



Unfair Dismissals Acts, 1977 to 2021 Explanatory Booklet for Employers and Employees

Department of Enterprise,
Trade and Employment 2021
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Unfair Dismissals Acts, 1977 to 2021

Explanatory Booklet

This booklet is intended to give a general guidance to employees and employers about the Unfair Dismissals Acts, 1977 to 2021. The original Act of 1977 has been amended over the years through the introduction of various other statutes and this booklet will refer to the Acts as the *Unfair Dismissals Act, 1977 (as amended)* or simply as *the Acts*.

This booklet is not a complete or authoritative statement of the law and is not a legal interpretation. The intention is to present, in non-legal language, an outline of obligations and rights under the Acts.

In cases of doubt or where further information is required, interested parties should refer to the Acts or contact the Workplace Relations Commission.

Call: 0818 80 80 90. *

www.workplacerelements.ie

Other Useful Telephone Numbers:

Department of Enterprise, Trade & Employment: 01 631 2121 - Lo Call 0818 302 121

Workplace Relations Commission (WRC): 059 917 8990 – Lo Call 0818 80 80 90

The Labour Court: 01 613 6666

* Note that rates for 0818 numbers may be equivalent to rates for landline numbers. These rates may vary among different service providers.

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1. PURPOSE OF THE ACTS

The purpose of the Acts is to protect employees from being unfairly dismissed from their jobs by laying down criteria by which dismissals are to be judged unfair and by providing an adjudication system and redress for an employee whose dismissal has been found to be unfair.

2. WHO IS COVERED?

In general, the Acts apply to any person

- (a) working under a contract of employment or apprenticeship –
 - (i) “contract of employment” means a contract of service or of apprenticeship, whether it is express or implied and, if it is express, whether it is oral or in writing,
 - (ii) “apprenticeship” is one designated by Solas and falls within the definition of industrial activity under the Industrial Training Act, 1967, or
- (b) employed through an employment agency - in the case of persons employed through an employment agency, the third party (hirer/user) is deemed to be the employer for the purpose of redress under the Acts,
- (c) And with one year’s continuous service with the employer (see paragraphs 3 and 4 for further information)

3. WHO IS NOT COVERED?

In general, the Acts do not apply to the following (see paragraph 4 for exemptions):

- (a) employees who have less than one year’s continuous service with the employer,
- (b) employees who have reached the normal retiring age in that particular employment or who, on the date of dismissal, had not attained the age of 16 years,
- (c) persons working for a close relative in a private house or farm, provided both also live in the same house or farm,

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- (d) employees on probation or undergoing training during a period at the beginning of employment, provided that
 - (i) the contract of employment is in writing, and
 - (ii) the duration of probation or training is one year or less and is specified in the contract,
 - (e) persons who are employed under a contract of apprenticeship (see paragraph 2 (a)) and who are dismissed either
 - (i) within six months of the commencement of the apprenticeship, or
 - (ii) within one month after the completion of the apprenticeship,
 - (f) employees during training for qualification or registration as a nurse or for other specified para-medical employment,
 - (g) employees who ordinarily worked outside the State unless
 - (i) s/he was ordinarily resident in the State for the duration of the contract, or
 - (ii) s/he was domiciled in the State for the duration of the contract and the employer was an individual ordinarily resident in the State or a firm having its principal place of business in the State,
 - (h) persons who were employed by/under the State and who were dismissed by the Government,
 - (i) members of the Defence Forces and An Garda Síochána,
 - (j) a Chief Executive Officer of the Health Service Executive,
 - (k) a Chief Executive Officer of a local authority,
 - (l) a Chief Executive Officer of the Child and Family Agency.

3.01 Employees with Less than One Year's Service

The Acts do not generally apply to a person who has been in the continuous service of the employer for less than one year. Continuous service is determined by rules set out in the amended First Schedule, Minimum Notice and Terms of Employment Acts, 1973 to 2005.

