

# Employment Rights Act 1996

## Overview

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## Aims of the Talk

To identify and discuss some of the key parts of the Employment Rights Act 1996 and how it impact on employers and employees.

We will not have time to discuss

- Flexible working,
- Parental leave or
- Time off for care of dependants



## **Employment Rights Act 1996**

This is probably the most important statute in regards to employment law rights for employees and workers in England and Wales.



## Employment Rights Act 1996

- Right to a written statement of employment particulars (section 1)
- Right to itemised pay statements (sections 8-10)

# Employment Rights Act 1996

Enforcing these rights:

An employee can ask the Tribunal to set out the statements of particulars or an itemised pay statement (section 11 ERA 1996)

Further, if the employee brings an unrelated claim and finds in those proceedings that an employer has failed to provide a written statement of employment particulars, it can award the employee 2-4 weeks pay (section 38 Employment Act 2002).



# Employment Rights Act 1996

Right not to suffer unlawful deductions from wage (sections 13-27)

'Wages' includes:

- (a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,
- (b) statutory sick pay under Part XI of the M1 Social Security Contributions and Benefits Act 1992,
- (c) statutory maternity pay under Part XII of that Act,
- (ca) statutory paternity pay under Part 12ZA of that Act,
- (cb) statutory adoption pay under Part 12ZB of that Act,
- (cc) statutory shared parental pay under Part 12ZC of that Act,
- (d) a guarantee payment (under section 28 of this Act),
- (e) any payment for time off under Part VI of this Act or section 169 of the M2 Trade Union and Labour Relations (Consolidation) Act 1992 (payment for time off for carrying out trade union duties etc.),
- (f) remuneration on suspension on medical grounds under section 64 of this Act and remuneration on suspension on maternity grounds under section 68 of this Act,
- (fa) remuneration on ending the supply of an agency worker on maternity grounds under section 68C of this Act.
- (g) any sum payable in pursuance of an order for reinstatement or re-engagement under section 113 of this Act,
- (h) any sum payable in pursuance of an order for the continuation of a contract of employment under section 130 of this Act or section 164 of the Trade Union and Labour Relations (Consolidation) Act 1992, and
- (j) remuneration under a protective award under section 189 of that Act,



# Employment Rights Act 1996

Unlawful deductions of wages claims must be brought within 3 months from the deduction or the last in the series of deductions.

S23 ERA 1996 states:

(2) Subject to subsection (4), an [employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

## Employment Rights Act 1996

Unlawful deductions of wages claims are limited to a maximum of two years.

S23(4A) of the ERA 1996 states:

*An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.*

An employee might be able to bring a claim in the county court for breach of contract (a 6 year limitation period). It is useful to note that this will not apply to holiday pay claims under the Working Time Regulations 1998 (Regulation 3 The Deduction from Wages (Limitation) Regulations 2014).



# Employment Rights Act 1996

There are permitted deductions from wages such as where :

The Employee's contract of employment permits this (Section 13)

The Employee had signed an agreement to permit the deduction (Section 13)

It is required by statute (Section 13)

There has been an overpayment in wages or expenses (Section 15)

# Employment Rights Act 1996

## Section 27A Exclusivity terms unenforceable in zero hours contracts

(1) In this section “zero hours contract” means a contract of employment or other worker's contract under which—

(a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and

(b) there is no certainty that any such work or services will be made available to the worker.

....

(3) Any provision of a zero hours contract which—

(a) prohibits the worker from doing work or performing services under another contract or under any other arrangement, or

(b) prohibits the worker from doing so without the employer's consent, is unenforceable against the worker.

(4) Subsection (3) is to be disregarded for the purposes of determining any question whether a contract is a contract of employment or other worker's contract

# **Employment Rights Act 1996**

## **Section 27A Exclusivity terms unenforceable in zero hours contracts- Enforcement**

The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 sets out that it is unlawful to dismiss an employee or subject a worker to a detriment.

These rights apply from day one of employment or engagement as a worker.

