



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART X

#### UNFAIR DISMISSAL

#### CHAPTER II

##### REMEDIES FOR UNFAIR DISMISSAL

##### *Orders for reinstatement or re-engagement*

#### 113 The orders.

An order under this section may be—

- (a) an order for reinstatement (in accordance with section 114), or
  - (b) an order for re-engagement (in accordance with section 115),
- as the tribunal may decide.

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

- C1** S. 113 restricted (24.4.2000) by 1992 c. 52, s. 239(4)(a) (as added (24.4.2000) by 1999 c. 26, s. 16, Sch. 5 para. 4(5); S.I. 2000/875, art. 2 (with transitional provision in art. 3))

#### 114 Order for reinstatement.

- (1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.
- (2) On making an order for reinstatement the tribunal shall specify—
  - (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal

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- (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
  - (b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
  - (c) the date by which the order must be complied with.
- (3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.
- (4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—
- (a) wages in lieu of notice or ex gratia payments paid by the employer, or
  - (b) remuneration paid in respect of employment with another employer,
- and such other benefits as the tribunal thinks appropriate in the circumstances.

<sup>F1</sup>(5) .....

#### **Textual Amendments**

**F1** S. 114(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 20, **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)

### **115 Order for re-engagement.**

- (1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.
- (2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—
- (a) the identity of the employer,
  - (b) the nature of the employment,
  - (c) the remuneration for the employment,
  - (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
  - (e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
  - (f) the date by which the order must be complied with.
- (3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—
- (a) wages in lieu of notice or ex gratia payments paid by the employer, or

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(b) remuneration paid in respect of employment with another employer,  
and such other benefits as the tribunal thinks appropriate in the circumstances.

F2(4) .....

#### Textual Amendments

**F2** S. 115(4) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 21, **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)

### 116 Choice of order and its terms.

- (1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—
  - (a) whether the complainant wishes to be reinstated,
  - (b) whether it is practicable for the employer to comply with an order for reinstatement, and
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.
- (3) In so doing the tribunal shall take into account—
  - (a) any wish expressed by the complainant as to the nature of the order to be made,
  - (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.
- (4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
- (5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.
- (6) Subsection (5) does not apply where the employer shows—
  - (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or
  - (b) that—
    - (i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and
    - (ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

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**117 Enforcement of order and compensation.**

- (1) An [<sup>F3</sup>employment tribunal] shall make an award of compensation, to be paid by the employer to the employee, if—
  - (a) an order under section 113 is made and the complainant is reinstated or re-engaged, but
  - (b) the terms of the order are not fully complied with.

- (2) Subject to section 124 <sup>F4</sup> . . . , the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

[<sup>F5</sup>(2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113.]

- (3) Subject to subsections (1) and (2) <sup>F4</sup> . . . , if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—
  - (a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to [<sup>F6</sup>126]), and
  - (b) except where this paragraph does not apply, an additional award of compensation of [<sup>F7</sup>an amount not less than twenty-six nor more than fifty-two weeks’ pay],
 to be paid by the employer to the employee.

- (4) Subsection (3)(b) does not apply where—
  - (a) the employer satisfies the tribunal that it was not practicable to comply with the order, <sup>F8</sup> . . .

<sup>F8</sup>(b) .....

<sup>F9</sup>(5) .....

<sup>F9</sup>(6) .....

- (7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of subsection (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee’s work to be done without engaging a permanent replacement.

- (8) Where in any case an [<sup>F10</sup>employment tribunal] finds that the complainant has unreasonably prevented an order under section 113 from being complied with, in making an award of compensation for unfair dismissal <sup>F11</sup> . . . it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

**Textual Amendments**

**F3** Words in s. 117(1)(8) 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

**F4** Words in s. 117(2)(3) repealed (25.10.1999) by 1999 c. 26, s. 44, Sch. 9(11); S.I. 1999/2830, art. 2(3), Sch. 2 Pt. I

**F5** S. 117(2A) inserted (1.10.2004) by Employment Act 2002 (c. 22), ss. 34(4), 55(2); S.I. 2004/1717, art. 2(2) (subject to art. 3)

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- F6** Word in s. 117(3)(a) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 37**; S.I. 2004/2185, **art. 2**
- F7** Words in s. 117(3)(b) substituted (25.10.1999) by 1999 c. 26, **s. 33(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with **Sch. 3 para. 8**)
- F8** S. 117(4)(b) and the preceding word “or” 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**)
- F9** S. 117(5)(6) repealed (25.10.1999) by 1999 c. 26, ss. 33(2), 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**)
- F10** S. 117(6)(c) and preceding word “and” inserted (1.8.1998) by 1998 c. 8, **s. 14(1)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with **art. 3(7)**)
- F11** Words in s. 117(8) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**

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

- C2** S. 117: power to modify conferred (1.8.1998) by 1992 c. 52, **s. 212A(8)(a)** (as inserted (1.8.1998) by 1998 c. 8, **s. 7**; S.I. 1998/1658, art. 2(1), **Sch. 1**)  
S. 117 applied (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 160**  
S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**  
S. 117 modified (21.5.2001) by S.I. 2001/1185, **art. 5**
- C3** S. 117 applied (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), 2, 3, **Sch. para. 185**  
S. 117 applied (with modifications) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), **6**

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