

## Checklist: dismissing an employee: some other substantial reason

There are five potentially fair reasons for dismissing an employee:

- Conduct.
- Capability.
- Redundancy.
- Breach of a statutory restriction.
- Some other substantial reason (SOSR).

Almost any reason that does not fall within the other four potentially fair reasons for dismissal may amount to SOSR, if it is not an insignificant or frivolous reason that justifies the dismissal of an employee carrying out a particular role. This checklist highlights some of the more common examples of SOSR.

### Business re-organisation

- If you are restructuring your business, but are not making any redundancies, SOSR may be relied on as a potentially fair reason for dismissal.
- Business re-organisations often include making changes to employees' terms and conditions. Dismissing an employee for their refusal to accept the proposed changes (either within the context of a business re-organisation or not) can also amount to SOSR.

### Refusal to accept changes to terms and conditions

- An employment contract can only be varied in accordance with its terms or with the parties' agreement. If an employee refuses to accept a change to their terms and conditions and your business dismisses them for that reason, the reason may constitute SOSR.
- However, these cases are unlikely to be straightforward because an employee is contractually entitled to resist unilateral changes to their terms. In some instances, where the change amounts to a breach of contract, the employee may be able to resign and claim unfair constructive dismissal.
- For a unilateral change to amount to SOSR, your business must be able to demonstrate that the changes were not imposed arbitrarily, but were for a "sound business reason". There is no need to prove that the re-organisation was crucial to the survival of the business. However, you must provide evidence to demonstrate the business reasons for the change and show that they were not trivial.
- Where the overwhelming majority of employees accept the change, individual employees may struggle to show that their dismissal for refusing to accept the change was unfair.

### Conflicts of interest

- Your business may be able to dismiss an employee for SOSR if they are in a situation that creates a potential conflict with your business' interests.
- You must be able to provide evidence demonstrating that the employee posed a risk to your business interests. Your business will need to show that:
  - o the employee had access to commercial information;
  - o the employee had close connections with a competitor (or an employee of a competitor); and
  - o you feared the employee may leak confidential information.
- To rely on SOSR, your business must be able to show that continuing to employ the employee would create a real commercial risk.

### Personality clashes

Personality clashes or irreconcilable differences between colleagues can amount to SOSR. However, to do so, the conflict would have to be causing substantial disruption to your business. An employment tribunal will expect you to take reasonable steps to solve the problem without resorting to dismissal, for example:

- Re-deploying one of the workers.
- Changing work patterns.
- Attempting to mediate.

### Pressure from third parties

- Where a third party (for example, a customer or supplier) requires an employee's dismissal, the dismissal can be regarded as fair for SOSR.
- Your business should take into consideration the:
  - o importance of the third party's continued business with your own business; and
  - o seriousness of the third party's threat to leave.
- For example, if a major client is adamant that it will never contract with your business again unless you dismiss an employee, this is more likely to be regarded as fair than where a minor client simply requests removal of an employee, but does not threaten cessation of business.

### Breakdown in trust and confidence

Businesses sometimes maintain that they must dismiss an employee because of a breakdown in trust and confidence. In some cases, SOSR can be relied on as a potentially fair reason for dismissal.

### More information

If you have any questions about the content of this checklist, please contact us on 01225 326435 or email us at [info@renneyandco.com](mailto:info@renneyandco.com)