

Legal UPDATE

Unfair Dismissal – Time Off Work for Dependants

Section 57A(1) of the Employment Rights Act 1996 entitles an employee to take a reasonable amount of time off work in order to take action which is necessary for dependants, for example if they are ill or injured or if there is a disruption in the care arrangements made for them. It is automatically unfair dismissal to dismiss an employee for seeking to exercise his or her statutory right to take unpaid time off work in these circumstances.

In a recent case, an employee was awarded £8,705 in compensation by the Employment Tribunal (ET) after she was dismissed for taking time off work to care for her son. Alison Balch commenced part-time work at a Royal Mail delivery and sorting office in Aberdeen.

During her six-month trial period she called in sick seven times on account of her son's asthma. At the end of the period, she was dismissed 'on the grounds of failure to demonstrate suitability for employment in particular regarding your poor level of attendance'. Ms Balch was given no formal warning concerning her attendance, however. Ms Balch's line manager had failed to carry out a performance review after she had completed three months' work. Although a review had been prepared at that time, it was not discussed with her until the six-month review took place. Both reports were critical of her attendance record.

She had explained that her absences were necessary because her five-year-old son suffered from asthma, but she was dismissed from her job. Neither Ms Balch's contract of employment nor the company's procedures made any mention of an employee's right to take time off to help dependants.

The Employment Judge found that the principal reason for Ms Balch's dismissal was that she had taken time off work in order to take action necessary to help her son when he was ill and ruled that she had been unfairly dismissed.

Under the Equality Act 2010, it is unlawful to discriminate against a fit employee because they have taken time off work to look after a disabled child. A child under the age of six may be deemed disabled under the Act even where their impairment does not have a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities if the condition would have that effect on a person aged six years or over.