



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART X

#### UNFAIR DISMISSAL

#### CHAPTER II

#### REMEDIES FOR UNFAIR DISMISSAL

#### *Compensation*

#### 118 General.

- (1) <sup>F1</sup> . . . Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—
- (a) a basic award (calculated in accordance with sections 119 to 122 and 126), and
  - (b) a compensatory award (calculated in accordance with sections 123, 124, 126 [<sup>F2F3</sup> . . . and 127A(1), (3) and (4)]).

<sup>F4</sup>(2) . . . . .

<sup>F4</sup>(3) . . . . .

[<sup>F5</sup>(4) Where section 127A(2) applies, the award shall also include a supplementary award.]

#### Textual Amendments

- F1** Words in s. 118(1) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**
- F2** Words in s. 118(1)(b) substituted (1.1.1999) by 1998 c. 8, s. 15, **Sch. 1 para. 21(2)**; S.I. 1998/1658, art. 2(3), **Sch. 3** (with art. 3(6))
- F3** Word in s. 118(1)(b) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 22, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

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- F4** S. 118(2)(3) repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)
- F5** S. 118(4) inserted (1.1.1999) by 1998 c. 8, s. 15, **Sch. 1 para. 21(3)**; S.I. 1998/1658, art. 2(3), **Sch. 3** (with art. 3(6))

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

- C1** S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

**119 Basic award.**

- (1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—
- (a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,
  - (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
  - (c) allowing the appropriate amount for each of those years of employment.
- (2) In subsection (1)(c) “the appropriate amount” means—
- (a) one and a half weeks’ pay for a year of employment in which the employee was not below the age of forty-one,
  - (b) one week’s pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and
  - (c) half a week’s pay for a year of employment not within paragraph (a) or (b).
- (3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.
- (4) Where the effective date of termination is after the sixty-fourth anniversary of the day of the employee’s birth, the amount arrived at under subsections (1) to (3) shall be reduced by the appropriate fraction.
- (5) In subsection (4) “the appropriate fraction” means the fraction of which—
- (a) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the employee’s birth in the period beginning with that anniversary and ending with the effective date of termination, and
  - (b) the denominator is twelve.

<sup>F6</sup>(6) .....

**Textual Amendments**

- F6** S. 119(6) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 23, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

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

- C2** S. 119 applied (1.11.1998) by 1998 c. 39, s. 24(4)(a); S.I. 1998/2574, art. 2(1), **Sch. 1**  
 S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**  
 S. 119 applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** with transitional provisions in art. 3)

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## 120 Basic award: minimum in certain cases.

- (1) The amount of the basic award (before any reduction under section 122) shall not be less than [<sup>F7</sup>£3,500] where the reason (or, if more than one, the principal reason)—
- (a) in a redundancy case, for selecting the employee for dismissal, or
  - (b) otherwise, for the dismissal,
- is one of those specified in section 100(1)(a) and (b), [<sup>F8</sup>101A(d),] 102(1) or 103.

<sup>F9</sup>(2) . . . . .

### Textual Amendments

- F7** Sum in s. 120(1) substituted (1.2.2003) by [The Employment Rights \(Increase of Limits\) \(No. 2\) Order 2002 \(S.I. 2002/2927\)](#), [art. 3](#), [Sch.](#) (subject to [art. 4](#))
- F8** Words in s. 120(1) substituted (1.10.1998) by [S.I. 1998/1833](#), [reg. 32\(5\)](#)
- F9** S. 120(2) repealed (17.12.1999) by [1999 c. 26](#), [ss. 36\(1\)\(a\)\(3\)](#), [44](#), [Sch. 9\(10\)](#); [S.I. 1999/3374](#), [art. 2\(b\)\(c\)](#), [Sch.](#)

### Modifications etc. (not altering text)

- C3** S. 117-127A applied (with modifications) (2.7.1999) by [S.I. 1999/1548](#), [reg. 3](#)
- C4** S. 120(1): power to amend conferred (17.12.1999) by [1999 c. 26](#), [s. 34\(1\)\(b\)](#); [S.I. 1999/3374](#), [art. 2\(b\)](#)

## 121 Basic award of two weeks' pay in certain cases.

The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

- (a) by virtue of section 138 is not regarded as dismissed for the purposes of Part XI, or
- (b) by virtue of section 141 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

### Modifications etc. (not altering text)

- C5** Ss. 117-127A applied (with modifications) (2.7.1999) by [S.I. 1999/1548](#), [reg. 3](#)

## 122 Basic award: reductions.

- (1) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which (if accepted) would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.
- (2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (3) Subsection (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in section 100(1)(a) and (b),

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[<sup>F10</sup>101A(d),] 102(1) or 103; and in such a case subsection (2) applies only to so much of the basic award as is payable because of section 120.

