

Dismissing an Employee

Establish whether there are grounds for dismissal

There are several potentially fair reasons for dismissing an employee:

- The way in which they have conducted themselves at work (for example, they have filed a fraudulent expenses claim or persistently arrive late at work).
- They are unable to carry out their job because they lack the necessary skills required (for example, a sales manager has consistently failed to meet reasonable sales targets despite receiving additional support and training).
- They are on long-term sick leave and cannot return to their job.
- Their job is redundant (for example, if your business is declining or your 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.
- Continuing to employ them would be illegal (for example, you have discovered that your employee’s immigration status does not permit them to work).

Be very careful when establishing the grounds for dismissal as using any other reasons could result in a claim for unfair dismissal.

Always follow the correct procedure

- Even if your business has established a potentially fair reason for dismissing an employee, you still must follow the correct procedure. Failure to do so could lead to a claim for unfair dismissal.
- Generally, an employee must have been employed for one year before they can

bring a claim against your business for unfair dismissal.

- 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:
 - pregnancy;
 - parental leave;
 - requests for flexible working; or
 - whistleblowing.

Check your employee’s contract

It is possible to dismiss an employee fairly but still be in breach of contract if you have not given them the correct notice under their contract. Your 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 your employee going to work for a competitor).
- Your employee may have a claim for wrongful dismissal in breach of contract (for example, if your business fails to give them their contractual notice period or pay a contractual bonus).

Notice of termination

- A notice of termination can rarely be withdrawn. An employee will be able to take the notice at face value unless your business can show that it did not intend to terminate the contract.
- In very limited circumstances (typically where notice is given in the heat of the moment), the recipient of the notice may be entitled not to take what is stated at face value.

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More information

If you have any questions, please visit our website at www.conybeare.com or feel free to contact Steven Conybeare via email steven@conybeare.com or call him on +44 (0) 870 753 0925.

About Conybeare Solicitors

Conybeare Solicitors is a boutique international law firm, built upon a solid foundation of business experience and legal expertise gained over 20 years, providing a premium service to sophisticated clients, wherever they may be. We offer our clients a better perspective.

Our philosophy is simple: to work with our clients to help them realise their objectives.

We do this by fully understanding your requirements, taking into account business parameters, developing and executing a strategy to minimise regulatory and legal risk and drawing together the full extent of our legal expertise and business experience. Ultimately, we provide you with solutions to achieve your ambitions.

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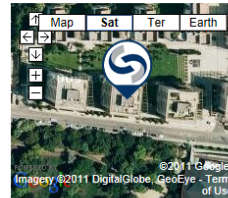
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