Employment Rights Act 1996

1996 CHAPTER 18

PART X

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

Fairness

98  General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
(3) In subsection (2)(a)—
   (a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
   (b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
   (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
   (b) shall be determined in accordance with equity and the substantial merits of the case.

(5) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(6) Subsection (4) is subject to—
   (a) sections 98A to 107 of this Act, and
   (b) sections 152, 153, 238 and 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 (dismissal on ground of trade union membership or activities or in connection with industrial action).

Annotations:

Amendments (Textual)

F1 S. 98(2)(ba) inserted (1.10.2006) by the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), Sch. 8 para. 22(2) (with regs. 44-46)
F2 S. 98(2)(ba)(2)(3A) omitted (6.4.2011) by virtue of the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), {reg. 3(2)(a)} (with regs. 5, 6, 9)
F3 S. 98(2A) inserted (1.10.2006) by the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), Sch. 8 para. 22(3) (with regs. 44-46)
F4 S. 98(3A) inserted (1.10.2006) by the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), Sch. 8 para. 22(4) (with regs. 44-46)
F5 Word in s. 98(4) substituted (6.4.2011) by the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), {reg. 3(2)(b)} (with regs. 5, 6, 9)
F6 S. 98(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 15(a), Sch. 9(2); S.I. 1999/2830, art. 2(3), Sch. 1 Pt. II, Sch. 2 Pt. II (with Sch. 3 paras. 10, 11)
F7 Words in s. 98(6) substituted (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 15(b); S.I. 1999/2830, art. 2(2), Sch. 1 Pt. II (with Sch. 3 paras. 10, 11)
F8 Word in s. 98(6) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), Sch. 7 para. 32(a); S.I. 2004/2185, art. 2
F9 Word in s. 98(6)(a) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), Sch. 7 para. 32(b); S.I. 2004/2185, art. 2
F10 Words in s. 98(6)(b) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), Sch. 1 para. 30; S.I. 2005/872, arts. 4, 5, Sch. (subject to arts. 6-12)
Employment Rights Act 1996 (c. 18)
Part X – Unfair dismissal
Chapter I – Right not to be unfairly dismissed

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Employment Rights Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

C1 S. 98(1) modified (1.1.1999) by 1998 Measure No. 1, s. 6(1), Sch. 3 para. 3(2)(b); Instrument dated 14.10.1998 made by the Archbishops of Canterbury and York

C2 S. 98(1) modified by SI 2006/246 reg. 7(3)(b) (as substituted (31.1.2014) by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (S.I. 2014/16), regs. 1(2), 8(1) (with reg. 8(2)))

Marginal Citations

M1 1992 c. 52.
### Changes to legislation:

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#### Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 8 Ch. 4 inserted by 2018 c. 24 Sch. para. 2
- s. 1(4)(d)(iiia) inserted by S.I. 2018/1378 reg. 3(b)(iii)
- s. 1(4)(l)-(n) inserted by S.I. 2018/1378 reg. 3(b)(vii)
- s. 1(4)(da) inserted by S.I. 2018/1378 reg. 3(b)(iv)
- s. 1(4)(ga) inserted by S.I. 2018/1378 reg. 3(b)(v)
- s. 1(6) inserted by S.I. 2018/1378 reg. 3(b)(viii)
- s. 8(2)(e) and word inserted by S.I. 2018/147 art. 2(b)
- s. 27(1)(cd) inserted by 2018 c. 24 Sch. para. 21
- s. 43K(1)(ca) and word omitted by 2013 c. 24 s. 20(5) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 43K(2)(ba) omitted by 2013 c. 24 s. 20(6) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 47C(2)(cb) inserted by 2018 c. 24 Sch. para. 22
- s. 47AA inserted by 2008 c. 25 s. 37
- s. 49C inserted by 2017 c. 16 s. 32(4)
- s. 75I(3)(f) inserted by 2018 c. 24 Sch. para. 23(b)
- s. 80C(2)(bb) inserted by 2018 c. 24 Sch. para. 24(2)
- s. 80C(4)(bb) inserted by 2018 c. 24 Sch. para. 24(3)
- s. 99(3)(cb) inserted by 2018 c. 24 Sch. para. 27
- s. 101B inserted by 2008 c. 25 s. 38
- s. 105(4B) inserted by 2008 c. 25 s. 39(3)
- s. 108(3)(de) inserted by 2008 c. 25 s. 39(4)
- s. 110(3A) inserted by 2002 c. 22 s. 44
- s. 166(8ZA) inserted by S.I. 2019/146 Sch. para. 253(2)(b)
- s. 183(4ZA) inserted by S.I. 2019/146 Sch. para. 253(3)(b)
- Sch. 2 para. 7A7B inserted by S.I. 2018/1378 reg. 9(3)