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# An Account on Unjust Dismissals in Workplaces

**Abstract**

Unjust dismissal from workplaces is a chief concern for virtually every profession across the globe. This topic in not an inconsequential problem and becomes important when employees may be dismissed in situations where there does not exist an explicit, legal contract between the employer and employee. This study investigates many fundamental concepts related with unjust dismissals in workplaces. I elucidate the concept of Employer-Employee Relation and its importance to unjust dismissals followed by the distinction between just and unjust terminations through a thorough explanation of the terms. In addition to this, there are several interesting notions that are addressed, including arguments that promulgate the doctrine of Employment at Will, as well as the possible circumstances in which violations of employee contracts may occur, leading to an unfair discharge as well. Further problems such as discrimination, cost-benefit analysis and unjust treatment of employees are also discussed. Employee rights against unjust dismissal are also crucial to understanding the concepts, and they are deliberated with respect to due process, adequate compensation and anti-discrimination policies. All these concepts will give an idea about the vital role that Unjust Dismissal plays in the workplace as part of Professional Ethics.

**Keywords**

Unjust dismissal, Employer-Employee Relation, Due Process, Just dismissal, Employment at Will, Discrimination, Appropriate Compensation, Utilitarian ethics, Kantian ethics.

**Introduction**

The topic of unjust dismissal is one of the foremost issues concerned with Management Ethics, and its implications can have dire real-world consequences. Job security is a prime concern for working people across the world, regardless of the profession. Hence, losing a job because of some morally unjust motive is something that affects not only employees, but employers as well. In fact, it can possibly affect the reputation of the business itself. Thus, it becomes critical to have a proper understanding of the concepts, causes and effects related to unjust dismissals.

**Employer Employee Relation**

The notion of Employer Employee Relation refers to the association between both groups with respect to the kind of compensation they provide each other, while producing the company’s goods and services. On the employer’s side, at a basic level, we can talk about the monetary resources, i.e. money and wages, that they provide to employees as incentive to get work done, as well as materials and machines, the tools required to produce the goods and services. However, we can also see that the relation they have with employees goes deeper, when we look into their right to make decisions about hiring, promotion, termination, assignments and other circumstances in the workplace. On the other hand, the employee dispenses human resources, namely, labor, knowledge and skill but in addition to this, his relation with the employer involves the right to accept, refuse, or negotiate the terms of work. These insights necessitate a respect for each other’s rights and obligations for a smooth operation of the business, since a strong Employer-Employee Relation advances efficiency, increases employee loyalty, reduces conflicts, and increases the morale in the workplace. In my opinion, unjust dismissals would become more complicated if there does not exist a healthy relationship between the two parties.

**Just Dismissal**

To contrast with unjust dismissals, we need to first understand what just dismissals are. In my view, just dismissals are more commonsensical, in the sense that the employer, employee and anyone else interpreting the case would find the motive for termination to be fair and explainable, i.e. the reason is understandable regardless of whether or not it was the correct decision for the company.

Some non-exhaustive examples of just dismissals include financial reasons (when there are too many workers and not enough resources to compensate them), labor reasons (when workers do not possess the required skills or when workers perform their jobs inadequately) and behavioral reasons (workers who conduct themselves in an inappropriate or disruptive manner). However, cases of misconduct can be tricky and may be handled in differing ways, and just dismissal on these grounds revolves around whether the employee went beyond his/her rights or the intentions were inherently unfair (Pittard, 2008). Nevertheless, when a valid, agreeable reason can be brought forth, a dismissal can be just. Thus, having understood what constitutes a just dismissal we can move to the situation of unjust dismissal.

**Unjust Dismissal**

A situation of unjust dismissal is predominantly found in cases where a contract that spells out the conditions under which employment can be terminated, does not exist. In such cases, an employee may be legally terminated, for any reason, regardless of its validity.

In these circumstances, it can be argued that the reason of dismissal should be just, or for a good cause (with reasons similar to those in the previous section). It can be taken a step further, by raising the argument that the terminated employee be informed of *why* he or she was terminated, with the provision to contest their case. This is not dissimilar to the situations of courts of law, where those who may be guilty of some crime have the right to defend themselves. Hence, to summarize, the decision of dismissal of an employee may be considered unjust when associated with two reasons: when an employee is dismissed without a good cause, and when the dismissal occurs without a fair hearing. These two elements together constitute due process. There are two aspects that we can judge due process upon, namely, morally and legally. In ideal situations, employers would conduct due process even when there are valid reasons and could even go as far as to consider alternatives such as warnings reprimands, or counselling (Pittard, 2008). Nevertheless, companies may hold the power of Employment at Will, which gives them more freedom when it comes to dismissals.

