

Dismissed with less than two years' service?

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If you have been employed for less than two years and your employer dismisses you, generally, you will have no claim for unfair dismissal.

Being dismissed from your job can be a huge shock and can often feel unfair, but that doesn't necessarily mean that, in the eyes of the law, you have any claim against your previous employer.

Should you find yourself in this position you will need to consider the following:

Basis for challenge

If you are dismissed for either of the following two reasons, you have the scope to challenge your dismissal.

1. An automatically unfair reason for dismissal; or 2. Discrimination.

In June, we wrote an [article](#), on the unfair reasons for dismissal, listing them as:

- 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);

- pay and working hours: including the Working Time Regulations, annual leave and the National Minimum Wage.
- acting as an occupational pension scheme trustee; and
- whistleblowing.

If you are dismissed for one of these reasons, the dismissal is unfair regardless of your length of service.

You can also challenge your dismissal if it's because your employer has discriminated against you.

The following protected characteristics can give rise to a discrimination claim:

- Age
- Disability
- Gender reassignment
- Marriage or civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Please note, however, if you have been dismissed when you should have been suspended on medical grounds, there is a one-month qualifying period of employment.

Appealing your dismissal

Subject to legal advice, if you have been dismissed by your employer, you should first appeal under your employer's disciplinary procedure.

Contractual claims (aka “wrongful dismissal”)

If you cannot claim for unfair dismissal, you can claim for breach of contract (regardless of your length of service), if your employer hasn't complied with the terms of your employment contract. This is known as a wrongful dismissal claim.

Fairness is not an issue here and the extent of your claim will generally be limited to putting you back in the position you would have been, had your employer not breached your employment contract.

If you have been dismissed with or without two years' service, we strongly recommend that you take legal advice before acting. Speak to employment lawyer [Karen Cole](#) today.

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

