benefits

received. You have a duty to try to find another job as quickly as possible in order to 'mitigate your loss'. The tribunal has power to award compensation not only for the period from the date of dismissal to the date when your case is heard, but also for future loss, that is loss which has not occurred at the date of the hearing. Future loss is in the discretion of the tribunal and will depend very largely on

your prospects for securing another post quickly. If you have worked in a particular sector for a long time, live in an isolated community or if you are approaching retirement age, it may be that much more difficult for you to find another job. The tribunal will take these factors into account when deciding

In practice, however, tribunals rarely award future loss for a lengthy period because there are so many uncertainties as to what might have happened if

the employee had stayed in the job.

the compensation appropriate to your case.

was a constructive dismissal.

Constructive dismissal There is a common misconception that if you resign because your head is a bully, or is imposing unreasonable demands, you will be able to claim that it

constructive dismissal claim. In order to establish a constructive dismissal, you will need to show that your employer has acted in fundamental breach of a term of your contract of employment. The most obvious example is a unilateral reduction in salary, where it will not be difficult to show a fundamental breach.

However, there are important steps that must be taken if such a claim is to succeed at tribunal, and you are advised to consult ATL for advice before submitting a letter of resignation if you think that you may have a

More often, however, the breach is not a single act but an ongoing whittling away of responsibility, bullying or unjustified complaints. In such cases, the term often relied on in constructive dismissal claims is a term which is implied into every contract of employment, namely that of mutual trust and confidence between employer and employee.

If either party acts in such a way that this relationship is destroyed, the other party will be entitled to treat themselves as discharged from their obligations under the contract entitling them to resign. There is a large amount of case law as to what is, or is not, a fundamental breach of the implied term of mutual trust and confidence and you are

advised to seek advice from ATL before taking any irrevocable action. It will

depend on the particular circumstances of the case so a diary of significant events will be helpful. You will also have to show that the reason for your resignation was the fundamental breach of your contract and not some other reason such as, for

You will have to show that you acted promptly in response to the breach of contract. Any delay will be prejudicial to a constructive dismissal claim because you may be held to have waived the breach of contract.

Finally, you must use any available internal procedures (such as grievance procedures) before taking the decision to resign.

Need further advice?

example, that you have got another job.

Your first point of contact is your ATL rep in your school or college. Your local ATL branch is also available to help with queries, or you can contact ATL's member advisors on tel: 020 7930 6441 or email us. Please have your membership number to hand when telephoning and include it with

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