



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART V

#### PROTECTION FROM SUFFERING DETRIMENT IN EMPLOYMENT

##### *Rights not to suffer detriment*

VALID FROM 06/04/2005

#### [<sup>F1</sup>43M Jury service

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee—
  - (a) has been summoned under the Juries Act 1974, the Coroners Act 1988, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or
  - (b) has been absent from work because he attended at any place in pursuance of being so summoned.
- (2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10.
- (3) For the purposes of this section, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.
- (4) In subsection (3) “a relevant period” means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in subsection (1)(a).]

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### Textual Amendments

**F1** S. 43M inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 40(1), 59(2)-(4)**; [S.I. 2005/872](#), **arts. 4, 5**, [Sch. \(subject to arts. 6-12\)](#)

## 44 Health and safety cases.

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
  - (b) being a representative of workers on matters of health and safety at work or member of a safety committee—
    - (i) in accordance with arrangements established under or by virtue of any enactment, or
    - (ii) by reason of being acknowledged as such by the employer,
 the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,
  - [<sup>F2</sup>(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),]
  - (c) being an employee at a place where—
    - (i) there was no such representative or safety committee, or
    - (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
 he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
  - (d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or
  - (e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.
- (2) For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.
- (3) An employee is not to be regarded as having been subjected to any detriment on the ground specified in subsection (1)(e) if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

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- (4) Except where an employee is dismissed in circumstances in which, by virtue of section 197, Part X does not apply to the dismissal, this section does not apply where the detriment in question amounts to dismissal (within the meaning of that Part).

#### Textual Amendments

F2 S. 44(1)(ba) inserted (1.10.1996) by S.I. 1996/1513, reg. 8

### 45 Sunday working for shop and betting workers. **E+W**

- (1) An employee who is—
- (a) a protected shop worker or an opted-out shop worker, or
  - (b) a protected betting worker or an opted-out betting worker,
- has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee refused (or proposed to refuse) to do shop work, or betting work, on Sunday or on a particular Sunday.
- (2) Subsection (1) does not apply to anything done in relation to an opted-out shop worker or an opted-out betting worker on the ground that he refused (or proposed to refuse) to do shop work, or betting work, on any Sunday or Sundays falling before the end of the notice period.
- (3) An employee who is a shop worker or a betting worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee gave (or proposed to give) an opting-out notice to his employer.
- (4) Subsections (1) and (3) do not apply where the detriment in question amounts to dismissal (within the meaning of Part X).
- (5) For the purposes of this section a shop worker or betting worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—
- (a) a failure to pay remuneration in respect of shop work, or betting work, on a Sunday which he has not done,
  - (b) a failure to provide him with any other benefit, where that failure results from the application (in relation to a Sunday on which the employee has not done shop work, or betting work) of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee, or
  - (c) a failure to provide him with any work, remuneration or other benefit which by virtue of section 38 or 39 the employer is not obliged to provide.
- (6) Where an employer offers to pay a sum specified in the offer to any one or more employees—
- (a) who are protected shop workers or opted-out shop workers or protected betting workers or opted-out betting workers, or
  - (b) who under their contracts of employment are not obliged to do shop work, or betting work, on Sunday,
- if they agree to do shop work, or betting work, on Sunday or on a particular Sunday subsections (7) and (8) apply.

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- (7) An employee to whom the offer is not made is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to make the offer to him or to pay him the sum specified in the offer.
- (8) An employee who does not accept the offer is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to pay him the sum specified in the offer.
- (9) For the purposes of section 36(2)(b) or 41(1)(b), the appropriate date in relation to this section is the date of the act or failure to act.
- (10) For the purposes of subsection (9)—
  - (a) where an act extends over a period, the “date of the act” means the first day of that period, and
  - (b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

**[<sup>F3</sup>45A Working time cases.**

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker—
  - (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the <sup>M1</sup>Working Time Regulations 1998,
  - (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
  - (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,
  - (d) being—
    - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
    - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,
 performed (or proposed to perform) any functions or activities as such a representative or candidate,
  - (e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or
  - (f) alleged that the employer had infringed such a right.
- (2) It is immaterial for the purposes of subsection (1)(e) or (f)—
  - (a) whether or not the worker has the right, or
  - (b) whether or not the right has been infringed,
 but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.

