



UNIT-10

Dismissal at Work

Learning Outcomes

By the end of this unit the learner will be able to:

- ✓ To determine whether grounds for dismissal are considered fair or unfair
- ✓ Understand the reasons why a person may be fairly dismissed
- ✓ Discuss the rights of the employee in the event of their termination

Unit 10

Dismissal at Work

Dismissal: From the Perspective of the Employee

When your employer terminates your employment, they are not always required to give you notice.

If you're dismissed, your employer must show they've:

- a good reason that they can defend
- acted in a reasonable manner given the circumstances

In addition, they must:

- Be consistent - don't fire you for doing something that other employees are allowed to do.
- Have thoroughly investigated the situation before dismissing you - for example, if you were the subject of a complaint

You cannot be treated less favourably than a full-time or permanent employee if you work part-time or on a fixed-term basis.

Notice Period

You must be given either the contractual minimum notice period or the statutory minimum notice period, whichever is longer.

There are some situations where you can be fired right away, such as if you are violent.

Getting your Dismissal in Writing

If you have completed two years of service as an employee, you have the right to request a written statement from your employer outlining the reasons for your dismissal (1 year if you started before 6 April 2012).

Your employer is required to provide the statement within 14 days of your request.

If you're fired while on Statutory Maternity Leave, your employer must give you a written statement:

- Even if you haven't requested one
- Regardless of how long you've been with your company,

If you're unsure about your employment status, speak with your employer or check your employment status online.

Reasons you can be Dismissed

In some cases, your employer may be able to dismiss you fairly.

It's possible that you won't be able to do your job properly if you:

- you haven't been able to keep up with significant changes at work, such as a new computer system
- you don't get along with your coworkers

Your boss should do the following before taking any action:

- Follow disciplinary procedures, such as warning you if your work isn't up to par.
- Provide you with the opportunity to improve - for example, by providing you with training

Illness

If you have a chronic or long-term illness that makes it impossible for you to perform your job, you may be fired.

Your boss should do the following before taking any action:

- Look for ways to help you, such as determining whether your job is making you sick and needs to be changed.
- Allow you to recover from your illness in a reasonable amount of time

If you have a disability (which could include a long-term illness), your employer has a legal obligation to accommodate you at work.

Dismissal due to a Disability could be considered Discrimination.

Redundancy

In most cases, redundancy is a form of dismissal that is fair. You will have been unfairly dismissed if the reason you were chosen for redundancy was unfair.

Summary Dismissal

You can be fired for "gross misconduct" without going through the normal disciplinary procedures with your employer. This can happen if you're violent toward a coworker, customer, or property, for example.

Even in cases of possible gross misconduct, your employer should always investigate the circumstances before dismissing you.

A 'Statutory Restriction'

You may be fired if continuing to employ you would be illegal, such as if you lose your driver's licence while working for a lorry company.

It's likely to be fair if it's impossible to continue employing you. For example, suppose a factory burns down and no one can work there anymore.

There must be a 'substantial reason.'

You may be fairly dismissed if, for example:

- you irrationally refuse to accept a reorganisation of your company that affects your employment terms
- you've been sentenced to prison

What Should You Do If You're Fired?

If you're facing dismissal (or have already been dismissed), you can seek help from a third party to resolve the problem through mediation, conciliation, or arbitration.

If you're a member of a trade union, you can also talk to your union representative.

Employment Tribunals

If you and your employer can't work out a problem, you can usually take your case to an employment tribunal.

You can go to an industrial tribunal in Northern Ireland.

Time limit for filing a claim for Wrongful Termination

Before you can file an unfair dismissal claim with a tribunal, you must have worked for your employer for a certain amount of time. If you started your job as an employee, you must:

- Starting on or after April 6, 2012 - the qualifying period is usually two years
- Prior to April 6, 2012 – the qualifying period is usually one year

The qualifying period in Northern Ireland is still usually one year.

If you were fired after June 25, 2013, because of your political beliefs or affiliation, there is no qualifying period. You'll have the right to go to an employment tribunal by default.

Different Types of Dismissal

Dismissal comes in a variety of forms:

- Fair dismissal
- Wrongful dismissal
- Constructive reprimand
- Wrongful termination

Dismissal, both Fair and Unfair

A dismissal is either fair or unfair depending on the following factors:

- The rationale behind it
- How you conduct yourself during the dismissal procedure

Fair Dismissals

If an employee is fired, the employer must have a good reason for doing so. The following are valid reasons:

- Their ability or behaviour
- Redundancy
- Something that prevents them from legally performing their job, such as losing their driver's licence.

