



# Employment Protection Act 1975

## 1975 CHAPTER 71

### PART II

#### RIGHTS OF EMPLOYEES

##### *Remedies for unfair dismissal*

#### **71 Order for reinstatement or re-engagement**

- (1) Where on a complaint under paragraph 17 of Schedule 1 to the 1974 Act (unfair dismissal) an industrial tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under this section and in what circumstances they may be made, and shall ask him whether he wishes the tribunal to make such an order, and if he does express such a wish the tribunal may make an order under this section.
- (2) An order under this section may be an order for reinstatement (in accordance with subsections (3) and (4) below) or an order for re-engagement (in accordance with subsection (5) below), as the tribunal may decide, and in the latter case may be on such terms as the tribunal may decide.
- (3) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order the tribunal shall specify—
  - (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of reinstatement;
  - (b) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
  - (c) the date by which the order must be complied with.
- (4) Without prejudice to the generality of subsection (3) above, if the complainant would have benefited from an improvement in his terms and conditions of employment had

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he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

- (5) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment, and on making such an order the tribunal shall specify the terms on which re-engagement is to take place including—
- (a) the identity of the employer;
  - (b) the nature of the employment;
  - (c) the remuneration for the employment;
  - (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of re-engagement;
  - (e) any rights and privileges, including seniority and pension rights, which must be restored to the employee ; and
  - (f) the date by which the order must be complied with.
- (6) In exercising its discretion under this section the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say—
- (a) whether the complainant wishes to be reinstated;
  - (b) whether it is practicable for the employer to comply with an order for reinstatement;
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (7) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and if so on what terms; and in so doing the tribunal shall take into account the following considerations, that is to say—
- (a) any wish expressed by the complainant as to the nature of the order to be made;
  - (b) whether it is practicable for the employer or, as the case may be, a successor or associated employer to comply with an order for re-engagement;
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and if so on what terms;
- and except in a case where the tribunal takes into account contributory fault under paragraph (c) above it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
- (8) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of subsection (6)(b) or (7)(b) above whether it is practicable to comply with an order for reinstatement or re-engagement unless the employer shows—
- (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement; or
  - (b) that he engaged the replacement after the lapse of a reasonable period, without having heard from "the dismissed employee that he wished to be reinstated or re-engaged, and that when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

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- (9) In calculating for the purpose of subsection (3)(a) or (5)(d) above any amount payable by the employer the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement or re-engagement by way of—
- (a) wages in lieu of notice or ex gratia payments paid by the employer;
  - (b) remuneration paid in respect of employment with another employer;
- and such other benefits as the tribunal thinks appropriate in the circumstances.

## **72 Enforcement of s. 71 order and compensation**

- (1) If an order under section 71 above is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation), an industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.
- (2) Subject to subsection (1) above, if an order under section 71 above is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—
- (a) the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, to be paid by the employer to the employee; and
  - (b) unless the employer satisfies the tribunal that it was not practicable to comply with the order, the tribunal shall make an additional award of compensation to be paid by the employer to the employee of an amount—
    - (i) where the dismissal is of a description referred to in subsection (3) below, not less than 26 or more than 52 weeks' pay, or
    - (ii) in any other case, not less than 13 or more than 26 weeks' pay.
- (3) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with subsection (2)(6)(i) above are the following, that is to say.—
- (a) a dismissal which is unfair by virtue of paragraph 6(4) or (5) of Schedule 1 to the 1974 Act (dismissal for membership or non-membership of a trade union, or for taking part in the activities of an independent trade union);
  - (b) a dismissal which is an unlawful act of discrimination by virtue of section 3(1) of the Race Relations Act 1968 ;
  - (c) a dismissal which is an act of discrimination (within the meaning of the Sex Discrimination Act 1975) which is unlawful by virtue of that Act.
- (4) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of subsection (2)(b) above whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.
- (5) If on a complaint under paragraph 17 of Schedule 1 to the 1974 Act the tribunal finds that the grounds of the complaint are well-founded, and no order is made

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under section 71 above the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, to be paid by the employer to the employee.

- (6) Where in any case the tribunal makes an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, and the tribunal finds that the complainant has unreasonably prevented an order under section 71 above from being complied with, it shall, without prejudice to the generality of section 76(4) below, take that conduct into account as a failure on the part of the complainant to mitigate his loss.
- (7) For the purposes of Part II of Schedule 4 as it applies for the calculation of a week's pay for the purpose of subsection (2) (b) above, the calculation date where the dismissal was with notice is the date on which the notice was given and in any other case the effective date of termination.
- (8) Notwithstanding anything in the said Part II, the amount of a week's pay for the purpose of calculating an additional award under subsection (2) (b) above shall not exceed £80,

### **73 Compensation for unfair dismissal**

Where a tribunal makes an award of compensation for unfair dismissal under section 72(2)(a) or (5) above, the award shall consist of a basic award (calculated in accordance with sections 74 and 75 below) and a compensatory award (calculated in accordance with section 76 below).

