

# The employer's guide to conducting a safe staff dismissal

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Run Time: Approx 50 mins

24/7 professional support for businesses,  
across **Employment Law, HR and Health & Safety**



The detail contained within this webinar is based on GB & Northern Ireland employment legislation.

Members in the jurisdictions of the Republic of Ireland, Jersey, Guernsey and Isle of Man are asked to please contact the Advice Service to obtain the information relevant to your jurisdiction.

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# Today We Will Cover

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- How to follow a full and fair dismissal process
- Common mistakes that could count against you in tribunal
- Our top tips to help mitigate the risks
- How the Employment Rights Bill will impact dismissals

# Did you know...

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- In 2024/25, unfair dismissal claims remained the most common type of claim brought before Employment Tribunals, making up 23% of all claims.
- The Employment Rights Bill, currently progressing through Parliament, introduces significant changes to employee protection against dismissal, particularly focusing on "day one" protection from unfair dismissal and restrictions on "fire and rehire" practices.

# Fair dismissals—**the law**

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- **FIVE** fair reasons; capability, conduct, statutory ban, redundancy, ‘SOSR’
- Two-part test; fair reason and reasonable process needed
- **Changes proposed:** Two year service requirement to be removed



# Reasonableness

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- There's no legal definition of 'reasonableness', but the ET will consider whether you:
  - genuinely believed that the reason was fair
  - carried out proper investigations where appropriate
  - followed the relevant procedures
  - told the employee why they were being considered for dismissal and listened to their views (in Northern Ireland, the employer must do this in writing)
  - allowed the employee to be accompanied at disciplinary or dismissal hearings
  - gave the employee the chance to appeal



# Capability (performance)

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- Must establish a reasonable belief in the employee's inability to perform
- Need to show evidence of how employee has been supported to improve
- Must consider reasonable adjustments if needed



# Capability (ill-health)

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- Dismissal should be a last resort after exhausting other efforts
- Must be able to show efforts to support employee to carry on work
- Reasonable adjustments to be considered
- Medical evidence needed
- Higher risk for discrimination claims!



# Top Tips

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Your policies should outline what is deemed **misconduct** and **gross misconduct** in your organisation

# Conduct (misconduct)

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- Standards of conduct should be laid out in your Employee Handbook
- Different to capability – this is where an individual **won't** do something or **should not have** done something.
- *British Home Stores Ltd v Burchell*
  - Genuine belief in employee's guilt
  - Reasonable grounds for that belief
  - Reasonable investigation leading to that belief



# Conduct (gross misconduct)

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- A single act or omission so serious the employer can bring the contract summarily to an end
- Disciplinary rules should give examples of what is considered “gross misconduct”: vary according to the type of organisation and its line of business
- Must follow Acas code and internal process



# Conduct (scenario)

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- Someone informs you that a member of staff has been seen taking money from the till
- You check the CCTV and can clearly see the staff member pocketing some money from the till
- Can you dismiss the employee on the spot?
  
- *Acas code of practice:*
- Made aware of allegations
- Opportunity to state case (disciplinary hearing)
- Written reasons for dismissal



# Redundancy

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- Where work of a particular kind, and / or in a particular place, has ceased or diminished – section 139 Employment Rights Act 1996
- Strong business case and meaningful consultation needed
- Objective, non-discriminatory selection criteria important
- Minimum consultation length for collective consultation – risk of protective award



# The Redundancy Process Step By Step

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- There are five key stages to handling a redundancy fairly and legally:
  - Step 1: Build a Clear Business Case
  - Step 2: Identify the At-Risk Pool
  - Step 3: Begin Consultation
  - Step 4: Apply Fair Selection Criteria
  - Step 5: Confirm Outcome, Explore Alternatives, Offer Appeal



# Some other substantial reason “SOSR”

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- “Catch all” reason, often seen where employment relationship irretrievably broken down, following third party pressure, or where the organisation’s reputation is at risk
- A SOSR dismissal could potentially be deemed fair in situations such as the following:
  - Conflict of interest
  - A clash of personalities (must verge on the extreme side of the spectrum)
  - Expiry of fixed term contract
  - Employee refusal to accept new contractual terms
  - A reputation risk to the business
  - Employee being investigated by the police



# Illegality / statutory ban

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- Where continued employment contravenes a law/ duty/restriction
- Can only rely on this once the contract has become illegal
- Example - a driving ban for someone employed as a driver, where there is no other suitable position available



# Conduct a meeting

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- You cannot make a decision on dismissal until this meeting is held. Give the employee a reasonable amount of time to prepare and rearrange if necessary.
- The hearing should be held as soon as possible after any misconduct investigations
- Ahead of the meeting, you should put the following in writing to the employee:
  - the alleged misconduct or performance issue
  - any evidence from the investigation
  - any other information they plan to talk about
  - the date, time and location of the hearing
  - information on the employee's right to be accompanied to the hearing
  - the possible outcomes



# Terminating employment

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- Dismissals should be confirmed in writing following a meeting
- Written reasons provided
- Employee may be entitled to notice
  
- Restrictive covenants can protect the organisation's legitimate business interest post employment
  - Four principal types used – non-competition/ solicitation/ dealing/ poaching
  - Must be signed, agreed, and reasonable to be effective



# Settlement agreements

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- Legally binding contract used to end an employment relationship by mutual agreement
- Can be used to bring a deteriorating employment relationship to an end and avoid employment claims
- Individual waives their right to bring a claim on matters specifically covered in the agreement



# The future of dismissals

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- Remove two-year qualifying service and introduce new rules for dismissals during probation
- Make dismissals for failing to agree to vary terms and conditions automatically unfair unless the employer can show this was unavoidable due to financial difficulties
- Provide for regulations for pregnant women, new mothers and those on statutory family leave to be given more protection from dismissal
- *Still progressing through Parliament and can still be changed*



# In Summary

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- Understand the five fair reasons you can dismiss for
- Ensure the dismissal fits into one of the five reasons
- Follow your internal procedures for any process (take advantage of our free business document review!)
- Keep in line with the Acas code of practice
- Provide written reasons for the dismissal

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# Next Weeks Session

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Risk Assessments: All you need to know  
16/7/25 2:30pm



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# Thank you!

Any questions

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