[<sup>F11</sup>(3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that award.]

- (4) The amount of the basic award shall be reduced or further reduced by the amount of—
- (a) any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or
  - (b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise).

#### **Textual Amendments**

**F10** Words in s. 122(3) inserted (1.10.1998) by S.I. 1998/1833, reg. 32(5)

**F11** S. 122(3A) inserted (1.8.1998) by 1998 c. 8, s. 15, Sch.1 para. 22; S.I. 1998/1658, art. 2(1), Sch. 1

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

**C6** Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, reg. 3

### **123 Compensatory award.**

- (1) Subject to the provisions of this section and sections 124 [<sup>F12</sup>, 126, 127 and 127A(1), (3) and (4)], the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The loss referred to in subsection (1) shall be taken to include—
- (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
  - (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- (3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—
- (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or
  - (b) any expectation of such a payment,
- only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.
- (4) In ascertaining the loss referred to in subsection (1) 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.

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- (5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—
- (a) calling, organising, procuring or financing a strike or other industrial action, or
  - (b) threatening to do so,
- was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise) exceeds the amount of the basic award which would be payable but for section 122(4), that excess goes to reduce the amount of the compensatory award.

#### Textual Amendments

**F12** Words in s. 123(1) substituted (1.1.1999) by 1998 c. 8, s. 15, **Sch.1 para. 23**; S.I. 1998/1658, art. 2(3), **Sch. 3** (with art. 3(6))

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

**C7** S. 123 applied (1.11.1998) by 1998 c. 39, s. 24(4)(b)  
Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**  
S. 123 applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)(b)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** (with transitional provisions in art. 3)

## 124 Limit of compensatory award etc.

- (1) The amount of—
- (a) any compensation awarded to a person under section 117(1) and (2), or
  - (b) a compensatory award to a person calculated in accordance with section 123, shall not exceed [<sup>F13</sup>£53,500].

[<sup>F14</sup>(1A) Subsection (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he is regarded as unfairly dismissed by virtue of section 100, 103A, 105(3) or 105(6A).]

<sup>F15</sup>(2) . . . . .

- (3) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by this section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

- (4) Where—
- (a) a compensatory award is an award under paragraph (a) of subsection (3) of section 117, and
  - (b) an additional award falls to be made under paragraph (b) of that subsection,

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the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

- (5) The limit imposed by this section applies to the amount which the [<sup>F16</sup>employment tribunal] would, apart from this section, award in respect of the subject matter of the complaint after taking into account—
- (a) any payment made by the respondent to the complainant in respect of that matter, and
  - (b) any reduction in the amount of the award required by any enactment or rule of law.

#### Textual Amendments

- F13** Sum in s. 124(1) substituted (1.2.2003) by [The Employment Rights \(Increase of Limits\) \(No. 2\) Order 2002 \(S.I. 2002/2927\)](#), [art. 3](#), [Sch.](#) (subject to [art. 4](#))
- F14** S. 124(1A) inserted (25.10.1999) by [1999 c. 26, s. 37\(1\)](#); [S.I. 1999/2830](#), [art. 2\(1\)](#), [Sch. 1 Pt. I](#)
- F15** S. 124(2) repealed (17.12.1999) by [1999 c. 26, ss. 36\(1\)\(3\), 44](#), [Sch. 9\(10\)](#); [S.I. 1999/3374](#), [art. 2\(b\)\(c\)](#), [Sch.](#)
- F16** Words in s. 124(5) 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](#)

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

- C8** Ss. 117-127A applied (with modifications) (2.7.1999) by [S.I. 1999/1548](#), [reg. 3](#)
- C9** S. 124(1) applied (1.11.1998) by [1998 c. 39, s. 24\(4\)\(b\)](#); [S.I. 1998/2574](#), [art. 2\(1\)](#), [Sch. 1](#)  
S. 124(1): power to amend conferred (17.12.1999) by [1999 c. 26, s. 34\(1\)\(c\)](#); [S.I. 1999/3374](#), [art. 2\(a\)](#)  
S. 124(1) applied (6.6.2000) by [1992 c. 52, s. 70A](#), [Sch. A1 para. 160\(2\)\(b\)](#) (as inserted (6.6.2000) by [1999 c. 26, s. 1](#), [Sch. 1](#); [S.I. 2000/1338](#), [art. 2](#) (with transitional provisions in [art. 3](#)))

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#### [<sup>F17</sup>124A] Adjustments under the Employment Act 2002

Where an award of compensation for unfair dismissal falls to be—

- (a) reduced or increased under section 31 of the Employment Act 2002 (non-completion of statutory procedures), or
- (b) increased under section 38 of that Act (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under section 118(1)(b) and shall be applied immediately before any reduction under section 123(6) or (7).]

