

Help is at hand when firms ignore the rules

Being unfairly dismissed is painful but the law offers employees protection

by Diana Bentley

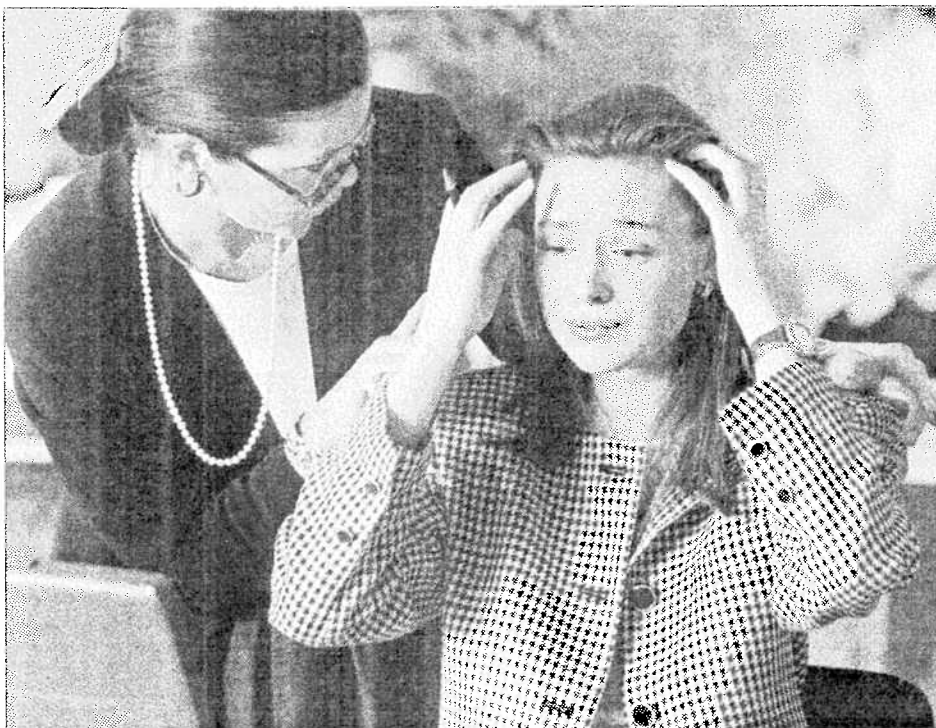
LOSING a job can be a wrench at the best of times, but being dismissed unfairly can cause real financial and emotional distress. However, if you have suffered a bruising experience at the hands of an employer you feel is being unfair, there is plenty to be done to help redress the situation.

"Basically any dismissal which is not fair can constitute 'unfair dismissal' under the Employment Rights Act of 1996," says Nicholas Lakeland, of law firm Silverman Sherliker. "This can set in motion a procedure which might help employees find a remedy — from getting their job back to financial compensation, or both."

Later this year, new regulations will strengthen the procedures that employers must observe before dismissing staff and will help employees who may be suffering at the hands of unscrupulous bosses.

Under the Act, dismissal in certain situations will automatically be considered unfair. "This can include dismissal for time off work due to family reasons, such as illness, or refusing to work on Sunday if you're a shop or betting employee," says Ben Willmott, employee relations advisor at the Chartered Institute of Personnel and Development.

In many other cases, however, it will be arguable whether the dismissal has been fair or not. Possible reasons for fair dismissal include a person's incompetence, misconduct at work or if an employee's position is genuinely no longer needed. "An employer can sack you if you're not doing your job properly, you are being



Victim: employees who are suffering at the hands of unscrupulous bosses are being given more legal rights

disruptive — you are always late for work or rude to your colleagues — or for gross misconduct like stealing," Lakeland says.

Even so, in most cases dismissal cannot be immediate and employers must follow a dismissal process — a disciplinary procedure.

In cases of incompetence, employers need to collect evidence of a person's inability to do their work properly and the steps that had to be taken to bring their work up to scratch.

For redundancy, employers must clearly show that the position is no longer needed and, in some cases, show that consultation with employees has taken place.

Employees who feel they have been wrongly treated can contest their dismissal by going before an Employment Tribunal though they should think carefully about the time and costs involved.

"Some law firms will offer to do a case on a 'no win, no fee' basis, in which case you'll have to pay them a percentage of the compensation awarded to you; sometimes this can be as much as 50 per cent," advises Lakeland. "Pri-

vately funded, straightforward cases often cost several thousand pounds in fees."

He suggests that employees should check the terms of their household insurance, as some policies can include legal expenses which may cover an employment case.

REMEDIES that the Employment Tribunal can order for unfair dismissal include reinstatement and financial compensation. Provided both parties agree, those who are keen to avoid a tribunal hearing can also opt for mediation, which can be arranged through the Advisory, Conciliation and Arbitration Service (Acas).

New rules that come into force this October will tighten up the steps employers need to follow before dismissing staff.

"Employers will need to write a letter setting out their grievances, have a meeting to discuss the issue and, where appropriate, have an appeals meeting," advises Willmott.

"There's some concern about the complexity of the new rules,

but in principle they should strengthen good practice — especially in smaller organisations — and help resolve matters before they escalate to the tribunal stage."

The new rules will certainly make it harder for an employer to get it right, says Lakeland, and will give employees more opportunity to argue their case before dismissal.

Nevertheless, whatever the legal remedies available for employment disputes, Willmott suggests that disputes can be avoided if problems at work are raised and discussed at an early stage.

"Don't think a problem will go away," he cautions. "Address it as early as possible with your employer and keep note of when you've done so. Employers will often keep a diary note of problematic matters and employees should, too. These can be useful when discussing the matter with your boss but also if it becomes a formal dispute and goes before a tribunal."

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