### **74 Calculation of basic award**

- (1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to (7) and sections 75(1) to (6) below, subject to the following provisions of this Act, namely—
  - (a) subsection (2) below (which provides for an award of two weeks' pay in certain cases);
  - (b) section 75(7) below (which provides for the amount of the award to be reduced where the employee contributed to the dismissal);
  - (c) section 75(8) below (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
  - (d) section 77 below (which prohibits double compensation where compensation in respect of the same matter is also awarded under the Sex Discrimination Act 1975).
- (2) In the following cases the amount of the basic award shall be two weeks' pay:—
  - (a) where the tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—
    - (i) by virtue of section 2(5) or (6) of the Redundancy Payments Act 1965 (unreasonable refusal or relinquishment of suitable alternative employment) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
    - (ii) by virtue of the operation of section 3(3) of that Act (renewal of employment or re-engagement) is not treated as dismissed for the purposes of Part I of that Act;

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- (b) where the amount calculated in accordance with subsections (3) to (7) and section 75(1) to (7) below is less than the amount of two weeks' pay.
- (3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing—
  - (a) one and a half weeks' pay for each such year of employment which consists wholly of weeks in which the employee was not below the age of 41 ;
  - (b) one week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of 41 and was not below the age of 22 ; and
  - (c) half a week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of 22 and was not below the age of 18.
- (4) In ascertaining for the purpose of subsection (3) above the period for which an employee has been continuously employed, where the effective date of termination falls to be determined in accordance with paragraph 5(6) of Schedule 1 to the 1974 Act, a period falling within such an interval as is referred to in paragraph 30(1 A) of that Schedule (period of continuous employment) shall count as a period of employment notwithstanding that it does not count under Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment).
- (5) Where in reckoning the number of years of employment in accordance with subsection (3) above 20 years of employment have been reckoned no account shall be taken of any year of employment earlier than those 20 years.
- (6) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with subsections (3) to (5) above shall be reduced by the appropriate fraction.
- (7) In subsection (6) above " the specified anniversary" in relation to a man means the 64th anniversary of the day of his birth, and in relation to a woman means the 59th anniversary of the day of her birth, and " the appropriate fraction " means the fraction of which—
  - (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
  - (b) the denominator is 12.

## **75 Provisions supplementary to s. 74**

- (1) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of section 74 above, the calculation date is, subject to subsection (3) below, the date on which notice would have been given by the employer had the conditions referred to in subsection (2) below been fulfilled (whether those conditions were in fact fulfilled or not).
- (2) Those conditions are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 1(1) of the Contracts of Employment Act 1972 (minimum period of notice), and that the notice expired on the effective date of termination.

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- (3) Where by virtue of paragraph 5(6) of Schedule 1 to the 1974 Act a date is to be treated as the effective date of termination for the purposes of section 74(3) above which is later than the effective date of termination as defined by paragraph 5(5) of that Schedule, then, for the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purpose of section 74 above, the calculation date is the effective date of termination as defined by the said paragraph 5(5).
- (4) Notwithstanding anything in the said Part II, the amount of a week's pay for the purpose of calculating a basic award shall not exceed £80.
- (5) The Secretary of State may, after a review under section 86 below, vary the limit referred to in subsection (4) above by order made in accordance with that section.
- (6) Without prejudice to the generality of the power to make transitional provision in an order under subsection (5) above, such an order may provide that it shall apply in the case of a dismissal in relation to which the effective date of termination for the purposes of this subsection (as defined by paragraph 5(6) of Schedule 1 to the 1974 Act) falls after the order comes into operation, notwithstanding that the effective date of termination for the purposes of other provisions of this Act or the 1974 Act (as defined by paragraph 5(5) of Schedule 1 to the 1974 Act) falls before the order comes into operation.
- (7) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall, except in a case where the dismissal was by reason of redundancy, reduce the amount of the basic award by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the tribunal under the Redundancy Payments Act 1965 in respect of the same dismissal or of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the said Act of 1965 or otherwise.

## **76 Calculation of compensatory award**

- (1) Subject to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation) and to section 77 below, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The said loss shall be taken to include—
  - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
  - (b) subject to subsection (3) below, loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- (3) The said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in pursuance of the Redundancy Payments Act 1965 or otherwise, shall include only the loss referable to the amount, if any, by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 75(7) or (8) above) in respect of the same dismissal.

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- (4) In ascertaining the said loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (5) In determining for the purposes of subsection (1) above how far any loss sustained by the complainant was attributable to action taken by the employer no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the Redundancy Payments Act 1965 or otherwise, exceeds the amount of the basic award which would be payable but for section 75(8) above that excess shall go to reduce the amount of the compensatory award.

#### **77 Compensation for act which is both sex discrimination and unfair dismissal**

- (1) Where compensation falls to be awarded in respect of any act both under the Sex Discrimination Act 1975 and under the provisions of this Act relating to unfair dismissal, an industrial tribunal shall not award compensation under that Act or this Act in respect of any loss or other matter which is or has been taken into account under the other Act by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.
- (2) Without prejudice to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation), whether as set out in Part III of Schedule 16 to this Act or as applied by section 65 of the Sex Discrimination Act 1975, in a case to which subsection (1) above applies the aggregate of the following amounts of compensation awarded by an industrial tribunal, that is to say—
  - (a) any compensation awarded under the said Act of 1975 ; and
  - (b) any compensation awarded under section 72(1) above or, as the case may be, which is calculated in accordance with section 76 above,shall not exceed the limit for the time being imposed by the said paragraph 20.