# Employment Rights Act 1996

The right not to suffer **detriments** in employment due to:

- 43M. Jury service.
- 44. Health and safety cases.
- 45. Sunday working for shop and betting workers..
- 45ZA. Sunday working for shop workers: additional hours.
- 45. Sunday working for shop and betting workers..
- 45ZA. Sunday working for shop workers: additional hours.
- 45A. Working time cases.
- 46. Trustees of occupational pension schemes..
- 47. Employee representatives..
- 47A. Employees exercising right to time off work for study or training.
- 47B. Protected disclosures.
- 47C. Leave for family and domestic reasons..
- 47D. Tax credits.
- 47E. Flexible working.
- 47F. Study and training.
- 47G. Employee shareholder status

# Employment Rights Act 1996

Right not to be **dismissed** due to:

- 98B. Jury service.
- 99. Leave for family reasons.
- 100. Health and safety cases.
- 101. Shop workers and betting workers who refuse Sunday work.
- 101ZA. Shop workers who refuse to work additional hours on Sunday.
- 101A. Working time cases.
- 102. Trustees of occupational pension schemes.
- 103. Employee representatives.
- 103A. Protected disclosure.
- 104. Assertion of statutory right.
- 104A. The national minimum wage.
- 104B. Tax credits.
- 104C. Flexible working.
- 104D. Pension enrolment.
- 104E. Study and training.
- 104F. Blacklists.
- 104G. Employee shareholder status.
- 105. Redundancy.
- 106. Replacements.
- 107. Pressure on employer to dismiss unfairly.



## **Employment Rights Act 1996**

Detriments and Automatically unfair dismissal claims-  
why are these so important to know about?

The automatically unfair dismissal claims do not require that the employee has the qualifying length of service to bring an 'ordinary' unfair dismissal (2 years).

This therefore can apply to relatively new employees and employees in the probation period.

# Employment Rights Act 1996

## Right to Notice of Dismissal

Employees (not workers) are entitled to notice pay if they are dismissed (section 86) provided they have not committed an act of gross misconduct. The amount of notice is determined by the employee's length of service:

The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

- (a) is not less than one week's notice if his period of continuous employment is less than two years,
- (b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and
- (c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.



# Employment Rights Act 1996

## Right to Notice of Dismissal

### Employee Notice (s86 ERA 1996)

(2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week



# Employment Rights Act 1996

## Right to Notice of Dismissal- Ill health Dismissals

S88 of the Employment Rights Act 1996

(1) If an employee has normal working hours under the contract of employment in force during the period of notice and during any part of those normal working hours—

(a) the employee is ready and willing to work but no work is provided for him by his employer,

(b) the employee is incapable of work because of sickness or injury,

(c) the employee is absent from work wholly or partly because of pregnancy or childbirth [ or on [adoption leave, [shared parental leave,] parental leave or [F4paternity leave]]], or

(d) the employee is absent from work in accordance with the terms of his employment relating to holidays,

the employer is liable to pay the employee for the part of normal working hours covered by any of paragraphs (a), (b), (c) and (d) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week's pay by the number of normal working hours.



# Employment Rights Act 1996

## Right to Notice of Dismissal- Ill health Dismissals – the Exception

The right of statutory notice pay when an employee is sick during the notice period does not apply if the contractual notice period is at least one week more than the statutory minimum.

(S87 Employment Rights Act 1996)

# Employment Rights Act 1996

## Right to Redundancy Pay

Redundancy is defined under **section 139**

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed,  
or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.



# Employment Rights Act 1996

## Amount of Redundancy Pay section 162

- (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.

The pay is capped at £538 per week (increased in April 2020)



# Employment Rights Act 1996

## Unfair Dismissal

- The right- s94
- Qualifying length of service- s108 (2 years)
- The statutory test- s98

# Employment Rights Act 1996

## Unfair Dismissal

### Notice periods and Effective Date of Termination

If an employer has given less than statutory notice the EDT will be extended when:

- calculating length of continuous employment to determine if the qualifying period is met for claims of a) written statement of reasons for dismissal (ERA 1996 s.92(7) and ERA 1996 s.92(3)) and/or b) unfair dismissal (ERA 1996 s.97(2) and ERA 1996 s.108(1)). Similarly the extension applies for the qualifying period in claiming redundancy payment (ERA 1996 s.145(5) and ERA 1996 s.155);
- calculating the basic award in unfair dismissal cases (as the calculation is based in part on length of continuous employment, see ERA 1996 s.97(2) and ERA 1996 s.119(1)). Similarly this extension would apply in calculating redundancy pay (ERA 1996 s.145(5) and ERA 1996 s.162(1)).

# Employment Rights Act 1996

## Unfair Dismissal- the statutory test

The employers duty to show a potentially fair reason for the dismissal:

- relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- relates to the conduct of the employee,
- is that the employee was redundant, or
- is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- Some other substantial reason

# Employment Rights Act 1996

## Unfair Dismissal- the statutory test

If the employer can show a potentially fair reason for the dismissal, the Tribunal will then consider whether the dismissal was 'fair' in accordance with s98(4):

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
- (b) shall be determined in accordance with equity and the substantial merits of the case.*

The Tribunal will have regard to relevant ACAS Codes- Failure to follow a relevant code can increase compensation awarded to an employee.