



EMPLOYMENT RIGHTS EXPLAINED

Factsheet 7: Leaving or losing your job

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This leaflet outlines certain employment rights that may apply to employees who lose their job. These rights are to do with minimum notice, holiday entitlements and unfair dismissal. There is information about contracts and hours of work in **Factsheet 1: Terms and conditions of employment** and about redundancy in **Factsheet 8: Redundancy**. You can find more information about your employment rights in the booklet *Employment rights explained* (available from your local Citizens Information Centre), from the National Employment Rights Authority (NERA) at www.employmentrights.ie or from the Citizens Information website at www.citizensinformation.ie

You are entitled to notice if you are dismissed from your job. If you are dismissed from your employment, you may, under certain conditions, bring a claim for unfair dismissal against your employer. The unfair dismissals legislation in Ireland does not actually protect you from dismissal; rather it provides a system of appeal whereby you can question the fairness of your dismissal after it has occurred.

What period of notice am I entitled to?

You are entitled to a statutory minimum period of notice under the Minimum Notice and Terms of Employment Act 1973 if you are dismissed from your job. The legislation covers employees who have worked for their employers for at least 13 weeks. This is the legal minimum; your contract of employment may contain provisions for a longer period of notice.

The minimum notice provided for is:

Duration of employment	Minimum notice
13 weeks to 2 years	1 week
2 years to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years to 15 years	6 weeks
15 years or more	8 weeks

Do I have to work out my notice?

You may be required to work the notice period or, if offered, you may accept payment instead of notice. If you accept a payment instead of notice, your employment is considered to have ended on the date on which the notice, if given, would have expired.

Can I be dismissed without notice?

Your employer may dismiss you without notice for gross misconduct although you may contest that there was gross misconduct. While legislation does not define gross misconduct, possible examples might include assault, drunkenness, stealing, bullying, harassment, or serious breach of the employer's policies or practices. Your contract of employment may contain further information on gross misconduct.

Do I have to give notice if I'm leaving?

Yes. The Minimum Notice and Terms of Employment Act 1973 requires an employee to give an employer a minimum of one week's notice of leaving. However, your contract of employment may require you to give more notice. In these circumstances, the period set down in your contract is the amount of notice you must give. Either the employer or the employee may waive their right to notice.

If my employment is ending, am I entitled to holiday pay for annual leave not taken?

If your employment is ending, you are entitled to receive a payment to cover annual leave entitlement earned but not taken. The payment should equal the amount that would have been paid had the annual leave been taken. Note that ending of employment is the only situation where it is legal to pay an employee instead of giving annual leave.

If your employment stops during the week ending on the day before a public holiday and you have worked for your employer for the previous four weeks, you should receive an additional day's pay for the public holiday. This also applies to part-time employees who have established a right to the public holiday by working at least 40 hours in the previous five weeks.

Do I have any rights if I resign due to conditions at work?

Yes. If you leave your job without being dismissed, you may still have a claim for unfair dismissal. This is known as constructive dismissal and arises where you consider that you have no alternative but to leave because the conditions in work are being made so unbearable for you.

If an employer dismisses an employee, the onus is on the employer to prove that the dismissal was fair. In a constructive dismissal claim, however, the onus of proof is on the employee. In order to establish constructive dismissal, an employee must only leave as a last resort having used all available means to try and resolve the problem. This is a complex area of law and an employee should seek detailed advice before leaving the job.

Are all employees covered by the unfair dismissals legislation?

In general, all employees are covered by the legislation but each employee must meet certain conditions. Normally, an employee must have been in the same employment for at least a year in order to bring a claim for unfair dismissal. However, there are important exceptions to this general rule. If you have less than 12 months' continuous service, you may bring a claim for unfair dismissal if you are dismissed for:

- Trade union membership or activity
- Pregnancy, giving birth or breastfeeding or any matters connected with pregnancy or birth
- Availing of rights granted by the Maternity Protection Acts 1994 and 2004, the Adoptive Leave Acts 1995 and 2005, the National Minimum Wage Act 2000, the Parental Leave Act 1998 and 2006 and the Carer's Leave Act 2001

Certain categories of employees are excluded from the legislation, such as members of the Gardaí and Defence Forces, and FÁS trainees who are not employed. Civil servants are now covered by this legislation as a result of the Civil Service Regulation (Amendment) Act 2005.

Am I entitled to be given the reasons for my dismissal?

Yes. Under the legislation, you may ask your employer for a written statement of the reasons for the dismissal. Your employer should provide this statement within 14 days of the request. There is, however, no penalty placed on an employer who fails to respond to such a request.

Do I have to prove that the dismissal was unfair?

No. Apart from a case involving constructive dismissal, a dismissal is presumed to be unfair unless your employer can show substantial grounds to justify it. An employer must be able to show that the reason for the dismissal was connected with the employee's capability, competence, qualifications, conduct, redundancy, or based on other substantial grounds. In addition, an employer may justify a dismissal by showing that continuation of the employment would be in breach of another law.

How might an employer prove that the dismissal was fair?