#### **78 Interim relief pending determination of complaint of unfair dismissal**

- (1) An employee who presents a complaint to an industrial tribunal that he has been unfairly dismissed by his employer and that the reason for the dismissal (or, if more than one, the principal reason) was that the employee—
  - (a) was, or proposed to become, a member of a particular independent trade union, or
  - (b) had taken, or proposed to take, part at any appropriate time in the activities of a particular independent trade union of which he was or proposed to become a member;may, subject to the following provisions of this section, apply to the tribunal for an order under the following provisions of this section.

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- (2) An industrial tribunal shall not entertain an application under this section unless—
  - (a) it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date); and
  - (b) before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or had proposed to become a member stating that on the date of the dismissal the employee was or had proposed to become a member of the union and that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.
- (3) An industrial tribunal shall determine an application under this section as soon as practicable after receiving the application and the relevant certificate, but shall, at least seven days before the date of the hearing, give the employer a copy of the application and certificate, together with notice of the date, time and place of the hearing.
- (4) An industrial tribunal shall not exercise any power it has of postponing the hearing in the case of an application under this section except where the tribunal is satisfied that special circumstances exist which justify it in doing so.
- (5) If on hearing an application under this section it appears to an industrial tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the complainant was unfairly dismissed and that the reason for the dismissal or (if more than one, the principal reason) was a reason mentioned in subsection (1) above, the tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on an application under this section and in what circumstances it may exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
  - (a) to reinstate the employee, that is to say, to treat the employee in all respects as if he had not been dismissed ; or
  - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (6) In subsection (5) above "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed " means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.
- (7) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (8) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions, and—
  - (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect; and
  - (b) if the employee is unwilling to accept the job on those terms and conditions, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal



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shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order under this section.

- (9) If on the hearing of an application under this section the employer fails to attend before the tribunal or he states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (5) above, the tribunal shall make an order for the continuation of the employee's contract of employment.
- (10) In this section—
- " appropriate time " has the same meaning as in section 53 above;
  - " authorised official ", in relation to a trade union, means an official of the union authorised by the union to act for the purposes of this section ;
- and any reference to the date of dismissal is a reference—
- (a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), to the date on which the employer's notice was given; and
  - (b) in any other case, to the effective date of termination.
- (11) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved, and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

## **79 Orders for continuation of contract of employment**

- (1) An order for the continuation of a contract of employment under section 78 above shall be an order that the contract of employment, if it has been terminated, shall continue in force as if it had not been terminated and if not shall on its termination continue in force, in either case until the determination or settlement of the complaint and only for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters and for the purpose of determining for any purpose the period for which the employee has been continuously employed.
- (2) Where the tribunal makes any such order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period or part of any such period falling between the date of the dismissal and the determination or settlement of the complaint and, subject to subsection (5) below, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period or part, and shall be paid, in the case of a payment for any such period falling wholly or partly after the order, on the normal pay day for that period and, in the case of a payment for any past period, within a time so specified.
- (3) If an amount is payable by way of pay in pursuance of any such order in respect only of part of a normal pay period the amount shall be calculated by reference to the whole period and be reduced proportionately.
- (4) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of any normal pay period or part of any such period shall go towards discharging the employer's liability in respect of that period under subsection (2) above, and conversely any payment under subsection (2) above in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

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- (5) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (6) For the purposes of this section the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

## **80 Supplementary provisions as to interim relief**

- (1) At any time between the making of an order by an industrial tribunal under section 78 above and the determination or settlement of the complaint to which it relates, the employer or the employee may apply to the tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order, and that section shall apply to the application as it applies to an application for an order under that section except that—
  - (a) no certificate need be presented to the tribunal under subsection (2) (b), and no copy of the certificate need be given to the employer under subsection (3), of that section; and
  - (b) in the case of an application by an employer, for the reference in the said subsection (3) to the employer there shall be substituted a reference to the employee.
- (2) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 78(7) or (8) above.—
  - (a) the tribunal shall make an order for the continuation of the employee's contract of employment and section 79 above shall apply to an order under this subsection as it applies to an order for the continuation of a contract of employment under section 78 above; and
  - (b) the tribunal shall also order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order under section 78(7) or (8) above and to any loss suffered by the employee in consequence of the non-compliance.
- (3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, then—
  - (a) if the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount of pay owed by the employer to the employee on the date of the determination, and, if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed by his employer, the tribunal shall specify that amount separately from any other sum awarded to the employee ; and
  - (b) in any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

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- (4) An industrial tribunal hearing an application under section 78 above or this section may consist of a President of Industrial Tribunals, the chairman of the tribunal or a member of a panel of chairmen of such tribunals for the time being nominated by a President to hear such applications.