



TERMINATION WITHOUT TEARS

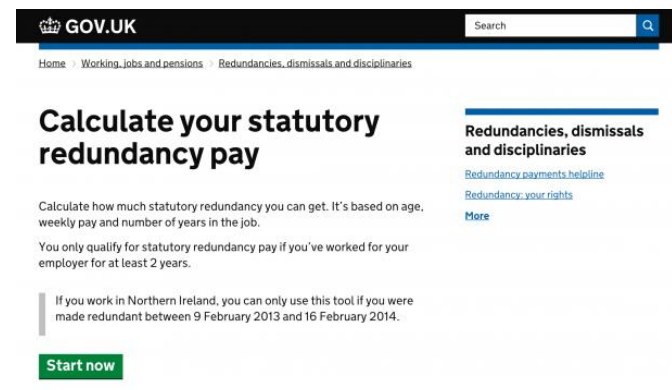
KEITH POTTER & DAVID SEALS - DOWNS SOLICITORS LLP

28 JUNE 2017

- Informing employee of dismissal
- Notice periods: contractual and statutory
- Stating when the employment ends
- Notice of PILON
- Garden leave



- PILON – change in April 2018
- Compensatory payments, including redundancy pay
- Bonuses, commission and pay in lieu of unused leave



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Home > Working, jobs and pensions > Redundancies, dismissals and disciplinarys

Calculate your statutory redundancy pay

Calculate how much statutory redundancy you can get. It's based on age, weekly pay and number of years in the job.

You only qualify for statutory redundancy pay if you've worked for your employer for at least 2 years.

If you work in Northern Ireland, you can only use this tool if you were made redundant between 9 February 2013 and 16 February 2014.

[Start now](#)

Redundancies, dismissals and disciplinarys

- [Redundancy payments helpline](#)
- [Redundancy: your rights](#)
- [More](#)

- Calculation of unused leave entitlement
- Termination without notice – gross misconduct
- Giving reasons for dismissal – necessary or desirable

- ACAS Code of Practice on Disciplinary and Grievance Procedures
- ACAS Guide on Disciplinary and Grievances at Work
- Employer's own procedures

The logo for ACAS (Advisory Conciliation and Arbitration Service) is displayed in a large, bold, blue font. The letters are lowercase and have a slight shadow effect, giving them a three-dimensional appearance. The 'a' and 'c' are particularly prominent.

- Promptness and consistency
- Careful investigation
- Documents and statements
- Suspension
- Informing employee of allegations and basis for them
- Being accompanied at hearing



- Presentation of employer's case
- Employee's chance to respond and present evidence
- Reaching conclusions and reasons for reaching them
- Right of appeal – re-hearing or review



- Prior warnings and PIPs
- Refusal to accept below standard performance
- Failure to meet sales targets

- Medical evidence on employee's condition – GP or occupational health specialist?
- Is employee incapable of performing all or substantial part of job?
- Prospect of recovery and return to work? When?
- Scope for redeployment to other work?
- Formal meeting invitation
- Effect of continuing absence

Statement of Fitness for Work
For social security or Statutory Sick Pay

Patient's name

I assessed your case on:

and, because of the following condition(s):

I advise you that: 3 you are not fit for work.
 4 you may be fit for work taking account of the following advice:

If available, and with your employer's agreement, you may benefit from:

<input type="checkbox"/> a phased return to work	<input type="checkbox"/> amended duties
<input type="checkbox"/> altered hours	<input type="checkbox"/> workplace adaptations

- Discrimination by reason of consequences of disability
- Justification
- Obligation to make reasonable adjustments

- What are they?
- Are they enforceable?
- Fiduciary duties
- Duty of fidelity



- Non-solicitation
- Non-dealing
- Non-poaching
- Non-compete



- Duration
- Garden leave
- Geographical extent
- Which clients covered?
- Which employees covered?
- Which goods/services?



- Automatic transfer principle
 - but what is the “the Company”?
- Changing terms and conditions
 - what if employees won't agree?
 - are changes valid anyway?



- Personal and corporate references
- Vicarious liability for a personal reference
- Verbal or written
- Have a policy
- No general obligation to give a reference but:
 - discrimination
 - victimisation
 - financial services sector
 - contractual obligations



- Subject of reference
 - Discrimination
 - *Pnaiser –v- NHS 2016*
 - *Bullimore –v- Prothecary Witham Weld Solicitors 2010*
 - Defamation / malicious falsehood
 - Negligence
 - Breach of contract
 - *TSB-v-Harris 2000*
- Recipient of reference
 - Negligence
 - Disclaimers / UCTA 1977

- DPA principles
 - Personal data must be processed fairly and lawfully
 - ICO recommendations
- Sensitive personal data
 - Sickness records
 - Explicit consent required
 - What if prospective asks about sickness absence?
- Subject access requests
 - Exclusion re references by current ER
 - Confidential references

- Partners
 - Expulsion
 - Partnership agreements
- LLP members
 - Are they workers? (*Clyde & Co LLP –v- Bates van Winkelhof 2014*)
- Directors
 - resignation from office
 - getting shares back
- Zero hours workers
- Consultants



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