



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XI

#### REDUNDANCY PAYMENTS ETC.

#### CHAPTER V

##### OTHER PROVISIONS ABOUT REDUNDANCY PAYMENTS

#### **162 Amount of a redundancy payment.**

- (1) The amount of a redundancy payment shall be calculated by—
  - (a) determining the period, ending with the relevant date, 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 each 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 relevant date 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.

*Status: Point in time view as at 24/04/2000.*

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- (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 relevant date, and
  - (b) the denominator is twelve.
- (6) Subsections (1) to (5) apply for the purposes of any provision of this Part by virtue of which an [<sup>F1</sup>employment tribunal] may determine that an employer is liable to pay to an employee—
- (a) the whole of the redundancy payment to which the employee would have had a right apart from some other provision, or
  - (b) such part of the redundancy payment to which the employee would have had a right apart from some other provision as the tribunal thinks fit,
- as if any reference to the amount of a redundancy payment were to the amount of the redundancy payment to which the employee would have been entitled apart from that other provision.
- <sup>F2</sup>(7) .....
- (8) This section has effect subject to any regulations under section 158 by virtue of which the amount of a redundancy payment, or part of a redundancy payment, may be reduced.

#### Textual Amendments

- F1** Words in s. 162(6) 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
- F2** S. 162(7) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 30, 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)

- C1** S. 162 modified (1.9.1999) by S.I. 1999/2277, art. 3, Sch. 2 Pt. I para. 3

### 163 References to [<sup>F3</sup>employment tribunals].

- (1) Any question arising under this Part as to—
- (a) the right of an employee to a redundancy payment, or
  - (b) the amount of a redundancy payment,
- shall be referred to and determined by an [<sup>F3</sup>employment tribunal].
- (2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.
- (3) Any question whether an employee will become entitled to a redundancy payment if he is not dismissed by his employer and he terminates his contract of employment as mentioned in section 150(1) shall for the purposes of this Part be taken to be a question as to the right of the employee to a redundancy payment.
- (4) Where an order under section 157 is in force in respect of an agreement, this section has effect in relation to any question arising under the agreement as to the right of an employee to a payment on the termination of his employment, or as to the amount of

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such a payment, as if the payment were a redundancy payment and the question arose under this Part.

#### Textual Amendments

- F3** Words in s. 163(1) and sidenote to s. 163 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

### 164 Claims for redundancy payment.

- (1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
  - (a) the payment has been agreed and paid,
  - (b) the employee has made a claim for the payment by notice in writing given to the employer,
  - (c) a question as to the employee's right to, or the amount of, the payment has been referred to an [<sup>F4</sup>employment tribunal], or
  - (d) a complaint relating to his dismissal has been presented by the employee under section 111.
- (2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—
  - (a) makes a claim for the payment by notice in writing given to the employer,
  - (b) refers to an [<sup>F4</sup>employment tribunal] a question as to his right to, or the amount of, the payment, or
  - (c) presents a complaint relating to his dismissal under section 111,and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.
- (3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an [<sup>F4</sup>employment tribunal] shall have regard to—
  - (a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and
  - (b) all the other relevant circumstances.

#### Textual Amendments

- F4** Words in s. 164(1)(c)(2)(b)(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

### 165 Written particulars of redundancy payment.

- (1) On making any redundancy payment, otherwise than in pursuance of a decision of a tribunal which specifies the amount of the payment to be made, the employer shall give to the employee a written statement indicating how the amount of the payment has been calculated.

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- (2) An employer who without reasonable excuse fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (3) If an employer fails to comply with the requirements of subsection (1), the employee may by notice in writing to the employer require him to give to the employee a written statement complying with those requirements within such period (not being less than one week beginning with the day on which the notice is given) as may be specified in the notice.
- (4) An employer who without reasonable excuse fails to comply with a notice under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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