

A woman in a light-colored business suit is walking away from the camera, carrying a large cardboard box and a green binder. She has her head down and one hand on her neck, suggesting a somber or stressed mood. In the background, another person is seated at a desk in an office setting with whiteboards and fluorescent lights.

# **Dealing with dismissals: What you need to know**



# Introduction

Managing dismissals can be a challenging part of the job for any business owner and manager. It is important that you handle them fairly and legally.

Effective handling of dismissals is crucial not only for maintaining standards but also for ensuring legal compliance and a positive workplace atmosphere. With the employment law landscape becoming ever more complex and tribunal claims rising, not dealing with dismissals compliantly can be very expensive in terms of time, money and reputation.

This guide will provide you with an understanding of the different types of dismissals, the process you need to follow and how you can manage the impact within your business, however it is not comprehensive.

**We would always recommend engaging an HR professional when you are looking to dismiss employees. Getting it wrong could be costly.**



# Understanding dismissals

## What constitutes a dismissal?

Dismissal refers to the termination of an employee's contract by the employer. Dismissals can come in various forms and must be conducted fairly and legally.

## Types of dismissal

- Fair dismissal: Based on the five legally valid reasons, which include conduct, capability, redundancy, some other substantial reason or statutory restriction.
- Unfair dismissal: Occurs when an employee is terminated without a fair reason or without following a fair procedure, as defined in the Employment Rights Act 1996.
- Constructive dismissal: When an employee resigns due to the employer's behaviour or serious breach of contract, making it intolerable to continue working.



# Five reasons for fair dismissal

The five fair reasons for dismissals are those that are grounded in employment law as the legitimate and justifiable reasons for terminating employment. Each with its own set of criteria and processes.

## Capability

Capability dismissals are based on an employee's ability to perform their job duties. This can be due to poor performance, lack of necessary skills, or health-related issues that prevent the employee from fulfilling their role. Employers should provide ample opportunities for improvement, including training and support, before deciding on dismissal for performance and you should take medical advice before terminating on ill health grounds.

## Conduct

Conduct-related dismissals occur when an employee's behaviour is deemed unacceptable. This can include instances of gross misconduct, such as theft, fraud, violence, or serious breaches of company policies. Lesser transgressions can include repeated actions that warranted a warning but have not been corrected by the employee, for example continual lateness. As with all dismissals, employers must ensure that a thorough investigation is conducted, and that the employee is given a chance to respond to the allegations in a properly managed disciplinary hearing.

## Redundancy

Redundancy occurs when an employer needs to reduce the workforce due to economic reasons, such as declining business, restructuring, or technological advancements. In these cases, the employer must follow a fair selection process and offer redundancy payments as required by law.

## Statutory restrictions

Dismissals can also be fair if they are based on legal requirements. For example, if an employee loses the right to work in the UK or fails to acquire necessary professional licences - such as a driver that needs a HGV driving licence - the employer may have no choice but to terminate the employment.

## Some other substantial reason (SOSR)

SOSR is a broad category that encompasses any other valid reasons not covered by the previous categories. These might include business reorganisations, conflicts of interest, or breakdowns in working relationships. The key is that the reason must be substantial and justifiable.



# Steps to handling dismissals

## 1 Establish clear policies

Develop clear policies that outline acceptable behaviour, performance standards, and the process for handling disciplinary hearings dismissals in line with ACAS guidelines and employment law requirements. Ensure all employees are aware of these policies.

## 2 Document performance and conduct

Maintain detailed records of employee performance and conduct. This documentation can serve as evidence if dismissal becomes necessary.

## 3 Conduct investigations

If an issue arises, deal with it straight away. Conduct a thorough investigation to gather all relevant facts. Ensure the investigation is impartial and that the employee has an opportunity to present their side.

## 4 Follow correct procedures

Adhere to the dismissal procedures, including providing written warnings, conducting disciplinary meetings, and allowing the employee to be accompanied by a representative. Remember that not following the recommended ACAS procedure could lead to a 25% uplift in an employment tribunal award.

## 5 Provide necessary termination payments

Give the appropriate notice period, as outlined in the employee's contract or statutory requirements - unless the offence was Gross Misconduct, in which case it can be without notice. If there is an express clause in the contract, payment in lieu of notice may be applicable. You will also need to pay for accrued but untaken holidays.

## 6 Hold an appeal process

Allow the employee to appeal the dismissal decision. An impartial party should Chair the appeal to ensure fairness.



# Managing the impact of dismissals

## Supporting remaining employees

Dismissals can affect the morale and productivity of remaining employees. Managing the process promptly and fairly will help.

## Maintaining workplace morale

Foster a positive workplace culture by recognising employee contributions, offering career development opportunities, and promoting work-life balance.

## Engage professional support

Handling dismissals in SMEs requires a balance of fairness, legal compliance, and sensitivity.

This document aims to provide information that allows you, as a business owner, to keep compliant. However, dismissals are complicated and come with big risks, so we would always recommend engaging an HR expert before starting the dismissal process.

The HR Dept offers unlimited advice within our retained packages, including Employment Tribunal Insurance, ensuring your protection when you fully follow our guidance.

# **Outsourcing your HR and people management is a cost-effective, time-saving and operationally efficient choice for SMEs.**

## **A cost-effective solution**

For a relatively low retained fee (far lower than hiring in-house), you can get unlimited access to telephone and email HR support. It's there for you to sense check your instincts, get advice where you are stuck, receive guidance through processes and get bespoke policies and key documents - essential for managing staff correctly.

## **Operational improvements**

Good HR is not just about legal compliance. By integrating the good practices which are recommended into your business, you can make gains on absence, performance, recruitment and retention – in fact anything people-related which can drive your business forwards.

## **Freeing up time**

Whether it is saving you hours trying to Google search the answers, streamlining regular admin like annual leave management or being available to run a one-off project such as a disciplinary process, having an outsourced HR service will free you up to spend more time on your core role.

## **And don't forget employment tribunal insurance...**

If you follow our advice from the outset of an issue, you are also insured for the outcome of any tribunal should a case make it that far, giving you further peace of mind that you won't be caught out by an HR issue.

**Get in touch with your local HR expert today to prevent people problems and watch your business thrive.**

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