

Unfair dismissal - misconduct

Misconduct can be a fair reason for dismissal, but the employer must follow a fair procedure. If this procedure hasn't been followed and the employee has 2 years' service, they might be able to bring a claim for unfair dismissal.

Fair process

ACAS (Advisory, Conciliation and Arbitration Service) guidance identifies key steps that an employer must take before dismissing an employee for misconduct:



1.

Carry out an investigation to establish the facts



2.

Inform the employee of the allegations



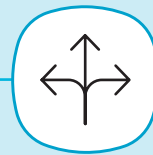
3.

Hold a meeting with the employee to discuss the allegations



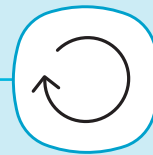
4.

Allow the employee to be accompanied at the meeting



5.

Decide on appropriate action



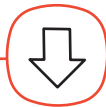
6.

Provide the employee with an opportunity to appeal



If the employee makes a claim for unfair dismissal, the Tribunal will consider:

- ✓ Whether there is a disciplinary procedure and whether it was followed
- ✓ Whether the employer has a reasonable basis for their belief in the employee's wrongdoing / misconduct
- ✓ Whether that belief is based upon a reasonable investigation undertaken by the employer
- ✓ Whether the employee was given the opportunity to be represented at any disciplinary meeting by a colleague or trade union representative
- ✓ Whether the employee was warned that dismissal was a potential outcome
- ✓ Whether the resulting action the employer took (the dismissal) was within a "range of reasonable responses." This is a wide test and the Tribunal will not become involved with 'business decisions,' it will consider what a reasonable employer might do rather than impose a personal view
- ✓ Whether the employee was given the opportunity to appeal



Compensation

If the Tribunal agrees that the dismissal was unfair, it's still important to know that any compensation awarded to the employee can be significantly reduced in some circumstances for example:

1. If the Tribunal finds that a fair procedure **hasn't** been followed, they'll consider whether the employee would have been dismissed. If so, the employee may only receive limited compensation for the time a fair process ought to have taken (say 2-4 weeks)
2. Has the employee committed any 'blameworthy' or 'culpable' conduct which led to the dismissal? If so, the settlement could be reduced by a percentage in line with how much the Tribunal feels the employee contributed to their own dismissal

In cases where both of the above reductions are applied, the employee may recover very little and in rare cases nothing at all, despite the Tribunal finding they have been unfairly dismissed. However, it remains open to a Tribunal to make a declaration that the employee has been unfairly dismissed.

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