



Employment Rights Act 1996

1996 CHAPTER 18

PART V

PROTECTION FROM SUFFERING DETRIMENT IN EMPLOYMENT

Enforcement

49 Remedies.

- (1) Where an [^{F1}employment tribunal] finds a complaint under section 48 well-founded, the tribunal—
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.
- (2) [^{F2}Subject to [^{F3}subsections (5A) and (6)]] the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
 - (a) the infringement to which the complaint relates, and
 - (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.
- (3) The loss shall be taken to include—
 - (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and
 - (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.
- (4) In ascertaining the 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 (as the case may be) Scotland.

Status: Point in time view as at 02/07/1999. This version of this provision has been superseded.

Changes to legislation: Employment Rights Act 1996, Section 49 is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

[^{F4}(5A) Where—

- (a) the complaint is made under section 48 (1ZA),
- (b) the detriment to which the worker is subjected is the termination of his worker's contract, and
- (c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 101A.]

[^{F5}(6) Where—

- (a) the complaint is made under section 48(1A),
- (b) the detriment to which the worker is subjected is the termination of his worker's contract, and
- (c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 103A.]

Textual Amendments

- F1** Words in s. 49(1) 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**
- F2** Words in s. 49(2) inserted (2.7.1999) by 1998 c. 23, s. 4(2); S.I. 1999/1547, art. 2
- F3** Words in s. 49(2) substituted (1.10.1998) by S.I. 1998/1833, reg. 31(3)(a)
- F4** S. 49(5A) inserted (1.10.1998) by S.I. 1998/1833, reg. 31(3)(b)
- F5** S. 49(6) inserted (2.7.1999) by 1998 c. 23, s. 4(3); S.I. 1999/1547, art. 2

Modifications etc. (not altering text)

- C1** S. 49 applied (with modifications) (1.11.1998) by 1998 c. 39, s. 24(2)(a)(with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**
 S. 49 restricted (1.11.1998) by 1998 c. 39, s. 14(3)(with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**
 S. 49 applied (with modifications) (15.1.2000) by S.I. 1999/3323, reg. 32(2)(a)
 S. 49 extended (with modifications) (5.10.1999) by 1999 c. 10, ss. 7, 20(2), **Sch. 3 para. 2(2)(a)**

Status:

Point in time view as at 02/07/1999. This version of this provision has been superseded.

Changes to legislation:

Employment Rights Act 1996, Section 49 is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.