

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: EMPLOYMENT

Employment Tribunals: Failure to pay sums

Section 150: Financial Penalty for failure to pay sums ordered by employment tribunal etc

825. This section inserts a new Part, 2A, into the Employment Tribunals Act 1996 to allow financial penalties to be imposed on employers who do not pay workers the award that the Employment Tribunal has ordered (or awards ordered on a relevant appeal) including costs and sums to cover preparation time as awarded by an Employment Tribunal. Employers who do not pay costs (in Scotland, expenses) awarded against them to cover a worker's Employment Tribunal fee can also be required to pay a penalty under the new provisions, as can employers who fail to pay sums due under Acas conciliated settlements (new sections 37A to 37D). The financial penalty regime will be operated by enforcement officers appointed or authorised by the Secretary of State (new section 37M).
826. The way that the provisions will work in the case of an unpaid Employment Tribunal award is that the procedure for imposing a penalty will start, at the earliest, when the time for appealing the Employment Tribunal decision has expired without an appeal being made (new section 37B(5)) and there are no unresolved matters in relation to an application for costs. As a first stage in the procedure, the employer will be told – in a warning notice – that the intention is to impose a financial penalty on them. They will then have 28 days either to pay the whole unpaid amount of the award or settlement sum or to set out their case for why no financial penalty should be imposed (new section 37E). Where the unpaid amount is paid before the end of the 28 day period it is to be treated as paid in full.
827. If, having taken what the employer has said into account, the enforcement officer is still minded to impose a financial penalty, the officer will issue a penalty notice. The amount of the penalty will be based on the total amount that remains unpaid to the worker, including interest on the award payable on the last date for responding to the warning notice, as well as any amount the employer has been told to pay in respect to employment tribunal fees: it will be 50% of the sum owed with a minimum of £100 and a maximum of £5000 (new section 37F). In cases where an employer has defaulted on an agreement to pay by instalments, the penalty will be based on the whole unpaid amount (new section 37D). Penalties will be payable to the Secretary of State and ultimately into the Consolidated Fund (new section 37H (6)).

*These notes refer to the Small Business, Enterprise and Employment
Act 2015 (c.26) which received Royal Assent on 26 March 2015*

828. Where a penalty notice has been issued the amount of the penalty can be reduced by 50% if both the penalty and the whole unpaid amount are paid within 14 days of the penalty notice (new section 37F (9) to (11)).
829. There are procedures for withdrawing and replacing warning notices (new Section 37I) and penalty notices (new section 37J) if they are defective. If a penalty notice has been served following a warning notice which is later withdrawn, that penalty notice will cease to have effect and the employer will be repaid with interest any amount that they have paid under the penalty notice.
830. If an enforcement officer withdraws a penalty notice they may remedy the defects and serve a replacement penalty notice to the employer. If a penalty notice is withdrawn and not replaced, an employer must be repaid any sum with interest that they have paid under the withdrawn notice.
831. Under new section 37G an employer has 28 days beginning with the day the penalty notice was served to appeal the notice or the amount of the financial penalty specified. The appeal is to an Employment Tribunal.
832. Where a penalty is not paid it will be subject to interest and recoverable through the relevant court (new section 37H).
833. New sections 37N and 37O provide the Secretary of State with powers to make regulations to make specific amendments to Part 2A of the Employment Tribunals Act 1996 and allow the provisions to apply with modifications in certain circumstances.
834. Subsections (4) and (7) of the section make provisions in relation to disclosure of information for the purposes of the provisions. Subsection 4 means that a worker cannot be prevented from providing information about their ACAS conciliated settlement to an enforcement officer if a settlement sum is unpaid. Subsection (7) also amends the Trade Union and Labour Relations (Consolidation) Act 1992 to put an enforcement officer on the same footing as anyone else to whom ACAS discloses information.