**Employment At Will (EAW)**

Employment at Will is a cornerstone of labor law in the American legal system, which dictates that any employer may terminate an employee at any time for any reason, except an illegal one, or for no reason without incurring legal liability.  Likewise, an employee is free to leave a job at any time for any or no reason with no adverse legal consequences (NCSL, 2008). In this situation, an employment will only be created when the employer and employee willingly come to an agreement. Further, it continues to exist so long as both the parties are willing. Some additional relevant notions include that both employers and employees have the right to enter into any mutually agreeable arrangement without outside interference, as well as the fact that either party has the right to terminate the arrangement at any time without violating the rights of the other, as long as doing so is in accord with the terms that they have already agreed on. Interestingly, it can be noted that the United States is one of the only countries to adopt this policy, as opposed to other parts of the world like Japan and Europe. Thus, the question arises as to how we can justify this sort of legal imposition. It turns out that three main arguments can be put forward, given as follows.

**Property Rights Argument**

As mentioned before in Employer-Employee Relation, both the employer and employee can be considered to possess some sort of “property.” Let us take the example of a factory. The owner of the factory (an employer), owns the means of production, i.e. the machinery and raw materials for the manufacture of a product. In addition to this, the owner also possesses the monetary resources, needed to pay the workers’ wages. In contrast, the workers (employees) possess the resource of labor, required for the proper functioning of the given machinery to convert raw materials to the finished product. Since this labor has use (it can be put to use in a productive manner) and economic value, it can be seen as the property that is owned by the worker. Employment can be described, therefore, as an exchange of a worker’s productive power for the wages that are given out in return by the factory owner.

In this exchange, both parties are free to exercise the rights of property ownership, in the sense that they themselves have the right to decide how their property may be put to use. The owner of the factory is free to utilize the productive resources of the factory and to pay out money as wages in any way that workers are willing to accept. Workers are free to accept work under the conditions and at the wages offered or to seek work elsewhere on more favorable terms. Thus, both parties are free to invest their property in activities that they deem fit and it stands to reason that any constraint that is imposed on the agreements between employers and employees, with respect to the conditions of hiring and firing (for the employer) and decisions to join or leave the company (for the employee), would be a direct violation of the property rights of both parties. We can compare this argument to real-life consumption of products, where consumers are under no obligation to continue buying a product, similarly, employers are free to stop “buying” the labor of an employee. Beyond the legal implications of property rights, it can be argued that it is also morally acceptable, as everyone may make use of what they possess, without the compulsion of any authority.

**Freedom of Contract Argument:**

In this argument, employment is viewed as a contractual arrangement between employers and employees. In these circumstances, there may exist a clear contract, legally signed by both parties. This document serves as the terms set by the company specifying the conditions under which it is willing to hire the employee, and that employee indicates a willingness to work under those terms, by his or her acceptance of the said contract. However, even if there does not exist a written explicit document, there would still be some implicit understanding of the terms of work.

To place a limit, then, on the kinds of agreements that can be made between an employer and an employee is to violate the freedom of contract of both parties. Just as it would be a violation of an employee’s freedom to contract to force an employee to remain in a job, so it would be a violation of the employer’s freedom to contract to prevent an employer from terminating an employee who voluntarily entered into an at-will employment relation.

We can interpret this argument with a Kantian sense, particularly by highlighting his concept of autonomy of a person. Autonomy implies the ability to make important decisions for ourselves, which would include the possibility of participating in mutually binding, voluntary, rational contracts. Hence, Kant’s autonomy necessitates freedom of contract, since if we are rational, we are free.

**Efficiency Argument:**

This argument for ‘employment at will’ is a utilitarian one that relies not on property rights or the freedom of contract but on the importance of this doctrine for the efficient operation of business for the benefit of both employers and employees. When Employment at Will is agreed to, we can say that it benefits both parties involved, mainly because the employer and employee were able to contract on some terms, thereby making it mutually advantageous. These advantages of Employment at Will can be understood from a utilitarian stance. First, we need to understand that the employer has direct control over the employees and resources as well as the right to make decisions concerning them. This can include the number, quality and designation of workers to different assignments as well as the reprimands and potential terminations. The disturbances caused by factors other than the most efficient allocation of resources into business decision making would only increase costs as well as impair efficiency, and thereby harm all stakeholders.

Taking a step further, we show that this argument can benefit employees as well, because efficient companies making larger profits would promote better job prospects as well as higher pay for its employees. The lack of legal restrictions on dismissals would result in a more open job market, thereby increasing job mobility. Job mobility is crucial as employees may wish to seek better prospects, and even if an employer wishes to fire someone without due process or is overly demanding or abusive, the ease of job mobility would deter them, since employees may simply quit and easily seek jobs elsewhere, thus allaying their fears of being unemployed.

