



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART I

#### PARTICULARS OF TERMS OF EMPLOYMENT

##### *Written particulars of terms of employment*

#### **1 Written particulars of terms of employment**

- (1) Not later than thirteen weeks after the beginning of an employee's period of employment with an employer, the employer shall give to the employee a written statement in accordance with the following provisions of this section.
- (2) An employer shall in a statement under this section—
  - (a) identify the parties;
  - (b) specify the date when the employment began;
  - (c) state whether any employment with a previous employer counts as part of the employee's continuous period of employment, and, if so, specify the date when the continuous period of employment began.
- (3) A statement under this section shall contain the following particulars of the terms of employment as at a specified date not more than one week before the statement is given, that is to say—
  - (a) the scale or rate of remuneration, or the method of calculating remuneration,
  - (b) the intervals at which remuneration is paid (that is, whether weekly or monthly or by some other period),
  - (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
  - (d) any terms and conditions relating to—

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*Status: This is the original version (as it was originally enacted).*

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- (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
- (ii) incapacity for work due to sickness or injury, including any provision for sick pay,
- (iii) pensions and pension schemes,
- (e) the length of notice which the employee is obliged to give and entitled to receive to determine his contract of employment, and
- (f) the title of the job which the employee is employed to do:

Provided that paragraph (d)(iii) shall not apply to the employees of any body or authority if the employees' pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under an Act of Parliament and the body or authority are required by any such provision to give to new employees information concerning their pension rights, or concerning the determination of questions affecting their pension rights.

- (4) Subject to subsection (5), every statement given to an employee under this section shall include a note—
  - (a) specifying any disciplinary rules applicable to the employee, or referring to a document which is reasonably accessible to the employee and which specifies such rules;
  - (b) specifying, by description or otherwise—
    - (i) a person to whom the employee can apply if he is dissatisfied with any disciplinary decision relating to him; and
    - (ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment, and the manner in which any such application should be made;
  - (c) where there are further steps consequent upon any such application, explaining those steps or referring to a document which is reasonably accessible to the employee and which explains them ; and
  - (d) stating whether a contracting-out certificate is in force for the employment in respect of which the statement is given.
- (5) The provisions of paragraphs (a) to (c) of subsection (4) shall not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.
- (6) The definition of week given by section 153(1) does not apply for the purposes of this section.

## **2 Supplementary provisions relating to statements under s. 1**

- (1) If there are no particulars to be entered under any of the heads of paragraph (d) of subsection (3) of section 1, or under any of the other provisions of section 1(2) and (3), that fact shall be stated.
- (2) If the contract is for a fixed term, the statement given under section 1 shall state the date when the contract expires.
- (3) A statement given under section 1 may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has

reasonable opportunities of reading in the course of his employment or which is made reasonably accessible to him in some other way.

- (4) If not more than six months after the termination of an employee's period of employment, a further period of employment is begun with the same employer, and the terms of employment are the same, no statement need be given under section 1 in respect of the second period of employment, but without prejudice to the operation of subsection (1) of section 4 if there is a change in the terms of employment.

### **3 Certain hours of employment to be disregarded,**

- (1) Subject to the following provisions of this section, no account shall be taken under section 1 of employment during any period when the hours of employment are normally less than sixteen hours weekly.
- (2) If the employee's relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly, the employee shall nevertheless for a period of twenty-six weeks (computed in accordance with subsection (3)) be treated for the purposes of subsection (1) as if his contract normally involved employment for sixteen hours or more weekly.
- (3) In computing the said period of twenty-six weeks no account shall be taken of any week—
  - (a) during which the employee is in fact employed for sixteen hours or more;
  - (b) during which the employee takes part in a strike (as defined in paragraph 24 of Schedule 13) or is absent from work because of a lock-out (as so defined) by his employer; or
  - (c) during which there is no contract of employment but which, by virtue of paragraph 9(1) of Schedule 13, counts in computing a period of continuous employment.
- (4) An employee whose relations with his employer are governed by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he has been continuously employed for a period of five years or more, be treated for the purposes of subsection (1) as if his contract normally involved employment for sixteen hours or more weekly.