#### Textual Amendments

- F17** S. 124A inserted (1.10.2004) by [Employment Act 2002 \(c. 22\)](#), [ss. 39, 55\(2\)](#); [S.I. 2004/1717](#), [art. 2\(2\)](#) (subject to [art. 3](#))

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<sup>F18</sup>**125** .....

#### Textual Amendments

**F18** S. 125 repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

### **126 Acts which are both unfair dismissal and discrimination.**

- (1) This section applies where compensation falls to be awarded in respect of any act both under—
- (a) the provisions of this Act relating to unfair dismissal, and
  - <sup>F19</sup>(b) any one or more of the <sup>M1</sup>Sex Discrimination Act 1975, the <sup>M2</sup>Race Relations Act 1976 <sup>F20</sup> . . . the Disability Discrimination Act 1995 [<sup>F21</sup> . . . the Employment Equality (Sexual Orientation) Regulations 2003][<sup>F23</sup> and the Employment Equality (Religion or Belief) Regulations 2003] .]
- (2) An [<sup>F24</sup>employment tribunal] shall not award compensation under any one of those <sup>F25</sup> . . . Acts [<sup>F26</sup>or Regulations] in respect of any loss or other matter which is or has been taken into account under [<sup>F27</sup>any other of them] by the tribunal (or another [<sup>F24</sup>employment tribunal]) in awarding compensation on the same or another complaint in respect of that act.

#### Textual Amendments

**F19** S. 126(1)(b) substituted (1.8.1998) by 1998 c. 8, s. 14(3); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(7))

**F20** Word in s. 126(1)(b) omitted (1.12.2003) by virtue of The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), reg. 39, **Sch. 5 para. 2(a)(i)**

**F21** Words in s. 126(1) inserted (1.12.2003) by The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), reg. 39, **Sch. 5 para. 2(a)(ii)**

**F22** Word in s. 126(1)(b) omitted (2.12.2003) by virtue of The Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), reg. 39(2), **Sch. 5 para. 2(a)**

**F23** Words in s. 126(1)(b) inserted (2.12.2003) by The Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), reg. 39(2), **Sch. 5 para. 2(b)**

**F24** Words in s. 126(2) 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**

**F25** Words in s. 126(2) repealed (1.8.1998) by 1998 c. 8, ss. 14(4)(a), 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(7))

**F26** Words in s. 126(2) inserted (1.12.2003) by The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), reg. 39, **Sch. 5 para. 2(b)**

**F27** Words in s. 126(2) substituted (1.8.1998) by 1998 c. 8, s. 14(4)(b); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(7))

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

**C10** Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

#### Marginal Citations

**M1** 1975 c. 65.

**M2** 1976 c. 74.



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<sup>F28</sup>127 .....

**Textual Amendments**

**F28** S. 127 repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 24, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

<sup>F29</sup>127A **Internal appeal procedures.**

- (1) Where in a case in which an award of compensation for unfair dismissal falls to be made under section 112(4) or 117(3)(a) the tribunal finds that—
  - (a) the employer provided a procedure for appealing against dismissal, and
  - (b) the complainant was, at the time of the dismissal or within a reasonable period afterwards, given written notice stating that the employer provided the procedure and including details of it, but
  - (c) the complainant did not appeal against the dismissal under the procedure (otherwise than because the employer prevented him from doing so),
 the tribunal shall reduce the compensatory award included in the award of compensation for unfair dismissal by such amount (if any) as it considers just and equitable.
- (2) Where in a case in which an award of compensation for unfair dismissal falls to be made under section 112(4) or 117(3)(a) the tribunal finds that—
  - (a) the employer provided a procedure for appealing against dismissal, but
  - (b) the employer prevented the complainant from appealing against the dismissal under the procedure,
 the award of compensation for unfair dismissal shall include a supplementary award of such amount (if any) as the tribunal considers just and equitable.
- (3) In determining the amount of a reduction under subsection (1) or a supplementary award under subsection (2) the tribunal shall have regard to all the circumstances of the case, including in particular the chances that an appeal under the procedure provided by the employer would have been successful.
- (4) The amount of such a reduction or supplementary award shall not exceed the amount of two weeks' pay.]

**Textual Amendments**

**F29** S. 127A inserted (1.1.1999) by 1998 c. 8, s. 13; S.I. 1998/1658, art. 2(3), **Sch. 3** (with art. 3(6))

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

**C11** S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

<sup>F30</sup>127B.....



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**Textual Amendments**

**F30** S. 127B repealed (25.10.1999) by 1999 c. 26, ss. 37(2), 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I**

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