In determining if an employee has the necessary service to qualify under the Acts, an Adjudication Officer, or The Labour Court, as the case may be, may consider whether the employment of a person on a series of two or more contracts of employment, between which there was no more than 26 weeks of a break, was wholly or partly for or connected with the avoidance of liability by the employer under the Acts. Where it is so found, the length of the various contracts may be added together to assess the length of service of an employee

for eligibility under the Acts. (See also paragraph 4.03 in relation to second or subsequent fixed term/fixed purpose contracts).

4. EXEMPTIONS AND EXCLUSIONS

4.01 Unfair Dismissal and Apprenticeships

In general, the Acts apply to any person working under a contract of employment or apprenticeship, where the apprenticeship is designated by Solas and falls within the definition of industrial activity under the Industrial Training Act, 1967.

The Acts do not apply to persons who are employed under a contract of apprenticeship and who are dismissed either

- (a) within six months of the commencement of the apprenticeship, or
- (b) within one month after the completion of the apprenticeship.

The above exclusions from the Acts of persons undergoing full-time training or apprenticeship in Solas establishments shall not apply where the dismissal results from one or more of the following:

- (a) an employee's trade union membership or activities, either outside working hours or at those times during working hours when permitted by the employer (see paragraph 4.11),
- (b) legal proceedings against an employer where an employee is a party or a witness,
- (c) an employee having made a protective disclosure,
- (d) an employee's religious or political opinions,
- (e) an employee's race, colour, or sexual orientation,
- (f) an employee's age,
- (g) an employee's membership of the travelling community,
- (h) an employee's pregnancy, attendance at ante-natal classes, giving birth, breastfeeding or any matters connected therewith,
- (i) the exercise or proposed exercise by an employee of a right under and in accordance with any of the following:
 - (i) the Maternity Protection Act 1994,
 - (ii) the Adoptive Leave Acts, 1995 & 2005,
 - (iii) the Paternity Leave and Benefit Act, 2016,

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- (iv) the Parent's Leave and Benefit Act, 2019,
 - (v) the Parental Leave Acts, 1998 & 2019,
 - (vi) the Carer's Leave Act, 2001,
 - (vii) the National Minimum Wage Acts, 2000 & 2015.

4.02 Unfair Dismissal and Discrimination

Dismissals will be unfair under the Acts where it is shown that they resulted wholly or mainly from any of the following:

- (a) religious or political opinions,
- (b) race, colour, or sexual orientation,
- (c) the age of an employee,
- (d) an employee's membership of the travelling community,
- (e) an employee's pregnancy, attendance at ante-natal classes, giving birth, breastfeeding or any matters connected therewith.

Please see paragraph 13 for further information in relation to redress sought under the Employment Equality Acts, 1998 & 2021.

4.03 Unfair Dismissal and Fixed Term/ Specific Purpose Contracts

The Acts contain special provisions in respect of contracts for a fixed term or for a specified purpose of limited duration which could not be ascertained exactly at the time the contract was made. The Acts stipulate that a dismissal consisting only of the expiry of the fixed term (without renewal), or the completion of the specified purpose shall not be covered by the Acts, provided that:

- (a) the contract is in writing,
- (b) it was signed by both parties, and
- (c) it contains a clause that the Acts shall not apply to such dismissal.

An Adjudication Officer, or The Labour Court, as the case may be, may examine any second or subsequent fixed term or fixed purpose contract of employment and between which there was no more than a 3-month break and take a view as to whether the fixed nature or fixed purpose of the contract was wholly or partly for or connected with the avoidance of liability under the Acts. Where it is so found, the length of the various contracts can be added together

for the purpose of determining the length of service for eligibility under the Acts, and the service shall be deemed to be continuous.

4.04 Unfair Dismissal and Lock-Outs & Strikes

The lock-out of an employee is regarded, for the purpose of the Acts, as a dismissal and it will be deemed to be an unfair dismissal if, after a lock-out, the employee is not re-instated or re-engaged within the meaning of the Acts when one or more other employees are.

Dismissal of an employee for taking part in a strike or other industrial action is regarded as unfair if:

- (a) one or more employees of the same employer who took part in the strike or industrial action were not dismissed, or
- (b) one or more employees who were dismissed for such participation were later re-instated or re-engaged within the meaning of the Acts whereas s/he was not.

