



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Rights not to suffer unfair dismissal or other detriment*

#### **25 Right of employee not to be unfairly dismissed: Great Britain**

- (1) After section 104 of the Employment Rights Act 1996 (assertion of statutory right) there shall be inserted—

#### **“104A The national minimum wage**

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee’s to which this section applies; or
  - (b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee’s to which this section applies; or
  - (c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.
- (2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—
- (a) whether or not the employee has the right, or
  - (b) whether or not the right has been infringed,
- but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.
- (3) The following are the rights to which this section applies—

- (a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an employment tribunal; and
  - (b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).”
- (2) In section 105 of that Act (redundancy as unfair dismissal) in subsection (1)(c) (which refers to any of subsections (2) to (7) of that section applying) for “(7)” there shall be substituted “(7A)” and after subsection (7) there shall be inserted—
  - “(7A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104A (read with subsection (2) of that section).”
- (3) In section 108 of that Act (exclusion of right: qualifying period of employment) in subsection (3) (cases where no qualifying period is required) the word “or” at the end of paragraph (g) shall be omitted and after that paragraph there shall be inserted—
  - “(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, or”.
- (4) In section 109 of that Act (exclusion of right: upper age limit) in subsection (2) (cases where upper age limit does not apply) the word “or” at the end of paragraph (g) shall be omitted and after that paragraph there shall be inserted—
  - “(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, or”.