An employer could give the following reasons for dismissal:

- **Capability** – This includes factors such as lateness, absenteeism and persistent illness, either short term or long term. An employer faced with the problem of an employee with persistent illness can dismiss the employee but must be able to establish clear justification for such action. This will involve the employer being able to show that there is a pattern of absence, that this gives rise to a problem, that the situation is unlikely to get better and that the employee has been warned of the likelihood of dismissal. This may also involve the employer obtaining a second opinion on the employee's medical condition. However, it is important to note that if an employee's illness might be considered a disability under employment equality legislation, the employee's rights under that particular legislation would also have to be taken into consideration
- **Competence** – This involves the employee's ability to do the job. The employer needs to be able to show that the employee was aware of the standards expected and that any shortcomings had been brought to the employee's attention, giving the employee an opportunity to improve
- **Qualifications** – This could involve a situation where the employee misleads the employer about qualifications that were required when applying for the job. Alternatively, it could involve the employee's failure to obtain qualifications required by the employer having been given a reasonable opportunity to do so
- **Conduct** – This involves a wide area of behaviour in the job and misconduct by the employee. Gross misconduct may justify dismissal without notice
- **Redundancy** – Employers can defend themselves against claims for unfair dismissal if they can show that the reason for the dismissal was a redundancy situation (see below)
- **Contravening the law** – An employer may dismiss an employee whose continued employment would not comply with the law. For example, it may be justifiable to dismiss a driver who has lost their driving licence on the grounds that their continued employment as a driver would be in breach of the law. However, whether such a dismissal would be justified or not would depend on the particular circumstances of the case

- **Other substantial grounds** – This category is designed to include any situations not already covered, but it is up to the employer to establish that there were other substantial grounds and that they justified the dismissal

Certain reasons for dismissal are automatically considered to be unfair.

These include:

- Trade union membership, or proposed membership and trade union activity
- The employee's religious or political opinions
- Availing of rights under legislation, such as maternity protection, parental or health and safety leave
- Any dismissal connected with the employee's race, sexual orientation, age or pregnancy – even if the employer has given an alternative reason for the dismissal

What happens if my dismissal is discriminatory?

Employment equality legislation prohibits dismissal based on any of the nine grounds for discrimination covered by that legislation. This may present an alternative route to taking a claim for unfair dismissal legislation. For example, if you have less than a year's service, it may not be possible to take action under unfair dismissal legislation but it could be possible under equality legislation.

If dismissal is being considered, does my employer have to listen to my side?

Yes. Your employer is expected to have disciplinary procedures in place and to follow them. Disciplinary procedures set out the stages and process the employer will follow in relation to alleged shortcomings of an employee. Generally, the procedure allows for informal warnings leading to written warnings and, ultimately, to dismissal.

The absence of such procedures may lead to a finding that the dismissal was unfair.

In addition, fair procedures must be followed, so, for example, you must be made fully aware of the allegations against you and given an opportunity to present your side. You must also be given the opportunity to be represented in any disciplinary procedures, for example by your trade union.

If my dismissal is unfair, can I get my job back?

If it is decided that your dismissal was unfair, you may be awarded compensation (up to two years' salary) – this is the most usual outcome. Alternatively, you could be given your job back either from the date of the dismissal (reinstatement) or from a specified date after the dismissal (re-engagement).

Re-engagement is normally considered where it is decided that the dismissal, though unfair, was partly your fault. Compensation may also be reduced where you were partly to blame for the dismissal.

Am I entitled to any unemployment payment after losing my job?

If you have enough social insurance contributions you may be entitled to Jobseeker's Benefit. If you do not have enough PRSI contributions you may qualify for Jobseeker's Allowance which is a means-tested benefit. You may also be entitled to a tax refund if you have been out of work for some time. When you leave your job your employer should give you your P45 which is a record of your tax and PRSI paid.

ENFORCING YOUR RIGHTS

Disputes concerning minimum notice may be referred to the Employment Appeals Tribunal.

Disputes in relation to pay for untaken holidays may be referred to a Rights Commissioner or to the Employment Appeals Tribunal if the employee's claim is connected with a claim under another employment matter such as dismissal, notice, or redundancy.

Claims for unfair dismissal may be brought to a Rights Commissioner if both the employer and employee agree to this. If either or both parties object to a Rights Commissioner hearing, the claim can be referred instead to the Employment Appeals Tribunal. A claim for unfair dismissal should normally be made within six months of the date of dismissal. The time limit may be extended to 12 months, but only where exceptional circumstances prevented the making of the claim within the normal six-month period.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

USEFUL ADDRESSES

Citizens Information Board Head Office

George's Quay House
43 Townsend Street, Dublin 2

Tel: (01) 605 9012

Website:

www.citizensinformationboard.ie

Email: info@ciboard.ie

Employment Appeals Tribunal

Davitt House, 65a Adelaide Road,
Dublin 2

Tel: (01) 631 3006

Lo-call: 1890 220 222

Website: www.entemp.ie

National Employment Rights Authority

O'Brien Road, Carlow

Tel: (059) 917 8800

Lo-call: 1890 220 100

Email: info@employmentrights.ie

Website: www.employmentrights.ie

Labour Relations Commission (including Rights Commissioner Service)

Tom Johnson House, Haddington
Road, Dublin 4

Tel: (01) 613 6700

Email: info@lrc.ie

Website: www.lrc.ie

Citizens Information 

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www.citizensinformation.ie

LO-CALL

1890 777 121 Open Mon to Fri, 9am to 9pm

DROP IN

For your local centre see Golden Pages listing