



Employment Act 2002

2002 CHAPTER 22

PART 3

DISPUTE RESOLUTION ETC.

Statutory procedures

^{F1}29 **Statutory dispute resolution procedures**

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Textual Amendments

F1 Ss. 29-33 repealed (6.4.2009) by [Employment Act 2008 \(c. 24\)](#), ss. 1, 22(1)(a), [Sch. Pt. 1](#); S.I. 2008/3232, art. 2 (with art. 3Sch.)

^{F1}30 **Contracts of employment**

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Textual Amendments

F1 Ss. 29-33 repealed (6.4.2009) by [Employment Act 2008 \(c. 24\)](#), ss. 1, 22(1)(a), [Sch. Pt. 1](#); S.I. 2008/3232, art. 2 (with art. 3Sch.)

^{F1}31 **Non-completion of statutory procedure: adjustment of awards**

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Status: Point in time view as at 01/10/2010.

Changes to legislation: Employment Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 May 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)

Textual Amendments

F1 Ss. 29-33 repealed (6.4.2009) by [Employment Act 2008 \(c. 24\)](#), ss. 1, 22(1)(a), **Sch. Pt. 1**; S.I. 2008/3232, art. 2 (with art. 3Sch.)

F1 32 Complaints about grievances

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Textual Amendments

F1 Ss. 29-33 repealed (6.4.2009) by [Employment Act 2008 \(c. 24\)](#), ss. 1, 22(1)(a), **Sch. Pt. 1**; S.I. 2008/3232, art. 2 (with art. 3Sch.)

F1 33 Consequential adjustment of time limits

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Textual Amendments

F1 Ss. 29-33 repealed (6.4.2009) by [Employment Act 2008 \(c. 24\)](#), ss. 1, 22(1)(a), **Sch. Pt. 1**; S.I. 2008/3232, art. 2 (with art. 3Sch.)

34 Procedural fairness in unfair dismissal

(1) Part 10 of the Employment Rights Act 1996 (c. 18) (unfair dismissal) is amended as follows.

^{F2}(2)

(3) In section 112 (the remedies: orders and compensation), at the end there is inserted—

“(5) Where—

(a) an employee is regarded as unfairly dismissed by virtue of section 98A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason), and

(b) an order is made in respect of the employee under section 113, the employment tribunal shall, subject to subsection (6), also make an award of four weeks’ pay to be paid by the employer to the employee.

(6) An employment tribunal shall not be required to make an award under subsection (5) if it considers that such an award would result in injustice to the employer.”

(4) In section 117 (under which an award of compensation falls to be made if an employee is reinstated or re-engaged in pursuance of an order under section 113, but the terms of the order are not fully complied with), after subsection (2) there is inserted—

“(2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113.”

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(5) In section 123 (compensatory award) at the end there is inserted—

“(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under section 117(3)(a), there shall be deducted from the compensatory award any award made under section 112(5) at the time of the order under section 113.”

(6) In section 120 (basic award: minimum in certain cases) after subsection (1) there is inserted—

“(1A) Where—

- (a) an employee is regarded as unfairly dismissed by virtue of section 98A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason),
- (b) an award of compensation falls to be made under section 112(4), and
- (c) the amount of the award under section 118(1)(a), before any reduction under section 122(3A) or (4), is less than the amount of four weeks’ pay,

the employment tribunal shall, subject to subsection (1B), increase the award under section 118(1)(a) to the amount of four weeks’ pay.

(1B) An employment tribunal shall not be required by subsection (1A) to increase the amount of an award if it considers that the increase would result in injustice to the employer.”

Textual Amendments

F2 S. 34(2) repealed (6.4.2009) by [Employment Act 2008 \(c. 24\)](#), s. 22(1)(a), [Sch. Pt. 1](#); S.I. 2008/3232, art. 2 (with [art. 3Sch.](#))

Commencement Information

I1 S. 34 in force at 1.10.2004 by [S.I. 2004/1717](#), [art. 2\(2\)](#)

Employment particulars

35 Particulars of procedures relating to discipline or dismissal

(1) Section 3 of the Employment Rights Act 1996 (c. 18) (note about disciplinary rules and procedures) is amended as follows.

(2) In subsection (1) (which requires a statement under section 1 of that Act to include a note specifying the disciplinary rules and procedures applying to an employee), after paragraph (a) there is inserted—

“(aa) specifying any procedure applicable to the taking of disciplinary decisions relating to the employee, or to a decision to dismiss the employee, or referring the employee to the provisions of a document specifying such a procedure which is reasonably accessible to the employee.”.

(3) In that subsection, in paragraph (b)(i) (which requires the note to specify a person for the employee to apply to if he is dissatisfied with a disciplinary decision) after “him” there is inserted “or any decision to dismiss him”.

