



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART IX

#### TERMINATION OF EMPLOYMENT

##### *Minimum period of notice*

#### **86 Rights of employer and employee to minimum notice.**

- (1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—
  - (a) is not less than one week's notice if his period of continuous employment is less than two years,
  - (b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and
  - (c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.
- (2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.
- (3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to subsections (1) and (2); but this section does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.
- (4) Any contract of employment of a person who has been continuously employed for three months or more which is a contract for a term certain of one month or less shall have effect as if it were for an indefinite period; and, accordingly, subsections (1) and (2) apply to the contract.

*Status: Point in time view as at 06/04/2003.*

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(5) <sup>F1</sup> .....

(6) This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.

#### Textual Amendments

**F1** S. 86(5) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(4)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

### 87 Rights of employee in period of notice.

- (1) If an employer gives notice to terminate the contract of employment of a person who has been continuously employed for one month or more, the provisions of sections 88 to 91 have effect as respects the liability of the employer for the period of notice required by section 86(1).
- (2) If an employee who has been continuously employed for one month or more gives notice to terminate his contract of employment, the provisions of sections 88 to 91 have effect as respects the liability of the employer for the period of notice required by section 86(2).
- (3) In sections 88 to 91 “period of notice” means—
  - (a) where notice is given by an employer, the period of notice required by section 86(1), and
  - (b) where notice is given by an employee, the period of notice required by section 86(2).
- (4) This section does not apply in relation to a notice given by the employer or the employee if the notice to be given by the employer to terminate the contract must be at least one week more than the notice required by section 86(1).

### 88 Employments with normal working hours.

- (1) If an employee has normal working hours under the contract of employment in force during the period of notice and during any part of those normal working hours—
  - (a) the employee is ready and willing to work but no work is provided for him by his employer,
  - (b) the employee is incapable of work because of sickness or injury,
  - (c) the employee is absent from work wholly or partly because of pregnancy or childbirth [<sup>F2</sup> or on [<sup>F3</sup> adoption leave, parental leave or paternity leave]], or
  - (d) the employee is absent from work in accordance with the terms of his employment relating to holidays,

the employer is liable to pay the employee for the part of normal working hours covered by any of paragraphs (a), (b), (c) and (d) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week’s pay by the number of normal working hours.

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- (2) Any payments made to the employee by his employer in respect of the relevant part of the period of notice (whether by way of sick pay, statutory sick pay, maternity pay, statutory maternity pay, [<sup>F4</sup>paternity pay, statutory paternity pay, adoption pay, statutory adoption pay,] holiday pay or otherwise) go towards meeting the employer's liability under this section.
- (3) Where notice was given by the employee, the employer's liability under this section does not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

#### Textual Amendments

- F2** Words in s. 88(1)(c) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 10**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)
- F3** Words in s. 88(1)(c) substituted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 29(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2
- F4** Words in s. 88(2) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 29(3)**; S.I. 2002/2866, {art. 2(2)}, Sch. 1 Pt. 2

## 89 Employments without normal working hours.

- (1) If an employee does not have normal working hours under the contract of employment in force in the period of notice, the employer is liable to pay the employee for each week of the period of notice a sum not less than a week's pay.
- (2) The employer's liability under this section is conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week's pay.
- (3) Subsection (2) does not apply—
  - (a) in respect of any period during which the employee is incapable of work because of sickness or injury,
  - (b) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth [<sup>F5</sup>or on [<sup>F6</sup>adoption leave, parental leave or paternity leave]], or
  - (c) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays.
- (4) Any payment made to an employee by his employer in respect of a period within subsection (3) (whether by way of sick pay, statutory sick pay, maternity pay, statutory maternity pay, [<sup>F7</sup>paternity pay, statutory paternity pay, adoption pay, statutory adoption pay,] holiday pay or otherwise) shall be taken into account for the purposes of this section as if it were remuneration paid by the employer in respect of that period.
- (5) Where notice was given by the employee, the employer's liability under this section does not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

#### Textual Amendments

- F5** Words in s. 89(3)(b) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 11**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

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- F6** Words in s. 89(3)(b) substituted (8.12.2002) by [Employment Act 2002 \(c. 22\), s. 53, Sch. 7 para. 30\(2\)](#); S.I. 2002/2866, [art. 2\(2\)](#), Sch. 1 Pt. 2
- F7** Words in s. 89(4) inserted (8.12.2002) by [Employment Act 2002 \(c. 22\), s. 53, Sch. 7 para. 30\(3\)](#); S.I. 2002/2866, [art. 2\(2\)](#), Sch. 1 Pt. 2

## 90 Short-term incapacity benefit and industrial injury benefit.

- (1) This section has effect where the arrangements in force relating to the employment are such that—
- (a) payments by way of sick pay are made by the employer to employees to whom the arrangements apply, in cases where any such employees are incapable of work because of sickness or injury, and
  - (b) in calculating any payment so made to any such employee an amount representing, or treated as representing, short-term incapacity benefit or industrial injury benefit is taken into account, whether by way of deduction or by way of calculating the payment as a supplement to that amount.
- (2) If—
- (a) during any part of the period of notice the employee is incapable of work because of sickness or injury,
  - (b) one or more payments by way of sick pay are made to him by the employer in respect of that part of the period of notice, and
  - (c) in calculating any such payment such an amount as is referred to in paragraph (b) of subsection (1) is taken into account as mentioned in that paragraph,
- for the purposes of section 88 or 89 the amount so taken into account shall be treated as having been paid by the employer to the employee by way of sick pay in respect of that part of that period, and shall go towards meeting the liability of the employer under that section accordingly.

## 91 Supplementary.

- (1) An employer is not liable under section 88 or 89 to make any payment in respect of a period during which an employee is absent from work with the leave of the employer granted at the request of the employee, including any period of time off taken in accordance with—
- (a) Part VI of this Act, or
  - (b) section 168 or 170 of the <sup>M1</sup>Trade Union and Labour Relations (Consolidation) Act 1992 (trade union duties and activities).
- (2) No payment is due under section 88 or 89 in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.
- (3) If, during the period of notice, the employer breaks the contract of employment, payments received under section 88 or 89 in respect of the part of the period after the breach go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.
- (4) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, no payment is due to the

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employee under section 88 or 89 in respect of the part of the period falling after the termination of the contract.

- (5) If an employer fails to give the notice required by section 86, the rights conferred by sections 87 to 90 and this section shall be taken into account in assessing his liability for breach of the contract.
- (6) Sections 86 to 90 and this section apply in relation to a contract all or any of the terms of which are terms which take effect by virtue of any provision contained in or having effect under an Act (whether public or local) as in relation to any other contract; and the reference in this subsection to an Act includes, subject to any express provision to the contrary, an Act passed after this Act.

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**Marginal Citations**

**M1** 1992 c. 52.

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