

Dismissals for capability or conduct

To dismiss someone because of a conduct or capability issue, employers must follow a fair procedure. They must do this for those with the [legal status of employee](#).

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero-hours contract

The fair procedure must be in line with the [Acas Code of Practice on disciplinary and grievance procedures](#). An employment tribunal will take this into account in any relevant claims.

The Acas Code of Practice mainly applies to employees. But employers could choose to follow it for those with the [legal status of worker](#). This might help to keep good working relationships.

Before dismissing someone because of a capability issue

If it's a capability issue, employers should support employees to improve first. Dismissal should be a last resort.

Employers must provide 'adequate resources' for an employee to do their job. This might include giving them training.

In some cases, it might be clear that an employee is unlikely to reach the standard needed to do the job. Or they might not improve even after their employer gives them more support and training.

If this happens, employers should try:

- changing their current duties, if possible
- finding a different role for them, if there is one

The employer should discuss and agree any changes to the employee's role with them.

If there's no other suitable role, the employer might be able to dismiss them. But they must have evidence of:

- the employee's poor performance
- any steps taken to support them to improve

What counts as evidence

Examples of evidence might include:

- records of regular, fair performance reviews showing consistent performance issues
- performance improvement plans showing a failure to improve
- complaints from other colleagues or customers

Following a fair procedure

Employers must follow a fair procedure to dismiss employees.

It's likely that this will be a disciplinary procedure. But some employers might have a separate 'capability procedure'.

Whatever procedure is used, it must be in line with the Acas Code of Practice on disciplinary and grievance procedures.

[Find out more about following a fair disciplinary procedure](#)

If someone cannot do their job because of a disability

In certain situations, employers might be able to dismiss someone who cannot do their job because of a disability. But they must make sure they do all they reasonably can to support the person first.

By law (Equality Act 2010), an employer must not dismiss or discipline someone just because they're disabled.

This is a complex area of law. If employers do not follow the law, it could be disability discrimination.

[Find out more about managing capability and performance for disabled employees](#)