

Dismissing an employee with under two years' service – risky business?

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Employees are, in general, only able to claim unfair dismissal against an employer if they have a minimum of two years' length of service. The qualifying period increased from one year to two years in April 2012. This presents employers with some level of flexibility in managing and dismissing staff with less than two years' service.

Generally, employees can only claim unfair dismissal against an employer if they have a minimum of two years' service. In 2012, the qualifying period increased from one to two years. This presents employers with some level of flexibility in managing and dismissing staff with less than two years' service.

Employers should be mindful of the start date for new employees and keep an eye out for any concerns. If dissatisfied, it is easier for employers to dismiss employees during the first two years of service (subject to some caveats below).

The minimum

It is sensible to meet with the employee to outline any concerns. Take notes during the meeting. Notes are important because they record what was discussed and are of use if issues arise further down the line. The employee may be given a short period to improve, for instance if the issue is performance related. If the employer remains unhappy, then there is the option to dismiss in a quick and efficient manner.

It is important to check whether any company policies and procedures are contractually binding. If so, the employer must ensure capability and disciplinary procedures are followed. Ideally a company's policies and procedures should not form part of an employment contract, since this enables change without consultation.

Exceptions

Employers must exercise caution when contemplating a dismissal. No qualifying length of service is required for a dismissal which is deemed automatically unfair. Examples include dismissal for reasons related to pregnancy, discrimination or acting as a trade union representative. The full list is set out in [the Employment Rights Act 1996](#).

Note, an employee whose termination date is the day before the second anniversary of their start date, will have two years' service and qualify for an unfair dismissal claim.

Irrespective of unfair dismissal claims, employees can claim wrongful dismissal for breach of contract, if the employer does not provide the relevant notice period or makes a payment in lieu of notice. In such cases, fairness is not an issue. The sole question is whether the contract has been breached. Employees are also entitled to be paid for any untaken accrued holiday at the termination date.

Best practice

Employers should follow the [ACAS Code of Practice on Disciplinary and Grievance Procedure](#). If the employer has unreasonably failed to follow the code, they risk facing a 25% uplift on any compensation. Therefore, a dismissal without notice may be met with an unlawful deduction from wages claim or breach of contract, along with an uplift. A capability termination may be met with a discrimination claim with the risk of an uplift.

Employers following the Code add robustness to any claim on an evidential basis.

If you need advice on steps to take to dismiss an employee, regardless of the length of service, or if you have been dismissed and want advice on your rights, please contact [Karen Cole](#).