
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART IV

DISPUTE RESOLUTION, ETC.

Employment particulars

Failure to give statement of employment particulars, etc.: industrial tribunals

27.—(1) This Article applies to proceedings before an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4.

(2) If in the case of proceedings to which this Article applies—

- (a) the industrial tribunal finds in favour of the employee, but makes no award to him in respect of the claim to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change),

the tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3) If in the case of proceedings to which this Article applies—

- (a) the industrial tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order,

the tribunal shall, subject to paragraph (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In paragraphs (2) and (3)—

- (a) references to the minimum amount are to an amount equal to two weeks' pay, and
- (b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.

(6) The amount of a week's pay of an employee shall—

- (a) be calculated for the purposes of this Article in accordance with Chapter IV of Part I of the Employment Rights Order; and
- (b) not exceed the amount for the time being specified in Article 23 of that Order (maximum amount of week's pay).

- (7) For the purposes of Chapter IV of Part I of the Employment Rights Order as applied by paragraph (6), the calculation date shall be taken to be—
- (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
 - (b) if he was not, the effective date of termination as defined by Article 129 of that Order.
- (8) The Department may by order—
- (a) amend Schedule 4 for the purpose of—
 - (i) adding a jurisdiction to the list in that Schedule, or
 - (ii) removing a jurisdiction from that list;
 - (b) make provision, in relation to a jurisdiction listed in Schedule 4, for this Article not to apply to proceedings relating to claims of a description specified in the order;
 - (c) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.