

Employment law

✦ Our step by step guide



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Employment Law

✦ Issues for employees – Unfair Dismissal

If you have been employed by your employer for a minimum period of time (currently 24 months) you have the right not to be unfairly dismissed. If you are dismissed and your employer does not have a fair reason, you can claim in the Employment Tribunal that you have been unfairly dismissed and you may be entitled to compensation. Potentially fair reasons for dismissal include capability, conduct, redundancy, retirement or some other substantial reason such as business re-organisation. If you make a claim to the Employment Tribunal that you have been unfairly dismissed, your employer must prove to the Tribunal that there was a fair reason for the dismissal. Usually, before dismissing for any of the reasons set out above, your employer should meet with you to discuss the reasons, to allow you to have your say in the meeting and only then to make a decision to dismiss. Your employer must prove that they acted reasonably in treating the reason as being sufficient to warrant dismissing you. This will depend on all of the circumstances of the case, including the size and resources of the employer's business. If you are successful, the Employment Tribunal may consider making an Order for your reinstatement or re-engagement if you have asked for this. In most cases where a Tribunal finds a dismissal to be unfair, it will make an award of compensation. You are entitled to receive a basic award which is calculated in almost exactly the same way as a statutory redundancy payment, to give you a number of weeks pay, depending on your age and length of service.

There is a cap on the amount that the Tribunal can award for a week's pay and this figure changes from year to year. You are also entitled to claim a compensatory award to cover the losses that you suffer as a result of being out of work following the unfair dismissal. The maximum figure that you can claim also changes from time to time. We can advise you on what you may be able to claim. Usually, the Employment Tribunal will consider compensating you for some or all of the following:

- Immediate loss of earnings (i.e. the loss between the date of dismissal and the hearing date).
- Future loss of earnings (i.e. the estimated losses following the hearing).
- Loss of statutory employment rights.

✦ Issues for employees – Wrongful Dismissal

You may claim against your former employer if you have been dismissed in breach of your Contract. This would cover claims for notice pay to which you are entitled, wages for work that you have done and payment for holiday which you are entitled to, but which you have not taken at the date of your dismissal. Damages for wrongful dismissal may be claimed no matter how long you have been employed by your employer.

Automatic Unfair Dismissal

A dismissal is automatically unfair if the reason relates to an employee exercising their rights in connection with the following:

- Pregnancy, including all reasons relating to maternity.
- Parental leave, paternity leave, adoption leave or time off for dependents.
- Matters relating to membership of a Trade Union.
- The right to request flexible working arrangements.
- The right not to be discriminated against because of your gender, race, disability, religion, belief, sexual orientation or age.
- The right to make a public interest disclosure, sometimes known as "blowing the whistle".
- The right not to be dismissed for a reason connected with the transfer of your employment to another employer, unless your employer can show that the dismissal was for an economic, technical or organisational reason. Discrimination because of your gender, race, disability, religion, belief, sexual orientation or age is now covered by the Equality Act 2010 and your right not to be discriminated against by an employer, exists no matter how long you have been employed and even during the recruitment process.

✦ Settlement agreements

If you have settled a Claim that you may have against your employer, you may be asked to enter into a Settlement Agreement. You are required to have independent legal advice before you sign a Settlement Agreement and it is normal for your employer to pay your legal costs in connection with that advice. We regularly advise employees on the terms of Settlement Agreements.

✦ Contract problems

If you are having problems generally in relation to the terms of your employment and need advice on your Contract of Employment, we can help.

✦ Issues for employers

Today, more than ever, we have to ensure that we combine legal expertise with commercial awareness and practical advice. We have to be able to work closely with your Business and understand its people, products or services and objectives in its own particular market place. Thomas Flavell & Sons has the expertise that your business needs to anticipate the problems that you may encounter and to provide practical solutions to them. We can also help to anticipate potential problems. We can help with the writing, drawing up and implementation of Contracts, including, if necessary, Settlement Agreements to settle disputes that may arise with employees. Repeated decisions from Employment Tribunals emphasise the need to have and to follow proper procedures in order to avoid disputes. We can advise you on the procedures that you need to follow, help you to put effective procedures in place and to avoid expensive mistakes. We can help negotiate terms for settlement of disputes to avoid your involvement in Employment Tribunal proceedings. If you become involved in Employment Tribunal proceedings, we can provide expert advice and representation to ensure that your case is presented in the best possible way. If your Business needs help with revising and updating Contracts, negotiating with employees, advising on issues relating to dismissal or any other matter relating to employment, we can help.

The information in this leaflet can do no more than set out guidelines. You should not rely upon any of the matters stated and Thomas Flavell & Sons accepts no liability should you choose to do so.

For full advice or further information on this or any other employment related matters contact our employment team on 01455 610747 or email us at law@thomasflavell.co.uk

Contacting us

Telephone enquiries are always welcome.
Your enquiry will be dealt with professionally
and efficiently by a member of our team.
Alternatively you can contact us by email
or visit our website for more details.

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