



I have been sacked! What can I do?

What is the reason for the dismissal and is it one which means the dismissal is automatically unfair

The reason for the dismissal decides what action you can take. The reason your employer has given you may not be the real reason for the dismissal.

In England, Wales and Scotland, in most circumstances, if your employer wants to dismiss you, they should follow the Acas Code of Practice on disciplinary and grievance procedures – go to [Procedure your employer must follow when dismissing or disciplining you](#) for more information.

Automatically unfair dismissal, where it does not matter how long you have worked for the employer

If the reason for the dismissal is any of those listed below, an employment tribunal will automatically decide that the dismissal was unfair. If you were dismissed for one of the following reasons you can still claim unfair dismissal regardless of how long you have worked for the employer and regardless of how old you are:-

- pregnancy. If you are dismissed because you are pregnant or on maternity leave or a related reason. For more information, click on this link [Parental rights at work](#)
- if you are dismissed for trying to enforce a right you have under law, you will automatically be treated as having been unfairly dismissed. For more information about statutory employment rights, go to [Basic rights at work](#)
- if you are dismissed for taking action over a health and safety issue.
- it's against the law to dismiss some shop and betting shop workers just for refusing to work on a Sunday
- if you are a trustee of an occupational pension fund
- if you are a trade union member or have taken part in trade union activities including official industrial action, or have acted as an employees' representative
- if you have 'blown the whistle' on a matter of public concern at work

Is the reason for the dismissal one which is not automatically unfair

If you have not been dismissed for one of the reasons above then the dismissal may have been fair or unfair depending on the reason for it and the procedures followed by your employer in dismissing you. If the reason for the dismissal was not one of those above, you will have to have worked for one year for your employer in order to make a claim to an employment tribunal.

Reasons for claiming unfair dismissal where you will have to have worked for one year to be able to claim are:-

Your employer says you are incapable of doing the work, including illness

This may relate to the level of skill needed to do the particular job or to the fact that you have been ill and so your employer thinks you are not capable of doing the work. Some employees who are ill may be protected by the Disability Discrimination Act.

Your employer says you do not have the necessary qualifications to do the job

You may be dismissed because you are not qualified, or are no longer qualified, to do your job. For example, if your job involves a lot of driving and you have lost your driving licence. Whether this will be a fair reason to dismiss you will depend on, in this case, how much driving the job involved, whether anyone else could have done the driving, how long you had lost your licence for, and so on. The employment tribunal would decide whether the dismissal was fair or unfair, taking into account all the circumstances of the case.

Your employer says your conduct is poor, including gross misconduct

Certain types of behaviour by an employee are thought to be unacceptable and if the employee has behaved in this way, any dismissal as a result will probably be fair. Some forms of unacceptable behaviour are known as **gross misconduct** and include theft at work, violence at work, harassment (such as sexual or racial harassment) of other employees or customers, and breach of health and safety rules.

Others types of behaviour which have been found to be misconduct include the following list. Whether the dismissal which results from such behaviour is fair or not will depend on the circumstances of the case and the employment tribunal would decide this taking into account all the circumstances of the case:-

- time-keeping and absenteeism
- refusal to obey a reasonable instruction from the employer, for example, refusing to wear particular clothing at work where the clothing is needed for health and safety reasons
- insolence or rudeness, including use of bad language. Things said in the heat of the moment would not usually justify a dismissal
- carelessness. If an employer has previously accepted poor standards from an employee without any warning, then dismissing them for another example of carelessness is likely to be an unfair dismissal
- criminal activity at work
- fighting or violence at work. An employment tribunal will look at all the circumstances of the case, such as whether the employee was acting in self defence, whether they were provoked, how previous incidents of fighting have been dealt with by the employers
- drinking or using/taking drugs during working hours (including possessing drugs or drink at work) and sometimes out of work, is usually treated as gross misconduct but will depend on the circumstances of each case.

Your employer says you have been made redundant

Employers often claim that an employee is redundant when this is not true, and the employee has actually been unfairly dismissed. The law on whether the redundancy is genuine or not is very complex, and in order for a redundancy to be a fair reason for dismissal, an employer would need to show to an employment tribunal that:-

- it was a genuine redundancy; and
- the employer consulted properly with all the affected employees; and
- the employee was fairly chosen for redundancy out of all the other employees; and
- the employer was offered any suitable alternative employment which was available.

Further help

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. Contact **Citizens Advice Islington** for further help on **0844 856 3537**