

**TIPS FOR
AVOIDING
UNFAIR
DISMISSAL
ALLEGATIONS**

**ASPECT LEGAL
CHEAT SHEET
SERIES**

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The issue of terminating employees is a difficult area, and one that we are often asked about. The repercussions of failing to properly navigate this area can cause significant wasted time, expense and stress.

Getting your organisation geared up to deal properly with dismissals requires you to start before problems emerge. So we have put together a list of tips to help you get the right processes in place to properly navigate this minefield.

Aspect Legal's top tips :

-  **Initial communications with new employees.** Be clear in specifying what you expect from new employees. Make sure your **company policies** are clearly written and easily understood and above all ensure they are known to employees and readily available.
-  **Have the right employment agreement in place.** Ensure also that your **employment contracts** reflect the requirements of your business and are **up to date** with current legislation. Also ensure that your contracts don't create excessive limitations on your relationship with your employees. We have seen many employment contracts that unnecessarily reduce the employer's rights, due to being used in the wrong ways. We have also seen many employment contracts that unnecessarily complicate the termination process. Make sure your employment contracts don't fall into either of these traps.
-  **Set the right probation period.** It is standard to provide a probationary period for your new employees, as a period in which you can assess their suitability to the role and that will provide termination rights with minimum notice. The probationary period could be a period between 6 months and 12 months, depending on the role, the business size and other factors – so make sure you **understand what probationary periods are applicable** for your organisation, and ensure these are properly dealt with in your employment contracts.
-  **Determine who has the power to hire and fire.** Communicate with your managers and be clear about who has the responsibility when it comes to recruitment, discipline and termination. Ensure you have documentation in place setting out these delegations, and that you have a process in place for what to do if the responsible staff are away when an issue occurs.
-  **Have a clear process about records.** Have a process in place that ensures all staff that are involved in recruitment, discipline and termination **take and keep appropriate notes** of all relevant discussions with employees that could affect the employment relationship in the future. This may include an event, promise or unresolved issue.
-  **Give your managers and supervisors adequate training.** Some dismissals arise due to personality clashes and cannot be avoided. However, giving your management team **education and knowledge about the risks**, and the best practices that should be followed, will reduce the risk of any future unfair dismissal claims.

-  **Try to avoid 'on the spot' dismissals.** An employee who commits a gross breach of his/her contract will not be able to substantiate an unfair dismissal claim, however where the employees actions are not deliberate, but rather the result of poor judgment, summary dismissal may not be justified even if a valid reason exists for termination. The caselaw is littered with examples of organisations that have found themselves in trouble after trying to use 'on the spot' dismissals. The decision to implement an 'on the spot' dismissal should only be taken after **consultation with someone who understands this area of law**.
-  **Don't delay your decision.** There are 4 possibilities when considering whether to dismiss an employee – you must assess these possibilities in relation to each individual circumstance, determine which is appropriate and then **act quickly**. The possibilities are:
 1. Summary dismissal is justified;
 2. Dismissal with notice is justified but not summary dismissal;
 3. Dismissal is not justified but a warning in writing is justified;
 4. There is no cause for a warning or dismissal.
-  **Issue warning letters when needed, keep a record and follow up.** There is no rule but it is advisable to give 2 warning letters followed by a final warning and ultimately dismissal if there is no improvement. Make sure you keep a record of these in case a dispute arises in the future.
-  **Give the employee a chance to state their case.** Put forward your reason for the proposed dismissal and give the employee a chance to respond.
-  **Get advice quickly if you aren't sure.**

It's impossible to avoid all dismissal problems, however implementing the strategies set out above will help to limit the risk of a complaint following a dismissal.

If you or your staff are unsure about whether you have a valid reason for a dismissal or despite your best efforts you find yourself on the receiving end of a formal complaint or Unfair Dismissal claim, its time to call the team at Aspect Legal to assist you.

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