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DEPARTMENT for
EMPLOYMENT
and LEARNING

EMPLOYMENT RIGHTS BOOKLET SERIES

Dismissal: fair and unfair - a guide for employers



Introduction

Every year many employees leave their jobs - usually by mutual agreement with their employer. Very often the employer is sorry to see them go. At other times it is because the employer has dismissed them. The purpose of the unfair dismissal provisions is to protect employees against the hardship resulting from being dismissed unfairly. The Labour Relations Agency (LRA) [Code of Practice on Disciplinary and Grievance Procedures](#) aims to help employers to set up fair procedures for dealing with the type of problem which may lead to dismissal. It is intended to help both employee and employer and is based on good management practice.

Legislation provides that an employer may dismiss an employee if:

- they have a valid reason for doing so; and
- they have acted reasonably in treating that reason as a sufficient reason for dismissing the employee.

This booklet explains in what circumstances a dismissal may be considered 'fair' or 'unfair' and what kind of procedures an employer should adopt to conform with the legal requirements. It is recognised that the procedure that is appropriate in a large firm may not be appropriate or practicable in the case of a much smaller firm. But there are some basic features that all firms can adopt and which will prevent unnecessary problems. The booklet concentrates on these.

Please note that this booklet gives **general guidance only** and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described.

Further information can be obtained from the LRA - for the addresses of its two offices see [Appendix 2](#).

The contents of this booklet apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout.

Any reference throughout this booklet to JobCentres includes Jobs and Benefits Offices and the One Centre.

Copies of this booklet and others in the series are available free of charge from JobCentres throughout Northern Ireland (see [Appendix 3](#)). They may also be accessed at www.delni.gov.uk/er under 'Publication Download'.

Upon request, consideration may be given to making this booklet available in alternative formats and in other languages, for people who are not proficient in English.

The Employment Rights series of booklets is updated on a regular basis. As part of this updating process, the Department would welcome any comment from members of the public regarding the content of these booklets.

All comments should be addressed to:

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What is unfair dismissal?

What is dismissal?

It is usually quite evident to both employee and employer when an employee has been dismissed, but it should be borne in mind that a dismissal will also take place:

- when the employee's limited-term contract expires but is not renewed (but see [Those who may not complain of unfair dismissal](#) on page 11). A limited-term contract is a contract for a fixed term or the performance of a specific task, or one which ends when a specified event does or does not occur;
- when an employee has reason to resign because of certain conduct of the employer - known as 'constructive dismissal' (see [Constructive dismissal](#) on page 12).

When is a dismissal fair or unfair?

The law on unfair dismissal does no more than give employees a legal right to be treated in the way in which a fair and reasonable employer would treat them anyway. For an employer to dismiss an employee fairly, he must both:

- have a valid reason for dismissing the employee; and
- act reasonably in treating that reason as a sufficient reason for dismissing the employee.

The second of these conditions does not apply in cases where the dismissal is unquestionably unfair (see page 2).

What may be a valid reason for dismissal?

Legislation lists five specific types of reason which can justify dismissal. They are as follows:

Conduct

This is by far the most common reason for dismissal and the one which leads to the largest number of complaints of unfair dismissal. For this reason this booklet is chiefly concerned with dismissal for disciplinary reasons. On the specific question of criminal offences (see [Dismissal in connection with criminal offences](#) on page 18).

Capability

The employee is unable satisfactorily to do, or does not have the qualifications, for the job. The question of the employee who becomes unable to do his job because of illness is discussed further on page 19 (see [Dismissal in connection with illness](#)).

Redundancy

In general, an employee can have no grounds for claiming unfair dismissal if the dismissal was because of redundancy, that is because the employer had no work or insufficient work for the employee to do. There are, however, some circumstances in which it is unfair to make an employee redundant (see [Dismissal on grounds of redundancy](#) on page 20).

A statutory requirement

This may prevent the employment continuing, for example where a chauffeur has lost his driving licence and there is no other suitable job available.

Some other substantial reason

Experience has shown that the above reasons are likely to cover almost every case where dismissal is necessary. Situations may arise, however, where an employer has a good reason for dismissing an employee which is not one of those listed above. An example would be the dismissal of an employee who was taken on as a temporary replacement for a worker who was returning after being suspended for medical reasons (provided, of course, that it had been clearly explained to the employee concerned that the job was only temporary). For such a reason as this, described in legislation as 'some other substantial reason', the dismissal may also be fair.

When is dismissal unquestionably unfair?

The dismissal of an employee will be held to be unfair if it is for one of the following reasons:

- because the employee was, or proposed to become, a member of an independent trade union; or had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time; or was not a member of a trade union, or had refused, or proposed to refuse, to become or remain a member of a trade union. Selection for redundancy on these grounds will also be held to be unfair. An employee will also be held to be unfairly dismissed if he is dismissed for refusing to make a payment (e.g. to a union or charity) in lieu of union membership, or for objecting to his employer deducting a sum from his wages or salary to make such a payment. (See also [Interim relief](#) on page 30);
- because the employee was dismissed or selected for redundancy on maternity related grounds (see [Dismissal on the grounds of pregnancy or maternity](#) on page 12);
- because the employee was dismissed or selected for redundancy for taking or seeking to take paternity leave (see [Dismissal related to paternity leave](#) on page 14);
- because the employee was dismissed or selected for redundancy for taking or seeking to take adoption leave (see [Dismissal related to adoption leave](#) on page 14);

- because the employee was dismissed or selected for redundancy for requesting flexible working arrangements (see [Dismissal relating to the right to request flexible working arrangements](#) on page 15);
- because the employee was dismissed or selected for redundancy for having sought, in good faith, to assert a statutory employment protection right (see [Dismissal for asserting a statutory employment right](#) on page 17);
- because the employee was dismissed or selected for redundancy for taking or proposing to take certain specified types of action on health and safety grounds (see [Dismissal for taking action on health and safety grounds](#) on page 16);
- because the employee was dismissed on the transfer of an undertaking or part of an undertaking, and the transfer itself, or a reason connected with it, is the main reason for the dismissal, unless it can be established that the dismissal was for an economic, technical or organisational reason entailing changes in the work force (see [Dismissal on the transfer of an undertaking](#) on page 22);
- because, subject to certain conditions, the employee was a shop worker or a betting worker and was dismissed or selected for redundancy for refusing to work on Sundays; or he was dismissed or selected for redundancy for giving, or proposing to give, an 'opting out' notice to his employer; (see [Dismissal for refusing to do shop work on a Sunday](#) on page 22 and [Dismissal for refusing to do betting work on a Sunday](#) on page 23);
- because the employee was dismissed or selected for redundancy for performing, or proposing to perform, any duties relevant to his role as an employee representative or as a candidate to be a representative of this kind or as a participant in the election of such a representative (see [Dismissal relating to activities as an employee representative](#) page 23);
- because the employee was dismissed or selected for redundancy for performing, or proposing to perform, any duties relevant to his role as an employee occupational pension scheme trustee (see [Dismissal relating to activities as an occupational pension scheme trustee](#) page 23);
- because the employee was dismissed or selected for redundancy for reasons relating to the national minimum wage (see [Dismissal relating to the national minimum wage](#) page 25);
- because the employee was dismissed or selected for redundancy for reasons relating to the Working Time Regulations (Northern Ireland) 1998 (see [Dismissal relating to the Working Time Regulations \(Northern Ireland\) 1998](#) page 26);
- because the employee was dismissed or selected for redundancy for making a protected disclosure within the meaning of the Public Interest

Disclosure (Northern Ireland) Order 1998 (see [Dismissal for making a public interest disclosure](#) page 27);

