

---

STATUTORY INSTRUMENTS

---

**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

PART XI

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

*Dismissal*

**Circumstances in which an employee is dismissed**

**127.**—(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to paragraph (2) and Article 128, only if)—

- (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
  - (b) he is employed under a contract for a fixed term and that term expires without being renewed under the same contract, or
  - (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
- (2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—
- (a) the employer gives notice to the employee to terminate his contract of employment, and
  - (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

**Failure to permit return after childbirth treated as dismissal**

**128.**—(1) Where an employee who—

- (a) has the right conferred by Article 111, and
- (b) has exercised it in accordance with Article 114,

is not permitted to return to work, she shall (subject to the following provisions of this Article) be taken for the purposes of this Part to be dismissed for the reason for which she was not permitted to return with effect from the notified day of return (being deemed to have been continuously employed until that day).

- (2) Paragraph (1) does not apply in relation to an employee if—

- (a) immediately before the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
  - (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work under Article 111 or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in paragraph (4).
- (3) Paragraph (1) does not apply in relation to an employee if—
- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work under Article 111,
  - (b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in paragraph (4), and
  - (c) she accepts or unreasonably refuses that offer.
- (4) The conditions referred to in paragraphs (2) and (3) are—
- (a) that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
  - (b) that the provisions of the contract as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had returned to work under Article 111.
- (5) Where on a complaint of unfair dismissal any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (2) or (3), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.
- (6) Paragraph (2) shall not apply in relation to the employment of a person by the managers of a voluntary school within the meaning of the Education and Libraries (Northern Ireland) Order 1986.

### **Effective date of termination**

**129.**—(1) Subject to the following provisions of this Article, in this Part “the effective date of termination”—

- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,
- (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and
- (c) in relation to an employee who is employed under a contract for a fixed term which expires without being renewed under the same contract, means the date on which the term expires.

(2) Where—

- (a) the contract of employment is terminated by the employer, and
- (b) the notice required by Article 118 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

(3) In paragraph (2)(b) “the material date” means—

- (a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

(4) Where—

(a) the contract of employment is terminated by the employee,

(b) the material date does not fall during a period of notice given by the employer to terminate that contract, and

(c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by Article 118 to expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

(5) In paragraph (4) “the material date” means—

(a) the date when notice of termination was given by the employee, or

(b) where no notice was given, the date when the contract of employment was terminated by the employee.

(6) Where an employee is taken to be dismissed for the purposes of this Part by virtue of Article 128, references in this Part to the effective date of termination are to the notified date of return.