

EMPLOYMENT LAW UPDATE APRIL 2012



**GAIL ESCOLME
HAYTON WINKLEY
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UNFAIR DISMISSAL

Changes

From 6th April 2012 the period of service required to bring an unfair dismissal claim increased from 1 year to 2 years.

However this only applies to employees who began work on or after the 6th April. Anyone employed up to the 5th April 2012 still only requires 1 year of service to be able to bring an unfair dismissal claim



UNFAIR DISMISSAL

When is a period of service NOT required to bring a claim?

It is **automatically unfair** to dismiss an employee for the following reasons:-

- Seeking to enforce rights under
 - the part-time workers regulations
 - the fixed term workers regulations
 - the national minimum wage regulations
 - the working time regulations
 - right to request flexible working regulations
 - the right to request time off to undertake relevant training regulations.
- Trusteeship of occupational pension scheme
- Protected shop/betting workers under Sunday trading legislation
- Being summoned to attend for jury service or obeying a jury service summons

Automatic unfair dismissal cont.

- Exercising or seeking to exercise the right to
 - accompany an employee at a meeting to discuss request or appeal flexible working
 - be accompanied at a disciplinary or grievance hearing or for accompanying a fellow worker to such a hearing.
 - be accompanied, or accompany a fellow employee, to a meeting to discuss request or appeal regarding time off to undertake relevant training regulations
- Health and safety reasons
- Spent convictions
- Pregnancy and maternity, paternity, adoption, parental and dependent care reasons
- Trade union reasons
- Assertion of a statutory right
- To do with being an employee representative.

If an employee brings a claim for any of the above reasons they require no period of service!

Discrimination

In addition: They do not require a period of service if they are dismissed because they have a protected characteristic under the Equality Act which are:-

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex or sexual orientation



Potentially fair reasons for dismissal

There are 5 potentially fair reasons for dismissal:-

- Incapability
- Misconduct
- Redundancy
- Contravention of a duty or restriction
- Some other substantial reason



• The employer must act reasonably when dismissing and the dismissal must be "within a range of reasonable responses".

PENSIONS

► New laws come into force on 1 October 2012 which require employers to automatically enrol employees into a pension scheme.

► All employees between the age of 22 and the State Pension age will need to be automatically enrolled into a suitable pension plan after a maximum of 3 months employment.



Compliance Dates

- These have changed for small employers – (under 50) though the regulations are still in draft form..
- Small employers will now be allocated a staging date between 1 June 2015 and 1 April 2017.
- An employer will be required to register with the Regulator online within 4 months of their staging date.

SOCIAL MEDIA

- Do you have a policy?
- If not, what would you do if an employee took to Facebook or Twitter and commented about you, your business, or one of your customers?
- Think about what you would find acceptable use.
- Can employees use social media websites in their lunch hour?
- Can they mention who they work for?



Social Media cont.

- Set out in a policy what your rules are regarding social media.
- Do you plan to monitor IT equipment?
If so, say so.
- Ensure that your policy sets out what will happen if an employee makes a derogatory comment against you, your company or a fellow employee!



REDUNDANCY –A Whistle Stop Tour

1. Establish whether there is a true redundancy situation.
 - Is there a closure of the business?
 - Is there a closure of the place of business, i.e. branch?
 - Is there a reduced requirement for employees to carry out work of a particular kind?
2. Establish how many redundancies are being proposed.
 - If 20 or more in a 90 day period then collective consultation obligations will arise and the Secretary of State must be informed!
 - If under 20 then a fair procedure must be followed, i.e.
 - Letter warning each affected employee
 - Meeting
 - Right of appeal



REDUNDANCY

4. Meet with all employees who might be made redundant (as a group).
 - Explain the reasons for the proposed redundancies and the procedure.
 - Confirm in writing.
5. Score each employee using an objective matrix.
6. Write to those employees who have been provisionally selected (i.e. who have scored the least inviting them to a meeting).
7. Hold the meeting and listen to what they have to say.
8. If no further investigation is necessary confirm the redundancy to them in a further meeting.
9. Confirm the dismissal in writing.
10. Offer right of appeal

Change of Terms & Conditions of Employment

Every employee is entitled to receive a copy of their main terms and conditions of employment in writing within 8 weeks of the employment commencing.

Over time terms may change – usually accepted by both parties, i.e. a pay rise.

However there are times when the employer seeks to change terms of employment which are not beneficial to the employee. If there is no contractual right to make the change the employer could:-

1. Obtain express agreement from the employees
2. Unilaterally impose the change and use the employees' conduct to establish implied agreement to the new terms.
3. Terminate the existing contract and immediately offer continued employment on the new terms.

Changes to T's & C's cont.

By Agreement

- ▶ Inform the affected employees of the proposed changes and the reason for them.
- ▶ If they agree make sure they sign revised contracts as evidence of that agreement.



Unilateral change

- ▶ If employees do not agree to the change the employer could abandon the proposal or impose it anyway in breach of contract.
- ▶ Risky strategy – employees could bring claims against the employer

Changes to T's and C's cont.

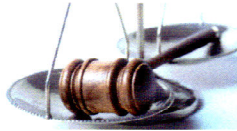
Dismissal and re-engagement

- ▶ If the employer gives notice under the old contract and offers a new one straight away, could be deemed a dismissal, though the loss will be mitigated to some degree.



- ▶ Moral to this tale – be very careful and where possible seek agreement to variations – offering consideration where you can.

CASE LAW



C.F Capital PLC v Willoughby
Claimant dismissed – she did not resign – employers cannot withdraw a termination of contract.

Disability Discrimination – reasonable adjustments
Cordell v FCO – It is not reasonable for an employer to have to make any adjustment the employee may like. Diplomatic posting of deaf employee to Astana denied because lip reader would have cost £300k.

Case Law cont.

Michalak v Mid Yorkshire Hospitals NHS Trust and Others

Unfair dismissal
PIDA Claim
Sex discrimination
Race discrimination



A classic example of how not to handle matters!

36 days of evidence
7 days deliberating
2 days to read the Claimant's statement
16 files of documents
15 named respondents

Michalak cont.

- Secret meetings
- Complete failure to follow internal and external procedures
- Throw it all in strategy heavily criticised
- 50% of trust employees from ethnic minorities – not one had dealings with this.

AWARD

Unfair Dismissal – £7180

Discrimination:-

Injury to feelings – £30,000
Psychiatric Injury – £56,000
Exemplary Damages – £4,000
Past loss of earnings – £168,234.60
Care – £43,207.50
Interest – £19,782.78

Michalak cont.

- Future loss of earnings – £991,802.20
- Life Insurance – £15,000
- Loss of pension – £666,260
- Future care – £31,122
- Medical treatment – £50,000
- Sub Total – £2,075,409
- +15% uplift – £311,311.35
- Total – £2,386,720.35



• After grossing up – GRAND TOTAL – £4,452,202.60

• The Trust and 3 of its employees were jointly and severally liable to pay the Claimant this amount!!

 Hayton Winkley Solicitors



If we can be of assistance
with any employment law
issue, please contact us

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