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- (4) In subsection (2) (which provides that the note does not need to specify the rules and procedures relating to health and safety at work) after “decisions,” there is inserted “decisions to dismiss”.

Commencement Information

I2 S. 35 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

36 Removal of exemption for small employers

In section 3 of the Employment Rights Act 1996 (c. 18) (note about disciplinary rules and procedures), subsections (3) and (4) (exemptions for undertakings with less than 20 employees) shall cease to have effect.

Commencement Information

I3 S. 36 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

37 Use of alternative documents to give particulars

In Part 1 of the Employment Rights Act 1996 (employment particulars), after section 7 there is inserted—

“7A Use of alternative documents to give particulars

- (1) Subsections (2) and (3) apply where—
- (a) an employer gives an employee a document in writing in the form of a contract of employment or letter of engagement,
 - (b) the document contains information which, were the document in the form of a statement under section 1, would meet the employer’s obligation under that section in relation to the matters mentioned in subsections (3) and (4)(a) to (c), (d)(i), (f) and (h) of that section, and
 - (c) the document is given after the beginning of the employment and before the end of the period for giving a statement under that section.
- (2) The employer’s duty under section 1 in relation to any matter shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under that section, would meet the employer’s obligation under that section in relation to that matter.
- (3) The employer’s duty under section 3 shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under section 1 and the information included in the form of a note, would meet the employer’s obligation under section 3.
- (4) For the purposes of this section a document to which subsection (1)(a) applies shall be treated, in relation to information in respect of any of the matters mentioned in section 1(4), as specifying the date on which the document is given to the employee as the date as at which the information applies.

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- (5) Where subsection (2) applies in relation to any matter, the date on which the document by virtue of which that subsection applies is given to the employee shall be the material date in relation to that matter for the purposes of section 4(1).
- (6) Where subsection (3) applies, the date on which the document by virtue of which that subsection applies is given to the employee shall be the material date for the purposes of section 4(1) in relation to the matters of which particulars are required to be given under section 3.
- (7) The reference in section 4(6) to an employer having given a statement under section 1 shall be treated as including his having given a document by virtue of which his duty to give such a statement is treated as met.

7B Giving of alternative documents before start of employment

A document in the form of a contract of employment or letter of engagement given by an employer to an employee before the beginning of the employee's employment with the employer shall, when the employment begins, be treated for the purposes of section 7A as having been given at that time."

Commencement Information

I4 S. 37 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

38 Failure to give statement of employment particulars etc.

- (1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 5.
- (2) If in the case of proceedings to which this section applies—
 - (a) the employment tribunal finds in favour of the employee, but makes no award to him in respect of the claim to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 (c. 18) (duty to give a written statement of initial employment particulars or of particulars of change),the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.
- (3) If in the case of proceedings to which this section applies—
 - (a) the employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996,the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.
- (4) In subsections (2) and (3)—

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- (a) references to the minimum amount are to an amount equal to two weeks' pay, and
 - (b) references to the higher amount are to an amount equal to four weeks' pay.
- (5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.
- (6) The amount of a week's pay of an employee shall—
- (a) be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and
 - (b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).
- (7) For the purposes of Chapter 2 of Part 14 of the Employment Rights Act 1996 as applied by subsection (6), the calculation date shall be taken to be—
- (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
 - (b) if he was not, the effective date of termination as defined by section 97 of that Act.
- (8) The Secretary of State may by order—
- (a) amend Schedule 5 for the purpose of—
 - (i) adding a jurisdiction to the list in that Schedule, or
 - (ii) removing a jurisdiction from that list;
 - (b) make provision, in relation to a jurisdiction listed in Schedule 5, for this section not to apply to proceedings relating to claims of a description specified in the order;
 - (c) make provision for this section to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this section were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

Commencement Information

I5 S. 38 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

General

39 Unfair dismissal: adjustments under sections 31 and 38

In the Employment Rights Act 1996 (c. 18), after section 124 there is inserted—

“124A Adjustments under the Employment Act 2002

Where an award of compensation for unfair dismissal falls to be—

- (a) reduced or increased under section 31 of the Employment Act 2002 (non-completion of statutory procedures), or

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(b) increased under section 38 of that Act (failure to give statement of employment particulars),
the adjustment shall be in the amount awarded under section 118(1)(b) and shall be applied immediately before any reduction under section 123(6) or (7).”

Commencement Information

I6 S. 39 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

40 Interpretation of Part 3

In this Part—

“employer” and “employee” have the same meanings as in the Employment Rights Act 1996 (c. 18);

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Textual Amendments

F3 Words in s. 40 repealed (6.4.2009) by Employment Act 2008 (c. 24), s. 22(1)(a), Sch. Pt. 1; S.I. 2008/3232, art. 2 (with art. 3Sch.)

Commencement Information

I7 S. 40 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

Status:

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