



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART V

#### PROTECTION FROM SUFFERING DETRIMENT IN EMPLOYMENT

##### *Enforcement*

#### 49 Remedies.

- (1) Where an [<sup>F1</sup>employment tribunal] finds a complaint [<sup>F2</sup>under section 48(1), [<sup>F3</sup>(1XA),] (1ZA), (1A) or (1B)] well-founded, the tribunal—
- shall make a declaration to that effect, and
  - may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

- [<sup>F4</sup>(1A) Where an employment tribunal finds a complaint under section 48(1AA) well-founded, the tribunal—
- shall make a declaration to that effect, and
  - may make an award of compensation to be paid by the temporary work agency or (as the case may be) the hirer to the complainant in respect of the act or failure to act to which the complaint relates.]

- (2) Subject to subsections [<sup>F5</sup>(5ZA),] (5A) and (6) the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
- the infringement to which the complaint relates, and
  - any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

- (3) The loss shall be taken to include—
- any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and

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- (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.
- (4) In ascertaining the loss the 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 England and Wales or (as the case may be) Scotland.
- (5) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

[<sup>F6</sup>(5ZA) Where—

- (a) the complaint is made under section 48(1XA),
- (b) the detriment to which the worker is subjected is the termination of his or her contract, and
- (c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 100.]

[<sup>F7</sup>(5A) Where—

- (a) the complaint is made under section 48 (1ZA),
- (b) the detriment to which the worker is subjected is the termination of his worker's contract, and
- (c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 101A. ]

[<sup>F8</sup>(6) Where—

- (a) the complaint is made under section 48(1A),
- (b) the detriment to which the worker is subjected is the termination of his worker's contract, and
- (c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 103A. ]

[<sup>F9</sup>(6A) Where—

- (a) the complaint is made under section 48(1A), and
- (b) it appears to the tribunal that the protected disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.]

[<sup>F10</sup>(7) Where—

- (a) the complaint is made under section 48(1B) by a person who is not an employee, and
- (b) the detriment to which he is subjected is the termination of his contract with the person who is his employer for the purposes of section 25 of the Tax Credits Act 2002,

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any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 10 if the complainant had been an employee and had been dismissed for the reason specified in section 104B.]

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#### Textual Amendments

- F1** Words in s. 49(1) 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**
- F2** Words in s. 49(1) substituted (1.10.2014) by Children and Families Act 2014 (c. 6), ss. 129(3)(a), 139(6); S.I. 2014/1640, art. 4(b)
- F3** Word in s. 49(1) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **5(a)**
- F4** S. 49(1A) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), ss. 129(3)(b), 139(6); S.I. 2014/1640, art. 4(b)
- F5** Word in s. 49(2) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **5(b)**
- F6** S. 49(5ZA) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **5(c)**
- F7** S. 49(5A) inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(3)(b)**
- F8** S. 49(6) inserted (2.7.1999) by 1998 c. 23, s. 4(3); S.I. 1999/1547, **art. 2**
- F9** S. 49(6A) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 18(4), 103(2) (with s. 24(6))
- F10** S. 49(7) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 1(4)**; S.I. 2002/1727, **art. 2**

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

- C1** S. 49 applied (with modifications) (1.11.1998) by 1998 c. 39, s. 24(2)(a)(with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**  
S. 49 restricted (1.11.1998) by 1998 c. 39, s. 14(3)(with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**  
S. 49 applied (with modifications) (15.1.2000) by S.I. 1999/3323, **reg. 32(2)(a)**  
S. 49 extended (with modifications) (5.10.1999) by 1999 c. 10, ss. 7, 20(2), **Sch. 3 para. 2(2)(a)**
- C2** S. 49 applied (with modifications) (prosp.) by Pensions Act 2008 (c. 30), ss. 56(2), 149(1) (with s. 56(3)-(6))
- C3** S. 49 applied (with modifications) (30.6.2012) by Pensions Act 2008 (c. 30), ss. 56(2), 149(1) (with s. 56(3)-(6)); S.I. 2012/1682, art. 2, **Sch. 2**
- C4** S. 49(1)-(5) applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **45(3)**
- C5** S. 49(1)-(5) applied (with modifications) (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs.1(1), **33(2)** (with reg. 3)
- C6** S. 49(1)-(5) applied (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(2)(3), 17, **Sch. para. 8(2)**
- C7** S. 49(1)-(5) applied (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 1(2), **34(3)**
- C8** S. 49(1)-(5) applied (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 51(2)**
- C9** S. 49(1)-(5) applied (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 32(3)** (with reg. 41)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 49(1) words substituted by [2020 c. 7 Sch. 7 para. 11\(a\)](#)
- s. 49(1) words substituted by [2023 c. 46 Sch. para. 7\(2\)](#)
- s. 49(1A) words inserted by [2023 c. 46 Sch. para. 7\(3\)](#)

