

24th July 2015

# 3HR Legal Weekly

## Immigration

### BRP Card Collection –Special Service From 3HR

**Q: We are finding it very inconvenient for our Entry Clearance migrants to have to collect their BRP cards within 10 days of arrival in the UK. Are there any alternatives?**

**A:** 3HR Legal are very pleased to be able to announce that we are one of very few legal representatives who have been approved by the Home Office to collect BRP cards on behalf of migrants and their families. This therefore allows your expatriate staff to concentrate on embedding into their new role in the UK business, rather than having to schedule a potentially lengthy visit to a Post Office within 10 days of arriving in the UK (with the risk of facing a fine or even cancellation of their visas if they fail to do so). We will need to have the individual's (and their family's, if applicable) passport containing their initial entry visa sticker, but this is the only document we require to then be able to make the collection. We can then arrange a courier for secure return of the passport and BRP card, or the migrant may collect at their own convenience from our office. We can of course also check to ensure that the Home Office have produced the BRP card without any errors.

Other than for a few approved representatives and sponsors, ordinarily migrants are expected to collect their own BRP cards unless they have a serious illness or disability or they are under 18 and cannot collect at the same time as their parents/guardian collects their own. In those cases an alternative person may be nominated to make the collection, but it is necessary to obtain Home Office authorisation in advance.

**Thomas Miles**  
Solicitor/ Head of Legal  
E: thomas.miles@3hrlegal.com



## Employment

### How to Dismiss Your Employees Fairly

Dismissal is when you end an employee's contract. When dismissing staff, you must do it fairly. There are different types of dismissal: fair, unfair, constructive and wrongful dismissal.

**Fair and unfair dismissal:** A dismissal is fair or unfair depending on your reason for it and how you act during the dismissal process. There are five potentially fair reasons for dismissal: capability or qualifications, conduct, redundancy, breach of a statutory duty or restriction and "some other substantial reason" (SOSR). Even if you have a fair reason, the dismissal is only fair if you also act reasonably during the dismissal and disciplinary process.

There's no legal definition of 'reasonableness', but a tribunal would consider whether you:

- genuinely believed that the reason was fair
- carried out proper investigations where appropriate
- followed the relevant procedures
- told the employee why they were being considered for dismissal and listened to their views
- allowed the employee to be accompanied at disciplinary/dismissal hearings
- gave the employee the chance to appeal

Reasonableness might also depend on whether the employee could be expected to understand the consequences of their behaviour.

Even if you've acted reasonably, some reasons for dismissal are classed automatically unfair. These included (amongst others) dismissals related to pregnancy, including all reasons relating to maternity, acting as an employee representative, being a part-time or fixed-term employee, discrimination, pay and working hours and whistleblowing.

**Dismissal and disciplinary procedures:** You must set out your dismissal and disciplinary rules and procedures in writing - if you don't, a tribunal can order you to pay an employee compensation.

**Constructive dismissal:** This is when an employee resigns because you've breached their employment contract. This could be a single serious event or a series of less serious events. An employee could claim constructive dismissal if you: cut their wages without agreement, unlawfully demote them, allow them to be harassed, bullied or discriminated against, unfairly increase their workload or change the location of their workplace at short notice. A constructive dismissal isn't necessarily unfair - but it would be difficult for you to show that a breach of contract was fair. A constructive dismissal might lead to a claim for wrongful dismissal.

**Wrongful dismissal:** This is where you break the terms of an employee's contract in the dismissal process, e.g. dismissing someone without giving them proper notice.

**Summary dismissal:** This is when you dismiss someone instantly without notice or pay in lieu of notice, usually because of gross misconduct (e.g. theft, fraud, violence). Tribunals may rule a summary dismissal as 'procedurally unfair' - you can only suspend someone without pay if their contract says you can do this. If it doesn't, you should suspend the employee on full pay and investigate the circumstances. If you feel summary dismissal is your only choice, you must still follow a fair procedure as you would do for any other disciplinary matter.

**Penalties for unfair dismissals:** If a tribunal finds that an employee has been unfairly dismissed, you might be ordered to reinstate them (give them their job back) or re-engage them (re-employ them in a different job). You might also have to pay compensation, which depends on the employee's age, gross weekly pay and length of service.

**Eligibility to claim unfair dismissal:** Employees can only claim unfair dismissal if they've worked for a qualifying period (2 years) - unless they're claiming for an automatically unfair reason.

**If you have any employee relations issues, you should seek legal advice prior to carrying out any dismissal in order to avoid the employee successfully claiming unfair dismissal. For advice on any Employment Law issue, please contact us.**

**Emma Mursell**  
Solicitor/ Head of Employment  
E: emma.mursell@3hrlegal.com



This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on. Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.

3HR Legal Ltd is a Solicitors Practice, authorised and regulated by the Solicitors Regulation Authority, No: 597935.  
The registered office is New Broad Street House, 35 New Broad Street, London EC2M 1NH, registered in England and Wales no: 08198795  
Tel: 0207 194 8140 Web: [www.3hrlegal.com](http://www.3hrlegal.com)