
THE LEGAL APPRENTICE

Employment Law Fact Sheet

What is employment law?

Employment law focuses on everything to do with the workplace. It covers the complete lifecycle of employment—from hiring an employee, to when they leave their job.

This includes “hiring and firing” employees, advertising job openings, pay, moving employees around companies, promotions and benefits and what happens when things go wrong at work. It also involves issuing or defending employment tribunal/court cases when disagreements between an employer and employee cannot be resolved.

Key sorts of topics covered by employment law

- Discrimination at work
- Promotions, pay and bonuses
- Hiring someone
- Dealing with someone who has done something wrong (disciplinary hearings)
- Sickness absence
- Employment tribunal / court claims
- Terminating someone’s contract

What does employment law involve?

On the one hand, employment law is concerned with an individual and his/her rights and obligations in the workplace. On the other hand, it also deals with an employer’s rights and obligations.

Solicitors who represent clients in this area will work on collecting information about the matter in question so that they properly understand the facts, researching the relevant law, preparing documentation (contracts of employment, handbooks for staff, policies, tribunal/court documents and pleadings etc.) and conducting settlements on their behalf.

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Depending upon how a matter progresses, they may also have to start a claim in the Employment Tribunal or the courts, or defend any such claims, on their clients' behalf. The majority of cases concern dismissals, breach of contracts, harassment, redundancy/lay-off and discrimination on the grounds of age, sex, religion and disability.

What skills does an employment lawyer need?

An employment solicitor needs to be **agile** and **adaptable** in order to be able to operate in a constantly changing environment. Employment law changes all the time due to important cases being heard in the tribunals and courts that constantly reshape the legal landscape. This requires lawyers to have **good reasoning** and **excellent communication** skills. Like all lawyers, they also need to have good **drafting** skills, a keen **eye for detail**, and be able to understand and distil complicated information into a form which clients will understand.

Interesting new developments

Kurmajic v Sainsbury's Supermarkets - this case concerned an employee of Sainsbury's who posted information about a gentleman he had helped in the store car park, including his age and address, in a comment on Facebook. After an initial hearing, the employee in question was dismissed (i.e. his employment was brought to an end by Sainsbury's). It was held that the employee had, in fact, been unfairly dismissed because his employer did not follow a fair process in dismissing him, despite acknowledgement by the court that these actions were still inappropriate. [See link here.](#)

City of York Council v Grosset - this case concerned an English teacher who showed his pupils, aged 16 and 17, a horror film with an 18 rating. Having been dismissed by his employers for his actions, the teacher claimed that his error in judgement was due to him suffering cystic fibrosis, and that he had been overworked and stressed. It was

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accepted by the court that his dismissal was a disproportionate response by his employer, and that there had also been unlawful discrimination. See link [here](#).

Relevant Employment Law and guidance – a broad overview

Unfair Dismissal

When an employer decides to end the employment of one of their employees this is called 'dismissal.' However, it is not as simple as telling them 'you're fired!'

An individual who has worked for their employer continuously for **two years** has the right not to be 'unfairly dismissed'. Therefore the employer must be able to show that:

- 1) the reason (or principal reason) for the employee's dismissal was **fair**, namely:
 - the individual's capability or qualifications were not up to scratch (i.e. their performance was below the standard required or expected of them in some way, or that they lacked the necessary qualifications to do their job);
 - the individual's conduct was poor (i.e. they did something wrong at work, such that the employer was entitled to dismiss them – stole from their employer, consistently turned up late or failed to meet targets, for example);
 - the individual's role was redundant (i.e. no longer required);
 - there is a legal duty or some kind of restriction which prevents the individual's employment from continuing (for example, if their continued employment would be a breach of immigration rules, or they lost their driving licence when driving is a requirement of their job); and/or
 - some other substantial reason of a kind to justify the individual's dismissal (i.e. a fixed-term employment contract coming to an end, a business reorganisation, or personality clashes between colleagues which cause significant disruption to the business);

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- 2) The employer followed a **fair process** when dismissing the individual; and
- 3) The employer's decision to dismiss the individual, for the reason (or reasons) it identified, was **reasonable** in the circumstances (e.g. was dismissing the individual for what they did reasonable, or should that employer have taken another course of action, like giving the individual a conduct warning or asking them to improve their performance?).

Disciplinary Process

Usually, an employer will go through a 'disciplinary process' when it becomes aware that one of their employees might be misbehaving. This usually involves **discussing the matter with the individual** first, to see if things can be resolved without having to take any further action.

If the matter is not resolved talking to the employee, the employer will typically need to **start formal disciplinary proceedings**. This should involve carrying out an **investigation** into the issue, to find out what really happened.

Once the employer has concluded its investigation, it should **tell the individual** in writing of the outcome of its investigation. The employer should **give all the relevant documents and** evidence to the individual relating to the allegations against them, and **hold a** meeting with them to allow them to explain their side of the story.

'Sanctions'

The employer might still need to carry out further investigations before making a decision about what penalty or 'disciplinary sanction' they should give the individual.

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Sanctions can include:

- a *first* written warning/improvement note (perhaps where the individual does not have any previous issues on their record);
- a *final* written warning (where the individual does have a previous record of bad behaviour or if the issue is serious enough to justify a final warning);
- dismissal (where the matter is very serious);

The employer should give the individual the opportunity to appeal any sanction which they disagree with.

Gross Misconduct and Immediate Dismissal

An employer can dismiss an individual immediately where the employer finds that the individual's conduct is so serious that the employer cannot continue to employ them because trust and confidence has broken down. Conduct which is this serious is known as "gross misconduct".

"Gross misconduct" can cover a whole range of actions but examples can include theft or dishonesty, vandalism of the employer's property, fighting or physical violence, serious negligence (i.e. the individual seriously fails to do their duty or meet the standards required or expected of them), serious breaches of the employer's policies, offensive or abusive behaviour, criminal behaviour etc.

Employers will normally include examples of the type of behaviour which may amount to gross misconduct warranting dismissal in the individual's contract of employment, in its disciplinary policy, or in its staff handbook.

Automatically Unfair Dismissal

A dismissal will be regarded as automatically unfair, if the employer dismisses the individual because of age, sex, race, religion or belief, disability, sexual orientation, pregnancy or maternity, gender reassignment, or marital/civil partnership status

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and/or if the individual was dismissed because they reported wrongdoing which they had seen or heard about at work (**automatic** unfair dismissal).

So if, for example, an employer dismissed an individual because they were +50 years old or because they were black, and tried to make it look like they were dismissing the individual because there was a disciplinary issue, then this could amount to automatic unfair dismissal. The individual in question might be able to bring a claim against their employer, depending on the facts.

To claim automatic unfair dismissal, an individual does not need two years' continuous service with their employer (like they need in order to bring an **ordinary** unfair dismissal claim).

Policy and Procedures

In any disciplinary situation, it will be important for the employer to follow their policies and procedures (such as a disciplinary policy, for example), the ACAS Code of Practice (to the extent that it is relevant: <http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>) and the individual's own contract of employment. Where government, educational, charitable or other institutional bodies are involved, it may also be necessary to follow relevant industry advice, codes of practice and/or guidelines.

Key resources and legislation

www.acas.org.uk/

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

<https://www.gov.uk/browse/employing-people>