- because the employee was dismissed or selected for redundancy for reasons relating to the Tax Credits Act 2002 (see [Dismissal relating to the Tax Credits Act 2002](#) page 27);
- because the employee was dismissed or selected for redundancy for taking, or seeking to take, parental leave (see [Dismissal relating to parental leave](#) page 27);
- because the employee was dismissed or selected for redundancy for taking, or seeking to take, time off for dependants (see [Dismissal relating to time off for dependants](#) page 28);
- because the employee was dismissed or selected for redundancy for taking lawfully organised official industrial action lasting eight weeks or less (or more than eight weeks, in certain circumstances) where the action started on or after 24 April 2000 (see [Dismissal during an industrial dispute](#) page 5);
- because the employee was dismissed or selected for redundancy for exercising or seeking to exercise rights relating to trade union recognition procedures (see [Dismissal on the grounds of trade union recognition](#) page 24);
- because the employee was dismissed or selected for redundancy for exercising or seeking to exercise the right to be accompanied at a disciplinary or grievance hearing, or to accompany a fellow worker (see [Dismissal in connection with disciplinary and grievance hearings](#) on page 25);
- because the employee was dismissed or selected for redundancy for performing or proposing to perform any duties relating to an employee's role as a workforce representative or as a candidate to be such a representative for the purposes of the Transnational Information and Consultation of Employees Regulations 1999, or for taking certain actions in connection with these Regulations, or for proposing to take or failing to take such actions (see [Dismissal relating to the Transnational Information and Consultation of Employees Regulations 1999](#) on page 23);
- because the employee was dismissed or selected for redundancy on grounds related to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 (see [Dismissal relating to the Part-time Workers \(Prevention of Less Favourable Treatment\) Regulations \(Northern Ireland\) 2000](#) on page 28);

- because the employee was dismissed or selected for redundancy on grounds relating to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 (see [Dismissal relating to the Fixed-term Employees \(Prevention of Less Favourable Treatment\) Regulations \(Northern Ireland\) 2002](#) on page 29).

Dismissal during an industrial dispute

It is automatically unfair to dismiss workers for taking lawfully organised official industrial action lasting eight weeks or less (where they started taking the action on or after 24 April 2000). It is also unfair to dismiss them where they have taken action for more than eight weeks if the employer has not first taken such procedural steps as are reasonable to resolve the dispute. It will be for the industrial tribunals to determine whether an employer has taken all reasonable steps, and in doing so, they will have regard to the behaviour of both the employer and the union. (See **Industrial action and the law: a guide for employers (ER29)**.)

Otherwise, subject to the exceptions listed below, an industrial tribunal has no jurisdiction to determine a complaint of unfair dismissal from an employee dismissed while participating in official industrial action provided his employer:

- has dismissed all who were taking part in the action at the same establishment as the complainant at the date of his dismissal; and
- has not offered re-engagement to any of them within three months of their date of dismissal without making him a similar offer.

Likewise (again, subject to the exceptions listed below), an industrial tribunal has no jurisdiction to determine a complaint of unfair dismissal from an employee dismissed while participating in unofficial industrial action.

The exceptions are that an industrial tribunal can determine a complaint of unfair dismissal from an employee dismissed while participating in official or unofficial industrial action if the reason or main reason for the dismissal was:

- the taking by the employee of certain specified types of action on health and safety grounds (see [Dismissal for taking action on health and safety grounds](#) on page 16);
- for reasons related to paternity or adoption leave (see [Dismissal related to paternity leave](#) on page 14 and [Dismissal related to adoption leave](#) on page 14);
- on maternity related grounds (see [Dismissal on the grounds of pregnancy or maternity](#) on page 12);
- in respect of the taking by the employee of certain specified types of action as an employee representative or as a candidate to become an employee representative or as a participant in the election of such a representative (see [Dismissal relating to activities as an employee representative](#) on page 23);

- that the employee exercised rights under the Working Time Regulations (Northern Ireland) 1998 (see [Dismissal relating to the Working Time Regulations \(Northern Ireland\) 1998](#) on page 26);
- that the employee exercised rights prescribed in the Maternity and Parental Leave etc Regulations 1999 (see [Dismissal relating to parental leave](#) on page 27);
- that the employee asserted the right to time off for dependants (see [Dismissal relating to time off for dependants](#) on page 28).

An industrial tribunal can also determine a complaint of unfair dismissal from an employee dismissed while participating in unofficial industrial action if the reason or main reason for the dismissal was that the employee made a protected disclosure within the meaning of the Public Interest Disclosure (Northern Ireland) Order 1998 (see [Dismissal for making a public interest disclosure](#) on page 27).

What is ‘reasonable procedure’ and ‘sufficient reason for dismissing an employee’? ¹

An employer must act reasonably in all the circumstances in treating the reason for dismissing the employee as a ‘sufficient reason’ for the dismissal. Not only must the employer have a valid reason for the dismissal, but also he must have acted reasonably in all the circumstances in dismissing the employee for that particular reason. The question whether the employer acted reasonably not only involves consideration of the way in which the dismissal was carried out, but also whether he acted reasonably in relation to the situation leading up to the decision to dismiss the employee. For example, if the employee was dismissed for misconduct or lack of capability, it is necessary to consider whether he was warned and given a chance to improve or, if redundancy was the reason for dismissal, whether the employee was considered for alternative work within the same organisation. These matters are dealt with more fully below.

What is the LRA Code of Practice on disciplinary and grievance procedures?

The LRA Code of Practice gives employers practical advice on how to deal with disciplinary matters in a way which is fair and can be seen to be fair by their employees. Tribunals take into account any provision of the Code which appears to them to be relevant to any question before them. They do not expect all employers to follow the Code to the letter regardless of their particular circumstances, but to decide to what extent it is practicable and necessary for an employer to do so given the size and administrative resources of his firm.

Legislation specifically requires tribunals to take these factors into account when determining whether the employer acted reasonably. For instance, a small firm where there is only one level of management may not be able to provide a right of appeal to another manager. Nor would an employer employing only a small number of people necessarily be expected to have a formal written disciplinary procedure, and keep formal records of every offence and

disciplinary action taken - although it might be prudent to do so, since if no records are kept, the tribunal will have to decide between the employer and the employee if their evidence conflicts.

As the Code states in relation to smaller establishments '...it may not be practicable to adopt all the detailed provisions but most of the features listed could be adapted and incorporated into a simpler procedure'. **Above all, the tribunals are concerned with the question of whether the employer acted reasonably in the circumstances** - not whether all the provisions of the LRA Code were followed, or whether the employer acted as they would have done.

What are the essential elements of a good procedure?

Reasonable procedure is what an employer should always do in the interests of justice and good employee relations. Its essential elements are as follows:

The new recruit

When the employee is first engaged he should be given clear instructions as to the scope of his duties². So far as matters of conduct are concerned, there should be clear rules which are reasonable, having regard to the nature of the undertaking. The employee should know what actions are considered so serious that a first offence means summary dismissal, that is dismissal without notice or pay in lieu of notice³.

Unsatisfactory conduct of employee

Except where the default is so serious as to justify summary dismissal, for example where an employee has been caught 'red-handed' in an act of gross misconduct, an employee should always be told in what way he is at fault and warned that an improvement must be made. It is not essential to put warnings in writing, but it is desirable to do so. A written note will ensure that the employer's intentions are absolutely clear and may also be useful in evidence should the case come to a tribunal. The employee should be given a reasonable time to improve after being warned.

The employer should always give the employee a proper opportunity to put his side of the case even in a case of gross misconduct, and should take account of what the employee says **before making any decision** about dismissal. The employer should not jump to hasty conclusions and assume, for example, that an employee who has been warned about possible dismissal because of bad time-keeping, does not have a genuine reason for being late on a subsequent occasion on which the employer is considering dismissing the employee.

Workers are entitled to be accompanied by a fellow worker or a trade union official of their choice at certain disciplinary and grievance hearings provided they make a reasonable request to be accompanied.

Dismissing the employee

The employer should always explain clearly to the employee the reason for the dismissal.

Where possible, the employee should be given the opportunity to appeal to another manager from the one who made the decision. This may not be possible in the very small firm, but even then there should be opportunity for the employee to ask the employer to reconsider the decision if he feels that there has been some unfairness.

Industrial tribunals can make a supplementary award if employers have not allowed employees to use an appeal procedure provided by them (see [Compensatory award](#) on page 32).

