



Human Resources & Health and Safety



Do you employ staff?

How to Avoid Wrongful and Unfair Dismissals

Do you understand the difference between Wrongful and Unfair dismissal?

Wrongful Dismissal

Any of your employees, irrespective of their length of service, can raise a claim for wrongful dismissal. This is a claim under employment law which relates to a breach of the contract of employment e.g. dismissing an employee without the correct amount of notice, or denying a dismissed employee any wages or benefits owed to them, such as accrued holiday pay, etc. This breach can relate to both express (explicitly written down) and implied terms (e.g. mutual trust and confidence) of the contract, although it is easier for a claimant to prove that an express term of the contract has been breached. The most common cases of wrongful dismissal are when an employer has not provided the employee with the correct amount of contractual or statutory notice. Another common cause is when an employer has paid an employee in lieu of notice, but has not paid the employee the correct amount owed to them.

Unfair Dismissal

Under provisions set out in the Employment Rights Act 1996, an employee has the legal right to not be unfairly dismissed by his or her employer. A dismissal is automatically unfair if it is because of an employee exercising specific rights relating to:

- Pregnancy and maternity
- Parental leave, paternity leave, adoption leave, shared parental leave, or time off for dependants
- Representation: including acting as an employee representative
- Trade Union membership or Union Recognition

- Part-time and Fixed-term contracts
- Pay and working hours, such as the Working Time Regulations, annual leave, or the National Minimum Wage, etc.

A dismissal will also be deemed unfair if it is perceived to be discriminatory, or if the employer failed to follow the disciplinary and dismissal procedures correctly. For example, if an employee is dismissed after a disciplinary, but was not given the opportunity to provide evidence on their behalf or provide the employer with their point of view, that dismissal could be considered unfair. Procedural adherence, and following the ACAS Code of Conduct, is incredibly important. If you have a legitimate reason for dismissing an employee, but you dismiss them in an incorrect way, they may still be able to raise a claim for unfair dismissal. To be eligible to raise a claim, employees need to have “qualifying service” i.e. two years’ continuous service (prior to 6 April 2012 it was one year).

How to Avoid Them?

The best way to avoid unfair or wrongful dismissal is to ensure that your HR policies and procedures are legally compliant and up to date, and to ensure that they are strictly adhered to. Similarly, employers should always remember that the contract does not just apply to the employee, but the employer too. Communicate with employees clearly, and treat them fairly and reasonably, as you yourself would want to be treated. Professional management is carried out objectively, it is all too easy to allow anger or haste to prevent you from carrying out a disciplinary procedure correctly, which is why emotional intelligence plays an important part in employee management.

It is also important to be aware of the five fair reasons for dismissal:

- Capability
- Conduct
- Redundancy
- A statutory duty or restriction that prohibits the employment from continuing, and
- Some other substantial reason (SOSR).

ACAS Conciliation

Before someone can raise a claim before an employment tribunal, they are required to submit a request for early conciliation with ACAS, who will then contact the employer. The purpose of this early conciliation is to try to settle conflicts outside of the tribunals, which can be costly, time consuming, and stressful for both parties. There is no obligation for an employer to enter into conciliation, and many don't when they feel the claimant does not have real grounds for a claim. However, if the employer is aware that they have not done everything 100% as they should have, it is a good idea to engage with the conciliation process. The financial penalties from an employment tribunal are likely to be more significant than any compensation that would be agreed upon through conciliation, and conciliation can also help an employer avoid the bad publicity that can come from employment tribunals.

New additional 'HR Plus' Services

We are pleased to confirm that we will be offering new additional **hands-on** and **fixed-fee** 'HR Plus' services throughout 2017; these will include outsourced support with the management of:

- **Maternity, adoption, shared parental leave and associated flexible working requests;** we will meet with you in order to gather relevant information, introduce ourselves to your employee, take care of all associated administration (letters etc.) including the pregnancy risk assessment. Keep in contact with your employee during the leave period, keeping you up-to-date as is necessary, meet again with both parties (independently) prior to the return to work, discuss and design the re-induction process and carry out a post-return to work review to ensure a successful return for both parties.
- **Recruitment;** we will meet with you in order to gather relevant information, discuss and agree with you how to advertise the vacancy and source candidates, receive and sift all applications to select suitable candidates for first stage interviews, interview candidates selecting a short-list of candidates for second stage interviews. Includes all administration prior to second stage interviews.
- **Absence Management;** we will meet with you in order to gather relevant information. For short-term absences, we will hold return to work interviews and complete necessary administration and if appropriate manage the formal absence management process for you. For long-term absences, we will meet with the employee, complete all necessary administration (follow up letters etc.), refer to occupational health if appropriate, manage the return to work process or the formal capability dismissal process as required. Keeping you updated, every step of the way.

Free Offer (till the end of April 2017 only)

Full collection of Family Friendly Policies/Procedures:

Hassle Free HR supports employers within the SME sector to implement effective and legally compliant HR practices. We are offering a full collection of legally compliant and up-to-date, Family Friendly HR Policies/Procedures: inclusive of Adoption, Maternity, Ordinary Parental, Paternity and Shared Parental Leave Policies/Procedures. Also included is a Flexible Working Policy/Procedure. The collection includes all associated template letters and forms and associated flow charts. Conditions apply.

How We Can Help

If you have any queries relating to any of the above or are interested in enquiring about our new 'HR Plus' services or our free offer, please don't hesitate to contact us at [hradvice@hasslefreehr.co.uk](mailto:hRADVICE@hasslefreehr.co.uk)