



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XI

#### REDUNDANCY PAYMENTS ETC.

### CHAPTER VI

#### PAYMENTS BY SECRETARY OF STATE

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

- C1** Pt. 11 Ch. 6 modified (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 1(2), [8](#)

#### **166 Applications for payments.**

- (1) Where an employee claims that his employer is liable to pay to him an employer's payment and either—
- (a) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or
  - (b) that the employer is insolvent and the whole or part of the payment remains unpaid,
- the employee may apply to the Secretary of State for a payment under this section.
- (2) In this Part “employer's payment”, in relation to an employee, means—
- (a) a redundancy payment which his employer is liable to pay to him under this Part,<sup>F1</sup> . . .
  - [<sup>F2</sup>(aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention

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- or alleged contravention of section 135 which has effect by virtue of section 203(2)(e) or (f), or]
- (b) a payment which his employer is, under an agreement in respect of which an order is in force under section 157, liable to make to him on the termination of his contract of employment.
- (3) In relation to any case where (in accordance with any provision of this Part) an [<sup>F3</sup>employment tribunal] determines that an employer is liable to pay part (but not the whole) of a redundancy payment the reference in subsection (2)(a) to a redundancy payment is to the part of the redundancy payment.
- (4) In subsection (1)(a) “legal proceedings”—
- (a) does not include any proceedings before an [<sup>F3</sup>employment tribunal], but
- (b) includes any proceedings to enforce a decision or award of an [<sup>F3</sup>employment tribunal].
- (5) An employer is insolvent for the purposes of subsection (1)(b)—
- (a) where the employer is an individual, if (but only if) subsection (6) is satisfied,  
<sup>F4</sup> . . .
- (b) where the employer is a company, if (but only if) subsection (7) is satisfied [<sup>F5</sup>, and
- <sup>F5</sup>(c) where the employer is a limited liability partnership, if (but only if) subsection (8) is satisfied.]
- (6) This subsection is satisfied in the case of an employer who is an individual—
- (a) in England and Wales if—
- (i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors, or
- (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the <sup>M1</sup>Insolvency Act 1986, and
- (b) in Scotland if—
- (i) sequestration of his estate has been awarded or he has executed a trust deed for his creditors or has entered into a composition contract, or
- (ii) he has died and a judicial factor appointed under section 11A of the <sup>M2</sup>Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors.
- (7) This subsection is satisfied in the case of an employer which is a company—
- (a) if a winding up order <sup>F6</sup>. . . has been made, or a resolution for voluntary winding up has been passed, with respect to the company,
- [<sup>F7</sup>(aa) if the company is in administration for the purposes of the Insolvency Act 1986,]
- (b) if a receiver or (in England and Wales only) a manager of the company’s undertaking has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or
- (c) if a voluntary arrangement proposed in the case of the company for the purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.

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[<sup>F8</sup>(8) This subsection is satisfied in the case of an employer which is a limited liability partnership—

- (a) if a winding-up order, an administration order or a determination for a voluntary winding-up has been made with respect to the limited liability partnership,
- (b) if a receiver or (in England and Wales only) a manager of the undertaking of the limited liability partnership has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the limited liability partnership comprised in or subject to the charge, or
- (c) if a voluntary arrangement proposed in the case of the limited liability partnership for the purpose of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.]

[<sup>F9</sup>(9) In this section—

- (a) references to a company are to be read as including references to a charitable incorporated organisation, and
- (b) any reference to the Insolvency Act 1986 in relation to a company is to be read as including a reference to that Act as it applies to charitable incorporated organisations.]

#### Textual Amendments

- F1** Word in s. 166(2)(a) repealed (1.10.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(2), **Sch. 2** (with art. 3(5))
- F2** S. 166(2)(aa) inserted (1.10.1998) by 1998 c. 8, s. 11(2); S.I. 1998/1658, art. 2(2), **Sch. 2** (with art. 3(5))
- F3** Words in s. 166(3)(4)(a)(b) 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** Word in s. 166(5)(a) omitted (6.4.2001) by virtue of S.I. 2001/1090, reg. 5, **Sch. 5 para. 18(1)(2)**
- F5** S. 166(5)(c) and word “and” immediately preceding it inserted (6.4.2001) by S.I. 2001/1090, reg. 5, **Sch. 5 para. 18(1)(2)**
- F6** Words in s. 166(7)(a) repealed (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248, 278, 279, Sch. 17 para. 49(2)(a), **Sch. 26** (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1) (subject to arts. 5-8) (as amended by S.I. 2003/3340, art. 2)
- F7** S. 166(7)(aa) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248, 278, **Sch. 17 para. 49(2)(b)** (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1) (subject to arts. 5-8) (as amended by S.I. 2003/3340, art. 2)
- F8** S. 166(8) inserted (6.4.2001) by S.I. 2001/1090, reg. 5 **Sch. 5**, para. 18(1)(3)
- F9** S. 166(9) inserted (E.W.) (2.1.2013) by The Charitable Incorporated Organisations (Consequential Amendments) Order 2012 (S.I. 2012/3014), arts. 1, 3

#### Marginal Citations

- M1** 1986 c. 45.
- M2** 1889 c. 39.

