



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART V

#### PROTECTION FROM SUFFERING DETRIMENT IN EMPLOYMENT

##### *Enforcement*

#### **48 Complaints to [<sup>F1</sup>employment tribunals].**

- (1) An employee may present a complaint to an [<sup>F1</sup>employment tribunal] that he has been subjected to a detriment in contravention of section 44, 45, [<sup>F2</sup>46, 47 [<sup>F3</sup>, 47A or 47C]].
- [<sup>F4</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.]
- [<sup>F5</sup>(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.]
- (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>F1</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.

[<sup>F6</sup>(5) In this section and section 49 any reference to the employer includes, where a person complains that he has been subjected to a detriment in contravention of section 47A, the principal (within the meaning of section 63A(3)).]

#### Textual Amendments

- F1** 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**
- F2** Words in s. 48(1) substituted (1.9.1999) by 1998 c. 30 , s. 44(1) , **Sch. 3 para. 11(a)** (with s. 42(8) ); S.I. 1999/987 , art. 2
- F3** Words in s. 48(1) substituted (15.12.1999) by 1999 c. 26 , s. 9 , **Sch. 4 Pt. III para. 9** ; S.I. 1999/2830 , art. 2(2) , **Sch. 1 Pt. II** (with Sch. 3 paras. 10 , 11 )
- F4** S. 48(1ZA) inserted (1.10.1998) by S.I. 1998/1833 , **reg. 31(2)**
- F5** S. 48(1A) inserted (2.7.1999) by 1998 c. 23 , s. 3 ; S.I. 1999/1547 , art. 2
- F6** S. 48(5) inserted (1.9.1999) by 1998 c. 30 , s. 44(1) , **Sch. 3 para. 11(b)** (with s. 42(8) ); S.I. 1999/987 , art. 2

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

- C1** S. 48 applied (4.9.2000) by 1999 c. 26 , s. **12(2)** (with ss. 14 , 15 ) ; S.I. 2000/2242 , art. 2
- C2** S. 48(2)-(4) applied (with modifications) (1.11.1998) by 1998 c. 39 , s. **24(2)(a)** ; S.I. 1998/2574 , art. 2(1) , **Sch. 1**  
S. 48(2)-(4) extended (with modifications) (5.10.1999) by 1999 c. 10 , ss. 7 , 20(2) , **Sch. 3 para. 2(2)(a)**  
S. 48(2)-(4) applied (with modifications) (15.1.2000) by S.I. 1999/3323 , **reg. 32(2)(a)**

## 49 Remedies.

- (1) Where an [<sup>F7</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) [<sup>F8</sup>Subject to [<sup>F9</sup>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.

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- (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>F10</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,

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.]

[<sup>F11</sup>(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

- F7** 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**
- F8** Words in s. 49(2) inserted (2.7.1999) by 1998 c. 23, s. 4(2); S.I. 1999/1547, art. 2
- F9** Words in s. 49(2) substituted (1.10.1998) by S.I. 1998/1833, reg. 31(3)(a)
- F10** S. 49(5A) inserted (1.10.1998) by S.I. 1998/1833, reg. 31(3)(b)
- F11** 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)

- C3** 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)**

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