



## **EMPLOYMENT LAW**

Here we highlight some of the issues that might face you either as an Employee or as an Employer.

Thomas Flavell & Sons can advise you on these and any other employment issues that you may encounter from day to day.

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### **EMPLOYMENT LAW ISSUES FOR EMPLOYEES**

#### **Unfair Dismissal**

In order to bring a claim for unfair dismissal you must be able to answer 'yes' to the following questions :-

Were you an employee ? (not self- employed)

Were you dismissed ?

Were you employed for a continuous period of over 12 months ?

Please note that in some cases a dismissal will be automatically unfair regardless of your length of service, for example dismissal for health and safety reasons, or as a result of the National Minimum Wage, the Working Time Regulations or if your employer fails to go through a grievance or consultation procedure with you before dismissal.

It will then be for your employer to show that there was a potentially fair reason for the dismissal. There are only 4 potentially fair reasons :-

capability

conduct

redundancy

some other substantial reason eg. business reorganisation

The employer must then prove that they acted reasonably in treating the reason as a sufficient reason for dismissing the employee. This will depend on the circumstances of the case, including the size and administrative resources of the employer's business.

How much will I receive?

If you are successful the Tribunal will firstly consider an order for reinstatement or re- engagement. This is only awarded in less than 1% of cases. The most likely remedy is compensation. You will receive a **basic award** which is calculated in almost exactly the same way as a redundancy payment. This is calculated to give a number of weeks pay based on your age and length of service and we will tell you how this might apply in your case. You will also receive a **compensatory award** . This is intended to compensate you for financial loss suffered as a result of the unfair dismissal. There is an upper limit for this award, which changes from time to time.

Usually the tribunal will consider the following heads of compensation:-

immediate loss of earnings i.e. loss between the dismissal and the hearing at which the tribunal decide on compensation

future loss of earnings i.e. estimated loss after the hearing

expenses incurred as a consequence of the dismissal (not legal costs)

loss of statutory employment rights this covers, for example, the fact that an unfairly dismissed employee will not be protected against unfair dismissal in a new job until he or she has been there for one continuous year

loss of pension rights

## **Discrimination**

### Sex discrimination

Sex discrimination can apply equally to men and women. The Sex Discrimination Act 1975 specifies three types of sex discrimination:-

**Direct discrimination** An employer discriminates against a woman if he treats her less favourably than he treats or would treat a man and the difference in treatment is on the ground of her sex

**Indirect discrimination** A person discriminates against a woman in these circumstances if he applies to her a requirement or condition which he applies or would apply equally to a man, but which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and which is to her detriment because she cannot comply with it

**Victimisation** it is unlawful to discriminate against a person by victimising that person for either bringing a claim under the Sex Discrimination Act or helping someone else to bring a claim

How much will I receive?

If you are successful you will be entitled to a declaration and compensation. The amount of compensation will be calculated, broadly, in the same way as the compensatory award in an unfair dismissal case (see above) but with no upper limit. If you have suffered an injury to feelings you may also be compensated for this.

### Disability Discrimination

There are three types of disability discrimination:-

For a reason, which relates to a disabled person's disability, the employer treats a disabled person less favourably than he treats or would treat others to whom the reason does not or would not apply and the employer cannot show that this treatment is justified

An employer fails to comply with the duty of reasonable adjustment imposed on him by the Disability Discrimination Act 1995 and he cannot show that this failure is justified

Victimisation - this occurs when a disabled person is treated less favourably than other persons because he or she has taken action under, or by reference to, the Disability Discrimination Act

How much will I receive?

If you are successful you will be entitled to a declaration and compensation. The amount of compensation will be calculated, broadly, in the same way as the compensatory award in an unfair dismissal case (see above) but with no upper limit. If you have suffered an injury to feelings you may also be compensated for this.

### Racial Discrimination

The Race Relations Act 1976 specifies three types of discrimination:-

**Direct Discrimination** this occurs when, on racial grounds, one person treats another person less favourably than he or she treats or would treat other persons

**Indirect Discrimination** this occurs when one person applies a requirement or condition to another person which, although it is applied equally to all racial groups, is such that the proportion of those from that other person's racial group who can comply with it is considerably smaller than the proportions of persons not of that racial group who can comply with it, and which cannot be justified on grounds other than race

**Victimisation** this occurs when a person is treated less favourably than other persons because he or she has taken under, or by reference to, the Race Relations Act

How much will I receive?

If you are successful you will be entitled to a declaration and compensation. The amount of compensation will be calculated, broadly, in the same way as the compensatory award in an unfair dismissal case (see above) but with no upper limit. If you have suffered an injury to feelings you may also be compensated for this.

### **Wrongful Dismissal**

This involves a claim against your employer for breach of contract. For example, unpaid notice pay, unpaid wages or holiday pay.

### **Compromise Agreement**

If you have settled any claim you may have against your employer you may be asked to enter into a compromise agreement. You must take independent legal advice in order to make a compromise agreement binding. Normally, your employer will pay your legal costs in obtaining the advice. We regularly advise employees on the proposed terms and may be able to negotiate better terms for you.

### **Contract problems**

If you are having problems generally in relation to the terms of your employment and need advice on your contract of employment we can help.

## **EMPLOYMENT LAW ISSUES FOR EMPLOYERS**

Today, more than ever, we have to ensure that we combine legal expertise with commercial awareness and practical advice.

We have to be able to work closely with your business and understand its people, products or services and objectives in its own particular marketplace. Thomas Flavell & Sons has the expertise that your business needs to anticipate the problems that you may encounter and to provide practical solutions to the problems you could not anticipate.

We can help with the writing, drawing up and implementation of both employer and employee agreements.

Repeated decisions from employment tribunals emphasise the need to have and to follow written procedures in order to avoid expensive mistakes. We can advise you on the procedures that you need to follow and help you to put effective procedures in place.

We can help to negotiate terms for settlement of disputes that may arise so as to avoid your involvement in Employment Tribunal proceedings and can incorporate these into compromise agreements which are the only way, without ACAS or a Tribunal order, to protect Employers against claims from former employees when matters are agreed.

Only written and professionally considered agreements and contracts can offer your business the protection it needs to avoid the problems that can be associated with such things as directorships, negotiating terms of employment and service contracts.

If your business needs help with revising and updating contracts, negotiating early retirement, advising employers and employees on the laws pertaining to redundancy and negotiating redundancy payments and severance packages we can help.

If you become involved in Employment Tribunal proceedings we can provide expert advice and representation to ensure that your case is presented in the best possible way.

The information above can do no more than set out guidelines - you should not rely upon it and Thomas Flavell & Sons accept no liability should you do so. For full advice or for further information on these or any other employment related matters please contact [David Boon](#)