Written statement of reasons for dismissal

Legislation also provides that employees who have been dismissed may request from their employer a written statement of the reasons for their dismissal, which their employer must provide **within 14 days**. Employees who are dissatisfied because they have not received a statement or believe the statement to be inaccurate may refer the matter to an industrial tribunal. All employees with one year's continuous service with their employer qualify for this right. An employee who is dismissed at any time and for any reason while she is pregnant or during a statutory maternity leave period will be entitled to receive a written statement of the reason for her dismissal, without having to request it and regardless of her length of service.

There is of course nothing to prevent an employer from providing written statements voluntarily for employees who do not qualify for this right under employment legislation.

Who may make a complaint of unfair dismissal?

In general any employee below retiring age⁴ has the right to make a complaint of unfair dismissal to an industrial tribunal provided that he has worked for that employer for at least one year, including any statutory period of notice (see [Effective date of termination](#) on page 30).

In the following types of case, however, employees may make a complaint regardless of their length of service or age:

- dismissal for trade union membership or activities or for non-membership of a trade union;
- dismissal on maternity related grounds (see [Dismissal on the grounds of pregnancy or maternity](#) on page 12);
- dismissal related to paternity leave (see [Dismissal related to paternity leave](#) on page 14);

- dismissal related to adoption leave (see [dismissal related to adoption leave](#) on page 14);
- dismissal for having sought, in good faith, to exercise a statutory employment protection right (see [Dismissal for asserting a statutory employment right](#) on page 17);
- dismissal for taking, or proposing to take certain specified types of action on health and safety grounds (see [Dismissal for taking action on health and safety grounds](#) on page 16);
- dismissal of a shop worker or betting worker, subject to certain conditions, for refusing, or proposing to refuse to work on Sundays; or for giving, or proposing to give, an 'opting-out' notice to his employer;
- dismissal for performing, or proposing to perform, any duties relevant to an employee's role as an employee occupational pension scheme trustee (see [Dismissal relating to activities as an occupational pension scheme trustee](#) on page 23);
- dismissal for qualifying for the national minimum wage or seeking to enforce a right to it (or because the employer was prosecuted as the result of enforcement action taken by the employee) (see [Dismissal relating to the national minimum wage](#) on page 25);
- dismissal for exercising rights under the Working Time Regulations (Northern Ireland) 1998 (see [Dismissal relating to the Working Time Regulations \(Northern Ireland\) 1998](#) on page 26);
- dismissal for making a protected disclosure within the meaning of the Public Interest Disclosure (Northern Ireland) Order 1998 (see [Dismissal for making a public interest disclosure](#) on page 27);
- dismissal for performing, or proposing to perform, any duties relating to an employee's role as an employee representative or as a candidate to be a representative of this kind or for participating in the election of such a representative (see [Dismissal relating to activities as an employee representative](#) on page 23);
- dismissal for taking or seeking to take parental leave (see [Dismissal relating to parental leave](#) on page 27);
- dismissal for taking or seeking to take time off for dependants (see [Dismissal relating to time off for dependants](#) on page 28);
- dismissal for reasons relating to the Tax Credits Act 2002 (see [Dismissal relating to the Tax Credits Act 2002](#) on page 27);
- dismissal on grounds related to trade union recognition procedures (see [Dismissal on the grounds of trade union recognition](#) on page 24);

- dismissal for exercising or seeking to exercise the right to be accompanied at a disciplinary or grievance hearing, or to accompany a fellow worker (see [Dismissal in connection with disciplinary and grievance hearings](#) on page 25);
- dismissal for reasons relating to the Transnational Information and Consultation of Employees Regulations 1999 (see [Dismissal relating to the Transnational Information and Consultation of Employees Regulations 1999](#) on page 23);
- dismissal on grounds related to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 (see [Dismissal relating to the Part-time Workers \(Prevention of Less Favourable Treatment\) Regulations \(Northern Ireland\) 2000](#) on page 28);
- dismissal for taking lawfully organised official industrial action lasting eight weeks or less (or more than eight weeks, in certain circumstances), where the action started on or after 24 April 2000;
- dismissal on grounds related to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 (see [Dismissal relating to the Fixed-term Employees \(Prevention of Less Favourable Treatment\) Regulations \(Northern Ireland\) 2002](#) on page 29).

In the case of dismissal on certain medical grounds there is a qualifying period of one month's continuous employment before a complaint can be made. (For further details of these categories and details about those who may not claim unfair dismissal see [Those who may not complain of unfair dismissal](#) on page 11).

If there is any doubt or disagreement about whether an employee is covered by the legislation the tribunal will decide.

What happens when an employee makes a complaint of unfair dismissal?

Many disputes about the fairness or unfairness of dismissals are settled through agreed voluntary procedures without the employee making a complaint to an industrial tribunal. The following deals with what happens when an employee makes a complaint to an industrial tribunal.

What is the procedure for making a complaint?

An application to an industrial tribunal should be in writing and should state:

- the name and address of the applicant;
- the name(s) and address(es) of the respondent(s) (i.e. the party whose

action or decision is disputed); and

- **sufficient detail of the complaint(s) which you are making to inform the person or body complained against of the case which has to be met**

If you name more than one respondent please say why you are doing so.

An application form IT1 (NI) may be obtained from any JobCentre or downloaded from the website of the Office of the Industrial Tribunals and the Fair Employment Tribunal, www.industrialfairemploymenttribunalsni.gov.uk/

You are asked to give certain other information, which will be helpful to the industrial tribunal, so complete the form as fully as possible and keep a copy of what you write. You should read the notes on the form before completing it and remember to sign the application.

Further information

Those who may not complain of unfair dismissal

The following people cannot normally complain of unfair dismissal (but see **'Note'** on page 12):

- those who are not employees (for example an independent contractor or freelance agent). However, in some cases specified workers who are not employees can complain that they have suffered a detriment by the termination of their contracts, compensation being awarded on the same basis as for unfair dismissal. See also:
 - **Dismissal relating to the national minimum wage** on page 25;
 - **Dismissal relating to the Working Time Regulations (Northern Ireland) 1998** on page 26;
 - **Dismissal for making a public interest disclosure** on page 27;
 - **Dismissal in connection with disciplinary and grievance hearings** on page 25; and
 - **Dismissal relating to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000** on page 28;
- employees who have not completed **one year's** continuous employment with their employer before their effective date of termination (see **Effective date of termination** on page 30). This qualification is reduced to one month where an employee is dismissed on medical grounds in consequence of certain health and safety requirements or recommendations (see the booklet **Suspension from work on medical or maternity grounds (ER10)**);

- employees who, before their effective date of termination (see **Effective date of termination** on page 30), had reached the normal retiring age for their employment or, if there is no normal retiring age, had reached age 65⁴;
- certain employees with fixed term contracts for one year or more where the dismissal consists only of the expiry of the contract without renewal and the employee has previously agreed in writing to forgo his right of complaint in such circumstances. Any such agreements must have been made **before 1 December 1999** and are valid only for the term of the contract to which they originally related, or any extension of the term agreed before 1 December 1999. Since that date, employees working under fixed term contracts cannot agree to waive their right to complain of unfair dismissal;
- members of the police service and armed forces;
- masters and crew members engaged in share fishing who are paid solely by a share in the profits or gross earnings of a fishing vessel;
- employees who have reached a settlement with their employer, either with LRA conciliation or on the basis of a 'compromise agreement' reached with the benefit of independent advice, in which they have waived their right to make a complaint in relation to the dispute to which the settlement relates;
- employees covered by a dismissal procedures agreement which has been exempted from the unfair dismissal provisions by an Order made by the Department for Employment and Learning.

Note: In certain types of case (see **Who may make a complaint of unfair dismissal?** on page 8), an employee may complain to an industrial tribunal regardless of length of service or age.

Constructive dismissal

A tribunal may rule that an employee who resigns because of conduct by his employer has been 'constructively dismissed'. For a tribunal to rule in this way the employer's action has to be such that it can be regarded as a substantial breach of the employment contract indicating that he intends no longer to be bound by the contract: an example of this might be where the employer arbitrarily demotes an employee to a lower rank or poorer paid position. The contract is what has been agreed between the parties, whether orally or in writing or a combination of both, together with what must necessarily be implied to make the contract workable.

