



# 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 [<sup>F2</sup>43M,] 44, 45, [<sup>F3</sup>46, 47, 47A,][<sup>F4</sup>47C(1)][<sup>F5</sup>, 47E [<sup>F6</sup>, 47F or 47G]].
- [<sup>F7</sup>(1YA) A shop worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of section 45ZA.]
- [<sup>F8</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>F9</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.]
- [<sup>F10</sup>(1AA) An agency worker may present a complaint to an employment tribunal that the agency worker has been subjected to a detriment in contravention of section 47C(5) by the temporary work agency or the hirer.]
- [<sup>F11</sup>(1B) A person may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47D.]
- (2) On [<sup>F12</sup>a complaint under subsection (1), (1ZA), (1A) or (1B)] it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
- [<sup>F13</sup>(2A) On a complaint under subsection (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.]

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- (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; and, in the absence of evidence establishing the contrary, an employer<sup>F14</sup>, a temporary work agency or a hirer] 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>F15</sup>(4A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) <sup>F16</sup>and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purposes of subsection (3)(a).]
- <sup>F17</sup>(5) In this section and section 49 any reference to the employer <sup>F18</sup>includes—]
- <sup>F18</sup>(a) [ 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)).
  - <sup>F19</sup>(b) [ in the case of proceedings against a worker or agent under section 47B(1A), the worker or agent.]]
- <sup>F20</sup>(6) In this section and section 49 the following have the same meaning as in the Agency Workers Regulations 2010 ( S.I. 2010/93)—
- “agency worker”;
  - “hirer”;
  - “temporary work agency”.]

#### 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) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24) , ss. 40(2) , 59(2)-(4) ; S.I. 2005/872 , arts. 4 , 5 , Sch. (subject to arts. 6-12 )
- F3** 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
- F4** Word in s. 48(1) substituted (1.10.2014) by Children and Families Act 2014 (c. 6) , ss. 129(2)(a) , 139(6); S.I. 2014/1640 , art. 4(b)
- F5** Words in s. 48(1) substituted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) , ss. 40 , 269(4) , Sch. 1 para. 2 ; S.I. 2010/303 , art. 4 , Sch. 3 (with arts. 8-14 ) (as amended by S.I. 2010/1151 , art. 22 )
- F6** Words in s. 48(1) substituted (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27) , ss. 31(3) , 35(1); S.I. 2013/1766 , art. 2

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- F7** S. 48(1YA) inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 8**
- F8** S. 48(1ZA) inserted (1.10.1998) by S.I. 1998/1833 , **reg. 31(2)**
- F9** S. 48(1A) inserted (2.7.1999) by 1998 c. 23 , **s. 3** ; S.I. 1999/1547 , **art. 2**
- F10** S. 48(1AA) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(b)**, 139(6); S.I. 2014/1640, art. 4(b)
- F11** S. 48(1B) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21) , s. 27 , **Sch. 1 para. 1(3)** ; S.I. 2002/1727 , **art. 2**
- F12** Words in s. 48(2) substituted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(c)**, 139(6); S.I. 2014/1640, art. 4(b)
- F13** S. 48(2A) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(d)**, 139(6); S.I. 2014/1640, art. 4(b)
- F14** Words in s. 48(4) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(e)**, 139(6); S.I. 2014/1640, art. 4(b)
- F15** S. 48(4A) inserted (20.5.2011 with application as mentioned in regs. 3 and 4 of the amending S.I.) by The Cross- Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133) , **regs. 2** , 34
- F16** Words in s. 48(4A) substituted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 19**; S.I. 2014/253, art. 3(g)
- F17** 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**
- F18** Words in s. 48(5) substituted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24) , **ss. 19(2)(a)** , 103(3) (with s. 24(6) ); S.I. 2013/1455 , art. 2(a) (with art. 4(2) )
- F19** S. 48(5)(b) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24) , **ss. 19(2)(b)** , 103(3) (with s. 24(6) ); S.I. 2013/1455 , art. 2(a) (with art. 4(2) )
- F20** S. 48(6) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(f)**, 139(6); S.I. 2014/1640, art. 4(b)

