

Top Tips – Fair Dismissal

We have highlighted the key issues that your business should consider when dealing with poor performance and, more generally, when dismissing an employee for this or other reasons. Failure to follow the correct procedures can have serious financial and commercial implications for your business, including unlimited damages in some cases.

General good practice to help avoid potential claims

Your business should follow good management practices to help avoid potential claims relating to a dismissal:

- Ensure you have a proper contract of employment in place which will protect you in the event of poor performance and also termination of the employment relationship.
- Make sure that any employee-related policies and procedures your business has are always followed (for example, an equal opportunities policy).
- Address any issues with your employees as soon as they emerge. Generally an employer's position deteriorates the longer the delay.
- Think carefully before sending any e-mails to your employees (for example, never send any aggressive e-mails as they could be used against your business by an employee in a future claim).
- In many circumstances an informal meeting with an employee can resolve a problem. However, your employees must be made aware that a formal process could be used if an issue remains unresolved. The process of formally disciplining an employee is complicated, so you should take legal advice before you start. Do contact us for further information.
- Keep records of any e-mails, letters, conversations or meetings (formal or informal) that your business has with your employees relating to their performance.
- Conduct regular appraisals with your employees to enable your business to give an honest assessment of their performance and allow them to raise any concerns. And do not give flattering performance reviews if they are undeserved. They could make it more difficult to dismiss an employee in the future.

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- Use probationary periods effectively. If your business has any legitimate concerns about a new employee, you may be able to extend the period or dismiss them at the end of it.
- Employees should not be sidelined, bullied or shunned in order to get them to leave. If an employee can demonstrate that they resigned because of your business' conduct, they could have a claim for constructive dismissal.
- Be very careful if you think that stress could be a reason for an employee's poor performance (for example, they are struggling to cope with an increased or challenging workload). In these circumstances you should take legal advice.
- Fully investigate any claims made by or against an employee before making any decision.
- Do not assume that your business can dismiss an employee simply because their fixed-term contract has come to an end. The employee may have a claim for unfair dismissal. Unfair dismissal is any dismissal that is not for a fair reason or does not follow the correct procedure.
- Always take any employee grievances or claims raised against your business seriously. You must be particularly careful if an employee has raised a grievance or claim in the past. You should make sure that any further allegations are dealt with fairly, to avoid the risk of them bringing a victimisation claim.
- Sometimes, from both a practical and commercial point of view, it is simplest to try to reach a financial agreement with an employee to leave your business. You should take legal advice before you enter into any negotiations. For further information please contact us. If an agreement can be reached, to protect your business, you should ask your employee to sign a compromise agreement which is an agreement, usually in return for a fixed sum of money, in which an employee specifies that they will not bring a claim against their employer.
- There is no obligation on your business to provide a reference if one is requested. However, if you do provide a reference (oral or written) for an employee you must ensure that it is accurate. For example, do not give a good reference to an employee whom you have dismissed for poor performance, as this could lead to a claim being brought against your business.

More information

If you have any questions or require further advice, please contact Shainul Kassam at skassam@fortunelaw.com.

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