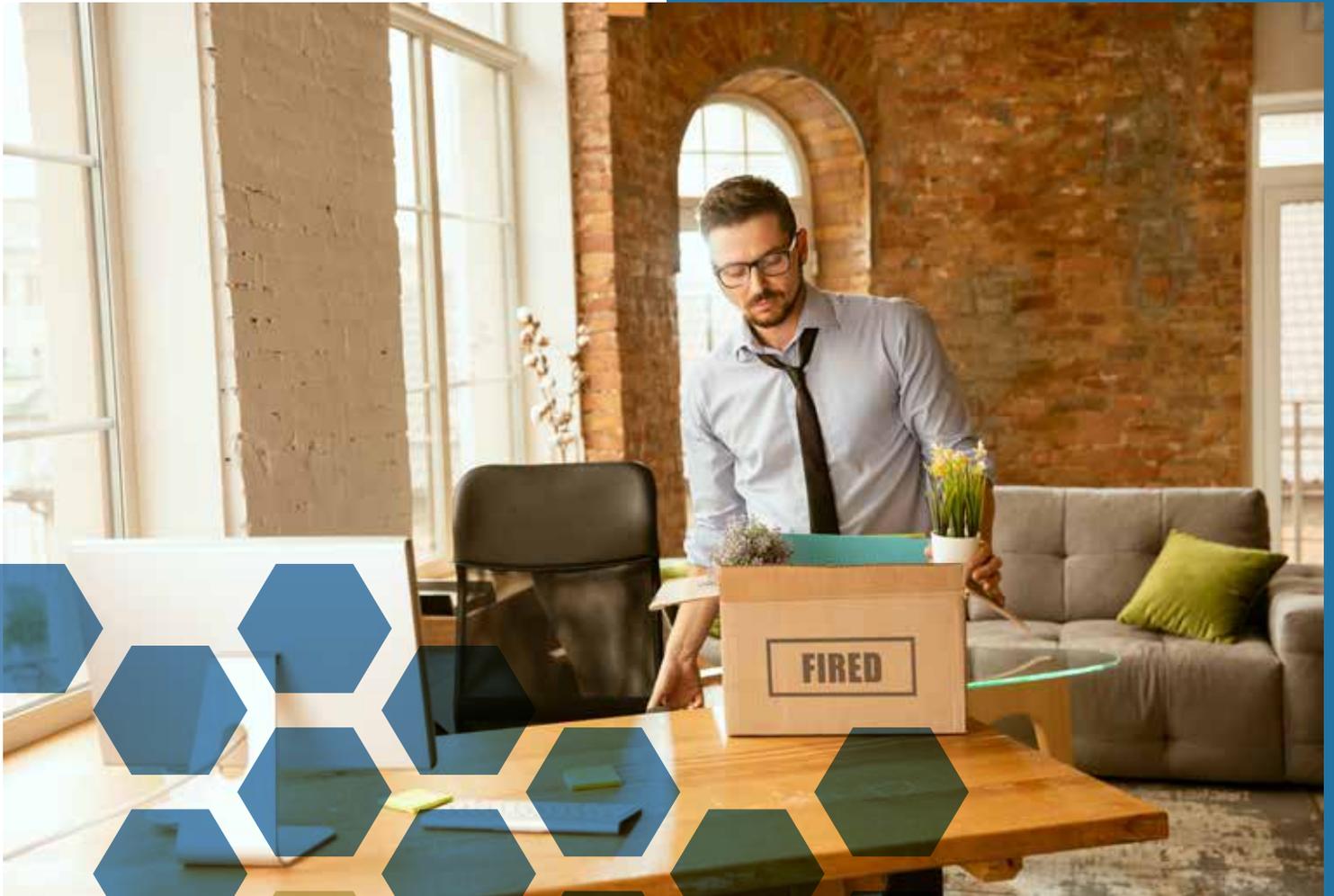


**CASTLEMILK**  
LAW & MONEY ADVICE CENTRE



## **REDUNDANCIES & UNFAIR DISMISSAL**

# REDUNDANCIES & UNFAIR DISMISSAL



Employment law is very complicated. This leaflet mentions some of the rights of employees on unfair dismissal and redundancy.

It is very important to get advice on these issues. So if you are experiencing employment problems, you should go and see a solicitor at a Law Centre or in private practice, or a Citizens Advice Bureau or other advice centre. This leaflet gives very general information and is not intended as a substitute for taking advice.