**Violations and Issues Leading to Unjust Dismissals**

It is generally seen that employers may possess more bargaining strength when it comes to employment, especially in situations when potential candidates are being employed for the first time and could exploit those with an unemployed status. This may lead to an unethical violation. Freedom of contract argument can be violated by unfavorable societal conditions. When the employees can be exploited due to unfavorable situation in the society, their freedom of choice loses meaning, as they have lost the right to choose or negotiate favorable contracts. This may lead to inadequate pay (compared to the amount of work) or even unjust dismissal. Another concern relates to globalization. If unfavorable societal conditions exist in an area, one can have the option to move to another area or country. However, there are cases involving the slowing down of globalization occurring in some parts of the world, which decreases job mobility as well as increases reservation for certain groups, thereby retaining unfavorable societal conditions. With respect to the efficiency argument, situations involving bad faith, mal intentions, and poor work culture may occur, resulting in unjust dismissal. In ideal circumstances, employees and employers of an organization work in an atmosphere that upholds good faith, right moral intentions and a work culture that is agreeable to both parties. To uphold the efficiency of the company the employer can exercise various rights and decisions, which have been discussed earlier. However, when the employer indulges in activities solely for their own benefit at the expense of others (an employee or a group of employees), or when the intentions themselves are unjust, for example, the termination of employment is for purely monetary gains, these mal intentions and acts of bad faith lead to an unfavorable work culture, which overall, is a violation of the efficiency argument.

**Further Problems Leading to Unjust Dismissal**

The notion of cost-benefit analysis, which occurs in nearly all aspects of current day life, is something that has the potential to lead to unjust dismissal. In this case the employer may hold the benefits of reducing costs through terminations over a fair process. Another classic example of unfair dismissal is that of aged employees. Employers may tend to favor the younger employees, who do not demand much pay, over the older employees, who they may treat as machines that have finished serving their purpose and are thereby removed. This is in direct violation of Kant’s second Categorical Imperative, as the older employees are being treating simply as means. Another problem is that of discrimination. When the individual merit of some induvial is ignored by some unfair employer, simply because of the fact that the induvial belongs or is associated with some group (such as  race, color, religion, sex, national origin, age, disability, or veteran status (NCSL, 2008)) that the employer has some prejudice against., this constitutes discrimination. If the employer terminates an employee in a discriminatory fashion, the dismissal is unjust, and this would be a major problem to people seeking to be employed.

**Employee Rights Against Unjust Dismissal**

Once again, we can bring up the second formulation of Kant’s Categorical Imperative, thereby making the employers treat employees only as ends and never merely as a means. This is because employees are human being with dignity and rationality, and not simply objects that can be taken advantage of. Employee rights are of a great concern, and to ensure they are upheld, there must be anti-discrimination measures and policies in the workplace. Education of employers as well as employees on the sensitive matters of social groups, can help remove biases and prejudice when considering both hiring and dismissal of workers, and is a step forward to implementing an indiscriminatory workplace. Another potential remedy is the compensation of workers after dismissal. If dismissal is completely necessary, as in the case of dire economic conditions of the company, the employers can give some sort of severance pay to compensate, rather than abruptly ending their employment. Since the dismissal of an employee may be debatable, the company should not refuse the right of the worker to have a fair hearing. Thus, a helpful measure to avoid unjust dismissal is due process, as through an organized discussion, the truth of the matter (whether the employee really deserves to be terminated or not) can be actualized.

**Conclusion**

It is never guaranteed in today’s workplaces that the employment of a worker is infinite. The changing situations of society or of the economy may push the company to take steps regarding the employment of these workers. This fact is known by virtually every professional. However, it is also important that these employees can be assured that if at all a case of dismissal arises against them, it will be done in a fair manner. Thus, to conclude, the discussion of unjust dismissal is of vital importance for all employees and not just those unfortunate enough to be fired without a cause. It is important to know what rights and policies both the employer and employee hold, since any employee may be at risk of losing their job, but the dismissal should be just and morally permissible.

**References**

* Boatright, John R., Smith, Jeffery D. & Patra, Bibhu Prasan (2018). Ethics and the Conduct of Business. Pearson Education. Eighth Edition, Indian Edition
* Prof. Kumar Neeraj Sachdev, Lecture slides (Discrimination and Unjust Dismissal, under Unjust Dismissal)
* Pittard, Marilyn. (2008). Back to the Future: Unjust Termination of Employment Under the Work Choices Legislation.
* National Conference of State Legislatures [NCSL] (2008). At Will Employment – Overview

https://www.ncsl.org/research/labor-and-employment/at-will-employment-overview.aspx