



Employment Rights Act 1996

1996 CHAPTER 18

PART XIV

INTERPRETATION

CHAPTER II

A WEEK'S PAY

Miscellaneous

228 New employments and other special cases.

- (1) In any case in which the employee has not been employed for a sufficient period to enable a calculation to be made under the preceding provisions of this Chapter, the amount of a week's pay is the amount which fairly represents a week's pay.
- (2) In determining that amount the [F1 employment tribunal]—
 - (a) shall apply as nearly as may be such of the preceding provisions of this Chapter as it considers appropriate, and
 - (b) may have regard to such of the considerations specified in subsection (3) as it thinks fit.
- (3) The considerations referred to in subsection (2)(b) are—
 - (a) any remuneration received by the employee in respect of the employment in question,
 - (b) the amount offered to the employee as remuneration in respect of the employment in question,
 - (c) the remuneration received by other persons engaged in relevant comparable employment with the same employer, and
 - (d) the remuneration received by other persons engaged in relevant comparable employment with other employers.

Status: Point in time view as at 06/08/2022.

Changes to legislation: Employment Rights Act 1996, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 08 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) The Secretary of State may by regulations provide that in cases prescribed by the regulations the amount of a week's pay shall be calculated in such manner as may be so prescribed.

Textual Amendments

- F1** Words in s. 228(2) 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)

- C1** Ss. 226-229 applied (with modifications) (4.3.1998) by [S.I. 1998/192, reg. 37\(1\)](#)
C2 Ss. 220-228 applied (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), [16\(4\)](#) (with reg. 21(5))

229 Supplementary.

- (1) In arriving at—

- (a) an average hourly rate of remuneration, or
- (b) average weekly remuneration,

under this Chapter, account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Chapter I of this Part, a period of employment with the former employer counts as part of the employee's continuous period of employment.

- (2) Where under this Chapter account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other payments are calculated, the remuneration or other payments shall be apportioned in such manner as may be just.

Modifications etc. (not altering text)

- C3** Ss. 226-229 applied (with modifications) (4.3.1998) by [S.I. 1998/192, reg. 37\(1\)](#)

Status:

Point in time view as at 06/08/2022.

Changes to legislation:

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