4.05 Unfair Dismissal and the National Minimum Wage Acts

The dismissal of an employee which results from his/her entitlement or future entitlements under the National Minimum Wage Acts, 2000 & 2015, or from the exercise or proposed exercise of his/her rights under those Acts, is an unfair dismissal within the meaning of the Unfair Dismissals Act, 1977 (as amended).

The general requirement of at least one year's continuous service does not apply where an employee claims s/he was dismissed for having exercised or having proposed to exercise a right under the National Minimum Wage Acts, 2000 & 2015, or because of his/her entitlements or future entitlements under those Acts.

4.06 Unfair Dismissal and Protective Disclosures

Dismissals will be unfair under the Acts where it is shown that they resulted wholly or mainly from the employee having made a protective disclosure.

The requirement of one year's continuous service does not apply where the dismissal results from the employee having made a protective disclosure.

4.07 Unfair Dismissal and Protective Leave/Family Leave

Protective leave/ Family leave includes the exercise or proposed exercise by an employee of a right under and in accordance with any of the following:

- (a) the Maternity Protection Act 1994. These rights include:
 - (i) the right to take the specified forms of protective leave, ante-natal care, or post-natal care absence,
 - (ii) the right to time off from work to attend ante-natal classes,
 - (iii) the right to time off from work or a reduction of working hours for breastfeeding, and
 - (iv) the right to return to work (provided s/he has complied with all the notification procedures).
- (b) the Adoptive Leave Acts, 1995 & 2005,
- (c) the Paternity Leave and Benefit Act, 2016,
- (d) the Parent's Leave and Benefit Act, 2019,
- (e) the Parental Leave Acts, 1998 & 2019,
- (f) the Carer's Leave Act, 2001.

The dismissal of an employee which results solely or mainly from the exercise or proposed exercise of the right to any of the above-mentioned family leaves, as provided for under the Acts will be regarded as unfair.

The requirement of one year's continuous service does not apply where the dismissal results from any of the above-mentioned family leaves.

The exclusions from the Acts of persons working for close relatives, as at 3(c) above, persons undergoing full-time training or apprenticeship in Solas establishments, as at 3(e) above, and persons on probation or training, as at 3(d) and 3(f) above, shall not apply where the dismissal results from the exercise or proposed exercise by the employee of the right to family leave.

The exclusions from the Acts of members of An Garda Síochána and of persons who have reached the normal retiring age in their particular employment or who, on the date of dismissal, had not attained the age of 16 years, as at 3(b) above, shall not apply where the dismissal results from the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Acts,

1998-2019 or Carer's Leave under and in accordance with the Carer's Leave Act, 2001.

4.08 Replacement of an Employee on Protected Leave of Absence

The Acts do not apply to the dismissal of an employee where the employer has informed the employee, in writing, at the commencement of employment that his/her employment will terminate upon the return to work of another employee who is absent on protective leave under one or more of the below listed Acts and the dismissal duly occurs for the purpose of facilitating the return to work of that other employee:

- (a) the Maternity Protection Acts, 1994 & 2004,
- (b) the Adoptive Leave Acts, 1995 & 2005,
- (c) the Paternity Leave and Benefit Act, 2016,
- (d) the Parent's Leave and Benefit Act, 2019,
- (e) the Parental Leave Acts, 1998 & 2006, or
- (f) the Carer's Leave Act 2001

4.09 Unfair Dismissal and Redundancy

Dismissals will be unfair under the Acts where it is shown that they resulted wholly or mainly from an unfair selection for redundancy. An employee dismissed due to redundancy may have a claim of unfair dismissal if his/her selection for redundancy, instead of other employees in similar employment, was contrary to an existing redundancy procedure in the workplace and there were no special reasons for departing from that procedure.

