



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART II

#### PROTECTION OF WAGES

##### *Enforcement*

### 23 Complaints to [<sup>F1</sup>employment tribunals].

- (1) A worker may present a complaint to an [<sup>F1</sup>employment tribunal]—
  - (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
  - (b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),
  - (c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or
  - (d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).
- (2) Subject to subsection (4), an [<sup>F1</sup>employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
  - (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
  - (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

*Status: Point in time view as at 01/10/2011.*

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- (3) Where a complaint is brought under this section in respect of—
- (a) a series of deductions or payments, or
  - (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,
- the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

[<sup>F2</sup>(3A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) applies for the purposes of subsection (2).]

- (4) Where the [<sup>F1</sup>employment tribunal] is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

[<sup>F3</sup>(5) No complaint shall be presented under this section in respect of any deduction made in contravention of section 86 of the <sup>M1</sup>Trade Union and Labour Relations (Consolidation) Act 1992 (deduction of political fund contribution where certificate of exemption or objection has been given).]

#### Textual Amendments

- F1** Words in s. 23(1)(2)(4) and sidenote to s. 23 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F2** S. 23(3A) inserted (20.5.2011 with application as mentioned in regs. 3 and 4 of the amending S.I.) by The Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), **regs. 2, 32**
- F3** S. 23(5) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 18**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3)

#### Modifications etc. (not altering text)

- C1** S. 23(1)(a) extended (1.4.1999) by 1998 c. 39, s. 20(1)(a) (with s. 36); S.I. 1998/2574, art. 2(2), **Sch. 2**

#### Marginal Citations

- M1** 1992 c. 52.

## 24 Determination of complaints.

[<sup>F4</sup>(1)] Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—

- (a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,
- (b) in the case of a complaint under section 23(1)(b), to repay to the worker the amount of any payment received in contravention of section 15,
- (c) in the case of a complaint under section 23(1)(c), to pay to the worker any amount recovered from him in excess of the limit mentioned in that provision, and
- (d) in the case of a complaint under section 23(1)(d), to repay to the worker any amount received from him in excess of the limit mentioned in that provision.

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[<sup>F5</sup>(2) Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.]

#### Textual Amendments

- F4** S. 24 renumbered (6.4.2009) as s. 24(1) by [Employment Act 2008 \(c. 24\)](#), **ss. 7(1)(a)**, 22(1)(a); S.I. 2008/3232, **art. 2** (with [Sch. paras. 1, 5](#))
- F5** S. 24(2) inserted (6.4.2009) by [Employment Act 2008 \(c. 24\)](#), **ss. 7(1)(b)**, 22(1)(a); S.I. 2008/3232, **art. 2** (with [Sch. paras. 1, 5](#))

## 25 Determinations: supplementary.

- (1) Where, in the case of any complaint under section 23(1)(a), a tribunal finds that, although neither of the conditions set out in section 13(1)(a) and (b) was satisfied with respect to the whole amount of the deduction, one of those conditions was satisfied with respect to any lesser amount, the amount of the deduction shall for the purposes of section 24(a) be treated as reduced by the amount with respect to which that condition was satisfied.
- (2) Where, in the case of any complaint under section 23(1)(b), a tribunal finds that, although neither of the conditions set out in section 15(1)(a) and (b) was satisfied with respect to the whole amount of the payment, one of those conditions was satisfied with respect to any lesser amount, the amount of the payment shall for the purposes of section 24(b) be treated as reduced by the amount with respect to which that condition was satisfied.
- (3) An employer shall not under section 24 be ordered by a tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or in respect of any combination of deductions or payments, in so far as it appears to the tribunal that he has already paid or repaid any such amount to the worker.
- (4) Where a tribunal has under section 24 ordered an employer to pay or repay to a worker any amount in respect of a particular deduction or payment falling within section 23(1)(a) to (d), the amount which the employer is entitled to recover (by whatever means) in respect of the matter in relation to which the deduction or payment was originally made or received shall be treated as reduced by that amount.
- (5) Where a tribunal has under section 24 ordered an employer to pay or repay to a worker any amount in respect of any combination of deductions or payments falling within section 23(1)(c) or (d), the aggregate amount which the employer is entitled to recover (by whatever means) in respect of the cash shortages or stock deficiencies in relation to which the deductions or payments were originally made or required to be made shall be treated as reduced by that amount.

## 26 Complaints and other remedies.

Section 23 does not affect the jurisdiction of an [<sup>F6</sup>employment tribunal] to consider a reference under section 11 in relation to any deduction from the wages of a worker; but the aggregate of any amounts ordered by an [<sup>F6</sup>employment tribunal] to be paid

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under section 12(4) and under section 24 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

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**Textual Amendments**

**F6** Words in s. 26 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

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