



Employment Act 2002

2002 CHAPTER 22

PART 3

DISPUTE RESOLUTION ETC.

Employment particulars

35 Particulars of procedures relating to discipline or dismissal

- (1) Section 3 of the Employment Rights Act 1996 (c. 18) (note about disciplinary rules and procedures) is amended as follows.
- (2) In subsection (1) (which requires a statement under section 1 of that Act to include a note specifying the disciplinary rules and procedures applying to an employee), after paragraph (a) there is inserted—
 - “(aa) specifying any procedure applicable to the taking of disciplinary decisions relating to the employee, or to a decision to dismiss the employee, or referring the employee to the provisions of a document specifying such a procedure which is reasonably accessible to the employee.”.
- (3) In that subsection, in paragraph (b)(i) (which requires the note to specify a person for the employee to apply to if he is dissatisfied with a disciplinary decision) after “him” there is inserted “ or any decision to dismiss him ”.
- (4) In subsection (2) (which provides that the note does not need to specify the rules and procedures relating to health and safety at work) after “decisions,” there is inserted “ decisions to dismiss ”.

Commencement Information

II S. 35 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

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36 Removal of exemption for small employers

In section 3 of the Employment Rights Act 1996 (c. 18) (note about disciplinary rules and procedures), subsections (3) and (4) (exemptions for undertakings with less than 20 employees) shall cease to have effect.

Commencement Information

I2 S. 36 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

37 Use of alternative documents to give particulars

In Part 1 of the Employment Rights Act 1996 (employment particulars), after section 7 there is inserted—

“7A Use of alternative documents to give particulars

- (1) Subsections (2) and (3) apply where—
 - (a) an employer gives an employee a document in writing in the form of a contract of employment or letter of engagement,
 - (b) the document contains information which, were the document in the form of a statement under section 1, would meet the employer’s obligation under that section in relation to the matters mentioned in subsections (3) and (4)(a) to (c), (d)(i), (f) and (h) of that section, and
 - (c) the document is given after the beginning of the employment and before the end of the period for giving a statement under that section.
- (2) The employer’s duty under section 1 in relation to any matter shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under that section, would meet the employer’s obligation under that section in relation to that matter.
- (3) The employer’s duty under section 3 shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under section 1 and the information included in the form of a note, would meet the employer’s obligation under section 3.
- (4) For the purposes of this section a document to which subsection (1)(a) applies shall be treated, in relation to information in respect of any of the matters mentioned in section 1(4), as specifying the date on which the document is given to the employee as the date as at which the information applies.
- (5) Where subsection (2) applies in relation to any matter, the date on which the document by virtue of which that subsection applies is given to the employee shall be the material date in relation to that matter for the purposes of section 4(1).
- (6) Where subsection (3) applies, the date on which the document by virtue of which that subsection applies is given to the employee shall be the material date for the purposes of section 4(1) in relation to the matters of which particulars are required to be given under section 3.

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- (7) The reference in section 4(6) to an employer having given a statement under section 1 shall be treated as including his having given a document by virtue of which his duty to give such a statement is treated as met.

7B Giving of alternative documents before start of employment

A document in the form of a contract of employment or letter of engagement given by an employer to an employee before the beginning of the employee's employment with the employer shall, when the employment begins, be treated for the purposes of section 7A as having been given at that time."

Commencement Information

I3 S. 37 in force at 1.10.2004 by S.I. 2004/1717, art. 2(2)

38 Failure to give statement of employment particulars etc.

- (1) This section applies to proceedings before an employment tribunal relating to a claim by [F¹a worker] under any of the jurisdictions listed in Schedule 5.

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

- (a) the employment tribunal finds in favour of the [F²worker], 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 [F²worker] under section 1(1) or 4(1) of the Employment Rights Act 1996 (c. 18) (duty to give a written statement of initial employment particulars or of particulars of change [F³or [F⁴(in the case of a claim by an [F⁵worker]])] under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday)),

the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the [F⁶worker] 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 section applies—

- (a) the employment tribunal makes an award to the [F⁷worker] 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 [F⁷worker] under section 1(1) or 4(1) of the Employment Rights Act 1996 [F⁸or [F⁹(in the case of a claim by an [F¹⁰worker]])] under section 41B or 41C of that Act],

the tribunal must, subject to subsection (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 subsections (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.

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

(6) The amount of a week's pay of an [^{F11}a worker] shall—

- (a) be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and
- (b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).

[^{F12}(6A) The provisions referred to in subsection (6) shall apply for the purposes of that subsection—

- (a) as if a reference to an employee were a reference to a worker; and
- (b) as if a reference to an employee's contract of employment were a reference to a worker's contract of employment or other worker's contract.]

(7) For the purposes of Chapter 2 of Part 14 of the Employment Rights Act 1996 as applied by subsection (6), the calculation date shall be taken to be—

- (a) if the [^{F13}worker] was employed by the employer on the date the proceedings were begun, that date, and
- [^{F14}(b) if he was not, in the case of an employee, the effective date of termination as defined by section 97 of that Act or in the case of all other workers the date on which the termination takes effect.]

(8) The Secretary of State may by order—

- (a) amend Schedule 5 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 5, for this section not to apply to proceedings relating to claims of a description specified in the order;
- (c) make provision for this section 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 section 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.

Textual Amendments

- F1** Words in s. 38(1) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(2)**
- F2** Word in s. 38(2)(a) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(3)(a)**
- F3** Words in s. 38(2)(b) inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), **Sch. 5 para. 12(a)**
- F4** Words in s. 38(2)(b) inserted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(3)(b)**
- F5** Word in s. 38(2)(b) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(3)(a)**

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- F6** Word in s. 38(2) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(3)(c)**
- F7** Word in s. 38(3)(a) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(4)(a)**
- F8** Words in s. 38(3)(b) inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), **Sch. 5 para. 12(b)**
- F9** Words in s. 38(3)(b) inserted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(4)(b)**
- F10** Word in s. 38(3)(b) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(4)(a)**
- F11** Words in s. 38(6) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(5)**
- F12** S. 38(6A) inserted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(6)**
- F13** Word in s. 38(7)(a) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(7)(a)**
- F14** S. 38(7)(b) substituted (6.4.2020) by [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#), regs. 1(2), **17(7)(b)**

Commencement Information

- I4** S. 38 in force at 1.10.2004 by [S.I. 2004/1717](#), **art. 2(2)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7(3)(e) and word inserted by [2023 c. 20 Sch. para. 36\(4\)\(c\)](#)
- s. 15(2)(bb) word omitted by [2023 c. 20 Sch. para. 43\(a\)](#)
- s. 15(2)(bc) inserted by [2023 c. 20 Sch. para. 43\(b\)](#)