



Employment Relations Act 2004

2004 CHAPTER 24

PART 3

RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

Other rights of workers and employees

41 Flexible working

- (1) In section 237(1A)(a) of the 1992 Act (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action)—
 - (a) for “or 103A” substitute “ , 103A or 104C ”; and
 - (b) for “and protected disclosure” substitute “ , protected disclosure and flexible working ”.
- (2) In section 238(2A)(a) of that Act (cases where employment tribunal to determine whether dismissal of an employee is unfair despite limitation in subsection (2) of that section)—
 - (a) for “or 103” substitute “ , 103 or 104C ”; and
 - (b) for “and employee representative” substitute “ , employee representative and flexible working ”.
- (3) In section 48(1) of the Employment Rights Act 1996 (c. 18) (complaints to employment tribunals), for “47D” substitute “ 47E ”.
- (4) After subsection (7B) of section 105 of that Act (redundancy) insert—

“(7BA) 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 section 104C.”
- (5) In section 108(3) of that Act (exceptions to one year qualifying period of continuous employment for claims for unfair dismissal), after paragraph (gh) insert—

“(gi) section 104C applies.”

Changes to legislation: Employment Relations Act 2004, Section 41 is up to date with all changes known to be in force on or before 25 May 2023. 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) View outstanding changes

- (6) In section 109(2) of that Act (exceptions to upper age limit for claims for unfair dismissal), after paragraph (gh) insert—
“(gi) section 104C applies.”.
- (7) In sections 194(2) and 195(2) of that Act (provisions of the Act which have effect in relation to employment as a member of the staff of the House of Lords or the House of Commons), in paragraph (c) for “and 47D” substitute “, 47D and 47E ”.
- (8) In section 199(2) of that Act (provisions of the Act not applicable to share fishermen) for “47D” substitute “ 47E ”.

Commencement Information

- II** S. 41 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 13)

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Changes and effects yet to be applied to :

- s. 41(1)(2) repealed by [2008 c. 30 Sch. 11 Pt. 1](#)