Dismissal on the grounds of pregnancy or maternity

A woman will automatically be regarded as unfairly dismissed if her employer dismisses her, or selects her for redundancy, because she is pregnant or has given birth to a child, or for a reason connected with her pregnancy or childbirth.

All employees whose expected week of childbirth was on or after 6 April 2003 are entitled to 26 weeks' maternity leave provided that they satisfy certain notification requirements. If such employees have completed 26 weeks' continuous employment by the beginning of the 14th week before the expected week of childbirth they are entitled to an additional period of maternity leave. Additional maternity leave lasts for up to a further 26 weeks starting from the end of ordinary maternity leave.

A detailed description of the maternity provisions may be found in the booklet: **Maternity rights: a guide for employers and employees (ER16)**.

A woman may make a complaint of automatic unfair dismissal, regardless of her length of service, in any of the following circumstances:

- the dismissal is for a reason connected with her pregnancy;
- the dismissal is on the grounds that she has given birth and takes place during her ordinary or additional maternity leave;
- the dismissal is on the grounds that she took, sought to take or availed herself of the benefits of ordinary maternity leave, or that she took or sought to take additional maternity leave;
- the dismissal is on grounds of a health and safety provision which could give rise to a maternity suspension;
- she is unfairly selected for redundancy for any of the above reasons;
- the dismissal is on grounds of redundancy, it takes place during her ordinary or additional maternity leave, and the employer has not first complied with the requirement to offer her any suitable alternative vacancy which is available.

In addition, from 6th April 2003, it is unlawful to dismiss an employee who doesn't return from her maternity leave on time because:

- her employer has not properly notified her of the date it ends and she reasonably believes it has not ended; or
- her employer has given her less than 28 days' notice of the date it ends and is not reasonably practicable for her return on that date.

An employee who is not given her job back, or offered a suitable alternative job, at the end of additional maternity leave will not be regarded as unfairly dismissed if the employer can show an industrial tribunal that:

- it was not reasonably practicable (on grounds other than redundancy) for her to be taken back in her original job or a suitable alternative job and an associated employer had offered her suitable alternative employment which she had either accepted or unreasonably refused; or

- it was not reasonably practicable for her to be taken back in her original job or to be offered a suitable alternative job and the employer (together with any associated employers) employed only five or fewer people (including the employee herself) at the point when her additional maternity leave period ended.

If a woman is made redundant during her ordinary or additional maternity leave period, she may be entitled to a redundancy payment. However, if she was offered a suitable vacancy and unreasonably refused it, she may lose her right to a redundancy payment.

In addition, employees have the right not to be subjected to detrimental treatment on the grounds of pregnancy, childbirth or maternity.

Dismissal related to paternity leave

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, paternity leave. Employees who believe they have been treated unfairly for these reasons can complain to an industrial tribunal regardless of their length of service. Employees who are not given their job back at the end of paternity leave are entitled to make a complaint of unfair dismissal, regardless of their length of service.

It is unlawful for an employer to dismiss an employee because he:

- took paternity leave; or
- sought to take paternity leave.

This protection against dismissal also applies if an employee is selected for redundancy on these grounds. Further information about paternity leave can be found in the booklet **Rights to paternity leave and pay (ER34)**.

Dismissal related to adoption leave

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, adoption leave. Employees who believe they have been treated unfairly for these reasons can complain to an industrial tribunal regardless of their length of service. Employees who are not given their job back at the end of ordinary adoption leave are entitled to make a complaint of unfair dismissal, regardless of their length of service.

It is unlawful for an employer to dismiss an employee because:

- they took or sought to take adoption leave; or
- their employer believes that they are likely to take adoption leave; or
- the employee failed to return after a period of additional adoption leave; and

- their employer failed to give them appropriate notice of their return date and they reasonably believed that the period had not ended; or
- their employer gave them less than 28 days' notice of the date on which their adoption leave would end, and it was not reasonably practicable for them to return on that date.

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.

If a redundancy situation arises during an employee's ordinary or additional adoption leave which makes it impractical for their employer to continue to employ them under their original contract, the employee is entitled to be offered a suitable alternative vacancy where there is one. The offer should be made before the original contract ends and the new contract must take effect immediately when the original contract does end.

If the employer fails to offer a suitable alternative vacancy and there is one, the redundancy will be regarded as unfair dismissal. If the employee unreasonably turns down a suitable alternative vacancy, they may give up their right to a redundancy payment.

An employee may make a complaint about redundancy during adoption leave to an industrial tribunal.

Further information about adoption leave can be found in the booklet **Adoptive parents: a guide for employers and employees (ER35)**.

Dismissal relating to the right to request flexible working arrangements

Employees are protected from suffering a detriment or dismissal for making an application under this right. Employees who believe they have suffered detriment can complain to an industrial tribunal regardless of their length of service. In most cases, employees will be able to make a complaint to an industrial tribunal if they are dismissed during the procedure of making an application.

It is unlawful for an employer to dismiss an employee who has one year's continuous service if the reason or the main reason for the dismissal is that:

- they made an application to work flexibly under the right;
- their application to work flexibly has been granted; and
- they have made or have stated their intention to make a complaint to an industrial tribunal in respect of their application to work flexibly.

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.

In addition, it is unlawful for an employer to dismiss or select for redundancy an employee with less than one year's continuous service if the reason is that:

- they made or stated their intention to make a complaint to an industrial tribunal in respect of their application to work flexibly.

For further information see the booklets **Flexible working: a guide for employers and employees (ER36)**.

Dismissal for taking action on health and safety grounds

Employees will be unfairly dismissed if their employer dismisses them (or selects them for redundancy when others in similar circumstances are not selected) because they:

- carry out or propose to carry out any activities which they are designated by their employer to carry out in connection with preventing or reducing risks to health and safety at work; or
- perform or propose to perform any functions they have as official or employer acknowledged health and safety representatives or committee members; or
- bring to their employer's attention, by reasonable means and in the absence of a representative or committee with whom it would be reasonably practicable for them to raise the matter, a concern about circumstances at work which they reasonably believe are harmful to health or safety; or
- in the event of danger which they reasonably believe to be serious and imminent and which they could not reasonably be expected to avert, leave or propose to leave the workplace or any dangerous part of it, or (while the danger persists) refuse to return; or
- in circumstances of danger which they reasonably believe to be serious and imminent, take or propose to take appropriate steps to protect themselves and other persons from the danger.

It is also unlawful for an employer to subject an employee to any other detrimental treatment on one of these grounds.

Whether or not the steps which an employee takes to protect himself or others from danger are 'appropriate' will be judged by reference to all the circumstances including, in particular, the employee's knowledge and the facilities and advice available at the time.

It will not be unfair for an employer to dismiss an employee (or subject him to any other detriment) if it was, or would have been, so negligent for the employee to take the steps he took, or proposed to take, that a reasonable employer could have reacted in that way.

There is no qualifying period of service, or age limit, for employees who wish to complain that they have been dismissed for one of the reasons described above.

Dismissal for asserting a statutory employment right

Employees will be unfairly dismissed if their employer dismisses them (or selects them for redundancy when others in similar circumstances are not selected) because they have sought to assert one of their statutory employment protection rights either by bringing proceedings against the employer to enforce the right or by alleging in some other way that the employer has infringed the right.

To benefit from this protection, employees do not necessarily have to have specified the right they sought to assert, so long as they made it reasonably clear to the employer what that right was.

