

Dismissing someone fairly

A dismissal is when an employer ends an employee's contract. It usually means the same as being sacked or fired.

There are five potentially fair reasons for dismissal under the ERA (Employment Rights Act):

- ✓ capability means the ability of someone in terms of their performance. They could also become unfit for work or to do a particular job, or they do not have the right qualifications for that type of work.
- ✓ conduct can be a single act of serious misconduct or a series of other acts that are less serious.
- ✓ redundancy – when the job is no longer needed.
- ✓ breach of a statutory duty or restriction - when the employee cannot do their job legally, for example a driver who has been banned from driving.
- ✓ another substantial reason.

Other substantial (SOSR) reasons may include:

- ✓ you take on an employee on temporary cover i.e. - maternity cover and dismiss them when this cover period ends. This kind of dismissal is fair if you made it clear the job was temporary at the very start of their placement.
- ✓ an employee refusing to agree to new terms and conditions of employment.
- ✓ third party pressure – a client refuses to work with an employee.
- ✓ breakdown in trust and confidence - Employers should, however, proceed with caution and refrain from simply asserting that trust and confidence have been broken and SOSR was the only possible way to dismiss a troublesome employee.

Acting reasonably

Even when you have a fair reason for dismissal, it will only be fair if you also acted reasonably during the dismissal and disciplinary process.

As there is not a clear definition of 'reasonableness' if you are taken to an employment or industrial tribunal, they would have to consider the following:

- ✓ they genuinely believed that the reason was fair
- ✓ that all the necessary investigations were appropriate
- ✓ that the employer followed the relevant procedures
- ✓ the employer has told the employee as to why they were being considered for dismissal and has listened to the employee's views
- ✓ have allowed the employee to be accompanied at disciplinary or dismissal hearing
- ✓ Has given the employee time to appeal

Reasonableness might also depend on whether the employee could be expected to understand the consequences of their behaviour.

Does the employer have to put their reasons in writing?

An employer must put the reasons in writing when the employee is pregnant or on maternity leave. This is regardless of how long they have been employed for.

Other employees have the right to ask their employer for a written statement giving the reasons for their dismissal if they have:

- ✓ employee' [employment status](#)*
- ✓ been employed for 2 years

If an employee asks for the reasons in writing, their employer must give them the reasons in writing within 14 days.

*ACAS

<https://www.acas.org.uk/dismissals>

<https://www.gov.uk/dismiss-staff/fair-dismissals>