

What are the automatically unfair reasons for dismissal?

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In general, to bring an unfair dismissal claim, an employee must have worked for an employer for at least two years. In certain circumstances, however, the law offers employees protection against unfair dismissal, regardless of their length of service.

Some of these reasons are known as the 'automatically unfair' reasons for dismissal and are commonly borne out of UK statute. [ACAS](#) breaks these down into the following categories:

- pregnancy: including all reasons relating to maternity;
- family reasons: including parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants;
- representation: including acting as an employee representative;
- trade union membership grounds and union recognition;
- part-time and fixed-term employees (under the [Fixed-term Employees \(Prevention of Less Favourable Treatment\) Regulations 2002](#) and the [Part-time Workers \(Prevention of Less Favourable Treatment\) Regulations 2000](#)); and
- pay and working hours: including the Working Time Regulations, annual leave and the National Minimum Wage.

The [.gov.uk](#) website expands this further by adding:

- acting as an occupational pension scheme trustee; and
- [whistleblowing](#).

With this ambiguity existing between the two most popular 'go to' websites, we thought we'd fill in some of the missing details and expand upon what's included under some of these umbrella headings.

Under 'pay and working hours'

As well as rights under the [Working Time Regulations](#), [annual leave](#) and the [National Minimum Wage](#), we would expand this category to include (or even detail) rights relating to flexible working arrangements, jury service, Sunday working hours, study leave, training requests and working tax credits.

Under 'representation'

We would expand this point to include an employee's right to be accompanied to a disciplinary or grievance hearing or to a meeting under the statutory retirement procedure, to make it clear that this heading includes both the employee AND a representative.

As the counterpart to representation, we would add 'consultation' to the mix, as an employer has a duty to inform and consult with its employees in certain prescribed circumstances (such as collective redundancies, business transfers and health and safety matters) under the [Information and Consultation of Employees Regulations 2004](#) and the [Transnational Information and Consultation of Employees Regulations 2004](#).

Under 'trade unions'

One of a trade union's main aims is to protect and advance the interests of its members in the workplace and most trade unions are independent of any employer. Therefore, an employer cannot impede upon any employee's membership or non-membership of a trade

union or participation in any trade union activities, such as protected industrial action and collective bargaining arrangements.

Employers are also prohibited from compiling, using, selling or supplying blacklists of trade union members or activists.

Under 'other'

Yes, unfortunately, we would have to add that infamous heading 'other' to both ACAS and .gov.uk's lists, as both fail to mention agency workers, zero-hour contracts, pension auto-enrolment or where an employee asserts a statutory rights (such as the right to receive a written statement of particulars of employment or not to have an unlawful deduction from wages). A dismissal will also be automatically unfair if an employer selects the employee for redundancy based on any of the grounds we have listed above.

So, what are the 'fair' reasons for dismissal?

Under the [Employment Rights Act 1996](#), dismissal is usually deemed as fair if an employer can demonstrate that the reason they dismissed the employee was for one of the five potentially fair reasons for dismissal and that it acted fairly and reasonably in treating that reason as sufficient to justify the dismissal.

The five potentially fair reasons for dismissal are:

1. conduct
2. capability
3. illegality
4. redundancy; or
5. some other substantial reason

What else do I need to know?

Note: in an automatically unfair dismissal claim, the requirement for reasonableness (required for usual unfair dismissal claims) is not required.

Where dismissal relates to an employee's political opinion or affiliation, or to an employee's membership of the reserve forces, the employee doesn't need two years' service. However, these are not classed as 'automatically unfair' dismissals and still require the employee in either case to show that the employer did not act reasonably.

If an employee is dismissed in circumstances where they would qualify for suspension on medical grounds, the qualifying length of service to bring an unfair dismissal claim changes to one month.

If you have been dismissed or are looking to dismiss someone, call [Karen Cole](#) today to discuss your rights.

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