An employee dismissed due to redundancy may have a claim of unfair dismissal if his/her selection for redundancy, instead of other employees in similar employment, resulted wholly or mainly from any of the following:

- (a) an employee's trade union membership or activities, either outside working hours or at those times during working hours when permitted by the employer (see paragraph 4.11),
- (b) legal proceedings against an employer where an employee is a party or a witness,
- (c) an employee having made a protective disclosure,
- (d) an employee's religious or political opinions,
- (e) an employee's race, colour, or sexual orientation,

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- (f) an employee's age,
 - (g) an employee's membership of the travelling community,
 - (h) an employee's pregnancy, attendance at ante-natal classes, giving birth, breastfeeding or any matters connected therewith,
 - (i) the exercise or proposed exercise by an employee of a right under and in accordance with any of the following:
 - (i) the Maternity Protection Act 1994,
 - (ii) the Adoptive Leave Acts, 1995 & 2005,
 - (iii) the Paternity Leave and Benefit Act, 2016,
 - (iv) the Parent's Leave and Benefit Act, 2019,
 - (v) the Parental Leave Acts, 1998 & 2019,
 - (vi) the Carer's Leave Act, 2001,
 - (vii) the National Minimum Wage Acts, 2000 & 2015.

If the employee succeeds in his/her claim for unfair dismissal and is consequently re-instated or re-engaged, any payments made under the Redundancy Payments Acts must be refunded.

An employee who claims and receives a redundancy payment in respect of lay-off or short time shall be deemed to have voluntarily left his/her employment.

4.10 Unfair Dismissal and State Employees

Since 4th July 2006, the Acts apply to most State employees (including civil servants up to and including Assistant Secretary level) except for those State employees listed above who are still excluded from the Acts. The exclusion from the Acts for most State employees was removed by the Civil Service Regulation (Amendment) Act, 2005 and the relevant sections of this Act became operational on 4th July, 2006.

4.11 Unfair Dismissal and Trade Union Membership or Activities

Dismissals will be unfair under the Acts where it is shown that they resulted wholly or mainly from an employee's trade union membership or activities, either outside working hours or at those times during working hours when permitted by the employer

If it is shown that a dismissal resulted wholly or mainly from an employee's membership, or proposed membership, of a trade union or from his/her activities on behalf of a trade union, then the following exceptions do not apply:

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- (a) requirement of a least one year's continuous service with the employer,
 - (b) employee having reached the normal retiring age,
 - (c) employee engaged on probation/training contract, and
 - (d) statutory apprenticeship.

In such cases, the presumption that the dismissal was unfair and the requirements that the employer show justification (paragraphs 8 and 9) will not apply.

5. CONSTRUCTIVE DISMISSAL

It can be construed as dismissal if a person's conditions of work are made so difficult that s/he feels obliged to leave. This is called constructive dismissal.

The service requirements and the exemptions and exclusions apply equally to cases of constructive dismissal.

6. WRITTEN NOTICE OF REASONS FOR DISMISSAL

An employer who has dismissed an employee must, if asked, give the employee, in writing, within 14 days, the reasons for his/her dismissal. However, in the hearing of a claim for unfair dismissal, account may be taken of any other substantial grounds that would have justified the dismissal.

7. ADVANCE NOTICE TO EMPLOYEE OF DISMISSAL PROCEDURES

The Acts are not intended to replace dismissal procedures within a workplace, and these can take their course before a claim for unfair dismissal is submitted to the Workplace Relations Commission.

In order to ensure full recognition of these procedures, where they exist, the employer must give a written notice of any agreements or dismissal procedures that exist between him/her and a trade union or of any procedures that have been established by custom/practice, to every employee within a 28-day period. These requirements are satisfied if, for example, this information is incorporated in a staff handbook or similar publication given to each employee

when s/he takes up employment. It is in the employer's own interest to have a clear and comprehensive set of procedures governing dismissals and to ensure that employees are fully conversant with the procedures.

8. BURDEN OF PROOF

In general, the Acts provide that every dismissal of an employee will be presumed to have been unfair, having regard to all circumstances, unless the employer can show substantial grounds justifying the dismissal.

This general principle does not apply to dismissals for trade union membership/activities. (See paragraph 4.11).

