



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XI

#### REDUNDANCY PAYMENTS ETC.

### CHAPTER III

#### RIGHT BY REASON OF LAY-OFF OR SHORT-TIME

##### *Lay-off and short-time*

#### **147 Meaning of “lay-off” and “short-time”.**

- (1) For the purposes of this Part an employee shall be taken to be laid off for a week if—
  - (a) he is employed under a contract on terms and conditions such that his remuneration under the contract depends on his being provided by the employer with work of the kind which he is employed to do, but
  - (b) he is not entitled to any remuneration under the contract in respect of the week because the employer does not provide such work for him.
- (2) For the purposes of this Part an employee shall be taken to be kept on short-time for a week if by reason of a diminution in the work provided for the employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee’s remuneration for the week is less than half a week’s pay.

#### **148 Eligibility by reason of lay-off or short-time.**

- (1) Subject to the following provisions of this Part, for the purposes of this Part an employee is eligible for a redundancy payment by reason of being laid off or kept on short-time if—

*Status: Point in time view as at 01/08/1998.*

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- (a) he gives notice in writing to his employer indicating (in whatever terms) his intention to claim a redundancy payment in respect of lay-off or short-time (referred to in this Part as “notice of intention to claim”), and
  - (b) before the service of the notice he has been laid off or kept on short-time in circumstances in which subsection (2) applies.
- (2) This subsection applies if the employee has been laid off or kept on short-time—
- (a) for four or more consecutive weeks of which the last before the service of the notice ended on, or not more than four weeks before, the date of service of the notice, or
  - (b) for a series of six or more weeks (of which not more than three were consecutive) within a period of thirteen weeks, where the last week of the series before the service of the notice ended on, or not more than four weeks before, the date of service of the notice.

### *Exclusions*

#### **149 Counter-notices.**

Where an employee gives to his employer notice of intention to claim but—

- (a) the employer gives to the employee, within seven days after the service of that notice, notice in writing (referred to in this Part as a “counter-notice”) that he will contest any liability to pay to the employee a redundancy payment in pursuance of the employee’s notice, and
- (b) the employer does not withdraw the counter-notice by a subsequent notice in writing,

the employee is not entitled to a redundancy payment in pursuance of his notice of intention to claim except in accordance with a decision of an <sup>F1</sup>employment tribunal].

#### **Textual Amendments**

- F1** Words in s. 149 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

#### **150 Resignation.**

- (1) An employee is not entitled to a redundancy payment by reason of being laid off or kept on short-time unless he terminates his contract of employment by giving such period of notice as is required for the purposes of this section before the end of the relevant period.
- (2) The period of notice required for the purposes of this section—
  - (a) where the employee is required by his contract of employment to give more than one week’s notice to terminate the contract, is the minimum period which he is required to give, and
  - (b) otherwise, is one week.
- (3) In subsection (1) “the relevant period”—

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- (a) if the employer does not give a counter-notice within seven days after the service of the notice of intention to claim, is three weeks after the end of those seven days,
  - (b) if the employer gives a counter-notice within that period of seven days but withdraws it by a subsequent notice in writing, is three weeks after the service of the notice of withdrawal, and
  - (c) if—
    - (i) the employer gives a counter-notice within that period of seven days, and does not so withdraw it, and
    - (ii) a question as to the right of the employee to a redundancy payment in pursuance of the notice of intention to claim is referred to an <sup>[F2]</sup>employment tribunal],is three weeks after the tribunal has notified to the employee its decision on that reference.
- (4) For the purposes of subsection (3)(c) no account shall be taken of—
- (a) any appeal against the decision of the tribunal, or
  - (b) any proceedings or decision in consequence of any such appeal.

#### Textual Amendments

**F2** Words in s. 150(c)(ii) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

#### 151 Dismissal.

- (1) An employee is not entitled to a redundancy payment by reason of being laid off or kept on short-time if he is dismissed by his employer.
- (2) Subsection (1) does not prejudice any right of the employee to a redundancy payment in respect of the dismissal.

#### 152 Likelihood of full employment.

- (1) An employee is not entitled to a redundancy payment in pursuance of a notice of intention to claim if—
  - (a) on the date of service of the notice it was reasonably to be expected that the employee (if he continued to be employed by the same employer) would, not later than four weeks after that date, enter on a period of employment of not less than thirteen weeks during which he would not be laid off or kept on short-time for any week, and
  - (b) the employer gives a counter-notice to the employee within seven days after the service of the notice of intention to claim.
- (2) Subsection (1) does not apply where the employee—
  - (a) continues or has continued, during the next four weeks after the date of service of the notice of intention to claim, to be employed by the same employer, and
  - (b) is or has been laid off or kept on short-time for each of those weeks.

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### *Supplementary*

#### **153 The relevant date.**

For the purposes of the provisions of this Act relating to redundancy payments “the relevant date” in relation to a notice of intention to claim or a right to a redundancy payment in pursuance of such a notice—

- (a) in a case falling within paragraph (a) of subsection (2) of section 148, means the date on which the last of the four or more consecutive weeks before the service of the notice came to an end, and
- (b) in a case falling within paragraph (b) of that subsection, means the date on which the last of the series of six or more weeks before the service of the notice came to an end.

#### **154 Provisions supplementing sections 148 and 152.**

For the purposes of sections 148(2) and 152(2)—

- (a) it is immaterial whether a series of weeks consists wholly of weeks for which the employee is laid off or wholly of weeks for which he is kept on short-time or partly of the one and partly of the other, and
- (b) no account shall be taken of any week for which an employee is laid off or kept on short-time where the lay-off or short-time is wholly or mainly attributable to a strike or a lock-out (whether or not in the trade or industry in which the employee is employed and whether in Great Britain or elsewhere).

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