## Unfair Dismissal

Many employees are protected from unfair dismissal. If you think you have been unfairly dismissed, you may be able to go to an Employment Tribunal.

Employment Tribunals have the power to grant compensation or to order the re-instatement or re-engagement of employees.

In general, at Employment Tribunal hearings, the employer explains the reason for the dismissal and why the decision to dismiss was reasonable.

Your employer must have a fair reason for dismissing you. For example they might say that dismissal was due to misconduct, or lack of capability or qualifications to do the job, or redundancy or some other substantial reason.

Employers should follow a reasonable procedure before dismissing an employee, and the Tribunal will look at this in detail.

Generally you need to have worked for your employer continuously for two years in order to make a redundancy or unfair dismissal claim, though there are some limited exceptions to this. This is known as the “qualifying period of employment”. You need to get advice on whether this rule applies to you.

The Advisory, Conciliation and Arbitration Service (ACAS) has more information on these issues on their website at [acas.org.uk](http://acas.org.uk). In particular they issue Codes of Practice on disciplinary and other matters.



## Redundancy and Redundancy Payments

Where the reason for dismissal is redundancy, an employee might be entitled to a redundancy payment. You have to be employed for at least two years to qualify for a statutory redundancy payment. Your employer may offer additional rights on redundancy under your employment contract, so this has to be checked.

Employers are required to consult with their employees before making anyone redundant.

A redundancy situation might arise where an employer ceases to carry on business, or where the requirement for employees to carry out work of a particular kind, or in a particular place, diminishes.

There is a set formula for calculating the amount of a statutory redundancy payment. There is advice on this at the ACAS website and at [gov.uk](http://gov.uk).

It is important to get advice on all of these issues, especially the amount of the redundancy payment and how to make a claim. If you are entitled to a redundancy payment and your employer does not pay out, you can go to an Employment Tribunal. If an employer is insolvent, it might be possible to claim a redundancy payment from the Government. You can make an online claim from the Redundancy Payment Service which is part of the UK Government's Insolvency Service.



# Unlawful Discrimination

Employees usually have to have been employed for at least two years before making a claim for unfair dismissal or for a redundancy payment. However if an employee has been subject to unlawful discrimination, then the two year qualifying period does not apply and an employee can make a claim regardless of their length of service.

You should get advice if you think you have been discriminated against due to:

- Race
- Sex
- Disability
- Religion or belief
- Age
- Sexual orientation
- Gender reassignment
- Pregnancy or maternity, or
- Marriage or civil partnership

This is a very complicated area of law and it is very important to get legal advice and representation, especially if you are considering going to an Employment Tribunal.

## Unfair Dismissal Unfair Selection for Redundancy

In a redundancy situation, employers have to follow proper procedures. This involves consulting with employees and following a fair selection process. If proper procedures are not followed, a dismissal for redundancy might be unfair.

So if you have been made redundant and your employer has not followed a fair process, you might have been unfairly dismissed. This means that you can go to the Employment Tribunal and claim additional sums, for example for compensation for lost wages. It is worthwhile getting advice on this point.

You do need to go to the Employment Tribunal within three months of the date of your dismissal (see Time Limits below).



# Time Limits

There are strict time limits for making an application to the Employment Tribunal, though again there are limited exceptions to these. Get advice as early as possible.

For unfair dismissal claims there is a strict time limit of three months less one day from the date of dismissal. This includes unfair dismissal due to unfair selection for redundancy. You do need to get advice on this point. It is sometimes difficult to work out your date of dismissal, especially when you are entitled to a period of notice.

Where there is no unfair dismissal, and you are simply making a claim for a statutory redundancy payment which has not been paid, the time limit is six months from the date of dismissal. This can sometimes be extended to twelve months.

In other cases the time limits do not run from the date of dismissal but from another date. For example in unpaid wages cases the time limit starts to run from the date of non-payment, and in discrimination cases from the date when the discrimination occurs. You need to get advice as early as possible.



Before taking your employer to the Employment Tribunal, you must contact the Advisory, Conciliation and Arbitration Service (ACAS) and go through the Early Conciliation procedure. This involves completing an online form on the ACAS website. The Early Conciliation procedure can take up to six weeks and must be started during the three month or six month time period mentioned above.

During Early Conciliation, generally the three month or six month time period pauses. At the end of Early Conciliation you will get a reference number which enables you to go to the Employment Tribunal and raise your claim.

Again this is an extremely complicated area of law and it is very important to get advice about time limits. Since these are very short, it is important to get advice as quickly as possible. In particular you will need advice about how Early Conciliation affects any applicable time limit.

