



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART X

#### UNFAIR DISMISSAL

### CHAPTER III

#### SUPPLEMENTARY

#### **133 Death of employer or employee.**

(1) Where—

- (a) an employer has given notice to an employee to terminate his contract of employment, and
- (b) before that termination the employee or the employer dies,

this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

(2) Where—

- (a) an employee's contract of employment has been terminated,
- (b) by virtue of subsection (2) or (4) of section 97 a date later than the effective date of termination as defined in subsection (1) of that section is to be treated for certain purposes as the effective date of termination, and
- (c) the employer or the employee dies before that date,

subsection (2) or (4) of section 97 applies as if the notice referred to in that subsection as required by section 86 expired on the date of the death.

- (3) Where an employee has died, sections 113 to 116 do not apply; and, accordingly, if the [F1employment tribunal] finds that the grounds of the complaint are well-founded, the case shall be treated as falling within section 112(4) as a case in which no order is made under section 113.

*Status: Point in time view as at 06/04/2022.*

*Changes to legislation: Employment Rights Act 1996, Chapter III is up to date with all changes known to be in force on or before 13 June 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) Subsection (3) does not prejudice an order for reinstatement or re-engagement made before the employee's death.
- (5) Where an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with—
- (a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, subsections (3) to (6) of section 117 apply, and an award shall be made under subsection (3)(b) of that section, unless the employer satisfies the tribunal that it was not practicable at the time of the refusal to comply with the order, and
  - (b) if there has been no such refusal, subsections (1) and (2) of that section apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee's death as they would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.

#### Textual Amendments

- F1** Words in s. 133(3) 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**

### 134 Teachers in aided schools.

- (1) Where a teacher in <sup>F2</sup>a foundation, voluntary aided or foundation special school is dismissed by the governing body of the school in pursuance of a requirement of the <sup>F3</sup>[local authority] under <sup>F4</sup>[paragraph 7 of Schedule 2 to the Education Act 2002]], this Part has effect in relation to the dismissal as if—
- (a) the <sup>F3</sup>[local authority] had at all material times been the teacher's employer,
  - (b) the <sup>F3</sup>[local authority] had dismissed him, and
  - (c) the reason or principal reason for which they did so had been the reason or principal reason for which they required his dismissal.
- (2) For the purposes of a complaint under section 111 as it has effect by virtue of subsection (1)—
- (a) section 117(4)(a) applies as if for the words “not practicable to comply” there were substituted the words “not practicable for the local education authority to permit compliance”, and
  - (b) section 123(5) applies as if the references in it to the employer were to the <sup>F3</sup>[local authority].

<sup>F5</sup>(3) In this section “local authority” has the meaning given by section 579(1) of the Education Act 1996. ]

#### Textual Amendments

- F2** Words in s. 134(1) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 55** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F3** Words in s. 134 substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(3)(a)**

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- F4** Words in s. 134(1) substituted (1.9.2003 for E.S. and 1.4.2006 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 30](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, [art. 4](#) (with Sch. 1 (as amended (1.4.2004) by S.I. 2004/571, reg. 3 and S.I. 2005/2570, (art. 2))); S.I. 2006/879, [art. 4](#), Sch. S. 134(3) inserted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, [Sch. 2 para. 41\(3\)\(b\)](#)
- F5** S. 134(3) inserted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, [Sch. 2 para. 41\(3\)\(b\)](#)

## [<sup>F6</sup>134A Application to police.

(1) For the purposes of section 100, and of the other provisions of this Part so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of section 100, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as police cadet shall be treated as employment by the relevant officer under a contract of employment.

[<sup>F7</sup>(2) In this section “ the relevant officer ”, in relation to—

- (a) a person holding the office of constable, or
- (b) a person holding an appointment as a police cadet,

means the person who under section 51A of the Health and Safety at Work etc. Act 1974 is to be treated as his employer for the purposes of Part 1 of that Act. ]

[ Subsection (1) does not apply to the holding of the office of constable by a member <sup>F8</sup>(3) of a police force on secondment to the [<sup>F9</sup>National Crime Agency].]

### Textual Amendments

- F6** S. 134A inserted (1.7.1998) by [1997 c. 42, s. 4](#); S.I. 1998/1542, [art. 2](#)
- F7** S. 134A(2) substituted (7.4.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. [158\(2\)\(b\)\(3\)](#), 178
- F8** S. 134A(3) added (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 87](#); S.I. 2006/378, art. 4(1), [Sch.](#) (subject to art. 4(2)-(7))
- F9** Words in s. 134A(3) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 51](#); S.I. 2013/1682, art. 3(v)

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