



Can employees with less than two years' service claim unfair dismissal?

Most employers are aware that when employment commenced on or after 6 April 2012, the right not to be unfairly dismissed under section 94 of the Employment Rights Act 1996 does not apply to an employee with less than two years' continuous service at the effective date of termination (for those who started before then, it was one year's continuous service). BUT there are other circumstances when an employee with less than two years' service may bring an unfair dismissal claim.

There are several factors that could bring the employee's service to two years (either generally, or for the purposes of making an unfair dismissal claim), and circumstances in which employees do not require any period of service to bring an unfair dismissal claim.

Statutory notice

Employees with more than a month but less than two years' service are entitled to a statutory week's notice from the employer (save for gross misconduct). If an employee is dismissed without notice, or with less than a week's notice, their date of termination for unfair dismissal purposes should be calculated by adding the statutory week.

Service from previous employment

Under the Transfer of Undertakings (Protection of Employment) Regulations 2006, employees transfer with their continuity of service intact. Employees who move from one associated company (as defined in the Employment Rights Act) to another also retain their service. There may also be sector-specific regulations governing how service is calculated for those transferring

between employers, such as education and health. Employees may therefore have more than two years' service from day one.

An employee's service may not have been calculated correctly, particularly if the employer has treated 'breaks' in between contracts of employment as breaking continuity. Whereas generally a break of at least a week (ending on a Saturday) can break continuity, there are various pitfalls to consider including whether any break:

- could be a 'temporary cessation of work' that might not break continuity of service;
- could be an 'arrangement' with the employee - for example, an agreement to return at a certain date, or the employee working every third week - which would not break continuity; or
- could be as a result of the employee being incapable of doing the work through illness or injury for up to 26 weeks. This rarely applies because usually the employee would remain employed on sick leave rather than having their contract terminated and then being re-engaged.

No requirement for service

There are several circumstances in the Employment Rights Act and under the Equality Act 2010 where no qualifying service is required. The better-known instances include dismissals relating to whistleblowing, health and safety, maternity or family reasons. Lesser-known instances include dismissals relating to jury service, shop worker Sunday working, national minimum wage and exclusivity clauses in zero-hours contracts. In some of these cases, the dismissal will be automatically unfair.

Employers should ensure that their dismissal processes are fair and Acas-compliant for all employees, irrespective of their length of service, to minimise the risk of an unfair dismissal claim. Where an employee being dismissed has less than two years' service, the employer should still be aware of the claims not requiring service, the issues around calculating continuous service correctly, and the need to be certain of the date employment commenced.

If you need advice on this matter please call our **adviceline on: 0300 333 0303**

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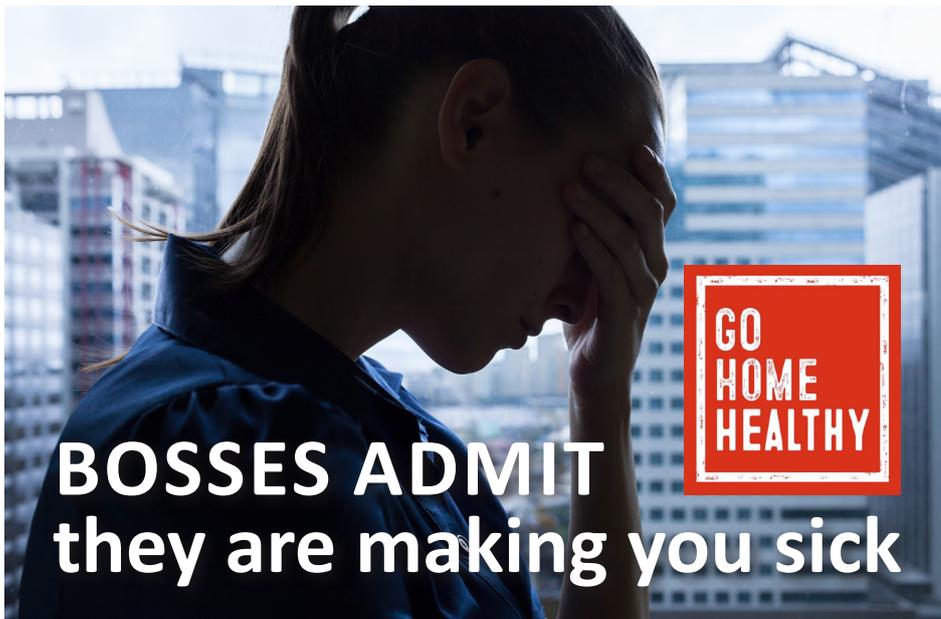


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BOSSES ADMIT they are making you sick

The entrenched acceptance of work-related ill-health in British workplaces has become so taken for granted, even company bosses now admit they are making you sick. And they say too little is being done to address the problem.

New research from the Health and Safety Executive (HSE) found more than two-fifths of businesses are reporting a rise in cases of long-term ill-health, with the majority (80 per cent) stating tackling this growing problem is a priority within their organisation.

The regulator sought the views of 300 'major business leaders' and 40 per cent of respondents said their industry was not doing enough to raise awareness and tackle the causes of long-term work-related ill-health.

The findings were revealed as HSE announced a new national campaign - 'Go Home Healthy'.

Workers feel they aren't taken seriously due to their gender, age or appearance

New research has revealed that one in five UK workers fear their performance is judged by how old they are.

Britain's anti-discrimination legislation should enable workers to feel that they're being judged on their performance and not on their physical attributes. However, new research has revealed that this isn't always the reality. A recent study has shown that employees across the UK fear not being taken seriously due to their age, appearance or gender.

Based on a survey of 2,000 workers, the research found that 21% of employees feel that they are not taken seriously due to their

age. And it seems as if this is particularly concerning for Generation Y and baby boomers: 43% of workers between the ages of 16 and 24 and 21% of people between 55 and 64 worry about being judged due to their age. Additionally, women feel the burden of their years or lack thereof more than men, with 25% of them being concerned about their age holding them back compared to 17% of men.

However, age isn't the only factor that women feel is held against them: almost one

in five are anxious that they are perceived differently due to their sex. And again it seems as if younger generations are more worried about this, with almost a quarter of 16 to 24-year-olds feeling they are not taken seriously due to their gender.

Young people also worry more about their colleagues and bosses judging them for their appearance. While an average 19% of the people surveyed feel their looks had an impact on how they are perceived in the office, 29% of 16 to 24-year-olds are conscious about how their appearance affects people's assumptions.

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