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- (3) It is sufficient for subsection (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
- (4) This section does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X, unless the dismissal is in circumstances in which, by virtue of section 197, Part X does not apply.]

#### Textual Amendments

**F3** S. 45A inserted (1.10.1998) by S.I. 1998/1833, reg. 31(1)

#### Marginal Citations

**M1** S.I. 1998/1833

### 46 Trustees of occupational pension schemes.

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.
- (2) Except where an employee is dismissed in circumstances in which, by virtue of section 197, Part X does not apply to the dismissal, this section does not apply where the detriment in question amounts to dismissal (within the meaning of that Part).
- (3) In this section “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the <sup>M2</sup>Pension Schemes Act 1993) established under a trust.

#### Commencement Information

**II** S. 46 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and S.I. 1996/2514, art. 2

#### Marginal Citations

**M2** 1993 c. 48.

### 47 Employee representatives.

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being—
  - (a) an employee representative for the <sup>M3</sup>purposes of Chapter II of Part IV of the <sup>M4</sup>Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
  - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,he performed (or proposed to perform) any functions or activities as such an employee representative or candidate.

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- (2) Except where an employee is dismissed in circumstances in which, by virtue of section 197, Part X does not apply to the dismissal, this section does not apply where the detriment in question amounts to a dismissal (within the meaning of that Part).

#### Marginal Citations

**M3** S.I. 1981/1794.

**M4** 1992 c. 52.

VALID FROM 01/09/1999

#### [<sup>F4</sup>47A Employees exercising right to time off work for study or training.

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer or the principal (within the meaning of section 63A(3)) done on the ground that, being a person entitled to—
- (a) time off under section 63A(1) or (3), and
  - (b) remuneration under section 63B(1) in respect of that time taken off,
- the employee exercised (or proposed to exercise) that right or received (or sought to receive) such remuneration.
- (2) Except where an employee is dismissed in circumstances in which, by virtue of section 197, Part X does not apply to the dismissal, this section does not apply where the detriment in question amounts to dismissal (within the meaning of that Part).]

#### Textual Amendments

**F4** S. 47A inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 10** (with s. 42(8)); S.I. 1999/987, **art. 2**

VALID FROM 02/07/1999

#### [<sup>F5</sup>47B Protected disclosures.

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
- (2) Except where the worker is an employee who is dismissed in circumstances in which, by virtue of section 197, Part X does not apply to the dismissal, this section does not apply where—
- (a) the worker is an employee, and
  - (b) the detriment in question amounts to dismissal (within the meaning of that Part).

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- (3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, “worker”, “worker’s contract”, “employment” and “employer” have the extended meaning given by section 43K.]

#### Textual Amendments

**F5** S. 47B inserted (2.7.1999) by 1998 c. 23, s. 2; S.I. 1999/1547, art. 2

VALID FROM 15/12/1999

#### [<sup>F6</sup>47C Leave for family and domestic reasons.

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.
- (2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—
  - (a) pregnancy, childbirth or maternity,
  - (b) ordinary, compulsory or additional maternity leave,
  - (c) parental leave, or
  - (d) time off under section 57A.
- (3) A reason prescribed under this section in relation to parental leave may relate to action which an employee takes, agrees to take or refuses to take under or in respect of a collective or workforce agreement.
- (4) Regulations under this section may make different provision for different cases or circumstances.]

#### Textual Amendments

**F6** S. 47C inserted (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 8; S.I. 1999/2830, art. 2(2), Sch. 1 Pt. II (with Sch. 3 paras. 10, 11)

VALID FROM 01/09/2002

#### [<sup>F7</sup>47D Tax credits

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that—
  - (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 25 of the Tax Credits Act 2002,
  - (b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under that Act, as a result of action taken by or on

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- behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right, or
- (c) the employee is entitled, or will or may be entitled, to working tax credit.
- (2) It is immaterial for the purposes of subsection (1)(a) or (b)—
- (a) whether or not the employee has the right, or
- (b) whether or not the right has been infringed,
- but, for those provisions to apply, the claim to the right and (if applicable) the claim that it has been infringed must be made in good faith.
- (3) Subsections (1) and (2) apply to a person who is not an employee within the meaning of this Act but who is an employee within the meaning of section 25 of the Tax Credits Act 2002, with references to his employer in those subsections (and sections 48(2) and (4) and 49(1)) being construed in accordance with that section.
- (4) Subsections (1) and (2) do not apply to an employee if the detriment in question amounts to dismissal (within the meaning of Part 10.)]