9. JUSTIFICATION

To justify a dismissal, an employer must show that it resulted from one or more of the following causes:

- (a) the capability, competence, or qualifications of the employee for the work s/he was employed to do,
- (b) the employee's conduct,
- (c) redundancy,
- (d) the fact that continuation of the employment would contravene another statutory requirement, and/or
- (e) other substantial grounds justifying the dismissal.

10. CLAIM FOR UNFAIR DISMISSALS AND TIME LIMITS

If an employee considers that s/he has been unfairly dismissed, s/he may submit a claim for redress under the Acts to a Workplace Relations Commission Adjudication Officer.

Written notice of a claim, which must contain certain prescribed particulars, must be submitted within 6 months of the date of dismissal. The time limit for submitting a claim for redress for unfair dismissal may be extended to 12 months, as the Adjudication Officer considers appropriate, in cases where reasonable circumstances have prevented the lodgement of the claim within the normal time limit of 6 months.

See paragraph 20 for information on submitting a claim to the Workplace Relations Commission.

11. REDRESS UNDER THE ACTS

Where an employee has been unfairly dismissed, s/he can, under the Acts, depending on the merits of the case, be awarded either

- (a) re-instatement in his/her old job, thereby entitling the employee to benefit from any improvement in terms and conditions of employment which may have occurred between the date of dismissal and the date of re-instatement,
- (b) re-engagement in his/her old job or in a suitable alternative job on conditions which the adjudicating bodies consider reasonable, or
- (c) (i) where financial loss has been sustained by the employee, financial compensation in respect of such loss, subject to a maximum of 104 weeks' remuneration.

The precise amount of compensation can depend on such matters as where the responsibility for the dismissal lay, the measures taken to reduce financial loss or the extent to which negotiated dismissal procedures were followed, if these existed,

(ii) in cases of unfair dismissal resulting from the employee having made a protective disclosure, financial compensation in respect of such loss, subject to a maximum of 260 weeks' remuneration. The Adjudication Officer, or the Labour Court, as the case may be, may take into account the employee's motivation for making the protective disclosure. If it is found that the investigation of the wrongdoing concerned was not the employee's sole or main motivation for making the disclosure, then the compensation due may be reduced by up to 25%, or

(iii) where no financial loss has been sustained by the employee, financial compensation may be awarded subject to a maximum award of 4 weeks' remuneration.

Where ownership of the business that dismissed an employee is transferred to new ownership, an award of compensation under the Acts may be made against the new owner. (The new owner of the business will be required to take on liability for any claim for unfair dismissal against the former employer).

In calculating financial loss (for the purpose of compensation), payments to an employee under the social welfare and income tax Acts, arising because of the Dismissal, will be disregarded.

12. REDRESS SOUGHT AT COMMON LAW

If an employee wishes, s/he may seek redress in respect of a dismissal at common law or an employee may seek redress in respect of the dismissal under the Acts, but the employee must choose between a common law action and a claim under the Acts.

The employee may change a claim between redress in common law and unfair dismissals legislation, subject to the following:

- (a) the employee retains the right to damages at common law for wrongful dismissal up to the time that an Adjudication Officer makes a decision in the case.
- (b) an employee retains the right to redress under the unfair dismissals' legislation up to the time that his/her claim for damages for wrongful dismissal in the civil courts has commenced.

13. REDRESS SOUGHT UNDER OTHER ACTS

Where an employee refers a claim in respect of a dismissal, to the Director General, under section 77 of the Employment Equality Acts, 1998 & 2021, which is a discriminatory dismissal, and a claim under the Unfair Dismissals Act, 1977, (as amended), they will be given 42 days from the date of the issue of the complaint acknowledgement letter to choose to proceed either with the discriminatory dismissal under the Employment Equality Acts or with the dismissal under the Unfair Dismissals Acts. If the Workplace Relations Commission has not received the Complainant's decision, in writing, within the specified timeframe, the discriminatory dismissal complaint will automatically

be deemed to be withdrawn and the dismissal under the Unfair Dismissals Acts will continue.

