

Subsidiary Legislation made under s. 12(2)(k).

Employment Tribunal (Calculation of Compensation) Regulations 2016

LN.2016/199

Commencement **13.10.2016**

ARRANGEMENT OF REGULATIONS

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1932-16

Employment

2016/199

Employment Tribunal (Calculation of Compensation) Regulations 2016

In exercise of the powers conferred upon him under section 12(2)(k) of the Employment Act, and of all other powers enabling him in that behalf, the Minister hereby makes the following Regulations—

Title, commencement and interpretation.

1.(1) These Regulations may be cited as the Employment Tribunal (Calculation of Compensation) Regulations 2016 and come into force on their date of publication.

(2) For the purposes of these Regulations—

“the appropriate amount” means—

- (a) one and a half weeks’ pay or three times the weekly minimum wage, whichever is the greater, for a year of employment in which the employee was not below the age of forty-one,
- (b) one week’s pay or twice the weekly minimum wage, whichever is the greater, for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and
- (c) half a week’s pay or the weekly minimum wage, whichever is the greater, for a year of employment not within paragraph (a) or (b).

“weekly minimum wage” means the amount prescribed as the minimum weekly remuneration payable under the Conditions of Employment (Standard Minimum Wage) Order 2001 as amended from time to time or under any such Order that prescribes the minimum weekly remuneration payable.

Basic award.

2.(1) The amount of the basic award provided in section 71(a) of the Employment Act, shall be £2,200 or such higher amount as calculated by—

- (a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,
- (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
- (c) allowing the appropriate amount for each of those years of employment.

(2) Where twenty years of employment have been reckoned under subregulation (1), no account shall be taken under that subregulation of any year of employment earlier than those twenty years.

(3) The amount of the basic award shall be two weeks' pay where the Employment Tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee by virtue of section 77C of the Employment Act is not entitled to remuneration under the protective award.

(4) Where the Employment Tribunal finds that the employee has unreasonably refused an offer by the employer which (if accepted) would have the effect of re-engaging or reinstating the employee in his employment in all respects as if he had not been dismissed, the Employment Tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(5) Where the Employment Tribunal considers that any conduct of the employee before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Employment Tribunal shall reduce or further reduce that amount accordingly.

(6) Subregulation (5) apply in a redundancy case and in such a case it applies only to so much of the basic award as is payable under subregulation (1).

(7) Subregulation (5) does not apply in a redundancy case if the reason for selecting the employee for dismissal was one of those specified in sections 62(1)(a) to (d) or 65B(1)(a) or (b) of the Employment Act.

(8) The amount of the basic award shall be reduced or further reduced by the amount of—

- (a) any redundancy payment awarded by the Employment Tribunal in respect of the same dismissal, or
- (b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of the Employment Act or otherwise).

Compensatory awards.

3.(1) Subject to the provisions of this Regulation, the amount of the compensatory award shall be such amount as the Employment Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in subregulation (1) shall be taken to include–

- (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
- (b) subject to subregulation (3), loss of any benefit which the complainant might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subregulation (1) shall be taken to include in respect of–

- (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy, or
- (b) any expectation of such a payment,

only the amount (if any) by which that payment would have exceeded the amount of a basic award (apart from any reduction under regulation 2(4), (5) or (7)) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subregulation (1) the Employment Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Gibraltar.

(5) In determining, for the purposes of subregulation (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which–

- (a) by calling, organizing, procuring or financing a strike or other industrial action, or
- (b) by threatening to do so,

was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.

(6) Where the Employment Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (the “Payment”) exceeds the amount of the basic award which would be payable but for subregulation (8) (“Initial Basic Award Amount”), the

difference between the Payment and the Initial Basic Award Amount shall be deducted from the compensatory award.

(8) The amount of a compensatory award to a person calculated for the purposes of section 72 of the Employment Act, shall not exceed the lesser of–

- (a) the amount which, in the case of the person who has presented a complaint under section 70 of the Employment Act, represents 104 weeks' pay; or
- (b) the amount calculated as follows– $104 \times (2 \times \text{the weekly minimum wage})$, whichever is the less.

(9) Subregulation (8) shall not apply to a compensatory award made to a person in a case where he is regarded as unfairly dismissed by virtue of section 65(4), 65B or 65D of the Employment Act.

(10) The limit imposed by this regulation applies to the amount which the Employment Tribunal would, apart from this regulation, award in respect of the subject matter of the complaint after taking into account–

- (a) any payment made by the respondent to the complainant in respect of that matter, and
- (b) any reduction in the amount of the award required by any enactment or rule of law.

Repeal.

4. The Industrial Tribunal (Calculation of Compensation) Regulations 1992 are repealed.

Savings and transitional provisions.

5. Notwithstanding the repeal of the Industrial Tribunal (Calculation of Compensation) Regulations 1992 (the repealed Regulations) by regulation 4, any calculation made under the repealed Regulations prior to the date of commencement of these Regulations, for a complaint which on the date of the commencement of these Regulations has not been determined, shall be determined in accordance with the provisions of the repealed Regulations.