



Employment Rights Act 1996

1996 CHAPTER 18

PART X

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

Exclusion of right

109 Upper age limit.

- (1) Section 94 does not apply to the dismissal of an employee if on or before the effective date of termination he has attained—
- (a) in a case where—
 - (i) in the undertaking in which the employee was employed there was a normal retiring age for an employee holding the position held by the employee, and
 - (ii) the age was the same whether the employee holding that position was a man or a woman,that normal retiring age, and
 - (b) in any other case, the age of sixty-five.
- (2) Subsection (1) does not apply if—
- ^{F1}(a)
 - [^{F2}(aa) subsection (1) of section 98B (read with subsection (2) of that section) applies,]
 - [^{F3}(b) subsection (1) of section 99 (read with any regulations made under that section) applies,]

Status: Point in time view as at 05/12/2005. This version of this provision has been superseded.

Changes to legislation: Employment Rights Act 1996, Section 109 is up to date with all changes known to be in force on or before 12 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)

- (c) subsection (1) of section 100 (read with subsections (2) and (3) of that section) applies,
- (d) subsection (1) of section 101 (read with subsection (2) of that section) or subsection (3) of that section applies,
- [^{F4}(dd) section 101A applies,]
- (e) section 102 applies,
- (f) section 103 applies,
- [^{F5}(ff) section 103A applies,]
- (g) subsection (1) of section 104 (read with subsections (2) and (3) of that section) applies,^{F6} . . .
- [^{F7}(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies,^{F8} . . .]
- [^{F9}(gh) subsection (1) of section 104B (read with subsection (2) of that section) applies,^{F10} . . .]
- [^{F11}(gi) section 104C applies,]
- (h) section 105 applies.^{F12}[^{F13} . . .
- (hh) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies.]^{F14}[^{F15} . . .
- (i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies.]^{F16}[^{F17} . . .
- (j) paragraph (1) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 applies.]
- ^{F18}[^{F19} . . .
- (k) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 applies.]]^{F20} or
- (l) paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations 2004 (read with paragraphs (4) and (7) of that regulation) applies.]

Textual Amendments

- F1** S. 109(2)(a) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 19, **Sch. 9(2)**; S.I. 1999/2830, art. 2(1)-(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with transitional provisions in Sch. 3 paras. 10, 11)
- F2** S. 109(2)(aa) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 40(7)**, 59(2)-(4); S.I. 2005/872, **arts. 4, 5**, Sch. (subject to arts. 6-12)
- F3** S. 109(2)(b) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 33**; S.I. 2005/872, **arts. 4, 5**, Sch. (subject to arts. 6-12)
- F4** S. 109(2)(dd) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(4)**
- F5** S. 109(2)(ff) inserted (2.7.1999) by 1998 c. 23, **s. 7(2)**; S.I. 1999/1547, **art. 2**
- F6** Word in s. 109(2)(g) repealed (1.11.1998) by 1998 c. 39, ss. 25(4), 53, **Sch. 3**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)
- F7** S. 109(2)(gg) inserted (1.11.1998) by 1998 c. 39, **s. 25(4)**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)
- F8** Word in s. 109(2)(gg) repealed (5.10.1999) by 1999 c. 10, ss. 7, 19(4), 20(2), Sch. 3 para. 3(4), **Sch. 6**
- F9** S. 109(2)(gh) inserted (5.10.1999) by 1999 c. 10, ss. 7, 20(2), Sch. 3 para. 3(4) (which amending Act was repealed (in part on 27.8.2002 and 4.12.2002, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 60, **Sch. 6**; S.I. 2002/1727, **art. 2**) and insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(4)**; S.I. 2002/1727, **art. 2**
- F10** Word in s. 109(2)(gh) omitted (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(3)**

Status: Point in time view as at 05/12/2005. This version of this provision has been superseded.

Changes to legislation: Employment Rights Act 1996, Section 109 is up to date with all changes known to be in force on or before 12 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)

- F11** S. 109(2)(gi) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(6)**, 59(2)-(4); S.I. 2005/872, **arts. 4, 5**, Sch. (subject to arts. 6-12)
- F12** Word at the end of s. 109(2)(h) omitted (1.7.2000) by virtue of S.I. 2000/1551, reg. 10, **Sch. para. 2(3)** (with regs. 12-17)
- F13** S. 109(2)(hh) and preceding word inserted (15.1.2000) by S.I. 1999/3323, **reg. 29(3)**
- F14** Word in s. 109(2)(hh) repealed (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(12)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)
- F15** S. 109(2)(i) and the word "or" preceding it inserted (1.7.2000) by S.I. 2000/1551, reg. 10, **Sch. para. 2(3)** (with regs. 12-17)
- F16** Word in s. 109(2)(i) repealed (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **43(3)(a)**
- F17** S. 109(2)(j) and preceding word inserted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(12)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)
- F18** Word in s. 109(2)(j) repealed (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(1), **31(3)(a)** (with reg. 3)
- F19** S. 109(2)(k) and the preceding word "or" inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **43(3)(b)**
- F20** S. 109(2)(l) and the preceding word "or" inserted (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(1), **31(3)(b)** (with reg. 3)

Modifications etc. (not altering text)

- C1** S. 109 excluded (4.9.2000) by 1999 c. 26, **s. 12(4)**, (with ss. 14, 15); S.I. 2000/2242, **art. 2**
S. 109 excluded (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 164** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2(a)**)
- C2** S. 109(1) excluded by 1992 c. 52, s. 154 (as substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 35**, 59(2)-(4); S.I. 2005/872, **arts. 4, 5**, Sch. (subject to arts. 6-12))

Status:

Point in time view as at 05/12/2005. This version of this provision has been superseded.

Changes to legislation:

Employment Rights Act 1996, Section 109 is up to date with all changes known to be in force on or before 12 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.