### **4 Changes in terms of employment**

- (1) If after the date to which a statement given under section 1 relates there is a change in the terms of employment to be included, or referred to, in that statement the employer shall, not more than one month after the change, inform the employee of the nature of the change by a written statement and, if he does not leave a copy of the statement with the employee, shall preserve the statement and ensure that the employee has reasonable opportunities of reading it in the course of his employment, or that it is made reasonably accessible to him in some other way.
- (2) A statement given under subsection (1) may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his employment, or which is made reasonably accessible to him in some other way.

- (3) If, in referring in the statement given under section 1 or under subsection (1) of this section to any such document, the employer indicates to the employee that future changes in the terms of which the particulars are given in the document will be entered up in the document (or recorded by some other means for the information of persons referring to the document), the employer need not under subsection (1) inform the employee of any such change if it is duly entered up or recorded not later than one month after the change is made.
- (4) Where, after an employer has given to an employee a written statement in accordance with section 1—
- (a) the name of the employer (whether an individual or a body corporate or partnership) is changed, without any change in the identity of the employer, or
  - (b) the identity of the employer is changed, in such circumstances that, in accordance with section 139(7) or paragraph 17 or paragraph 18 of Schedule 13, the continuity of the employee's period of employment is not broken,
- and (in either case) the change does not involve any change in the terms (other than the names of the parties) included or referred to in the statement, then, the person who, immediately after the change, is the employer shall not be required to give to the employee a statement in accordance with section 1, but, subject to subsection (5), the change shall be treated as a change falling within subsection (1) of this section.
- (5) A written statement under this section which informs an employee of such a change in his terms of employment as is referred to in subsection (4)(b) shall specify the date, on which the employee's continuous period of employment began.

## **5 Exclusion of certain contracts in writing**

Sections 1 and 4 shall not apply to an employee if and so long as the following conditions are fulfilled in relation to him, that is to say—

- (a) the employee's contract of employment is a contract which has been reduced to writing in one or more documents and which contains express terms affording the particulars to be given under each of the paragraphs in subsection (3) of section 1, and under each head of paragraph (d) of that subsection;
- (b) there has been given to the employee a copy of the contract (with any variations made from time to time), or he has reasonable opportunities of reading such a copy in the course of his employment, or such a copy is made reasonably accessible to him in some other way; and
- (c) such a note as is mentioned in section 1(4) has been given to the employee or he has reasonable opportunities of reading such a note in the course of his employment or such a note is made reasonably accessible to him in some other way:

Provided that if at any time after the beginning of an employee's period of employment these conditions cease to be fulfilled in relation to him, the employer shall give the employee a written statement under section 1 not more than one month after that time.

## **6 Power of Secretary of State to require further particulars**

The Secretary of State may by order provide that section 1 shall have effect as if such further particulars as may be specified in the order were included in the particulars to be included in a statement under that section, and, for that purpose, the order may

include such provisions amending section 1(1), (2) and (3) as appear to the Secretary of State to be expedient.

## **7 Power to vary number of weekly hours of employment necessary to qualify for rights**

- (1) The Secretary of State may by order provide that this Part and Schedule 13 shall have effect as if—
  - (a) for each of the references to sixteen hours in section 3 and in paragraphs 3 to 7 of Schedule 13 there were substituted a reference to such other number of hours less than sixteen as may be specified in the order; and
  - (b) as if for each of the references to eight hours in section 3 and in paragraphs 6 and 7 of Schedule 13 there were substituted a reference to such other number of hours less than eight as may be specified in the order.
- (2) An order under subsection (1) shall not be made unless a draft of the order has been laid before Parliament and approved by resolution of each House.