Provided that they have acted in good faith, employees are protected regardless of whether or not they did in fact qualify for the right they sought to assert and regardless of whether or not that right had in fact been infringed. The rights covered by the protection are those relating to:

- written statement of employment particulars;
- itemised pay statement;
- guarantee pay;
- remuneration during suspension on medical grounds;
- time off for public duties;
- time off to look for work or make arrangements for training prior to redundancy;
- time off for antenatal care;
- protection against unlawful deductions from pay;
- protection against unlawful receipt of payments by employer;
- protection against detriment in health and safety cases;
- minimum period of notice;
- deduction of unauthorised or excessive union subscriptions;
- requiring the employer to stop payment of a contribution to a union's political fund;
- detriment by any act, or any failure to act, on trade union grounds;
- time off for trade union duties and activities or training;
- protection against detriment in cases relating to Sunday shop or betting work;

- time off for employee pension scheme trustee duties or training;
- time off for employee representative duties or candidacy;
- working time, rest periods, breaks and annual leave;
- making a public interest disclosure;
- time off for study or training;
- pregnancy, childbirth and maternity;
- paternity and adoption leave;
- parental leave;
- time off for dependants;
- the right to request flexible working arrangements.

Similar protection is provided for where action is taken to enforce an employee's right to the national minimum wage (see [Dismissal relating to the national minimum wage](#) on page 25), or working tax credit (see [Dismissal relating to the Tax Credits Act 2002](#) on page 27) and where an employee takes certain actions under the Transnational Information and Consultation of Employees Regulations 1999 (see [Dismissal relating to the Transnational Information and Consultation of Employees Regulations 1999](#) on page 23).

There is no qualifying period of service or age limit for employees who wish to complain that they have been dismissed for one of the reasons described above.

Dismissal in connection with criminal offences

Inside employment

As explained before (see [What is reasonable procedure and sufficient reason for dismissing an employee?](#) on page 6), for a dismissal to be fair the employer must not only have a valid reason for the dismissal, but must also act reasonably. In a case in which the employee is suspected of a criminal offence, the test is whether the employer genuinely believed on reasonable grounds that the applicant was guilty of the offence in question and not, as in a criminal court, whether it is established beyond all reasonable doubt that the employee is guilty of the particular matter with which charged. Belief on reasonable grounds in this context will normally involve proper inquiries into the matter on the part of the employer. If the employer conducts such inquiries and gives the employee an opportunity to explain what has happened and then has reasonable grounds for coming to the conclusion that the employee can no longer be retained, the tribunal will usually find that the employer acted reasonably even if the employee is subsequently acquitted by a criminal court of the offence in question. On the other hand, if the employer dismisses the employee without

making proper inquiries or giving the employee an opportunity to explain, the tribunal may well find that the employer acted unreasonably and that the dismissal was unfair.

Outside employment

The question of criminal offences outside employment is dealt with by the LRA [Code of Practice on Disciplinary and Grievance Procedures](#) (see [Appendix 2](#) for the address of the LRA's two offices).

Dismissal in connection with illness

The inability of an employee to do a job, for whatever reason, is a valid reason for dismissal. However, the case of the employee who becomes physically or mentally unable to do his job because of illness, or is persistently absent from work because of illness, clearly demands special consideration. Tribunals recognise that - especially in the smaller firm - it will often not be possible for the organisation to 'carry' the ill employee, and they understand that a time comes when the employer can no longer be expected to keep open the post of an employee who is off sick.

As with the dismissals for other reasons, however, they expect the employer to have discussed the position with the employee concerned and to be absolutely sure of the facts about the employee's state of health and whether he is incapable of doing his job, or likely to be persistently absent in the future. This may involve taking medical advice about the employee's condition by talking, with the employee's permission, to his doctor. If there is less demanding work available which the sick employee would be capable of doing the tribunal will normally expect the employer to offer it to the employee.

Employers should also note that the Disability Discrimination Act 1995 makes it unlawful for employers with 15 or more employees to discriminate against current or prospective employees with disabilities. Employers will wish to note that some people with illnesses would be covered by the definition of disability which is 'a physical or mental impairment which has a substantial and long-term adverse effect on (a person's) ability to carry out normal day-to-day activities'. Under the Act, an employer dismissing a disabled person, or giving them compulsory early retirement, for a reason relating to the disability, would need to be able to justify this with a substantial and relevant reason. An employer cannot justify such treatment if the reason could be removed or made less than substantial, by a reasonable adjustment. For some employers and employees, reasonable adjustments might include part-time working, some additional sick leave, redeployment to other duties, or the transfer of minor duties to another employee.

Free material on all the Act's provisions, including the booklet **The Disability Discrimination Act 1995 - What Employers Need to Know (DL170)**, can be obtained by calling the Disability Rights Commission Helpline on 08457 622 633 or textphone 0845 762 2644.

The Government has also published a **Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability**, which is available from The Stationery Office (£9.95 ISBN 0-11-270954-0).

Dismissal on grounds of redundancy

Redundancy in itself is a valid reason for dismissal. But an employee dismissed for this reason may nevertheless be found to have been unfairly dismissed. This will arise where the employee was unfairly selected for redundancy:

- because the employee was chosen for redundancy by reason of his trade union membership or activities, or non-membership of a union; or
- because the employee was chosen for redundancy for taking action on health and safety grounds (see [Dismissal for taking action on health and safety grounds](#) on page 16) or for asserting a statutory employment right (see [Dismissal for asserting a statutory employment right](#) on page 17); or
- because the employer was chosen for redundancy on maternity-related grounds (see [Dismissal on the grounds of pregnancy or maternity](#) on page 12); or
- because the employee was chosen for redundancy for taking or seeking to take paternity leave (see [Dismissal related to paternity leave](#) on page 14); or
- because the employee was chosen for redundancy for taking or seeking to take adoption leave (see [Dismissal related to adoption leave](#) on page 14); or
- because the employee was chosen for redundancy for requesting flexible working arrangements (see [Dismissal relating to the right to request flexible working arrangements](#) on page 15); or
- because the employee was chosen for redundancy by reason of his refusal or proposal to refuse to do shop work or betting shop work on Sundays; or
- because the employee was chosen for redundancy for performing, or proposing to perform, any duties relevant to his role as an employee occupational pension scheme trustee (see [Dismissal relating to activities as an occupational pension scheme trustee](#) on page 23); or
- because the employee was chosen for redundancy for performing, or proposing to perform, any duties relevant to his role as an employee representative or as a candidate to be a representative of this kind (see [Dismissal relating to activities as an employee representative](#) on page 23); or

- because the employee was chosen for redundancy for reasons relating to the national minimum wage (see [Dismissal relating to the national minimum wage](#) on page 25); or
- because the employee was chosen for redundancy for reasons relating to the Working Time Regulations (Northern Ireland) 1998 (see [Dismissal relating to the Working Time Regulations \(Northern Ireland\) 1998](#) on page 26); or
- because the employee was chosen for redundancy for making a protected disclosure within the meaning of the Public Interest Disclosure (Northern Ireland) Order 1998 (see [Dismissal for making a public interest disclosure](#) on page 27); or
- because the employee was chosen for redundancy for taking or seeking to take parental leave, time off for dependants, ordinary maternity leave or additional maternity leave (see [Dismissal on the grounds of pregnancy or maternity](#) on page 12 or [Dismissal relating to parental leave](#) on page 27 or [Dismissal relating to time off for dependants](#) on page 28); or
- because the employee was chosen for redundancy for taking lawfully organised official industrial action lasting eight weeks or less (or more than eight weeks, in certain circumstances), where the action started on or after 24 April 2000 (see [Dismissal during an industrial dispute](#) on page 5); or
- because the employee was chosen for redundancy for exercising or seeking to exercise rights relating to trade union recognition procedures (see [Dismissal on the grounds of trade union recognition](#) on page 24); or
- because the employee was chosen for redundancy for performing or proposing to perform any duties relating to an employee's role as a workforce representative or as a candidate to be such a representative for the purposes of the Transnational Information and Consultation of Employees Regulations 1999, or for taking certain actions in connection with these Regulations, or for proposing to take or failing to take such actions (see [Dismissal relating to the Transnational Information and Consultation of Employees Regulations 1999](#) on page 23); or
- because the employee was chosen for redundancy for reasons relating to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 (see [Dismissal relating to the Part-time Workers \(Prevention of Less Favourable Treatment\) Regulations \(Northern Ireland\) 2000](#) on page 28); or
- because the employee was chosen for redundancy for reasons relating to the right to be accompanied at disciplinary and grievance hearings (see [Dismissal in connection with disciplinary and grievance hearings](#) on page 25); or

- because the employee was chosen for redundancy for reasons relating to the Tax Credits Act 2002 ([see Dismissal relating to the Tax Credits Act 2002](#) on page 27); or
- because the employee was chosen for redundancy for reasons relating to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 ([see Dismissal in connection with the Fixed-term Employees \(Prevention of Less Favourable Treatment\) Regulations \(Northern Ireland\) 2002](#) on page 29).