## 167 Making of payments.

- (1) Where, on an application under section 166 by an employee in relation to an employer’s payment, the Secretary of State is satisfied that the requirements specified in subsection (2) are met, he shall pay to the employee out of the National Insurance

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Fund a sum calculated in accordance with section 168 but reduced by so much (if any) of the employer's payment as has already been paid.

- (2) The requirements referred to in subsection (1) are—
- (a) that the employee is entitled to the employer's payment, and
  - (b) that one of the conditions specified in paragraphs (a) and (b) of subsection (1) of section 166 is fulfilled,
- and, in a case where the employer's payment is a payment such as is mentioned in subsection (2)(b) of that section, that the employee's right to the payment arises by virtue of a period of continuous employment (computed in accordance with the provisions of the agreement in question) which is not less than two years.
- (3) Where under this section the Secretary of State pays a sum to an employee in respect of an employer's payment—
- (a) all rights and remedies of the employee with respect to the employer's payment, or (if the Secretary of State has paid only part of it) all the rights and remedies of the employee with respect to that part of the employer's payment, are transferred to and vest in the Secretary of State, and
  - (b) any decision of an [<sup>F10</sup>employment tribunal] requiring the employer's payment to be paid to the employee has effect as if it required that payment, or that part of it which the Secretary of State has paid, to be paid to the Secretary of State.
- (4) Any money recovered by the Secretary of State by virtue of subsection (3) shall be paid into the National Insurance Fund.

#### Textual Amendments

**F10** Words in s. 167(3)(b) 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

#### 168 Amount of payments.

- (1) The sum payable to an employee by the Secretary of State under section 167—
- (a) where the employer's payment to which the employee's application under section 166 relates is a redundancy payment or a part of a redundancy payment, is a sum equal to the amount of the redundancy payment or part, <sup>F11</sup> . . . .
  - [<sup>F12</sup>(aa) where the employer's payment to which the employee's application under section 166 relates is a payment which his employer is liable to make to him under an agreement having effect by virtue of section 203(2)(e) or (f), is a sum equal to the amount of the employer's payment or of any redundancy payment which the employer would have been liable to pay to the employee but for the agreement, whichever is less, and]
  - (b) where the employer's payment to which the employee's application under section 166 relates is a payment which the employer is liable to make under an agreement in respect of which an order is in force under section 157, is a sum equal to the amount of the employer's payment or of the relevant redundancy payment, whichever is less [<sup>F13</sup>, or
  - (c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 1981.]

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- (2) The reference in subsection (1)(b) to the amount of the relevant redundancy payment is to the amount of the redundancy payment which the employer would have been liable to pay to the employee on the assumptions specified in subsection (3).
- (3) The assumptions referred to in subsection (2) are that—
- (a) the order in force in respect of the agreement had not been made,
  - (b) the circumstances in which the employer’s payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances,
  - (c) the relevant date, in relation to any such redundancy payment, had been the date on which the termination of the employee’s contract of employment is treated as having taken effect for the purposes of the agreement, and
  - (d) in so far as the provisions of the agreement relating to the circumstances in which the continuity of an employee’s period of employment is to be treated as broken, and the weeks which are to count in computing a period of employment, are inconsistent with the provisions of Chapter I of Part XIV, the provisions of the agreement were substituted for those provisions.

#### Textual Amendments

- F11** Words in s. 168(1)(a) repealed (1.10.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(2), **Sch. 2** (with art. 3(5))
- F12** S. 168(1)(aa) inserted (1.10.1998) by 1998 c. 8, s. 11(3); S.I. 1998/1658, art. 2(2), **Sch. 2** (with art. 3(5))
- F13** S. 168(1)(c) and the preceding word “, or” inserted (28.7.1999) by S.I. 1999/1925, **reg. 14**

### 169 Information relating to applications for payments.

- (1) Where an employee makes an application to the Secretary of State under section 166, the Secretary of State may, by notice in writing given to the employer, require the employer—
- (a) to provide the Secretary of State with such information, and
  - (b) to produce for examination on behalf of the Secretary of State documents in his custody or under his control of such description,
- as the Secretary of State may reasonably require for the purpose of determining whether the application is well-founded.
- (2) Where a person on whom a notice is served under subsection (1) fails without reasonable excuse to comply with a requirement imposed by the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person is guilty of an offence if—
- (a) in providing any information required by a notice under subsection (1), he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
  - (b) he produces for examination in accordance with a notice under subsection (1) a document which to his knowledge has been wilfully falsified.
- (4) A person guilty of an offence under subsection (3) is liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

## **170 References to [<sup>F14</sup>employment tribunals].**

- (1) Where on an application made to the Secretary of State for a payment under section 166 it is claimed that an employer is liable to pay an employer's payment, there shall be referred to an [<sup>F14</sup>employment tribunal]—
  - (a) any question as to the liability of the employer to pay the employer's payment, and
  - (b) any question as to the amount of the sum payable in accordance with section 168.
- (2) For the purposes of any reference under this section 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.

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### **Textual Amendments**

**F14** Words in s. 170(1) and sidenote to s. 170 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

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