

Business Law: CIMA Year One
Employment Law: Notice and Dismissal

There is a two tier structure in the law regarding dismissal:

- Contractual law covers wrongful dismissal
- Statutory law covers unfair dismissal

The Employment Act 2002 carries three obligations for employers when dismissing staff:

- a) If someone is disciplined or dismissed, they must be given a statement of the reasons; this statement must contain an invitation to a meeting with senior staff.
- b) There must be a meeting between the employee and senior staff about the action taken.
- c) The worker must be given the chance to appeal.

Termination by Notice

Most employment contracts are 'permanent' – however, the contract will never remain in place forever. Most contracts include a term regarding the notice period that must be given to an employee before they are dismissed. If such a term is not included, common law implies a notice period. In any case, the notice period must be at least one week for every year that has been worked, up to a maximum of 12 weeks (with a minimum of one week after one month of employment).

If proper notice is given of dismissal, common law offers no protection. If proper notice is not given, this is a breach of contract and the dismissed employee can sue for wrongful dismissal.

Summary Dismissal

If an employee is guilty of gross misconduct, they may be dismissed with no notice. Gross misconduct here means that the employee has committed a sufficiently serious breach of the terms of employment. Dismissal in this form is called 'summary dismissal' and tends to be justified though acts of disobedience.

Sinclair v Neighbour (1967)

S borrowed money from N's shop till to pay a personal bill, and replaced the money the next day. However, N was able to rightfully dismiss S.

In many cases, a single incident of misconduct (other than dishonesty) is not good grounds for dismissal.

Laws v London Chronicle Ltd (1959)

L was a secretary in a meeting involving her boss and a senior director. The meeting was hostile, and L left, with the support of her boss. L was dismissed for disobeying the senior director. L sued for wrongful dismissal and won, since this single act was not sufficient grounds.

Temporary Contracts

A 'temporary' contract is often more secure than a 'permanent' contract, since the contract itself states that it will last for a set period of time. Dismissal before this period is over is automatically in breach of contract, and therefore grounds for suing for wrongful dismissal.

For example, consider company directors and football managers. When a company wishes to dismiss an employee on a temporary contract, they must seek to make the situation as if the contract had been carried out; that is, they must pay off the remaining period on the contract.

Unfair Dismissal

The Employment Rights Act 1996 provides a statutory right to sue for unfair dismissal even if the appropriate notice period has been given. Legislation in this area dates from the 1970s. This right applies to workers who have been employed for more than one year (the 'qualifying period'). The one-year qualifying period does not apply if the dismissal is related to health and safety, discrimination, or trade union issues.

A claim for unfair dismissal must be carried through an employment tribunal. This is a low-key, accessible system, previously called an industrial tribunal. There are three stages:

- 1) The worker must prove that they were dismissed. This can include constructive dismissal, where an employer's conduct pressurises the employee to leave. This can be explained on contract principles; the employer has duties on providing a working environment, which are classed as 'condition' terms in the contract. If these are breached, the employee may resign *and* claim damages¹.
- 2) The employer must provide the principal reason for dismissal. There are three classes of reason:
 - a) *Automatically unfair reasons for dismissal*
These include dismissal for trade union activities, pregnancy, or assertion of a statutory right, such as those included in the Working Time Directives.

¹ Recall: the a condition is breached, the wronged party can repudiate the contract and claim damages, whereas a breach of warranty only allows for damages.

b) *Potentially fair reasons*

These include the lack of a necessary capability or skill, misconduct (other than gross misconduct), genuine redundancy, contravention of a statute, or some other substantial reason.

Cobley v Forward Technology Industries Plc (2003)

C was a chief executive of FTI. C led a competing bid for the control of a company during a hostile takeover. The courts decided that C's subsequent dismissal was fair.

c) *Automatically fair reasons*

These include national security, unofficial strike action, and official strike action (if all strikers are dismissed, and none reemployed within three months).

3) The tribunal decides on the class of reason, then (with regard to capacity and the merits of the case) decides whether the employer has followed a reasonable procedure – as a result, most employers follow ACAS procedures.

Wise v Leicester City FC (2004)

W broke the jaw of another footballer, and LC immediately dismissed him, with no appeal or meeting. W won unfair dismissal.

If the tribunal finds that dismissal was unfair, they will award compensation, based on:

- A basic award, calculated based on age and length of service;
- A compensatory award to cover other losses (a maximum of £56,800); and
- A special award or an additional award, if the employer is ordered to reinstate employment and refuses.

Choosing a Remedy

A dismissed employee has a number of options when seeking compensation.

If the employee has been employed for a short period of time (that is, below the qualification period of one year), it is necessary for the employee to sue for wrongful dismissal.

If the employee has been employed for a longer period, they will instead wish to look at compensation limits. Which remedy is preferable depends on the circumstances. Wrongful dismissal carries no limit on compensation (although a low salary post may lead to low compensation), while unfair dismissal is limited to £56,800 (but this is not affected by low salaries). Therefore, the employee must consider their contract (whether it is fixed-term or continuous), and their salary at time of dismissal.

If the employee was dismissed less than three months previous, they may choose either wrongful or unfair dismissal. However, after three months the employee cannot sue for unfair dismissal, and after six years they cannot sue for wrongful dismissal either.

There is one final difference between wrongful and unfair dismissal. If the employee sues for unfair dismissal, then all reasons for dismissal must be stated at the time of dismissal. Anything that is subsequently discovered can only reduce the award, not overturn the decision. This is because the employer cannot be held to have acted reasonably if they do not know the reasons for dismissal at the time of dismissal.

However, this does not apply to wrongful dismissal.

Boston Deep Sea Fishing and Ice Co v Ansell (1888)

A was a director of BDSFI, employed on a fixed-term contract. A was also secretly a director of a boat-building company; he ordered many boats for BDSFI from this other company due to bonuses he received on sales. A was dismissed *because he was found incompetent*. A sued for wrongful dismissal. While preparing their defence, B discovered A's secret dealings. At court, A proved he was competent, but the court held that the dismissal was justified due to the secret dealings.