There could be other legitimate reasons as well, which are sometimes referred to as "other substantial reasons."

Example:

Employers can hire someone to provide temporary maternity coverage and then fire them once the coverage period is over.

The dismissal is justified if the employer made it clear from the start that the position was only temporary.

Unfair Dismissals

Even if you believe you dismissed someone fairly, they may still file a claim for unfair dismissal if they believe:

- You didn't give the real reason for your dismissal.
- the reason was inequitable
- You acted irrationally, such as by failing to give them adequate notice of their dismissal.

Reasons for Dismissal that are automatically unfair

Even if you've acted responsibly, some dismissals are automatically deemed unfair. These pertain to the following topics:

- Pregnancy, including all maternity-related issues
- Family, such as parental leave, paternity leave (for birth and adoption), adoption leave, or dependents' time off
- Acting as a representative for employees
- Acting as a representative of a trade union
- Acting as a trustee for an occupational pension scheme
- whether or not to join a trade union
- working part-time or for a limited period of time
- Pay and working hours, including the National Minimum Wage, annual leave, and the Working Time Regulations
- Whistleblowing

Constructive Dismissal

When an employee resigns because you've broken their employment contract, this is known as a breach of contract. This could be a single major occurrence or a series of minor occurrences.

If you do any of the following, an employee may claim constructive dismissal:

- Slashing their pay without their consent
- Demote them in an illegitimate manner
- allow them to be harassed, bullied, or treated unfairly
- Disproportionately increase their workload
- Relocate their workplace on short notice
- Force them to work in hazardous situations

A constructive dismissal isn't always unjust, but proving that a breach of contract was fair would be difficult.

A claim for wrongful dismissal could arise from a constructive dismissal.

Wrongful Dismissal

This occurs when an employer violates an employee's contract terms during the dismissal process, such as dismissing someone without providing adequate notice.

The terms "wrongful dismissal" and "unfair dismissal" are not interchangeable.

An employee may take their employer to an employment tribunal if they believe they were fired unfairly, constructively, or incorrectly.

Who is not Eligible to file a claim for Wrongful Termination?

The right to bring an unfair dismissal complaint to a tribunal is not available to:

- Self-employed individuals
- Members of the military
- Employees in Northern Ireland who have reached an agreement with their employer through Acas (Advisory, Conciliation and Arbitration Service) or the Labour Relations Agency (LRA).
- Employees who, after seeking legal advice, reached a settlement with their employer through a "settlement agreement" or "compromise agreement."
- Employees working under an illegitimate contract, such as a bartender under the age of 18
- Employees who are covered by a dismissal procedure agreement that is legally exempt from the unfair dismissal rules.
- Employees who are taking part in unofficial strikes (unless the dismissal is for an automatically unfair reason)
- Officers of the law (unless the dismissal relates to health and safety or whistleblowing)
- Those employed on a fishing vessel and paid as a percentage of the vessel's profits or gross earnings.

Dismissals for Reasons of Conduct or Performance

An employer has the right to fire an employee if:

- They are unable to perform their duties to the required standard.
- They have the ability to do the job, but they are unwilling to do it properly.
- They've done something wrong in the past

If an employer wishes to fire someone, there is no legal requirement that they follow a specific procedure as long as they do so fairly.

Procedures for Disciplinary Action

In disciplinary rules, the employer should include examples of what he considers to be misconduct.

For different situations, different disciplinary procedures are appropriate.

Employees have the right to be present at all disciplinary hearings and to file an appeal with a manager.

Misconduct

Misconduct can include things like being consistently late or missing work without permission.

When the misconduct is not "serious" or "gross," make sure the dismissal is fair:

1. Schedule a meeting with the employee and explain the situation. Allow them to explain themselves during the meeting, and if you're not satisfied with their explanations, issue a first written warning. Tell them how you expect them to improve and over what time frame you expect them to improve, and that if they don't, you'll issue a final written warning.
2. Hold a second meeting if their performance or behaviour has not improved enough by the deadline; give them the opportunity to explain, and issue a final written warning if you are not satisfied with their reasons. Revise the action plan to include timeframes for improvement and inform them that if they don't improve, you may consider dismissing them.
3. If their performance or behaviour is still not up to par by the new deadlines, call a third meeting. Warn them that they may be fired at any time. Decide whether to give the employee another chance to improve or dismiss them after the meeting - or an appeal, if there is one. Whatever your final decision is, you must inform the employee.

