

An Introduction to UK Employment Law

Law Europe EEIG

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### Minimum Period of Notice to be given by the Employer upon Termination of the Employment Contract:

The period of notice to be given by an employer to terminate an employment contract is determined by reference to any express contractual term subject to the statutory minimum notice period prescribed by the Employment Rights Act 1996. The statutory minimum notice periods are as follows:

<u>Duration of Continuous Employment</u>	<u>Period of Notice (Weeks)</u>
Up to one month	0
One month up to 2 years	1
2 years up to 12 years	1 week for each year of continuous employment
12 years and above	12 weeks (maximum)

In addition, if the contract is silent as to any contractual notice period and an employee is of the opinion that the statutory minimum is insufficient, he or she may argue that it is an implied term of the contract that "reasonable notice" will be given. This will generally apply to more senior employees. A court may then imply a lengthier notice period than the statutory minimum having regard to the seniority of the employee.

### Dispensing with the Notice Period:

There are certain instances in which an employer may dispense with the requirement to give notice. This primarily applies where the employee commits a fundamental breach of contract which justifies summary dismissal (e.g. gross misconduct).

### Remedies:

The remedies available to an employee based on a dismissal are either to bring a claim for unfair dismissal (subject to a one year qualifying period), wrongful dismissal or a breach of contract claim.

In respect of unfair dismissal a Tribunal may make either a re-instatement or re-engagement order or a compensatory award.

In respect of a wrongful dismissal claim, the courts may make an award of damages or grant an interdict (injunction in England) to prevent an employer from carrying out a dismissal.

### Jurisdiction of the Courts:

Unfair dismissal claims must be brought before an Employment Tribunal. Employment Tribunals also have jurisdiction to hear breach of contract claims, subject to a maximum award of £25,000.

Wrongful dismissal claims can be brought before either the Employment Tribunals or in the Ordinary Courts.

### Compensation:

In addition to a payment in lieu of notice, the following awards may be made in respect of unfair dismissal in an Employment Tribunal:

- a. a basic award
- b. a compensatory award (which would include any notice payment); and
- c. an additional award

In respect of a wrongful dismissal claim, in addition to damages in respect of any notice period, the courts may make an award in respect of the loss of any other contractual benefits.

#### Calculation of Awards:

Dealing firstly with an unfair dismissal claim brought in the Employment Tribunal, the awards are calculated as follows:

- a. basic award: there are exceptional situations where this is calculated differently but ordinarily this is calculated using the number of years of continuous employment (subject to a maximum of 20 years), multiplied by a week's pay (subject to a current statutory maximum of £260). A multiplier based on the employee's age is then applied to this figure to arrive at the basic award payable. In respect of those years of employment where the employee was under 22, the figure will be multiplied by 0.5, where the employee was aged between 22 and 41, the multiplier would be 1 and where the employee was aged over 41, the multiplier would be 1.5.
- b. compensatory award: this is calculated using the following heads of loss:
  - i) immediate loss – loss from the date of dismissal until the date of the tribunal hearing (taking into account any income earned by new employment)
  - ii) future loss – an estimate of the future loss suffered by the employee
  - iii) expenses incurred in seeking new employment
  - iv) loss of statutory rights (i.e. as the employee will have to wait a year in their new employment to qualify for statutory protection against unfair dismissal).
- c. additional award: an additional award may be made by the Tribunal if an employer fails to observe a re-instatement order.

In wrongful dismissal claims, damages are assessed with reference to the employee's loss suffered as a result of the employer's breach of contract.

#### Re-instatement:

An Employment tribunal can make either a re-instatement or re-engagement order should this be requested by the employee and after consideration of the following:

- a. whether it would be practicable for the employer to comply with this order; and
- b. whether or not the applicant contributed to the dismissal and whether this would impact on the fairness of making a re-instatement order.

The tribunal has discretion in this regard and is not obliged to order re-instatement or re-engagement simply because this is requested by the employee.

### Mediation:

There are no obligatory mediation arrangements. However trade disputes can be mediated on a voluntary basis, by one or more of the parties to a dispute, requesting the Advisory Conciliation and Arbitration Service (ACAS) to intervene.

Mediation is conducted by an ACAS officer or someone appointed by ACAS who is outside the service. Mediation is dependant on the co-operation of both parties as any proposals made by the mediator have no binding effect on the parties.

### Written Contracts of Employment:

Minimum terms are implied by law if an employee does not have a written contract of employment. For example, an employee will owe implied duties to an employer such as to work with due diligence and care, and an employer has an implied duty to take care of the employee's health and safety at work.

Other examples include that an employee is entitled to be given a statutory minimum period of notice on termination of employment and to a minimum period of annual leave in each holiday year.

However, there are certain written terms of employment, which must be given to an employee within certain time limits (see further below).

### Discrimination:

If a dismissal is found to be by reason of discrimination, in the context of an unfair dismissal claim, the basis/amount of compensation is the same.

However, an employee may also have a separate claim for sex, race or disability discrimination based on their dismissal. An award of compensation in such a claim is based on the loss that flows from (i.e. is legally caused by) the act of dismissal itself and may include an element of compensation in respect of injury to feeling.

There is no upper limit to the compensation in a sex, race or disability discrimination claim.

Guidelines indicate that an injury to feeling award should normally be in the range of £500.00 to £15,000.00 depending on the circumstances.

### Statutory Requirements for Written Contracts:

There is no statutory requirement for a contract of employment to be in writing. However, an employer must provide each employee with a written statement detailing certain terms of their contract not later than two months after the beginning of the employee's employment. These written details include such items as the name of the employer and employee, job title and rates of pay.

If an employer fails to provide an employee with a written statement, the employee may bring a claim to an Employment Tribunal, and if successful, will get a declaration as to the relevant terms, which should have been given. There is no right to claim damages for this failure.

However, if an employee makes a request for a written statement and the employer dismisses the employee as a result of making such request, an employee may have an automatically unfair dismissal claim.

Effect of a business transfer on the rights of employees:

The legal rules dealing with the rights of an employee in the event of the transfer of the business in which he is employed are fairly complex. These rules are contained in the Transfer of Undertaking (Protection of Employment) Regulation 1981 ("the Regulations").

Generally, the rights of an employee are fully preserved in the event of a transfer subject to the Regulations. An employee will transfer to the new employer on their existing terms and conditions, with the exception, broadly, of terms in respect of pensions, and their continuity of employment is preserved.

An employee is also protected against being dismissed for a reason connected with the transfer of the business although again there is an exception to this.