

Unfair Dismissal Acts, 1977

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EXCLUDED EMPLOYEES

Employees over the normal retirement age
Employees under 16
Employed by a family member in a private dwelling or farm where they reside
Members of the Defense Forces and An Garda Suiochana
SOLAS Trainees
Chief Executives of the HSE, Local Authorities and TUSLA
A Statutory Apprenticeship - the first 6 months and within one month of ending
Fixed Term Workers whose contracts expired or specified purpose ended if stated in contract

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INCLUDED EMPLOYEES

Employee – Contract of Service

Section 2A – Civil Servant Employees

Fixed Term Workers dismissed for reasons other an expiration of contract or the specified purpose ending

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ONE YEARS' SERVICE

Must have **one years' continuous service.** If less, than must have been dismissed **wholly or mainly** for one of these reasons (automatically unfair):

- Trade Union Membership or Activity
- Religious Opinions
- Political Opinions
- Making a protected disclosure
- Commencing civil or criminal proceedings or be a witness
- Availing of any protective leave
- Race
- Sexual Orientation
- Age
- Being a member of the travelling community

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CONTINUOUS SERVICE

The First Schedule to the Minimum Notice and Terms of Employment Act, 1973 applies for the purpose of ascertaining the period of service of an employee and whether that service has been continuous.

If a fixed term work is re – employed within 3 months of their contract expiry and the WRC considers this to be a deliberate attempt to circumvent the Act, their previous service will be considered.

If a permanent worker is re – employed with 26 weeks (6 months) of their contract terminating and the WRC considers this to be a deliberate attempt to circumvent the Act, their previous service will be considered.

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TYPES OF DISMISSAL

termination by his employer whether prior notice of the termination was or was not given to the employee

termination by the employee in circumstances in which, because of the conduct of the employer, it was reasonable for the employee to terminate the contract of employment

expiration of a contract of employment for a fixed term or, in the case of a contract for a specified purpose, the cesser of the purpose

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TERMINATION BY THE EMPLOYER

Case Law:

- Mutual consent to termination will not be a dismissal if consent is freely given
- Ambiguous or unclear words in dismissal may mean no dismissal has occurred
- Employer must have demonstrated clear intention to dismiss
- Dismissal subject to an appeal is still a dismissal
- The dismissal notice must specify the date of termination

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TERMINATION BY EMPLOYEE

Known as Constructive Dismissal :

Due to the conduct of the employer (fundamental breach), the employee was entitled to terminate

It was a reasonable response

The conduct of the employee will be examined – were internal procedures exhausted, was there delay in leaving on the part of the employee

The burden of proof is on the employee.

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NON – RENEWAL OF FIXED TERM CONTRACT

Will be a dismissal unless all the provisions in the Act to exclude the Act from being applicable are strictly complied with:

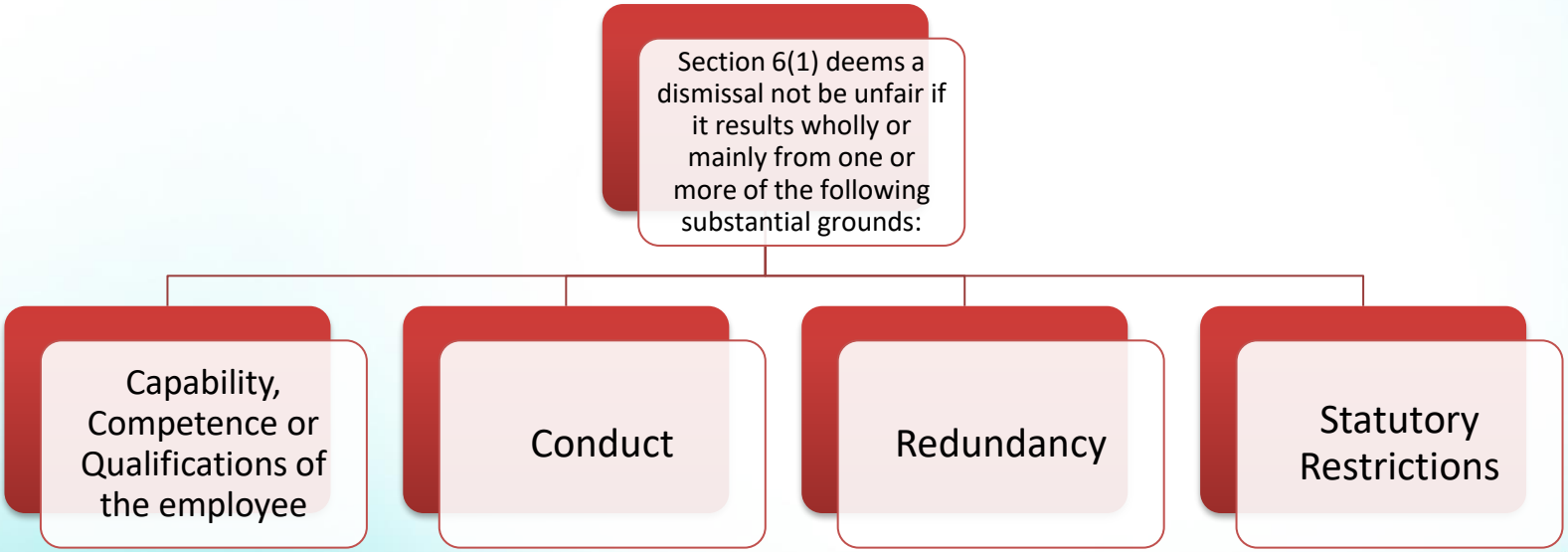
The contract is in writing

The contract is signed by both parties

The contract specifies that the Act will not apply to dismissals resulting only from the expiry of a fixed term or specified purpose contract.

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UNFAIR DISMISSAL TEST



UNFAIR DISMISSAL TEST

Section 6(7) then ensures that the WRC / LC considers the following:

- The reasonableness of the conduct of the employer
- Whether the internal policy was followed (if any)
- Whether SI 146 was followed (this will take precedent)
- If Redundancy selection was for one of the automatic grounds or departed from a collectively agreed procedure

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UNFAIR DISMISSAL TEST

Standard of Proof is the Balance of Probabilities

The Burden of Proof is on the employer

It is not for the WRC / LC to re – investigate the matter but to determine based on the evidence before the employer, was it is reasonable decision to dismiss (band of reasonable responses)

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DATE OF DISMISSAL

Where prior notice of the termination of the contract of employment was given, the date on which that notice expired

Where either prior notice of such termination is not given or the notice given does not comply with the provisions of the contract of employment or the minimum notice act, the date on which such a notice would have expired, if it had been given

Where a contract of employment for a fixed term expires without it being renewed or, in the case of a contract for a specified purpose, the purpose expire, the date of the expiry or cesser of the purpose

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REDRESS

Complaints must be brought by the employee to the Workplace Relations Commission

Within six months from the date of dismissal.

Can appeal to the Labour Court within 42 days of the date of the decision.

Redress is compensation up to 104 weeks pay, reinstatement or reengagement

Employee is under an obligation to mitigate their loss (look for another job)

If a new job is secured quickly, award is maximum 4 weeks pay

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