### *Itemised pay statements*

## **8 Right to itemised pay statement**

Every employee shall have the right to be given by his employer at or before the time at which any payment of wages or salary is made to him an itemised pay statement, in writing, containing the following particulars, that is to say.—

- (a) the gross amount of the wages or salary ;
- (b) the amounts of any variable and, subject to section 9, any fixed deductions from that gross amount and the purposes for which they are made ;
- (c) the net amount of wages or salary payable; and
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

## **9 Standing statement of fixed deductions**

- (1) A pay statement given in accordance with section 8 need not contain separate particulars of a fixed deduction if it contains instead an aggregate amount of fixed deductions, including that deduction, and the employer has given to the employee, at or before the time at which that pay statement is given, a standing statement of fixed deductions, in writing, which contains the following particulars of each deduction comprised in that aggregate amount, that is to say.—
  - (a) the amount of the deduction ;
  - (b) the intervals at which the deduction is to be made ; and
  - (c) the purpose for which it is made,and which, in accordance with subsection (4), is effective at the date on which the pay statement is given.
- (2) A standing statement of fixed deductions may be amended, whether by addition of a new deduction or by a change in the particulars or cancellation of an existing

deduction, by notice in writing, containing particulars of the amendment, given by the employer to the employee.

- (3) An employer who has given to an employee a standing statement of fixed deductions shall, within the period of twelve months beginning with the date on which the first standing statement was given and at intervals of not more than twelve months thereafter, re-issue it in a consolidated form incorporating any amendments notified in accordance with subsection (2).
- (4) A standing statement of fixed deductions shall become effective, for the purposes of subsection (1), on the date on which it is given to the employee and shall cease to have effect on the expiration of the period of twelve months beginning with that date, or, where it is re-issued in accordance with subsection (3), the expiration of the period of twelve months beginning with the date on which it was last re-issued.

## **10 Power to amend ss. 8 and 9**

The Secretary of State may by order

- (a) vary the provisions of sections 8 and 9 as to the particulars which must be included in a pay statement or a standing statement of fixed deductions by adding items to or removing items from the particulars listed in those sections or by amending any such particulars; and
- (b) vary the provisions of section 9(3) and (4) so as to shorten or extend the periods of twelve months referred to in those subsections, or those periods as varied from time to time under this section.

### *Enforcement of rights under Part I*

## **11 References to industrial tribunals**

- (1) Where an employer does not give an employee a statement as required by section 1 or 4(1) or 8, the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the relevant section.
- (2) Where
  - (a) a statement purporting to be a statement under section 1 or 4(1), or
  - (b) a pay statement, or a standing statement of fixed deductions, purporting to comply with section 8 or 9(1),
 has been given to an employee, and a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part, either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.
- (3) Where a statement under section 1 or 4(1) given by an employer to an employee contains such an indication as is mentioned in section 4(3), and
  - (a) any particulars purporting to be particulars of a change to which that indication relates are entered up or recorded in accordance with that indication, and
  - (b) a question arises as to the particulars which ought to have been so entered up or recorded,
 either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.

- (4) In this section, a question as to the particulars which ought to have been included—
- (a) in a pay statement, or in a standing statement of fixed deductions, does not include a question solely as to the accuracy of an amount stated in any such particulars;
  - (b) in a note under section 1(4), does not include any question whether the employment is, has been or will be contracted-out employment for the purposes of Part III of the Social Security Pensions Act 1975.
- (5) Where, on a reference under subsection (1), an industrial tribunal determines particulars as being those which ought to have been included or referred to in a statement given under section 1 or 4(1) the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.
- (6) On determining a reference under subsection (2)(a), an industrial tribunal may either confirm the particulars as included or referred to in the statement given by the employer, or may amend those particulars, or may substitute other particulars for them, as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the tribunal.
- (7) On determining a reference under subsection (3), an industrial tribunal may either confirm the particulars to which the reference relates, or may amend those particulars or may substitute other particulars for them, as the tribunal may determine to be appropriate; and particulars of the change to which the reference relates shall be deemed to have been entered up or recorded in accordance with the decision of the tribunal.
- (8) Where on a reference under this section an industrial tribunal finds that an employer has failed to give an employee any pay statement in accordance with section 8 or that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 9(1)—
- (a) the tribunal shall make a declaration to that effect; and
  - (b) where the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

In this subsection " unnotified deduction " means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by section 8 or 9(1).

- (9) An industrial tribunal shall not entertain a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made before the end of the period of three months beginning with the date on which the employment ceased.