
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART IV

DISPUTE RESOLUTION, ETC.

Employment particulars

Failure to give statement of employment particulars, etc.: Fair Employment Tribunal

28.—(1) This Article applies to proceedings before the Fair Employment Tribunal relating to a complaint by an employee under Article 38 of the Fair Employment and Treatment Order.

(2) If in the case of proceedings to which this Article applies—

- (a) the Fair Employment Tribunal finds in favour of the employee, but makes no award to him in respect of the complaint to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change),

the Tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3) If in the case of proceedings to which this Article applies—

- (a) the Fair Employment Tribunal makes an award to the employee in respect of the complaint to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order,

the Tribunal shall, subject to paragraph (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In paragraphs (2) and (3)—

- (a) references to the minimum amount are to an amount equal to two weeks' pay, and
- (b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.

(6) The amount of a week's pay of an employee shall—

- (a) be calculated for the purposes of this Article in accordance with Chapter IV of Part I of the Employment Rights Order; and
- (b) not exceed the amount for the time being specified in Article 23 of that Order (maximum amount of week's pay).

(7) For the purposes of Chapter IV of Part I of the Employment Rights Order as applied by paragraph (6), the calculation date shall be taken to be—

- (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
- (b) if he was not, the effective date of termination as defined by Article 129 of that Order.

(8) The Department may by order—

- (a) make provision for this Article not to apply to proceedings relating to complaints under Article 38 of a description specified in the order;
- (b) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.