In addition, as in respect of any other reason for dismissal, the tribunal needs to be satisfied that the employer acted reasonably in treating the redundancy as a sufficient reason for the dismissal. Accordingly, here also, the tribunal will look to see that the dismissal of that particular employee or the manner of the dismissal was fair; examples of unfair redundancy dismissals could occur where the employer failed to give adequate warning of redundancy or failed to consider alternative employment for the employee. For further information, see the booklet **Redundancy payments (ER3)**.

Dismissal on the transfer of an undertaking

Where an undertaking or a part of an undertaking is transferred from one employer to another (for example, through the sale of the undertaking or part of the undertaking), if either the old or the new employer dismisses an employee solely or mainly because the undertaking or part of the undertaking has been transferred, the dismissal will be considered unfair.

However, if a dismissal associated with the transfer, either by the old or the new employer, is necessary for economic, technical or organisational reasons entailing changes in the workforce, it may be considered fair if a tribunal finds that this is the main reason for dismissal and if it also finds that the employer acted reasonably in treating this reason as sufficient to justify dismissal. For further information, see the booklet **Transfers of undertakings: a guide to the regulations (ER11)**.

Dismissal for refusing to do shop work on a Sunday

The Shops (Sunday Trading) (Northern Ireland) Order 1997 gives shop workers the right not to be dismissed, selected for redundancy or subjected to other detrimental action for refusing or proposing to refuse to work on Sundays. Employees who were in their current employment at the time the Order came into operation on 4 December 1997 generally have these rights automatically. Employees who subsequently enter into a contractual agreement to do shop work on Sundays, either by formally 'opting-in' to Sunday working or by taking up a new job which requires Sunday working, can generally qualify for these rights by 'opting-out' of Sunday working, subject to a three month notice period. For further information see the leaflet **The Shops (Sunday Trading) (Northern Ireland) Order 1997 – new employment rights for shop workers (ST1)** available from the Department for Employment and Learning (see [Appendix 2](#)).

There is no qualifying period of service or age limit for employees who wish to complain that they have been dismissed for these reasons.

Dismissal for refusing to do betting work on a Sunday

Schedule 8A to the Betting, gaming, Lotteries and Amusements (Northern Ireland) Order 1985, inserted by Schedule 1 to the Betting and Gaming (Northern Ireland) Order 2004, gives on-course betting workers (ie those who are employed to work at a horse or dog track in Northern Ireland and whose work involves dealing with betting transactions) the following new employment rights:

- the right not to be dismissed for refusing to work on a Sunday;
- the right not to be selected for redundancy for refusing to work on a Sunday;
- the right not to suffer any other detriment for refusing to work on a Sunday. 'Detriment' is not defined but could include, for example, denial of overtime, promotion or training opportunities.

These rights apply irrespective of age, length of service or hours of work.

Dismissal relating to activities as an occupational pension scheme trustee

A dismissal will be held to be unfair if the main reason for it is that an employee who is a trustee of a relevant occupational pension scheme has performed, or has proposed to perform, any functions as such a trustee. There is no qualifying period of service or age limit for employees who wish to complain that they have been dismissed for these reasons. It is also unlawful for an employer to subject an employee to any other detrimental treatment for these reasons.

A 'relevant occupational pension scheme' means an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993) established under a trust.

Dismissal relating to activities as an employee representative

A dismissal will be held to be unfair if the main reason relates to an employee's status or actions as a representative for consultation about redundancies or business transfers, or as a candidate to be a representative of this kind, or to their participation in the election of such a representative. Further details can be found in the booklets **Redundancy consultation and notification (ER4)** and **Employment rights on the transfer of an undertaking (ER11)**. There is no qualifying period of service or age limit for employees who wish to complain that they have been dismissed for a reason described in this section. It is also unlawful for an employer to subject an employee to any other detrimental treatment on these grounds.

Dismissal relating to the Transnational Information and Consultation of Employees Regulations 1999

The Transnational Information and Consultation of Employees Regulations 1999, implement in the United Kingdom the European Works Council Directive,

which sets out requirements for informing and consulting employees at the European level, in undertakings or groups with at least 1000 employees across the Member States and at least 150 employees in each of two or more of those Member States. An employee will be held to be unfairly dismissed (or selected for redundancy) if he was, within the meaning of these regulations, a member of a special negotiating body or a European Works Council, an information and consultation representative or a candidate to be such a member or representative, and the reason or the main reason for the redundancy or dismissal was that he performed or proposed to perform any functions or activities as such a member, representative or candidate, or that he (or a person acting for him) made a request or proposed to make a request for reasonable time off to perform such functions and to be paid for doing so.

There is additional protection against dismissal for any employees who take proceedings in good faith to an industrial tribunal to enforce their rights under these regulations, or who take certain actions in relation to the procedures governed by the Regulations.

There is no qualifying period of service or age limit for employees who wish to complain that they have been dismissed for a reason described above. It is also unlawful for an employer to subject an employee to any other detrimental treatment on these grounds.

Dismissal on the grounds of trade union recognition

On 8 March 2001, statutory procedures came into operation concerning the recognition and derecognition of trade unions for collective bargaining purposes. For dismissals taking place on or after that date, employees will be held to be unfairly dismissed (or selected for redundancy) if the reason, or the main reason, for the dismissal is that they:

- acted with a view to obtaining or preventing recognition of a union (or unions) by the employer under Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as inserted by Schedule 1 to the Employment Relations (Northern Ireland) Order 1999);
- indicated that they supported or did not support recognition of a union (or unions) under that Schedule;
- acted with a view to securing or preventing the ending under that Schedule of bargaining arrangements;
- indicated that they supported or did not support the ending under that Schedule of bargaining arrangements;
- influenced or sought to influence the way in which votes were to be cast by other workers in a ballot arranged under that Schedule;
- influenced or sought to influence other workers to vote or to abstain from voting in such a ballot;
- voted in such a ballot; or

- proposed to do, failed to do, or proposed to decline to do, any of the things referred to above;

unless the relevant act or omission of the employee was unreasonable.

Employees can make an application for interim relief⁵ to an industrial tribunal if they consider that the reason or principal reason for their dismissal was one of the above. There is no qualifying period of service or upper age limit for employees who wish to complain that they have been dismissed for these reasons. It is also unlawful for an employer to subject workers to a detriment for these reasons by any act or by any deliberate failure to act.

Dismissal in connection with disciplinary and grievance hearings

Legislation provides that workers are entitled to be accompanied at certain disciplinary and grievance hearings by a fellow worker or a trade union official of their choice, provided they make a reasonable request to be accompanied. They also have the right to a reasonable postponement of the hearing, within specified limits, if a chosen companion is not available at the time proposed for the hearing by the employer.

Workers have the right to take time off during working hours in order to accompany fellow workers who are employed by the same employer. Workers will be unfairly dismissed (or selected for redundancy), regardless of age or length of service, if their employer dismisses them:

- for exercising or seeking to exercise the right to be accompanied; or
- for accompanying or seeking to accompany a worker.

It is also unlawful for an employer to subject a worker to any other detrimental treatment on these grounds.

The rights apply both to employees and to other workers such as agency workers and home workers, though not to those who are in business solely on their own account. For further information see the LRA's [Code of Practice on Disciplinary and Grievance Procedures](#). (See [Appendix 2](#) for the address of the LRA's two offices.)

Dismissal relating to the national minimum wage

Employees will be unfairly dismissed (or selected for redundancy) if the reason, or the main reason, is that:

- they took (or proposed to take) any action with a view to enforcing a right conferred by the National Minimum Wage Act 1998; or
- their employer was prosecuted as a result of such action; or
- they qualify, or will or might qualify, for the national minimum wage.

