



Enterprise and Regulatory Reform Act 2013

2013 CHAPTER 24

PART 2

EMPLOYMENT

Financial penalties

16 Power of employment tribunal to impose financial penalty on employers etc

(1) After section 12 of the Employment Tribunals Act 1996 insert—

“Financial penalties

12A Financial penalties

- (1) Where an employment tribunal determining a claim involving an employer and a worker—
 - (a) concludes that the employer has breached any of the worker’s rights to which the claim relates, and
 - (b) is of the opinion that the breach has one or more aggravating features, the tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim).
- (2) The tribunal shall have regard to an employer’s ability to pay—
 - (a) in deciding whether to order the employer to pay a penalty under this section;
 - (b) (subject to subsections (3) to (7)) in deciding the amount of a penalty.
- (3) The amount of a penalty under this section shall be—

Status: This is the original version (as it was originally enacted).

- (a) at least £100;
- (b) no more than £5,000.

This subsection does not apply where subsection (5) or (7) applies.

- (4) Subsection (5) applies where an employment tribunal—
 - (a) makes a financial award against an employer on a claim, and
 - (b) also orders the employer to pay a penalty under this section in respect of the claim.
- (5) In such a case, the amount of the penalty under this section shall be 50% of the amount of the award, except that—
 - (a) if the amount of the financial award is less than £200, the amount of the penalty shall be £100;
 - (b) if the amount of the financial award is more than £10,000, the amount of the penalty shall be £5,000.
- (6) Subsection (7) applies, instead of subsection (5), where an employment tribunal—
 - (a) considers together two or more claims involving different workers but the same employer, and
 - (b) orders the employer to pay a penalty under this section in respect of any of those claims.
- (7) In such a case—
 - (a) the amount of the penalties in total shall be at least £100;
 - (b) the amount of a penalty in respect of a particular claim shall be—
 - (i) no more than £5,000, and
 - (ii) where the tribunal makes a financial award against the employer on the claim, no more than 50% of the amount of the award.

But where the tribunal makes a financial award on any of the claims and the amount awarded is less than £200 in total, the amount of the penalties in total shall be £100 (and paragraphs (a) and (b) shall not apply).

- (8) Two or more claims in respect of the same act and the same worker shall be treated as a single claim for the purposes of this section.
- (9) Subsection (5) or (7) does not require or permit an order under subsection (1) (or a failure to make such an order) to be reviewed where the tribunal subsequently awards compensation under—
 - (a) section 140(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (failure to comply with tribunal's recommendation),
 - (b) section 117 of the Employment Rights Act 1996 (failure to reinstate etc.),
 - (c) section 124(7) of the Equality Act 2010 (failure to comply with tribunal's recommendation), or
 - (d) any other provision empowering the tribunal to award compensation, or further compensation, for a failure to comply (or to comply fully) with an order or recommendation of the tribunal.

- (10) An employer’s liability to pay a penalty under this section is discharged if 50% of the amount of the penalty is paid no later than 21 days after the day on which notice of the decision to impose the penalty is sent to the employer.
- (11) In this section—
- “claim” —
- (a) means anything that is referred to in the relevant legislation as a claim, a complaint or a reference, other than a reference made by virtue of section 122(2) or 128(2) of the Equality Act 2010 (reference by court of question about a non-discrimination or equality rule etc), and
- (b) also includes an application, under regulations made under section 45 of the Employment Act 2002, for a declaration that a person is a permanent employee;
- “employer” has the same meaning as in Part 4A of the Employment Rights Act 1996, and also—
- (a) in relation to an individual seeking to be employed by a person as a worker, includes that person;
- (b) in relation to a right conferred by section 47A or 63A of the Employment Rights Act 1996 (right to time off for young person for study or training), includes the principal within the meaning of section 63A(3) of that Act;
- (c) in relation to a right conferred by the Agency Workers Regulations 2010 (S.I. 2010/93), includes the hirer within the meaning of those Regulations and (where the worker is not actually employed by the temporary work agency) the temporary work agency within that meaning;
- “financial award” means an award of a sum of money, but does not include anything payable by virtue of section 13;
- “worker” has the same meaning as in Part 4A of the Employment Rights Act 1996, and also includes an individual seeking to be employed by a person as a worker.
- (12) The Secretary of State may by order—
- (a) amend subsection (3), (5) or (7) by substituting a different amount;
- (b) amend subsection (5), (7) or (10) by substituting a different percentage;
- (c) amend this section so as to alter the meaning of “claim”.
- (13) The Secretary of State shall pay sums received under this section into the Consolidated Fund.”
- (2) Schedule 3 (financial penalties: minor and consequential amendments) has effect.