



# Dickins Hopgood Chidley

## SOLICITORS

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## Unfair Dismissal, Wrongful Dismissal and Discrimination

### Dismissal - Key Issues to Consider

Employers must take great care to act fairly and lawfully when dismissing employees to reduce the risk of a claim being made at the Employment Tribunal.

#### The five potentially fair reasons for dismissal:

**Conduct.** This could be a single act of misconduct or a series of less serious acts

**Capability or qualifications.** This includes poor performance, ill-health and formal qualifications

**Redundancy.** This includes workplace closure, business closure, or reduced need for employees

**Illegality.** Where continuing to employ the employee in the position they hold would contravene a statutory restriction (for example, because of their immigration status)

**'Some other substantial reason'.** This is a catch-all category of other potentially fair reasons.

If the employer does not have one of these reasons then the dismissal will be unfair even if a fair procedure is adopted. Once the employer has established one of these reasons it must act reasonably, and be seen to do so, before dismissing an employee.

### The employer must follow a fair procedure.

Even if there is a potentially fair reason for dismissing an employee, an employer must still follow an appropriate fair procedure before deciding whether to dismiss. This means that it has carry out a proper investigation, consider alternative penalties, act consistently (by reference to how it has dealt with similar incidents) and generally act reasonably and fairly.

### The employer must act reasonably in treating the reason for dismissal as sufficient to dismiss.

Even if there is a potentially fair reason for the dismissal and the employer has followed a fair procedure, the employer must also act reasonably in treating that reason as a sufficient reason for dismissal.

### The employee should be dismissed in accordance with their contract.

Employees generally have a right to be given a period of notice (or, depending on their contract, a payment in lieu of notice if their employment is terminated).

### Employers must not base the dismissal on a reason that is discriminatory.

An employer must not base a dismissal on a reason that is directly or indirectly discriminatory based on a protected characteristic, and must not discriminate against an employee during the dismissal process.

### Restrictive covenants and wrongful dismissal

Dismissing in a manner that breaches an employee's contract is likely to lose the employer the benefit of any contractual rights, such as post-employment restrictions preventing the employee working for a competitor. It would also result in the employee having a claim for wrongful dismissal.

Sometimes, from both a practical and commercial point of view, it is better to try to reach a financial agreement with an employee to leave. There are risks in proposing such a solution, so it is advisable to take legal advice before entering into any negotiations.

### Qualifying periods

Generally, employees must have completed a qualifying period of two years' continuous employment before they can bring a claim for unfair dismissal, although there are exceptions (for equality and/or discrimination claims).

Sometimes, from both a practical and commercial point of view, it is better to try to reach a financial agreement with an employee to ensure that they do not take any further action as a result of the termination of their employment. It is advisable that employers take legal advice before entering into any negotiations, and that a formal settlement agreement is signed by the parties.

For advice on all employment law issues, contact **Charlotte Grew: 01488 683555** or [cgre@dhc-solicitors.co.uk](mailto:cgre@dhc-solicitors.co.uk)