



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART VI

#### REDUNDANCY PAYMENTS

##### *Miscellaneous and supplemental*

#### **110 Strike during currency of employer's notice to terminate contract**

- (1) The provisions of this section shall have effect where, after an employer has given notice to an employee to terminate his contract of employment (in this section referred to as a "notice of termination")—
  - (a) the employee begins to take part in a strike of employees of the employer, and
  - (b) the employer serves on him a notice in writing (in this section referred to as a "notice of extension") requesting him to agree to extend the contract of employment beyond the time of expiry by an additional period comprising as many available days as the number of working days lost by striking (in this section referred to as "the proposed period of extension").
- (2) A notice of extension shall indicate the reasons for which the employer makes the request contained in the notice, and shall state that unless either—
  - (a) the employee complies with the request, or
  - (b) the employer is satisfied that, in consequence of sickness, injury or otherwise, he is unable to comply with it, or that (notwithstanding that he is able to comply with it) in the circumstances it is reasonable for him not to do so,the employer will contest any liability to pay him a redundancy payment in respect of the dismissal effected by the notice of termination.
- (3) For the purposes of this section an employee shall be taken to comply with the request contained in a notice of extension if, but only if, on each available day within the proposed period of extension, he attends at his proper or usual place of work and is

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*Status: This is the original version (as it was originally enacted).*

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ready and willing to work, whether he has signified his agreement to the request in any other way or not.

- (4) Where an employee on whom a notice of extension has been served—
- (a) complies with the request contained in the notice, or
  - (b) does not comply with it, but attends at his proper or usual place of work and is ready and willing to work on one or more (but not all) of the available days within the proposed period of extension,
- the notice of termination shall have effect, and shall be deemed at all material times to have had effect, as if the period specified in it had (in a case falling within paragraph (a)) been extended beyond the time of expiry by an additional period equal to the proposed period of extension or (in a case falling within paragraph (b)) had been extended beyond the time of expiry up to the end of the day (or, if more than one, the last of the days) on which he so attends and is ready and willing to work; and section 50 and Schedule 3 shall apply accordingly as if (the period of notice required by section 49 were extended to a corresponding extent.
- (5) Subject to subsection (6), if an employee on whom a notice of extension is served in pursuance of subsection (1) does not comply with the request contained in the notice, he shall not be entitled to a redundancy payment by reason of the dismissal effected by the notice of termination, unless the employer agrees to pay such a payment to him notwithstanding that the request has not been complied with.
- (6) Where a notice of extension has been served, and on a reference to an industrial tribunal it appears to the tribunal that the employee has not complied with the request contained in the notice and the employer has not agreed to pay a redundancy payment in respect of the dismissal in question, but that the employee was unable to comply with the request, or it was reasonable for him not to comply with it, as mentioned in subsection (2)(b) the tribunal may determine that the employer shall be liable to pay to the employee—
- (a) the whole of any redundancy payment to which the employee would have been entitled apart from subsection (5), or
  - (b) such part of any such redundancy payment as the tribunal thinks fit
- (7) The service of a notice of extension, and any extension, by virtue of subsection (4) of the period specified in a notice of termination.—
- (a) shall not affect any right either of the employer or of the employee to terminate the contract of employment (whether before, at or after the time of expiry) by a further notice or without notice, and
  - (b) shall not affect the operation of sections 81 to 102 in relation to any such termination of the contract of employment.
- (8) In this section any reference to the number of working days lost by striking is a reference to the number of working days in the period beginning with the date of service of the notice of termination and ending with the time of expiry which are days on which the employee in question takes part in a strike of employees of the employer.
- (9) In this section, " strike " has the meaning given by paragraph 24 of Schedule 13, "time of expiry", in relation to a notice of termination, means the time at which the notice would expire apart from this section, " working day ", in relation to an employee, means a day on which, in accordance with his contract of employment, he is normally required to work, " available day ", in relation to an employee, means a working day beginning at or after the time of expiry which is a day on which he is not taking part in

a strike of employees of the employer, and " available day within the proposed period of extension " means an available day which begins before the end of that period.