

Can I fire someone with less than 2 years' service?

June 2019

Generally, employees can only claim unfair dismissal against an employer if they have a minimum of two years' service.

This is not, however, a green light to dismiss someone with less than two years' service, as there are other employment law issues to consider. It does, however give you, as an employer, some level of flexibility in managing and dismissing staff with less than two years' service under their belt.

When a new employee starts, keep an eye out for any concerns you might have and make a note of their start date. If dissatisfied, it's easier to dismiss someone in the first two years of their employment, subject to some of the below caveats.

Know the risks

In some cases, there is no qualifying period of employment (i.e. length of service), for example, the 'automatically unfair' reasons for dismissal. If you've not heard of these before, read our article "[What are the automatically unfair reasons for dismissal?](#)". Another area is discrimination. Employment law recognises nine types of discrimination:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Before dismissing an employee with less than two years' service, you should check that there is no discriminatory aspect to the decision.

You should also be aware that there is only a one-month qualifying period for an employee who is dismissed in circumstances where they should have been suspended on medical grounds.

Further, it is important to check whether any company policies or procedures are contractually binding. If so, you must ensure capability and disciplinary procedures are followed.

"Ideally a company's policies and procedures should not form part of an employment contract, as this enables change without consultation."

KAREN COLE

Irrespective of unfair dismissal claims, employees can claim wrongful dismissal for breach of contract, if you do not provide the correct notice period or if you do not make a payment in lieu of notice. If this is the case, fairness is not even an issue. The sole question to be answered is whether the contract has been breached.

Lastly, don't forget employees are entitled to be paid for any accrued holiday not taken at the date of termination.

What to do – as a minimum!

Meet with the employee in question and outline any concerns you may have. Take notes at that meeting. Notes are important because they record what was discussed and are useful if issues arise further down the

line. You may give the employee a short period to improve, for instance if the issue is performance related. If you remain unhappy after this period, then the option to dismiss can be pursued in a quick and efficient manner.

Dismissals close to two years' service

Employers should always seek legal advice when considering the dismissal of an employee with close to two years' service. It is important to bear in mind statutory and contractual notice periods even when you're dismissing without paying notice.

"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."

KAREN COLE

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, and a capability termination may be met with a discrimination claim also with the risk of an uplift.

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

If you're unsure of how to get rid of an employee, speak to Karen Cole today.

Karen Cole
020 7299 6909
karen.cole@riaabg.com
www.riaabarkergillette.com



[Click here to make an appointment](#)

Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

