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## **Termination of Employment**

### **Redundancy**

Two areas to consider:

- a) Entitlement to statutory redundancy payment
- b) Redundancy in the context of unfair dismissal

#### ***Entitlement to redundancy payment***

Employee must be able to show

- 2 years' continuous employment at relevant date
- dismissal for reason of redundancy
- under normal retiring age or 65 if none (this age limit will be removed by age discrimination legislation in 2006)

Dismissal will be for reason of redundancy if the reason is that

- employer has ceased or intends to cease to carry on the business for which the employee was employed; or
- has ceased or intends to cease to carry on his business in the place the employee was employed; or
- number of employees required to do the work has or is expected to diminish.

Employee will lose his entitlement to the statutory redundancy payment if he unreasonably refuses his employer's offer of suitable alternative employment, which would have commenced within 4 weeks of the redundancy.

A claim for a redundancy payment (assuming the employer has not made it without the need for a claim) should be made to the ET within 6 months of the relevant date, although the ET can extend this by a further 6 months.

***Note for employers- if making a redundancy payment to an employee, you must provide them with a written statement of how the amount has been calculated.***

The payment is not subject to rules regarding mitigation of loss, so an employee does not lose his entitlement if gets another job immediately.

Calculation of the payment is based on age, length of service and normal weekly earnings:

- age 18 to 21 – ½ week's wage for every year
- age 22 to 41 – 1 week's wage for every year
- age 42 to 64 – 1 ½ week's wages for every year

The sum is subject to a maximum limit of 20 years service and weekly earnings of £280, so the maximum award is currently £8,400 (this will increase to £8,700 on 1 February 2006 when the maximum week's earnings rises to £290).

If the employee has reached the age of 64 his redundancy payment is reduced by 1/12 for every month thereafter.

(\*Note – age discrimination legislation coming into effect later in 2006 will remove the upper age limit for redundancy claims, and there will be one multiplier regardless of someone's age during their years of employment- this multiplier has not yet been finalised).

### ***Redundancy in context of unfair dismissal***

Redundancy is a potentially fair reason for dismissal. If relying on this reason the employer will need to show that he

- considered other alternatives first
- genuinely consulted with employees before taking the decision
- devised and adhered to a fair and unbiased selection procedure.

## **DISMISSAL**

Note – an employee with 1 year's continuous employment can request a written statement of the reasons for his dismissal, which the employer should provide within 14 days.

If an employer is contemplating dismissing an employee the potential claims to be aware of are

- (1) Common law – wrongful dismissal
- (2) Statute – unfair dismissal

### ***Wrongful dismissal***

This is a claim for breach of contract. Damages are awarded to put the employee in the position he would be in if the contract had been properly performed. Commonly used where dismissal has been without proper notice, and the claim is for salary and benefits the employee would have received during his proper notice period.

Employees can now bring this sort of claim in ET as well as the county court, as a result of the Employment Tribunals (Extension of Jurisdiction) Order 1994, which enables employees to bring a claim in the ET for sums “outstanding on the termination of the employment.”

N.B. There is no qualifying period of employment. May be relevant where claim is for ‘constructive dismissal’ and an employee does not have 1 year’s continuous employment. Maximum award payable is £25,000.

### ***Unfair dismissal***

This is a statutory concept. A claim must be made in ET within 3 months of the ‘effective date of termination’( EDT) unless it was not reasonably practicable to do so, in which case ET has a discretion to extend the time limits. If the employee believes the Statutory Disciplinary and Dismissal Procedure (SDDP) is being followed a further 3 months is allowed before his claim is out of time.

#### **The process**

In making a claim of unfair dismissal the employee must first establish

- employee status (if this is disputed)
- 1 year’s continuous employment
- under normal retiring age or 65 (this will be removed later in 2006 with age discrimination legislation)
- dismissal ( with/without notice; expiry of fixed term contract without renewal; constructive dismissal).

It is then for the employer to show that

- dismissal was for one of 5 potentially fair reasons ( capability; conduct; to prevent breach of statute; redundancy; some other substantial reason justifying dismissal); and
- that the employer acted reasonably in all the circs in treating that reason as sufficient to dismiss an employee holding the position the employee held.

The ET will look at all relevant circs including the size and administrative resources of the employer. It should not substitute its own decision for that of the employer provided the employer’s decision to dismiss was within the range of reasonable responses an employer could make.

Note for employers – procedures are vital. It is not just the decision you reach which will be examined but also the fairness of the means by which you came to that decision. Any employer contemplating dismissal (on any grounds, not just disciplinary) must follow at least the SDDP. Failure to do so will make the dismissal automatically unfair.

If ET finds dismissal was unfair the possible orders it can make are

1. Reinstatement (subject to employee’s wishes)
2. Re-engagement (as above)

### 3. Compensation (most common)

Compensation is made up of

- (a) *Basic award* (max £8,400, rising to £8,700 from 1 February 2006); (automatic entitlement, calculated as per redundancy payment); and
- (b) *Compensatory award* (max £56,800, rising to £58,400 from 1 February 2006)– such amount as the ET considers “just and equitable” having regard to the loss sustained by the employee as a result of the dismissal.

The compensatory award is calculated under various headings:

- 1. Immediate loss of earnings (i.e. from EDT to date of hearing)
- 2. Future loss of earnings (estimated)
- 3. Loss of statutory rights
- 4. Expenses (does not include legal expenses of bringing claim)
- 5. Pension loss
- 6. If SDDP not followed and fault of employer, award increased by 10-50% unless ET thinks not just and equitable to do so.

Compensatory award can also be *reduced* as a result of

- 1. Employee’s failure to mitigate loss (i.e. by not finding another job – onus on employer to establish)
- 2. Contributory fault of employee
- 3. Employee’s failure to complete SDDP before bringing claim- award may be reduced by 10-50%.

### **Additional notes**

#### Procedure

Procedure in ET is governed by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004. Claim made by employee. Employer has 23 days to respond. ET can have pre-hearing reviews, order disclosure, make directions etc much as an ordinary court, but its rules are less formal. The overall aim is to enable claims to be dealt with fairly, quickly and cost-effectively.

#### Conciliation

A copy of the claim is sent to an ACAS conciliation officer, who will try to enable a settlement without the need for a hearing ( this happens in more than 50% of cases). There is then a conciliation period during which a tribunal hearing will not take place (13 weeks, in the case of a claim for unfair dismissal).

## Continuous employment

When calculating an employee's period of continuous employment for the purposes of bringing an unfair dismissal claim, continuity of employment is broken if there is a complete week in which there is no contract of employment. N.B. Continuity is not broken by absence through sickness, maternity leave, or holiday. In order to calculate the period of continuous employment you need to know

- date employment began under contract
- date employment ended (EDT)
- any weeks which break continuity
- any weeks which do not break continuity but do not count towards total.

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