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Essential Information Leaflet: EMPLOYMENT

UNFAIR DISMISSAL

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Is the dismissal fair?

Not many people realise that there are only 6 potentially fair reasons for dismissing someone and that even if there is a potentially fair reason for the dismissal, a failure to follow the correct procedure can render an otherwise fair dismissal, “automatically unfair”.

Can Anyone bring a Claim for Unfair Dismissal?

Before bringing a claim for unfair dismissal an individual has to show that he or she is an employee. There is no statutory definition of an “employee” and this leads to many arguments about employment status. Workers who believe that they are self-employed are often held to be employees when the question is put to the test. The law surrounding disputes about employment status is vast but in general terms, you can disregard the label attached to the relationship, as calling someone “self-employed” will certainly not carry any weight if the Employment Tribunals or HMRC adjudicate in any particular case.

In very general terms, an employee will need to have one year’s continuity of employment before the Employment Tribunal will allow them to bring a claim. Dismissed employees who argue that the reason for their dismissal was based on an act or acts of discrimination or one of the other exceptions (of which there are many) do not need a year’s continuity of employment to bring a claim. Such claims may be brought from day one of employment and discrimination claims may even be brought where there are alleged flaws in the recruitment process itself – a fact often overlooked by employers.

What is Constructive Dismissal?

Constructive dismissal occurs when an employee resigns in the face of a serious breach of the employment contract by the employer or someone acting on the employer’s behalf. The employee basically resigns because he or she has no other option – hence the term “constructively dismissed”.

What compensation is awarded to those who bring successful claims?

There are two main “heads of loss” under which an Employment Tribunal can award compensation. The first of these is called the “basic award” and it is identical to a statutory redundancy payment. It is calculated upon age, length of service and gross weekly pay (currently capped at £330 for dismissals which take place before 1st February 2009 and at £350 for dismissals which take place on or after 1st February 2009).

The second is called the “compensatory award” and will include loss of earnings and benefits to the date of the Tribunal and in many circumstances, future losses. The current maximum compensatory award that may be made is £63,000 for dismissals effected

before 1st February 2009. For dismissals taking effect on or after 1st February 2009 the maximum compensatory award is £66,200.

Tribunals will also make an award for “**loss of statutory rights**” and this is usually between £300 - £500. Historically, this was meant to compensate employees for the fact that they would now need to work for another employer for 12 months before gaining the right to bring a claim for unfair dismissal.

Where an employer has fallen down on procedure, Employment Tribunals currently have the power and discretion to uplift the compensation awarded by as much as 50%.

Employers are able to argue that compensation should be reduced because of the employee’s behaviour. This is known as a reduction for “**contributory fault**”. A successful contributory fault argument can reduce compensation awarded by as much as 100%.

How long does an Employee have to bring a claim?

Claims must generally be brought within 3 months of a dismissal. Key points to note in this regard are:

Employment Tribunals have discretion to hear claims brought out of time.

1. The actual dismissal date will be dependant upon whether notice was given or payment in lieu of notice was made.
2. Employment Tribunals may artificially extend the date of dismissal in particular circumstances in order to permit employees to bring a claim where they have been dismissed just before they have attained one year continuity of employment.

The information given herein is not a comprehensive guide to the law and is intended to be a brief and non-exhaustive summary only. Specific legal advice should be sought for actual cases.

CONTACT :

Jayne Scott
📞 01206 719693

Ellisons Solicitors
Headgate Court
Head Street
Colchester
Essex
CO1 1NP

Email:
jayne.scott@ellisonslegal.com

