

EMPLOYMENT – UNFAIR DISMISSAL AND WRONGFUL DISMISSAL

As you move through your working life, you will almost certainly change employers several times. Hopefully you will have had a good relationship with your employer and leave with good memories. Unfortunately, sometimes employment comes to an end unpleasantly, the employee having been dismissed. Where the employee considers that he or she should not have been dismissed, the employee may have a claim against the employer for “unfair” or “wrongful” dismissal.

Unfair dismissal occurs when the employer follows a fair disciplinary procedure when dismissing the employee however the reason for dismissal is not considered “fair”. An example perhaps could be an employee having been dismissed, following a fair disciplinary procedure, for repeated swearing at work. I use this example as the reason for dismissal needs to be considered from the employer’s perspective, to a great extent, when considering what is “fair”. If the employee was a carer in a children’s nursery then swearing in front of children would likely be considered as completely inappropriate and dismissal fair. If however the employee was working in a factory, say only with people of the same sex and similar age and with no one other than his (or her!) fellow employees witness to the swearing, dismissal for swearing may be considered unfair (with a warning being appropriate). That is “unfair” dismissal in a nutshell however there are other issues that one needs to investigate when considering whether a dismissal is possibly unfair. One thing to remember though is that you must have had at least two year’s employment in order to bring a claim for unfair dismissal.

Wrongful dismissal occurs where the employer has not followed a fair disciplinary procedure when dismissing the employee. There is no specific procedure to be followed however most employers follow, to a great extent, the procedure laid down by ACAS (the employment advisory service). The main points of a fair disciplinary procedure are that the employee is clearly advised (generally in writing) of the issue of concern, that the issue is fully investigated by the employer (meeting with the employee and taking witness statements from work colleagues, for example), that the employee is able to fully respond to the claim against the employee (to defend him or her self), and that the employee is given an opportunity to appeal any decision. In addition, the employee must be advised that he or she has the right to be accompanied to any disciplinary meetings or hearings by a work colleague or trade union representative. Where the employer has witnesses giving evidence, the employee should be given copies of the witness statements beforehand and the employee should be given the opportunity to question the witnesses. If an employer fails to comply with any of these aspects of a disciplinary procedure, the employee may have grounds for a claim for wrongful dismissal.

If you need advice in respect of dismissal, either as employee or employer, please contact Andrew Stokes at Alison Fielden & Co Solicitors on 01285 653261.