#### Textual Amendments

- F7** S. 47D inserted (1.9.2002 for certain purposes, otherwise prosp.) by [Tax Credits Act 2002 \(c. 21\)](#), s. 27, [Sch. 1 para. 1\(2\)](#); S.I. 2002/1727, [art. 2](#)

VALID FROM 06/04/2003

#### [<sup>F8</sup>47E Flexible working

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee—
- (a) made (or proposed to make) an application under section 80F,
- (b) exercised (or proposed to exercise) a right conferred on him under section 80G,
- (c) brought proceedings against the employer under section 80H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.
- (2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10.]

#### Textual Amendments

- F8** S. 47E inserted (6.4.2003) by virtue of [Employment Act 2002 \(c. 22\)](#), [s. 47\(3\)](#); S.I. 2002/2866, [arts. 2\(3\)](#), 3, [Sch. 1 Pt. 3](#) (with [Sch. 3 para. 7](#))



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VALID FROM 06/04/2010

#### [<sup>F9</sup>47F Study and training

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employee's employer done on the ground that the employee—
  - (a) made (or proposed to make) a section 63D application,
  - (b) exercised (or proposed to exercise) a right conferred on the employee under section 63F,
  - (c) brought proceedings against the employer under section 63I, or
  - (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.
- (2) This section does not apply if the detriment in question amounts to dismissal within the meaning of Part 10.]

#### Textual Amendments

- F9** S. 47F inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40(3), 269(4); S.I. 2010/303, art. 4, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

### Enforcement

#### 48 Complaints to [<sup>F10</sup>employment tribunals].

- (1) An employee may present a complaint to an [<sup>F10</sup>employment tribunal] that he has been subjected to a detriment in contravention of section 44, 45, 46 or 47.
- [<sup>F11</sup>(1ZA) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.]
- (2) On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
- (3) An [<sup>F10</sup>employment tribunal] shall not consider a complaint under this section unless it is presented—
  - (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (4) For the purposes of subsection (3)—
  - (a) where an act extends over a period, the “date of the act” means the last day of that period, and
  - (b) a deliberate failure to act shall be treated as done when it was decided on;

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and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

#### Textual Amendments

**F10** Words in s. 48(1)(3) and sidenote to s. 48 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

**F11** S. 48(1ZA) inserted (1.10.1998) by S.I. 1998/1833, reg. 31(2)

#### Modifications etc. (not altering text)

**C1** S. 48(2)-(4) 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

## 49 Remedies.

- (1) Where an [<sup>F12</sup>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) 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.
- (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.

[<sup>F13</sup>(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,

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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.]

#### Textual Amendments

- F12** 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
- F13** S. 49(5A) inserted (1.10.1998) by S.I. 1998/1833, reg. 31(3)(b)

#### Modifications etc. (not altering text)

- C2** 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. 24(3) (with s. 36); S.I. 1998/2574, art. 2(1), Sch. 1

*[<sup>F14</sup> Application to police of rights relating to health and safety]*

#### Textual Amendments

- F14** S. 49A and crossheading inserted (1.7.1998) by 1997 c. 42, s. 3; S.I. 1998/1542, art. 2

#### <sup>F15</sup> 49A Application to police of section 44 and related provisions.

- (1) For the purposes of section 44, and of sections 48 and 49 so far as relating to that section, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as police cadet shall be treated as employment by the relevant officer under a contract of employment.
- (2) In this section “the relevant officer”—
- in relation to a member of a police force or a special constable or police cadet appointed for a police area, means the chief officer of police,
  - in relation to a person holding office under section 9(1)(b) or 55(1)(b) of the Police Act 1997 (police members of the National Criminal Intelligence Service and the National Crime Squad) means the Director General of the National Criminal Intelligence Service or, as the case may be, the Director General of the National Crime Squad, and
  - in relation to any other person holding the office of constable or an appointment as police cadet, means the person who has the direction and control of the body of constables or cadets in question.

#### Textual Amendments

- F15** S. 49A inserted (1.7.1998) by 1997 c. 42, s. 3; S.I. 1998/1542, art. 2

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