



# Employment Relations Act 2004

## 2004 CHAPTER 24

### PART 3

#### RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

##### *Other rights of workers and employees*

#### **40 Protection of employees in respect of jury service**

- (1) In Part 5 of the Employment Rights Act 1996 (c. 18) (protection from suffering detriment in employment), before section 44 (but after the cross-heading immediately preceding that section) insert—

##### **“43M Jury service**

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee—
- (a) has been summoned under the Juries Act 1974, the Coroners Act 1988, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or
  - (b) has been absent from work because he attended at any place in pursuance of being so summoned.
- (2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10.
- (3) For the purposes of this section, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) In subsection (3) “a relevant period” means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in subsection (1)(a).”
- (2) In section 48(1) of that Act (application to employment tribunal), after “section” insert “43M,”.
- (3) After section 98A of that Act insert—

**“98B Jury service**

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—
- (a) has been summoned under the Juries Act 1974, the Coroners Act 1988, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or
  - (b) has been absent from work because he attended at any place in pursuance of being so summoned.
- (2) Subsection (1) does not apply in relation to an employee who is dismissed if the employer shows—
- (a) that the circumstances were such that the employee’s absence in pursuance of being so summoned was likely to cause substantial injury to the employer’s undertaking,
  - (b) that the employer brought those circumstances to the attention of the employee,
  - (c) that the employee refused or failed to apply to the appropriate officer for excusal from or a deferral of the obligation to attend in pursuance of being so summoned, and
  - (d) that the refusal or failure was not reasonable.
- (3) In paragraph (c) of subsection (2) “the appropriate officer” means—
- (a) in the case of a person who has been summoned under the Juries Act 1974, the officer designated for the purposes of section 8, 9 or, as the case may be, 9A of that Act;
  - (b) in the case of a person who has been summoned under the Coroners Act 1988, a person who is the appropriate officer for the purposes of any rules made under subsection (1) of section 32 of that Act by virtue of subsection (2) of that section;
  - (c) in the case of a person who has been summoned under the Court of Session Act 1988, either—
    - (i) the clerk of court issuing the citation to attend for jury service; or
    - (ii) the clerk of the court before which the person is cited to attend for jury service;
  - (d) in the case of a person who has been summoned under the Criminal Procedure (Scotland) Act 1995, either—
    - (i) the clerk of court issuing the citation to attend for jury service; or

---

*Status: This is the original version (as it was originally enacted).*

---

- (ii) the clerk of the court before which the person has been cited to attend for jury service;  
and references in that paragraph to a refusal or failure to apply include references to a refusal or failure to give a notice under section 1(2)(b) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.”
- (4) In section 105 of that Act (redundancy), for subsection (1)(c) substitute—  
“(c) it is shown that any of subsections (2A) to (7F) applies.”
- (5) In that section, before subsection (3) insert—  
“(2A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 98B (unless the case is one to which subsection (2) of that section applies).”
- (6) In section 108(3) of that Act (exceptions to one year qualifying period of continuous employment for claims of unfair dismissal), before paragraph (b) insert—  
“(aa) subsection (1) of section 98B (read with subsection (2) of that section) applies.”
- (7) In section 109(2) of that Act (exceptions to upper age limit for claims of unfair dismissal), before paragraph (b) insert—  
“(aa) subsection (1) of section 98B (read with subsection (2) of that section) applies.”
- (8) In section 237(1A)(a) of the 1992 Act (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action)—  
(a) after “section” insert “98B,”; and  
(b) after “(dismissal in” insert “jury service,”.
- (9) In section 238(2A)(a) of the 1992 Act (cases where employment tribunal to determine whether dismissal of an employee is unfair despite limitation in subsection (2) of that section)—  
(a) after “section” insert “98B,”; and  
(b) after “(dismissal in” insert “jury service,”.