There is no qualifying period of service or age limit for employees who wish to complain that they have been dismissed for one of these reasons.

While only **employees** can complain of unfair dismissal, **workers who are not employees** can complain to an industrial tribunal that they have suffered a detriment if their contracts are terminated for any of these reasons, compensation being awarded on the same basis as for unfair dismissal. Both employees and workers who are not employees are also protected from detrimental action or deliberate inaction by their employer falling short of dismissal or termination of contract.

For further information, see '**A detailed guide to the national minimum wage (PL501)**' which may be obtained by calling 0845 8450 360.

Dismissal relating to the Working Time Regulations (Northern Ireland) 1998

Broadly, the Regulations provide workers with the right to paid leave, rest periods and breaks, as well as limiting the average hours per week, which they can be required to work.

Workers who are employees will be held to be unfairly dismissed (or selected for redundancy) if the reason, or the main reason, for the dismissal is that they:

- refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Regulations;
- refused (or proposed to refuse) to forgo a right conferred by the Regulations;
- failed to sign a workforce agreement or to make, vary or continue any other agreement provided for in the Regulations; or
- performed (or proposed to perform) any functions or activities as a workforce representative for the purposes of the Regulations, or as a candidate to be such a representative.

There is no qualifying period of service or age limit for employees who wish to complain that they have been dismissed for one of these reasons.

Workers who are not employees can complain to an industrial tribunal that they have suffered a detriment if their contracts are terminated for any of these reasons, or for seeking to assert any rights conferred on them by the Regulations, compensation being awarded on the same basis as for unfair dismissal. Both employees and workers who are not employees are also protected from detrimental action or deliberate inaction by their employer falling short of dismissal or termination of contract.

For further information, see '**Working Time Regulations: a Detailed Guide (Revised August 2003)**', available from JobCentres or from the Department for Employment and Learning (see [Appendix 3](#)).

Dismissal for making a public interest disclosure

The Public Interest Disclosure (Northern Ireland) Order 1998, which came into operation on 31 October 1999, provides protection for 'whistleblowers' - workers who are dismissed or victimised as a result of making a qualifying disclosure. It applies both to **employees**, whose dismissal (or selection for redundancy) will be held to be unfair if it is wholly or mainly for making a disclosure within the meaning of the Order, and to **workers who are not employees**, who can complain to an industrial tribunal that they have suffered a detriment if their contracts are terminated for making such a disclosure, compensation being awarded on the same basis as for unfair dismissal. Both employees and workers who are not employees are also protected from detrimental action or deliberate inaction by their employer falling short of dismissal or termination of contract.

There is no qualifying period of service or age limit for employees who wish to complain that they have been dismissed for a reason described in this section.

For further information, see '**Guide to the Public Interest Disclosure (Northern Ireland) Order 1998**', available from the Department for Employment and Learning (see [Appendix 2](#)).

Dismissal relating to the Tax Credits Act 2002

From April 2003, the Tax Credits Act 2002 introduces working tax credit. Employees will be held to be unfairly dismissed (or selected for redundancy) if the reason, or the main reason, for the dismissal is:

- that they are entitled, or will or may be entitled, to working tax credit; or
- that they took (or proposed to take) any action with a view to enforcing or otherwise securing a right conferred by regulations under the Tax Credits Act 2002; or
- from the same date, that their employer was prosecuted or fined as a result of such action.

There is no qualifying period of service or upper age limit for employees who wish to complain that they have been dismissed for one of these reasons.

This protection applies to individuals who are employees within the meaning of the Employment Rights (Northern Ireland) Order 1996. It is also unlawful for an employer to subject such employees to any other detrimental treatment. In addition, individuals who are **not** employees within the meaning of the 1996 Order, but who **are** employees within the meaning of the Tax Credits Act 2002, are protected against detrimental treatment (including the termination of their contracts).

Dismissal relating to parental leave

The Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 give employees the right not to be dismissed where the reason, or the main reason is that they:

- took or sought to take parental leave;
- declined to sign a workforce agreement for the purposes of the Maternity and Parental Leave etc. (Northern Ireland) Regulations 1999;
- performed (or proposed to perform) any functions or activities as a workforce representative or candidate for the purposes of the Regulations.

There is no qualifying period of service or upper age limit for employees who wish to complain that they have been dismissed for one of these reasons. It is also unlawful for an employer to subject an employee to any other detrimental treatment for any of these reasons.

Further details can be found in **Parental leave: a guide for employers and employees (ER25)**.

Dismissal relating to time off for dependants

The Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 give employees the right not to be dismissed where the reason, or the main reason is that they exercised their right to take time off to deal with certain circumstances involving a dependant.

There is no qualifying period of service or upper age limit for employees who wish to complain that they have been dismissed for this reason. It is also unlawful for an employer to subject an employee to any other detrimental treatment for this reason.

Further details can be found in **Time off for dependants: a guide for employers and employees (ER24)**.

Dismissal relating to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000

Broadly, the aim of the Regulations, which came into operation on 1 July 2000, is to ensure that part-time workers are treated no less favourably in their working conditions than comparable full-timers, unless the less favourable treatment is justified on objective grounds. Part-time workers who believe that they have been treated in a manner which infringes the Regulations have the right to make a request in writing to receive, within twenty-one days, a written statement from their employer giving the reasons for the treatment.

Employees will be held to be unfairly dismissed (or selected for redundancy), regardless of age or length of service, if the reason, or the main reason, for the dismissal is that:

- they exercised or sought to enforce rights under the Regulations, refused to forgo them or alleged that the employer had infringed them; or
- requested a written statement; or

- they gave evidence or information in connection with proceedings brought by an employee under the Regulations; or
- the employer believed the employee intended to do any of these things.

While only **employees** can complain of unfair dismissal, **workers who are not employees** can complain to an industrial tribunal that they have suffered a detriment if their contracts are terminated for any of these reasons, compensation being awarded on the same basis as for unfair dismissal. Both employees and workers who are not employees are also protected from detrimental treatment for these reasons which falls short of dismissal or termination of contract.

Dismissal relating to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002

The aim of the Regulations, which came into operation on 1 October 2002, is to ensure that fixed-term employees are not treated less favourably than comparable permanent employees on the grounds that they are fixed-term employees, unless this is objectively justified. Fixed-term employees who believe that they have been treated in a manner which infringes the Regulations have the right to make a request in writing to receive, within twenty-one days, a written statement from their employer giving the reasons for the treatment.

Employees will be held to be unfairly dismissed (or selected for redundancy), regardless of age or length of service, if the reason, or the main reason, for the dismissal is that:

- they exercised or sought to enforce rights under the Regulations, refused to forgo them or alleged that the employer had infringed them;
- requested a written statement; or
- they gave evidence or information in connection with proceedings brought by an employee under the Regulations; or
- they performed or proposed to perform any functions or activities as a representative of the workforce for the purposes of a workforce agreement under the Regulations, or a candidate to become such a representative, or declined to sign such an agreement; or
- the employer believed the employee intended to do any of these things.

Employees are also protected from detrimental treatment which falls short of dismissal for these reasons.

Further details can be found in '**Fixed-Term Work – A Guide to the Regulations**', available from the Department for Employment and Learning (see [Appendix 2](#)).

Third-party pressure for an employee's dismissal

Pressure by a third party (for example, a trade union) by the calling or threatening of industrial action cannot be taken into account in the determination of whether a dismissal is fair or unfair by a tribunal. However, where pressure is exerted on the employer to dismiss an employee because the employee is not a member of a trade union, a party exerting pressure can be joined by either the employer or the employee in proceedings before a tribunal and may be required by the tribunal to pay some or all of any compensation awarded.

Effective date of termination

The effective date of termination for the purpose of calculating length of service is, in general, the date on which dismissal takes effect, except where the employee has not been given the required statutory notice, in which case the effective date of termination is the date on which that notice would have expired if it had been given.

