

# HR Guide

## Short service dismissal

This document does not constitute a legal opinion or legal advice and is intended to be a guide only. To ensure you follow best practice (and, if applicable, do not compromise your insurance), you should contact the Alcumus HR Consultancy team before embarking on the process and at each subsequent stage.

## Short service dismissal

### Legal position

In order to bring a claim for unfair dismissal (including constructive unfair dismissal), an employee must have the requisite qualifying period of service with their employer (currently 2 years) on the effective date of termination.

Any dismissal should not take place within 1 week of their 2-year anniversary as there is the risk of them being able to claim the statutory 1 weeks' notice (even if they are going to be paid their notice in lieu) to then take them to 2 or more years' service. Please speak to a member of the Alcumus HR Consultancy team if your employee's 2-year anniversary is within 2 weeks before taking any action.

There are some situations where a person can claim automatic unfair dismissal regardless of length of service. These include dismissals for reasons connected to pregnancy or childbirth, health and safety activities, whistleblowing, exercising various time off rights or asserting a statutory right (like, for example, time off for a dependant or making a flexible working request (this list is not exhaustive)). Please speak to a member of the Alcumus HR Consultancy team if the employee falls into any of these areas before taking any action against them/dismissing them.

Provided the employee concerned does not fall into an area where they may be able to claim automatic unfair dismissal or have a protected characteristic(s) (see below), you would be in a position to dismiss them without going through a formal disciplinary process (see also below).

If an employee has a protected characteristic(s), they may be in a position to claim discrimination. The usual protected characteristics (this list is not exhaustive) are:

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

Where an employee has one or more of these characteristics, please speak to a member of the Alcumus HR Consultancy team before taking any action against them/dismissing them.

## **Procedure where there is no risk of automatic unfair dismissal or protected characteristic(s)**

Subject to whether your handbook permits dismissal in such circumstances without a contractual obligation to go through the disciplinary process, the employee can simply be verbally invited to a meeting to discuss the concerns.

Although this may not be called a “disciplinary hearing”, where dismissal is a potential outcome (which can therefore include probationary review meetings where termination of employment is contemplated), the employee does have the right to be accompanied by a trade union representative or a fellow worker. You may or may not offer this right but if the employee does ask to be accompanied, they should be permitted to bring in a fellow worker with them at least.

The chair of the meeting should be accompanied by a colleague who can take notes of the meeting.

### **At the meeting**

There may or may not be some limited investigation in such a meeting but, typically, the Chair will be explaining the Company’s concerns to the employee and then confirming the decision to dismiss.

If the decision is to dismiss the employee, they can be told in the meeting that because they have less than two years’ service, the Company is legally entitled to terminate their employment without recourse to the disciplinary process and then explain why the decision to dismiss was made. Explain that they will/will not be required to work their notice (if the latter, explain it will be paid to them in lieu and that today is their last day of employment with the business) and the decision will be confirmed in writing. You can also explain that they will be entitled to a payment in lieu for any accrued but untaken holiday and that there is no right to appeal. Depending on their benefit package, they may be entitled to other payments. Please contact a member of the Alcumus HR Consultancy team if you are unsure.

Please contact a member of the Alcumus HR Consultancy team for the template letter to confirm the decision to terminate.