14. CLAIM BEFORE AN ADJUDICATION OFFICER

Upon receipt of a claim from an employee, the Workplace Relations Commission will acknowledge the complaint to the employee (Complainant) and send a copy of the claim details and any related documentation to the employer (Respondent). An Adjudication Officer to whom a claim for redress is referred under this section shall

- (a) inquire into the claim,
- (b) give the parties to the claim an opportunity to be heard by the Adjudication Officer and to present to the Adjudication Officer any evidence relevant to the claim,
- (c) make a decision in relation to the claim, consisting of an award of redress in accordance with paragraph 11 or the dismissal of the claim, and
- (d) give the parties to the claim a copy of that decision in writing.

The Director General may, where s/he considers that a claim for redress under the Acts may be dealt with by written submissions only, notify the parties to the claim, in writing, of his/her intention to deal with the claim in that manner.

Where a party objects to the claim being dealt with by written submissions only, s/he must inform the Director General, in writing, within 42 days of having been so notified. The Director General shall not then deal with the claim in that manner.

15. APPEAL TO THE LABOUR COURT

A party to a claim for redress under the Acts may appeal a decision of an Adjudication Officer to the Labour Court, not later than 42 days from the service on that party of notice of the decision of the Adjudication Officer in those proceedings. The time limit for submitting an appeal may be extended, as the Labour Court considers appropriate, in cases where exceptional

circumstances have prevented the lodgement of the appeal within the normal time limit.

The Labour Court shall then

- (a) give the parties to the appeal an opportunity to be heard by it and to present to it any evidence relevant to the appeal,
- (b) make a decision in relation to the appeal affirming, varying, or setting aside the decision of the Adjudication Officer to which the appeal relates, and
- (c) give both parties a copy of that decision in writing.

A decision of the Labour Court may include an award of redress detailed in paragraph 11.

16. APPEAL TO THE HIGH COURT

A party to proceedings before the Labour Court under the Acts may, not later than 42 days from the service on that party of notice of the decision of the Labour Court in those proceedings, appeal that decision to the High Court on a point of law, and the decision of the High Court in relation thereto shall be final and conclusive.

17. ENFORCEMENT OF A DECISION

Where an employer has neither implemented nor appealed an Adjudication Officer's decision, or the Labour Court's decision, as the case may be, an employee may submit a written application to the District Court to make an order, directing the employer to carry out the decision. An application should be made to a judge of the District Court assigned to the District Court district in which the employer concerned ordinarily resides or carries on any profession, business, or occupation.

In cases where an Adjudication Officer's decision requires an employer to re-instate or re-engage an employee, the District Court, upon the hearing of an application, may instead make an order directing the employer to pay to the employee compensation of such amount as is just and equitable having regard

to all the circumstances but not exceeding 104 weeks' remuneration in respect of the employee's employment.

In cases where a District Court order relates to the payment of compensation, the District Court, upon the hearing of an application, may direct the employer to pay to the employee interest on the compensation.

It is an offence for a person to fail to comply with a District Court Order. A person found guilty of this offence shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

In certain circumstances, the Enforcement section of the Workplace Relations Commission may enforce the decision of an Adjudication Officer or the Labour Court.

18. GIVING EVIDENCE/ BEING A WITNESS

An Adjudication Officer may issue a written notice to any person required to attend a Workplace Relations Commission hearing to give evidence in proceedings or to produce to the Adjudication Officer any documents in his/her possession, custody or control that relate to any matter to which those proceedings relate.

A person to whom a notice is given, shall be entitled to the same immunities and privileges as those to which s/he would be entitled if s/he were a witness in proceedings before the High Court.

A person to whom a notice has been given who fails/refuses to comply with the notice or who refuses to give evidence in proceedings to which the notice relates or fails/refuses to produce any document to which the notice relates, shall be guilty of an offence and shall be liable, on summary conviction, to a class E fine.

19. COMPLAINT FORM

The Workplace Relations Commission Complaint Form may be used to make a complaint under the Acts.

The E-Complaint Form is available on the Workplace Relations Commission website, www.workplacerelements.ie. It can be submitted online.

A hard copy of the Complaint Form is also available upon request.

www.workplacerelements.ie