

## Rights

### Disciplinary and Grievance Procedures

Most employees are entitled by law to a written statement setting out the main particulars of their employment within two months. As well as information on pay, hours, holiday entitlement and pensions the statement must cover a note giving details of the employer's disciplinary and grievance procedures.

This note must:

- cover any disciplinary rules which apply to the employee
- specify the person to whom the employee can apply and the manner in which an application should be made if the employee is dissatisfied with any disciplinary decision relating to them or for the purpose of seeking redress of any grievance relating to their employment
- cover any further steps which follow from making any such application.

### Statutory discipline and grievance procedures

*Disciplinary procedures:* if an employer is contemplating dismissal – or action short of dismissal such as loss of pay or seniority – they must follow a three-step procedure which involves:

- a statement in writing of what it is the employee is alleged to have done
- a meeting to discuss the situation, and
- the right of appeal

If an employer does not follow the minimum procedure then an employment tribunal may judge the dismissal 'automatically unfair'. The compensation will increase or decrease – by between 10-50% - depending on whether the employer or employee failed to adhere to the new law.

*Grievance procedures:* if an employee wishes to use a grievance as the basis of a complaint to an employment tribunal they must first complete step 1 of the statutory grievance procedure:

- step one: inform the employer of the grievance in writing
- step two: meet to discuss the grievance and
- step three: hold an appeal, if requested

Employment tribunals may adjust any award of compensation by between 10 and 50 per cent for failure by either party to follow relevant steps of the statutory procedure.

Employers with fewer than twenty employees, however, still need to give the name of the person to whom the employee can apply for seeking redress of any grievance and the manner in which such an application should be made.

### **Disciplinary and grievance hearings**

Workers are entitled to be accompanied at certain disciplinary and grievance hearings by a fellow worker or a trade union official of their choice, provided they make a reasonable request to be accompanied. They also have the right to a reasonable postponement of the hearing, within specified limits, if their chosen companion is unavailable at the time the employer proposes.

Workers have the right to take time off during working hours to accompany fellow workers employed by the same employer.

These rights apply to most workers, including agency workers and home workers.

### **Fair dismissal**

Dismissal is normally fair only if the employer can show that it is for one of the following reasons:

- a reason related to the employee's conduct
- a reason related to the employee's capability or qualifications for the job
- because the employee was redundant
- because a statutory duty or restriction prohibited the employment being continued
- some other substantial reason of a kind which justifies the dismissal.

and that the employer acted reasonably in treating that reason as sufficient for dismissal.

### **Unfair dismissal**

Employees have the right not to be unfairly dismissed. In most circumstances they must have at least one year's continuous service before they can make a complaint to an employment tribunal. However, there is no length of service requirement in relation to 'automatically unfair grounds' (see below). Also, the requirement is reduced to one month for employees claiming to have been dismissed on medical grounds as a consequence of certain health and safety requirements that should have led to suspension with pay rather than to dismissal.

A complaint of unfair dismissal must be received by an employment tribunal within three months of the effective date of termination of the employment (usually the date of leaving the job) unless the tribunal considers this was not reasonably practicable.

If both the employer and employee agree, instead of going to an employment tribunal, the case may be heard by an arbitrator under the Acas Arbitration Scheme. For further details, see section The Acas Arbitration Scheme.

If a tribunal establishes that a dismissal has taken place it is normally for the employer to show that it was for a fair reason and that they have, as a minimum, followed the statutory disciplinary procedures. In such cases the tribunal must then decide whether, in the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissal.

#### Automatically unfair dismissals

Dismissals are classed as 'automatically unfair' - regardless of the reasonableness of an employer's action - if an employee is exercising specific rights to do with:

- pregnancy - including all reasons relating to maternity
- family reasons - including parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants
- representation - including acting as an employee representative and trade union membership grounds and union recognition
- part-time and fixed-term employees
- discrimination - including protection against discrimination on the grounds of sex, race, disability and, from December 2003, sexual orientation and religion or belief
- pay and working hours - including the Working Time Regulations, annual leave and the National Minimum Wage

#### Remedies for unfair dismissal

If the employment tribunal finds the dismissal was unfair, it will order one of three possible remedies: reinstatement, re-engagement or compensation. Orders for reinstatement or re-engagement normally include an award of compensation for the loss of earnings.

#### Breach of contract claim

Employees who suffer a measurable financial loss because their employer has not followed the agreed terms of their contract can seek damages by making a breach of contract claim. Normally this must be made to a county or other civil court but if the employment has ended, it may be made to an employment tribunal.

Employers who suffer a measurable financial loss because an employee has departed from the agreed terms of the contract of employment can also seek damages in the same way - as a breach of contract claim or, if the employee has already claimed breach of contract to the tribunal, as a counter-claim.

#### **Notice of termination**

Both the employer and employee are normally entitled to a minimum period of notice of termination of employment. After one month's employment, an employee must give at least one week's notice; this minimum is unaffected by longer service. An employer must give an employee:

- at least one week's notice after one month's employment
- two weeks after two years
- three weeks after three years and so on up to 12 weeks after 12 years or more.

However, the employer or the employee will be entitled to a longer period of notice than the statutory minimum if this is provided for in the contract of employment. Most employees, subject to certain conditions, are entitled to certain payments during the statutory notice period.

Employees can waive their right to notice or to payment in lieu of notice. Employers can also waive their own right to notice. Either party can terminate the contract of employment without notice if the conduct of the other justifies it.

### Whistleblowing

Workers who 'blow the whistle' on wrongdoing in the workplace can complain to an employment tribunal if they are dismissed or victimised for doing so. An employee's dismissal (or selection for redundancy) will be unfair if it is wholly or mainly for making a protected disclosure.

### Written reasons for dismissal

Employees who are dismissed and have completed at least one year's continuous employment are entitled to receive, on request (orally or in writing), a written statement of reasons for dismissal within 14 days. An employee dismissed during:

- her pregnancy or her ordinary or additional maternity leave
- his or her ordinary or additional adoption leave

is entitled to a written statement of the reasons regardless of length of service and regardless of whether or not the request was made.