

Briefing Note: Dismissing an Employee

An Introduction to the Briefing Note

This Briefing Note sets out the steps a business should follow when it is considering dismissing an employee.

This Briefing Note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Why is it important to follow the law when dismissing an employee?

Dismissing an employee for a reason other than one allowed by law, without following the correct procedure or giving adequate notice, may lead to a claim for unfair or wrongful dismissal against the business. Compensation for a successful claim can potentially be substantial. Regardless of whether a claim succeeds, the costs of defending it, in terms of management time and legal costs, may be significant and are not usually recoverable.

Establish whether there are grounds for dismissal

There are several potentially fair reasons for dismissing an employee:

- Their conduct at work (for example, they have filed a fraudulent expenses claim or persistently arrive late at work).
- Their inability to carry out their job because they lack the required skills (for example, a sales manager has consistently failed to meet reasonable sales targets despite receiving additional support and training).
- Their absence on long-term sick leave and inability to return to their job.
- Their job is redundant (for example, if the business is declining or the workplace is facing closure). Do not use redundancy as an easy alternative to dismissing an employee for poor performance. The “redundant” employee could make a claim for unfair dismissal.
- Their continued employment would be illegal (for example, the business has discovered that an employee’s immigration status does not permit them to work).

Dismissing an employee for any reason other than those listed above will be unfair.

Always follow the correct procedure

- Even if a business has established a potentially fair reason for dismissing an employee, it must still follow the correct procedure. Failure to do so could lead to a claim for unfair dismissal.
- Generally, an employee must have completed a qualifying period of service before they can bring a claim for unfair dismissal. The qualifying period is two years or one year if their employment started before 6 April 2012.
- However, certain dismissals are deemed to be automatically unfair and an employee is protected as soon as they start work. These include dismissals connected with:

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Summary:

The steps a business should follow when it is considering dismissing an employee.

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- pregnancy;
- parental leave;
- requests for flexible working;
- whistleblowing; or
- a TUPE transfer.

Check the employee's contract

It is possible to dismiss an employee fairly but still be in breach of contract if the business has not given them the correct notice under their contract. A business does not want to take any action that could breach an employee's contract because:

- It may lose valuable protections in the contract such as post-employment restrictions (for example, stopping an employee going to work for a competitor).
- The employee may have a claim for wrongful dismissal in breach of contract (for example, if the business fails to give them their contractual notice period or pay a contractual bonus)

PILON clauses

Your business may have legitimate reasons for being unable to accommodate a flexible working request. In rejecting a request, you must identify one or more of the following grounds as the reason for doing so:

- A payment in lieu of notice (PILON) clause is a contractual right that enables a business to pay an employee a lump sum rather than require them to work out their statutory or contractual notice period.
- Before terminating employment and making a PILON, the business should ensure that the contract of employment they wish to terminate allows for termination in this way. If the contract does not allow for a PILON to be made, then it will probably be a breach of the contract to do so.
- If a business decides to make a PILON, it must notify the employee that a PILON is being made to them in exercise of the employer's contractual right to terminate the employment with immediate effect. Simply making the PILON will not be sufficient to bring the contract to an end.

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If you would like to know more about this topic or our other legal services, please contact Paul Maynard:
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