Serious Misconduct

If the misconduct or underperformance is serious enough, the employer can issue a single "first and final" written warning and explain that failure to improve could result in dismissal. If it is likely to or has caused serious harm to the organisation, it is considered serious enough.

Gross Misconduct

Theft, physical violence, gross negligence, and serious insubordination are all examples of gross misconduct.

When an employee engages in gross misconduct, the employer has the option of dismissing them immediately if they follow a fair procedure. Before dismissing an employee, the employer should investigate the incident and give the employee a chance to respond.

One-off Incidents

If the misconduct or underperformance was a one-time occurrence and the employee has a good disciplinary record, an informal discussion may be sufficient to resolve the issue.

Dismissals due to Illness

An employee may be forced to leave their job due to long-term illness. You may have to consider dismissing them if they don't resign.

If you're thinking about firing someone, here's what you should know.

Dismissal is a last resort, and an employer should consider all options for assisting the employee in regaining employment, including:

- Obtaining a medical report from the employee's primary care physician with their permission - they have the right to see the report before you do.
- Arranging for an occupational health evaluation
- Determine whether they are disabled and make any reasonable adjustments to assist them in performing their duties.

Even if the employee is disabled, it may be fair to dismiss them if they are unable to perform their job due to a lack of reasonable adjustments.

How to Dismiss Someone

The employer should ensure that he or she acts fairly and reasonably during the dismissal process.

Employers should follow the advice in the Acas (Advisory, Conciliation and Arbitration Service) code of practise or the Northern Ireland Labour Relations Agency (LRA) code of practise.

They may have to pay compensation if they do not follow the code and are taken to an employment or industrial tribunal.

Being consistently late or missing work without permission are examples of misconduct.

Make sure the dismissal is fair when the misconduct isn't "serious" or "gross":

1. Meet with the employee and explain the situation to them. Allow them to explain themselves during the meeting, and if you're not satisfied, issue a first written warning. Tell them how and when you expect them to improve, and that if they don't, you'll send them a final written warning.
2. Hold a second meeting if their performance or behaviour has not improved enough by the deadline; give them the opportunity to explain, and if you are not satisfied with their reasons, issue a final written warning. Rewrite the action plan to include timeframes for improvement, and let them know that if they don't improve, you might have to fire them.
3. Call a third meeting if their performance or behaviour is still not up to par by the new deadlines. Inform them that they could be shot at any time. After the meeting - or an appeal, if there is one - decide whether to give the employee another chance to improve or dismiss them. Whatever decision you make, you must inform the employee.

Serious Misconduct

If the misconduct or underperformance is severe enough, the employer may issue a single "first and final" written warning, stating that failure to improve may result in dismissal. It is considered serious enough if it is likely to or has caused serious harm to the organisation.

Gross Misconduct

Gross misconduct includes theft, physical violence, gross negligence, and serious insubordination.

If an employee commits gross misconduct, the employer has the option of dismissing them immediately if a fair procedure is followed. Before firing an employee, the employer should conduct an investigation and give the employee an opportunity to respond.

One-off Incidents

An informal discussion may be sufficient to resolve the issue if the misconduct or underperformance was a one-time occurrence and the employee has a good disciplinary record.

Dismissals due to illness

Due to a long-term illness, an employee may be forced to leave their job. If they don't resign, you may have to consider dismissing them.

Here's what you should know if you're thinking about firing someone.

Dismissal should only be used as a last resort, and employers should consider all options for assisting the employee in regaining employment, such as:

- Obtaining a medical report from the employee's primary care physician with their permission – they have the right to see the report first.
- Arranging for a workplace health assessment
- Determine if they are disabled and make any reasonable adjustments to help them complete their tasks.

Even if the employee is disabled, if they are unable to perform their job due to a lack of reasonable accommodations, it may be fair to dismiss them.

How to Dismiss Someone

During the dismissal process, the employer should ensure that he or she acts fairly and reasonably.

Employers should adhere to the Acas (Advisory, Conciliation and Arbitration Service) or Northern Ireland Labour Relations Agency (LRA) codes of practise.

If they do not follow the code and are taken to an employment or industrial tribunal, they may be forced to pay compensation.

Further Reading:

- ✓ *Employee Dismissal Law: Forms and Procedures (The Employment Law Library) Subsequent Edition by Allen J. Gross*
- ✓ *Employment Discrimination: Fourth Edition by Joel Wm. Friedman*