



Employment Rights Act 1996

1996 CHAPTER 18

PART X

UNFAIR DISMISSAL

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Interim relief

128 Interim relief pending determination of complaint.

[^{F1}(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

- (a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—
 - (i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
 - (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
- (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.]

- (2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
- (3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

Status: Point in time view as at 02/03/2010.

Changes to legislation: Employment Rights Act 1996, Cross Heading: Interim relief is up to date with all changes known to be in force on or before 20 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.
- (5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

Textual Amendments

F1 S. 128(1) substituted (2.3.2010) by [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010 \(S.I. 2010/493\)](#), [reg. 12\(8\)](#)

Modifications etc. (not altering text)

C1 Ss. 128-132 extended (4.9.2000) by [1999 c. 26, s. 12\(5\)](#) (with ss. 14, 15); [S.I. 2000/2242, art. 2](#)

C2 Ss. 128-132 applied (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [regs. 1\(1\), 47, Sch. 6 para. 13\(6\)](#) (with [regs. 44-46, Sch. 7](#))

C3 Ss. 128-132 applied (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), [reg. 18\(5\)](#)

129 Procedure on hearing of application and making of order.

- [^{F2}(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—
- (a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—
 - (i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
 - (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
 - (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.]
- (2) The tribunal shall announce its findings and explain to both parties (if present)—
 - (a) what powers the tribunal may exercise on the application, and
 - (b) in what circumstances it will exercise them.
 - (3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
 - (a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or
 - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
 - (4) For the purposes of subsection (3)(b) “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means, as regards seniority, pension rights and other similar rights, that the period prior to

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the dismissal should be regarded as continuous with his employment following the dismissal.

- (5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (6) If the employer—
 - (a) states that he is willing to re-engage the employee in another job, and
 - (b) specifies the terms and conditions on which he is willing to do so,the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.
- (7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.
- (8) If the employee is not willing to accept the job on those terms and conditions—
 - (a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and
 - (b) otherwise, the tribunal shall make no order.
- (9) If on the hearing of an application for interim relief the employer—
 - (a) fails to attend before the tribunal, or
 - (b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),the tribunal shall make an order for the continuation of the employee's contract of employment.

Textual Amendments

F2 S. 129(1) substituted (2.3.2010) by [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010 \(S.I. 2010/493\)](#), [reg. 12\(9\)](#)

Modifications etc. (not altering text)

C4 Ss. 128-132 extended (4.9.2000) by [1999 c. 26, s. 12\(5\)](#) (with ss. 14, 15); [S.I. 2000/2242, art. 2](#)

C5 Ss. 128-132 applied (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [regs. 1\(1\), 47, Sch. 6 para. 13\(6\)](#) (with [regs. 44-46, Sch. 7](#))

C6 Ss. 128-132 applied (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), [reg. 18\(5\)](#)

130 Order for continuation of contract of employment.

- (1) An order under section 129 for the continuation of a contract of employment is an order that the contract of employment continue in force—
 - (a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and
 - (b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.
- (2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal

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pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.

- (3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—
 - (a) in the case of a payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and
 - (b) in the case of a payment for any past period, within such time as may be specified in the order.
- (4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.
- (5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, goes towards discharging the employer's liability in respect of that period under subsection (2); and, conversely, any payment under that subsection in respect of a period goes towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.
- (6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (7) For the purposes of this section, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

Modifications etc. (not altering text)

- C7** Ss. 128-132 extended (4.9.2000) by 1999 c. 26, s. 12(5) (with ss. 14, 15); S.I. 2000/2242, art. 2
- C8** Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, Sch. 6 para. 13(6) (with regs. 44-46, Sch. 7)
- C9** Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), reg. 18(5)

131 Application for variation or revocation of order.

- (1) At any time between—
 - (a) the making of an order under section 129, and
 - (b) the determination or settlement of the complaint,
 the employer or the employee may apply to an [^{F3}employment tribunal] for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.
- (2) Sections 128 and 129 apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 128(4) has effect with the substitution of a reference to the employee for the reference to the employer.

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Textual Amendments

F3 Words in s. 131(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

Modifications etc. (not altering text)

C10 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, s. 12(5) (with ss. 14, 15); S.I. 2000/2242, art. 2

C11 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, Sch. 6 para. 13(6) (with regs. 44-46, Sch. 7)

C12 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), reg. 18(5)

132 Consequence of failure to comply with order.

- (1) If, on the application of an employee, an [^{F4}employment tribunal] is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 129(5) or (7), the tribunal shall—
 - (a) make an order for the continuation of the employee's contract of employment, and
 - (b) order the employer to pay compensation to the employee.
- (2) Compensation under subsection (1)(b) shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard—
 - (a) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and
 - (b) to any loss suffered by the employee in consequence of the non-compliance.
- (3) Section 130 applies to an order under subsection (1)(a) as in relation to an order under section 129.
- (4) If on the application of an employee an [^{F4}employment tribunal] is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment subsection (5) or (6) applies.
- (5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order—
 - (a) the tribunal shall determine the amount owed by the employer on the date of the determination, and
 - (b) if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.
- (6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

Textual Amendments

F4 Words in s. 132(1)(4) 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

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Modifications etc. (not altering text)

- C13** Ss. 128-132 extended (4.12.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**
- C14** Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)
- C15** Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

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