**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):

- Pt. 8 Ch. 5 inserted by [2023 c. 20 Sch. para. 2](#)
- Pt. 8A Ch. 1 heading inserted by [2023 c. 46 s. 1\(3\)](#)
- Pt. 8A Ch. 2 inserted by [2023 c. 46 s. 1\(4\)](#)
- Pt. 8A Ch. 3 inserted by [2023 c. 46 s. 2](#)
- Pt. 8A Ch. 4 inserted by [2023 c. 46 s. 3\(2\)](#)
- s. 43K(1)(ca) and word omitted by [2013 c. 24 s. 20\(5\)](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 43K(2)(ba) omitted by [2013 c. 24 s. 20\(6\)](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 47C(2)(cc) inserted by [2023 c. 20 Sch. para. 22](#)
- s. 47H inserted by [2020 c. 7 Sch. 7 para. 9](#)
- s. 47AA inserted by [2008 c. 25 s. 37](#)
- s. 47EA inserted by [2023 c. 46 Sch. para. 4](#)
- s. 47EB inserted by [2023 c. 46 Sch. para. 5](#)
- s. 48(1C) inserted by [2020 c. 7 Sch. 7 para. 10\(a\)](#)
- s. 48(1C) inserted by [2023 c. 46 Sch. para. 6\(2\)](#)
- s. 48(1D) inserted by [2023 c. 46 Sch. para. 6\(3\)](#)
- s. 49(8) inserted by [2020 c. 7 Sch. 7 para. 11\(b\)](#)
- s. 49(8) inserted by [2023 c. 46 Sch. para. 7\(4\)](#)
- s. 49C inserted by [2017 c. 16 s. 32\(4\)](#)
- s. 75I(3)(g) and word inserted by [2023 c. 20 Sch. para. 23\(b\)](#)
- s. 80C(2)(bc) inserted by [2023 c. 20 Sch. para. 24\(2\)](#)
- s. 80C(4)(bc) inserted by [2023 c. 20 Sch. para. 24\(3\)](#)
- s. 80EB(2)(f) and word inserted by [2023 c. 20 Sch. para. 25\(b\)](#)
- s. 99(3)(cc) inserted by [2023 c. 20 Sch. para. 28](#)
- s. 101B inserted by [2008 c. 25 s. 38](#)
- s. 104H inserted by [2020 c. 7 Sch. 7 para. 14](#)
- s. 104CA inserted by [2023 c. 46 Sch. para. 9](#)
- s. 105(4B) inserted by [2008 c. 25 s. 39\(3\)](#)
- s. 105(7BC) inserted by [2020 c. 7 Sch. 7 para. 15](#)
- s. 105(7BAA) inserted by [2023 c. 46 Sch. para. 10](#)
- s. 108(3)(gia) inserted by [2023 c. 46 Sch. para. 11](#)
- s. 108(3)(de) inserted by [2008 c. 25 s. 39\(4\)](#)
- s. 108(3)(gn) inserted by [2020 c. 7 Sch. 7 para. 16](#)
- s. 110(3A) inserted by [2002 c. 22 s. 44](#)
- s. 163(6) inserted by [2022 c. 35 Sch. 5 para. 27](#)
- s. 205A(2)(ba) inserted by [2023 c. 46 Sch. para. 16\(2\)](#)

- s. 205A(8A) inserted by [2023 c. 46 Sch. para. 16\(3\)](#)
- s. 225(7)(8) inserted by [2023 c. 46 Sch. para. 17](#)
- s. 227(1)(zb)(zc) inserted by [2023 c. 46 Sch. para. 18](#)