# Advice and Representation

The Employment Tribunal was set up as a quick and simple way for employers and employees to resolve employment disputes. Some applications are still straightforward, but employment law and procedure can be extremely complicated. It is essential to get detailed legal advice on your claim and the procedures you have to follow.

The Scottish Legal Aid Board run the “Advice and Assistance” and “Advice by Way of Representation”

schemes. These can cover the cost of a solicitor in providing initial advice and representing you at an Employment Tribunal. If you are successful however you will be expected to make payment of legal fees from the sum awarded to you at Tribunal.

This area of law is very complicated and it is worthwhile making an appointment with a solicitor and getting legal advice.

This leaflet gives basic information about employment law and is not a substitute for getting advice. There are many exceptions and qualifications to many of the rules and the tribunal procedure is very difficult. The information in the leaflet is not detailed enough to help in particular cases and if you have an employment law problem it is essential to seek legal advice.

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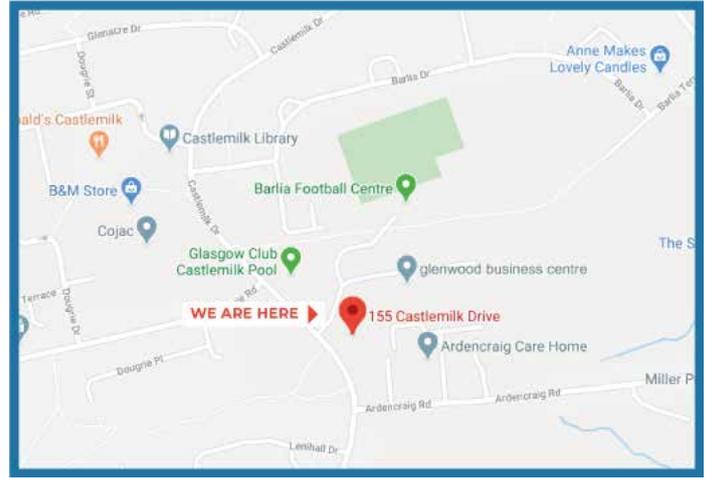
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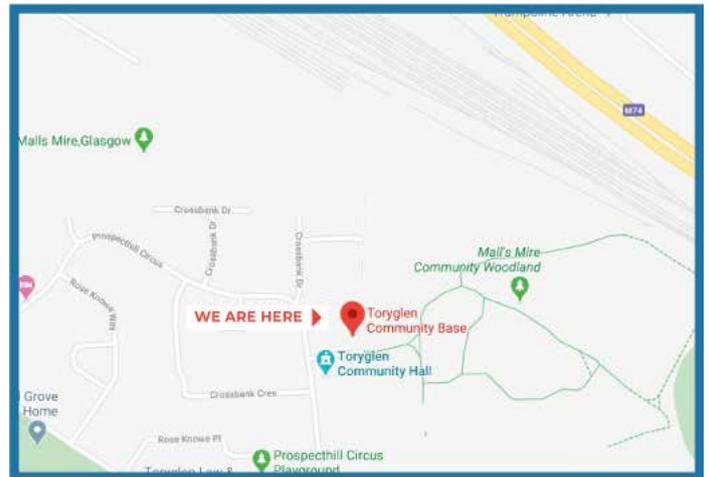
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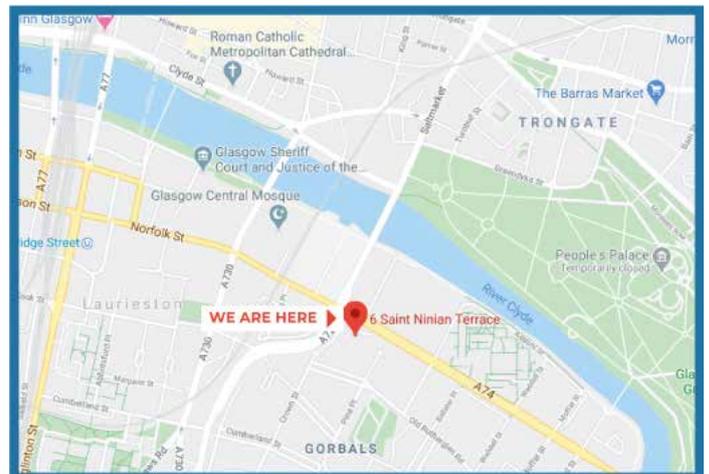


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