



University of Strathclyde
LAW CLINIC

2B. Length of Service and Employment Tribunal Claims

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Length of Service (Qualifying Period)



“Qualifying Period” is the period of time that you need to have been employed for in order to make a Claim.



For example, in general, to claim unfair dismissal you must have worked continuously for your employer for at least two years.



Please note that there are some circumstances in which unfair dismissal is claimed where no minimum qualifying service is required. These circumstances are listed [here](#).



Some other employment claims don't require a qualifying period. Please see slideshow 2C for more information.



Qualifying Period

- ▶ You might find yourself in a situation where you are very close to the 2 year qualifying period.
- ▶ The Qualifying Period does allow you to include the one week of statutory notice that you would be entitled to even if you are given pay in lieu of notice or are summarily dismissed without notice. This may give you the 2 years service if you are dismissed very close to this date.

Qualifying Period: Continuous Employment



To meet the 2 year Qualifying Period you have to have been in *continuous employment*.

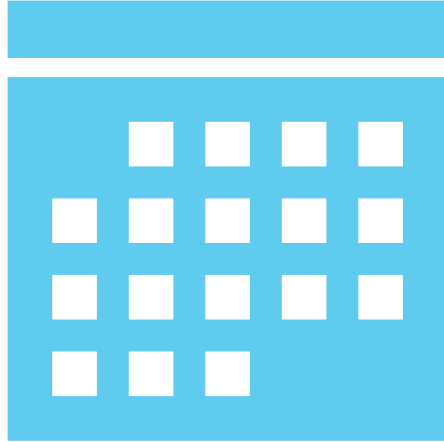


To establish continuity, a week will count if it is governed by a contract of employment. The contract doesn't need to be in writing.



It doesn't matter how many hours or days worked during the week.


Qualifying Period: Calculating Continuous Employment



- ▶ In order to calculate the length of continuous employment, you must use calendar months and calendar years.
- ▶ Accordingly, a month is often longer than four weeks and a calendar year may be slightly longer than 52 weeks.
- ▶ i.e. 2 years will have been reached from 21 January 2017 to 20 January 2019.

Qualifying Period: Continuous Employment

There is a presumption that continuous employment exists so you most likely would only need to provide a start and end date.



As long as you're with the same employer.



You could change place of work, contract terms or even contract of employment without continuity being affected.

Qualifying Period: Events that Break Continuity



To break continuity you need to have a complete calendar week where there is no contract of employment (Sunday to Saturday).



Illegality. Only work under a legal employment contract counts towards continuous employment.



Receipt of a statutory redundancy payment will break continuity for the purposes of future redundancy pay entitlement.

Qualifying Period: Events that do not Break Continuity

01

Continuity is not affected during a period of absence under statutory rights on maternity, paternity, adoption, parental leave etc.

02

Any week, either part or whole, that is governed by an employment contract counts toward the continuity.

03

Therefore, when you are off sick or on holiday or are absent with permission (whilst still governed under that contract), you don't need to worry about breaking continuity.



Qualifying Period: Preserving Continuous Employment

- ▶ You can ‘preserve’ continuity under certain circumstances after your employment has lawfully ended for more than a week.
- ▶ When you ‘preserve’ employment, you are not continuing, you are merely postponing the clock.
- ▶ So if you preserve for a month, you need to be employed for a month after the 2 years.

Qualifying Period: Preserving Continuous Employment

The circumstances in which you can preserve continuity include:

- ▶ The employer consenting to the withdrawal of a resignation;
- ▶ Re-employment/re-instatement after redundancy or unfair dismissal;
- ▶ Temporary cessation of work (e.g. a factory shutting down temporarily due to the lack of workforce);
- ▶ Military service; and
- ▶ Strikes and lock-outs.