

DISMISSING EMPLOYEES IN IRELAND

PROCEDURES AND PITFALLS



DISCRIMINATION

Employers should always keep the following in mind when intending to dismiss an employee from their service.

Employment Equality Acts – 9 Grounds of Discrimination:

- | | | |
|---|--|---|
|  • Gender |  • Sexual orientation |  • Disability |
|  • Civil status |  • Religious belief |  • Race, colour, nationality, ethnic or national origins |
|  • Family status |  • Age |  • Membership of the Traveller community |

MINIMUM NOTICE

Employers must give their employees minimum notice which is dependent on the length of the employee's service or as per contract, whichever is the longest.

If the employer does not require the employee to work out any part of their service, the employer has to pay the employee in lieu of that period.

Length of Service

- 13 weeks to 2 years
- 2 to 5 years
- 5 to 10 years
- 10 to 15 years
- 15 + years

Minimum Notice

- 1 week
- 2 weeks
- 4 weeks
- 6 weeks
- 8 weeks

PROBATIONARY PERIOD

Employees on probation do not have standard employment rights. After an employee has 1 year of service, they have the protection of the Unfair Dismissal Acts and cannot be dismissed without fair procedures being followed.

5 Step checklist



- Ensure a 'probationary period' clause in their contract.



- Include the right to dismiss the employee at any time during that period.



- 6 Months is the ideal probationary period and should be less than 1 year.



- The notice entitlement should be limited to one week for both parties.



- If a director is being dismissed, the employer must follow the company's memorandum and articles of association procedure.

Note:
Employment Equality Acts apply

PERFORMANCE RELATED DISMISSAL

An employee can only be charged with poor performance after they have been made aware of the work standard required.

The Dutiful Dozen

1. Check that the standard required of the employee is reasonable and achievable.
2. Point out to the employee that he or she is falling short of the standard before it becomes a disciplinary issue.
3. Create a performance improvement plan (PIP).
4. Set out what objectives the employee is not meeting but is required to meet and the deadlines the employee has to meet each objective in the PIP.
5. Talk through the PIP with the employee so that they understand it.
6. Urge the employee to notify them if they need assistance, training, or more time.
7. Ensure the employee's work situation allows for a focus on improvement.
8. Set regular reviews dates during the PIP period.
9. Inform the employee that should they not meet the deadlines set out in the PIP, then the disciplinary process will be initiated.
10. Inform the employee that sanctions resulting from the disciplinary process could result in dismissal.
11. Follow company disciplinary procedures and go through the sanctions of verbal and written warnings before dismissal.
12. Proceed to dismissal only as a last resort.

MISCONDUCT DISMISSAL

The Workplace Relations Commission (WRC) and Labor Court expects employers to meticulously adhere to fair procedures and natural justice when dismissing an employee for misconduct.

It is up to the employer to prove that the dismissal was fair.

Establishing Fair Procedures

1. Confine the investigation to establishing the facts.
2. Suspend the employee only if necessary.
3. Clarify that suspension is not a disciplinary sanction.
4. Provide the employee with a written copy of the investigation outcome.
5. Give the employee sufficient time to prepare for a disciplinary hearing.
6. The individual conducting the hearing must be impartial.
7. The decision maker must take time to consider everything before making a decision.
8. Check if follow ups to anything said during the hearing are necessary.
9. Ensure the decision is balanced and based on all of the facts.
10. Take lesser disciplinary sanctions into consideration.
11. Inform the employee of the appeal procedure.
12. An appeal must be heard by an impartial and independent individual.
13. A written copy of the appeal outcome must be sent to the employee: it must reflect what was put forward in the appeal and illustrate that the appeal was not predetermined.

7 SPECIFICS OF THE DISCIPLINARY HEARING INVITATION

1. Detail the disciplinary process and allegations
2. Name the conductor and note taker of the hearing.
3. State that the disciplinary sanction (if any), may include dismissal.
4. Remind the employee of their right to representation in line with the company policy.
5. Request the employee to name anybody he/she wishes to question.
6. State that the employee's suspension may be extended to facilitate the disciplinary process.
7. Attach all relevant documents and a copy of the company disciplinary policy.

5 SPECIFICS OF THE DISMISSAL LETTER

1. Reflect what was said at the hearing.
2. Decide on conflicting statements.
3. State whether or not he/she is required to work notice.
4. Remind the employee of their right to appeal in writing.
5. State that an appeal will not change the dismissal date but that if successful they will be reinstated.

OBSTACLES: GRIEVANCES AND SICK LEAVE

1. Employees may attempt to derail the process by taking sick leave or submitting grievances.
2. The company doctor should examine the employee to determine if he or she is fit to participate in the process.
3. A grievance should be dealt with separately.
4. It should not delay or interfere with the disciplinary process.

INCAPACITY DISMISSAL

Note: Employees accrue annual leave while on sick leave.

An employer intending to dismiss an employee on sick leave must be mindful of potential claims.

Potential Employee Claims

- Discriminatory Dismissal.
- Unfair Dismissal.
- Breach of contract.



3 Procedural Steps Employers Need to Take

1. Process all the material facts about the employee's condition.
2. Inform the employee that the company is considering incapacity dismissal.
3. Give the employee an opportunity to give his or her input in advance of any decision.



Sick leave Policy Rights and Consents

- Specify the employer's right to get an employee medically assessed by an employer appointed doctor, at the employer's expense, in the sick leave policy.
- Include the employee's consent to give any medical report that is produced, to the employer.



The Medical Report

- Ask the doctor to address the employee's incapacity, expected return to work date and the measures needed to facilitate a return to work.
- Give a copy of the medical report to the employee for his or her medical adviser to review.



Contradictory Medical Reports

- Give it to the doctor who carried out the original medical examination.
- Seek a further medical opinion from another doctor which may involve a specialist.



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Examples of Employer Measures to Facilitate "Return to Work"

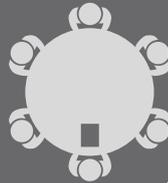


- Adaptation of the premises and equipment.
- Patterns of working time and distribution of tasks.
- The provision of training and integration of resources.

Note: The measures should not impose a disproportionate burden on the employer's financial resources eg. Covering the cost of a treatment facility.

4 Checks for Meeting the Employee

- Request a meeting with the employee with a witness.
- Inform the employee that the purpose of the meeting is to discuss potential termination on the basis of incapacity.
- Ask the employee for his or her input regarding the medical reports and return to work measures.
- Take the time to consider the employee's input.



Termination of Employment



- If appropriate issue the employee with a written notice of dismissal in accordance with the employee's contract of employment.
- Ensure to provide for a right of appeal against the decision of dismissal.

One to Watch Out for

- If an employer provides its employee with permanent health insurance, the policy needs to be considered before any dismissal decision is made.
- A dismissal in some cases could lead to a breach of contract claim before the Circuit Court or High Court, which could be very costly for employers.

For references, please visit www.sor-solicitors.ie/knowledge

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