#### **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 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031) , regs. 1(1) , 47 , **Sch. 6 para. 13(3)** (with regs. 44-46 , Sch. 7 )
- C3** S. 48 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155) , **reg. 18(2)**
- C4** 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)**
- C5** S. 48(2)-(4) applied (with modifications) (8.10.2004) by The European Public Limited- Liability Company Regulations 2004 (S.I. 2004/2326) , regs. 1(2) , **45(2)**
- C6** S. 48(2)-(4) applied (with modifications)(6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426) , regs.1(1) , **33(2)** (with reg. 3 )
- C7** S. 48(2)-(4) applied (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) , regs. 1(2)(3) , 17 , **Sch. para. 8(2)**
- C8** S. 48(2)-(4) applied (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059) , regs. 1(2) , **34(2)**
- C9** S. 48(2)-(4) applied (with modifications) (prosp.) by Pensions Act 2008 (c. 30) , **ss. 56(2)** , 149(1) (with s. 56(3)-(6) )
- C10** S. 48(2)-(4) applied (with modifications) (1.10.2009) by The European Public Limited- Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401) , **reg. 32(2)** (with reg. 41 )

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**C11** S. 48(2)-(4) applied (with modifications) (30.6.2012) by [Pensions Act 2008 \(c. 30\)](#) , **ss. 56(2)** , 149(1) (with s. 56(3)-(6) ); S.I. 2012/1682 , art. 2 , Sch. 2

## 49 Remedies.

- (1) Where an [<sup>F21</sup>employment tribunal] finds a complaint [<sup>F22</sup>under section 48(1), (1ZA), (1A) or (1B)] 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.
- [<sup>F23</sup>(1A) Where an employment tribunal finds a complaint under section 48(1AA) 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 temporary work agency or (as the case may be) the hirer to the complainant in respect of the act or failure to act to which the complaint relates.]
- (2) [<sup>F24</sup>Subject to [<sup>F25</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.
- (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>F26</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>F27</sup>(6) Where—
- (a) the complaint is made under section 48(1A),

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(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. ]

[<sup>F28</sup>(6A) Where—

(a) the complaint is made under section 48(1A), and

(b) it appears to the tribunal that the protected disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.]

[<sup>F29</sup>(7) Where—

(a) the complaint is made under section 48(1B) by a person who is not an employee, and

(b) the detriment to which he is subjected is the termination of his contract with the person who is his employer for the purposes of section 25 of the Tax Credits Act 2002,

any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 10 if the complainant had been an employee and had been dismissed for the reason specified in section 104B.]

#### Textual Amendments

- F21** 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
- F22** Words in s. 49(1) substituted (1.10.2014) by Children and Families Act 2014 (c. 6), ss. 129(3)(a), 139(6); S.I. 2014/1640, art. 4(b)
- F23** S. 49(1A) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), ss. 129(3)(b), 139(6); S.I. 2014/1640, art. 4(b)
- F24** Words in s. 49(2) inserted (2.7.1999) by 1998 c. 23, s. 4(2); S.I. 1999/1547, art. 2
- F25** Words in s. 49(2) substituted (1.10.1998) by S.I. 1998/1833, reg. 31(3)(a)
- F26** S. 49(5A) inserted (1.10.1998) by S.I. 1998/1833, reg. 31(3)(b)
- F27** S. 49(6) inserted (2.7.1999) by 1998 c. 23, s. 4(3); S.I. 1999/1547, art. 2
- F28** S. 49(6A) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 18(4), 103(2) (with s. 24(6))
- F29** S. 49(7) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, Sch. 1 para. 1(4); S.I. 2002/1727, art. 2

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

- C12** 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)
- C13** S. 49 applied (with modifications) (prosp.) by Pensions Act 2008 (c. 30), ss. 56(2), 149(1) (with s. 56(3)-(6))
- C14** S. 49 applied (with modifications) (30.6.2012) by Pensions Act 2008 (c. 30), ss. 56(2), 149(1) (with s. 56(3)-(6)); S.I. 2012/1682, art. 2, Sch. 2

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- C15** S. 49(1)-(5) applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **45(3)**
- C16** S. 49(1)-(5) applied (with modifications) (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs.1(1), **33(2)** (with reg. 3)
- C17** S. 49(1)-(5) applied (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(2)(3), 17, **Sch. para. 8(2)**
- C18** S. 49(1)-(5) applied (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 1(2), **34(3)**
- C19** S. 49(1)-(5) applied (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 51(2)**
- C20** S. 49(1)-(5) applied (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 32(3)** (with reg. 41)

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