

7. Dismissal

Legislation on Termination of Employment is set out in the **Employment Rights Act 1996**, from Part IX Termination of Employment.

UK Gov: Employment Rights Act 1996

A dismissal takes place when the employer ends the employee or worker's contract of employment. A resignation takes place when the employee/worker ends the contract of employment.

Employers should follow different processes for dismissals and resignation depending on the circumstances. It is important that an employer ensures that they have followed their own policies and procedures and provides the leaving employee with all their statutory rights e.g. correct notice, payment of any accrued but untaken annual leave. If the dismissal is resulting from disciplinary action an employer should always ensure that they have followed **ACAS Code of Practice on Disciplinary and Grievance Procedures**:

ACAS: Code of Practice

It is wise for both the employer and employee or worker to check stated terms within the employment contract in the first instance.

There are fair reasons for an employer to dismiss an employee or worker, which include:

- Capability or qualifications of the employee performing the work
- Conduct of the employee
- Redundancy
- Some other substantial reason (SOSR)
- Statutory restriction

Employers should be maintaining a detailed record of evidence to support any dismissals as a matter of good practice.

ACAS: Termination of an employment contract

Gov.uk: Fair dismissals

Citizens Advice Scotland: Is your dismissal unfair



If you need more help with employment rights, contact your nearest **Citizens Advice Bureau**.

An employee has the right not to be unfairly dismissed, the law states that the employer must ensure:

- There is a fair reason to dismiss
- That the reason to dismiss is fair in all circumstances and has followed a fair process

An employee will be regarded as being unfairly dismissed through assertion of a statutory right.

There are many reasons for unfair dismissal. Unfair dismissals are normally where an employer has not followed a fair dismissal process, if proven, an Employment Tribunal has the power to order re-instatement of the employee or award compensation to the affected person.

ACAS: Dismissals

There are two qualifying periods for claiming unfair dismissal. If employed before 6 April 2012 only requires one year's continuous service to claim unfair dismissal.

Employees who commenced employment on or after 6 April 2012 are required to have two years continuous service to claim unfair dismissal. The exception to this is for automatically unfair cases.

Gov.uk: Dismissal - your rights

Examples of automatically unfair reasons include, matters of Health & Safety, discrimination, seeking time off for family reasons and whistleblowing.

Constructive Dismissal is caused by unreasonable conduct by the employer which forces the employee to leave.

An employee would need to have 2 years qualifying service to be able to make a claim for constructive dismissal.

Where an employer has not followed a fair dismissal process they are at risk of facing an employment tribunal claim against them.

The **Employment Rights Bill 2024** outlines changes on the horizon regarding unfair dismissal.

Gov.uk: Unfair dismissal

Citizens Advice provides information on this aimed at employees and workers, it is also useful for employers to view.

Citizens Advice: Check your rights if you're dismissed

South of Scotland Employment Rights Advice Service

Disclaimer: Dumfries and Galloway Citizens Advice Service has tried to ensure that the information contained in this page is accurate. We endeavour to provide information of the highest quality, however, we cannot guarantee that it is completely error free, therefore, we **DISCLAIM** all warranties, whether express or implied and we are not responsible for claims brought by third parties arising from your use of this information page.

**citizens
advice
bureau**