Notice period

The required statutory notice is one week if the employee has been employed for one month but less than two years, two weeks for two years, three weeks for three years and so on up to 12 years. After 12 years' service the period of notice required is 12 weeks. The employee may be entitled to longer notice under the contract of employment. If a business is transferred from one person to another, the period of employment of an employee in the business at the time of the transfer counts as a period of employment with the transferee and does not break the continuity of the period of employment.

Interim relief

Employees may make an application to a tribunal for interim relief⁵ if they consider that the reason or principal reason for their dismissal was:

- their trade union membership or activities or their non-membership of a trade union; or
- that they performed or proposed to perform any functions they had as health and safety representatives or committee members or as employees designated to carry out workplace health and safety activities; or
- that they performed or proposed to perform any functions they had as an occupational pension scheme trustee; or
- that they performed or proposed to perform any functions they had as an employee representative for consultation about redundancy or business transfers or as a candidate to be a representative of this kind or that they participated in the election of such a representative; or
- that they performed or proposed to perform any functions they had as a representative of members of the workforce or as a candidate to be a

representative of this kind for the purposes of the Working Time Regulations (Northern Ireland) 1998; or

- that they made a protected disclosure within the meaning of the Public Interest Disclosure (Northern Ireland) Order 1998; or
- that they exercised or sought to exercise rights relating to trade union recognition procedures; or
- that they exercised or sought to exercise their right to be accompanied to a disciplinary or grievance hearing or that they accompanied or sought to accompany a fellow worker to such a hearing.

Applications for interim relief must be received by the tribunal within seven days of the date of the dismissal.

Order for reinstatement or re-engagement

In deciding whether to make an order that the employer should reinstate the employee in the same job or re-engage the employee under a new contract of employment, the tribunal will take into account:

- the employee's wishes;
- whether it is practicable for the employee to return to work for the employer (there may, for example, be circumstances in which it is not practicable because relationships at the work place have been seriously damaged);
- in cases where the employee was partly to blame for the dismissal, whether or not it would be just to make such an order.

If the employer fails to comply with the terms of an order for reinstatement or re-engagement the tribunal, on being notified of the failure, will make an award of compensation calculated in the ordinary manner provided for in the legislation. Also, the tribunal will make an additional award of compensation to be paid by the employer, unless the employer satisfies the tribunal that it was not practicable to comply with the order for reinstatement or re-engagement as the case may be.

How awards of compensation are worked out

Basic award

The basic award⁴ is calculated by adding up the following amounts, but only continuous employment within the last 20 years can count:

- 1½ weeks' pay for each complete year of employment when an employee was between the ages of 41 and 65 inclusive;
- 1 week's pay for each complete year of employment when an employee was between the ages of 22 to 40 inclusive;

- ½ week's pay for each complete year of employment when an employee was below the age of 22.

The maximum number of weeks' pay that may be awarded is 30. There is also a maximum week's pay that can be used to calculate the award. (The limit on a week's pay may vary from year to year: the current figure is given in the booklet **Limits on payments (ER19).**)

In trade union, health and safety, employee representative, workforce representative and occupational pension scheme trustee cases (see **Interim relief** on page 30), there is a minimum figure for the basic award. (This minimum may vary from year to year: the current figure is given in the booklet **Limits on payments (ER19).**)

The basic award, including the minimum award in trade union and health and safety cases, can be reduced if the employee:

- contributed to some extent to the dismissal, or his conduct prior to the dismissal otherwise justified the reduction;
- has already been awarded or has received a redundancy payment;
- was within a year of age 65⁴ at the effective date of termination (see **Those who may not complain of unfair dismissal** on page 11);
- unreasonably refused an offer of reinstatement or unreasonably prevented the employer from complying with an order of reinstatement;
- has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement.

Compensatory award

This award compensates the employee for the loss suffered as a result of the dismissal insofar as the employer is responsible for this loss. As well as covering loss of earnings between the dismissal and the hearing and an estimate of future loss, the tribunal will also consider matters such as loss of pension and other rights and any reasonable expenses incurred by the employee as a result of the dismissal.

The compensatory award is an amount the tribunal considers just and equitable in the circumstances, but there is a maximum compensatory award in cases of unfair dismissal. (The maximum compensatory award may vary from year to year: the current figure is given in the booklet **Limits on payments (ER19).**) The tribunal will reduce the award if it finds that the employee was partly to blame for the dismissal or the employee did not mitigate his loss: for example, by failing to make a reasonable effort to obtain another job. Certain payments made by the employer to the employee, for example wages in lieu of notice or an *ex gratia* payment, will normally result in a reduced compensatory award. The compensatory award will also be reduced by the amount of the employee's earnings from any other employment between the dismissal and the tribunal hearing.

Tribunals have the power to reduce the compensatory award where employees have not made use of an internal appeals procedure whose existence they were informed of at or shortly after the time of dismissal. Similarly, the tribunal can make a supplementary award where employers have not allowed the employee to use an appeal procedure provided by them. The reduction or supplementary award can be subject to a maximum of two weeks' pay.

Compensation awards in unfair dismissal cases where the reason for the dismissal is that the dismissed employee made a protected disclosure under the **Public Interest Disclosure (Northern Ireland) Order 1998**, or took action relating to health and safety are not subject to a maximum.

Additional Award

This award compensates the employee for the additional loss suffered because of the employer's failure to comply with a tribunal's order for reinstatement or re-engagement. The additional award will be between 26 and 52 weeks' pay. There is a maximum week's pay that can be used to calculate the additional award. (The limit on a week's pay may vary from year to year: the current figure is given in the booklet **Limits on payments (ER19)**.)

Note: Industrial tribunals may, however, exceed these limits if the total compensation awarded (apart from the basic award) would otherwise be less than the arrears of pay element of the original award with which the employer failed to comply.

Interest on tribunal awards

Legislation provides that an employer who does not pay the compensation awarded by the tribunal within 42 days of the tribunal's decision, will be required to pay simple interest on the amount outstanding.

However, in relation to awards in cases of discrimination on the grounds of sex, race and disability, interest begins to accrue from the day after the day on which the tribunal's decision is sent to the parties. However, no interest will be payable if the full amount of the award is paid to the complainant within 14 days of the decision being sent out.

Exemption from the unfair dismissal provisions

The parties to a dismissal procedures agreement may apply jointly to the Department for Employment and Learning to substitute the agreement for the unfair dismissal provisions of the legislation. He may do so if he is satisfied on all the following points:

- that every trade union which is a party to the dismissal procedures agreement is an independent trade union;
- that the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed;

- that these procedures are available without discrimination to all employees falling within any description to which the agreement applies;
- that the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided by the legislation;
- that the procedures provide either for arbitration in every case, or at least arbitration in cases where a decision cannot be reached and the right to submit any question of law arising out of a decision to arbitration; and
- that the provisions of the agreement are such that it can be determined with reasonable certainty whether a particular employee is one to whom the agreement applies or not.

Endnotes

1. Where employers and unions have agreed on dismissal procedures they can apply for exemption from the provisions of the legislation (see **Exemption from the unfair dismissal provisions** on page 33).
2. Under employment protection legislation an employer is generally bound to give an employee' not later than two months after the beginning of the period of employment, a written statement setting out the principal employment particulars, and these must include the job title or a brief description of duties.
3. The Code of Practice says employees should not be dismissed for a first breach of discipline, except for gross misconduct.
4. In certain types of case (see **Who may make a complaint of unfair dismissal?** on page 8), an employee may complain to an industrial tribunal regardless of length of service or age.
The European Employment Directive 2000/78/EC, which is due to be implemented in Northern Ireland in December 2006, will amend current legislation by prohibiting direct and indirect discrimination in training and employment on the grounds of age.
5. Interim relief is an order (made by a tribunal at an interim hearing) that the employer temporarily reinstate or re-engage the employee or for the contract of employment to be continued until the complaint of unfair dismissal has been settled by agreement or decided at a tribunal hearing.

Appendix 1: Booklets in this series

ER 1	Individual rights of employees
ER 2	Written statement of employment particulars
ER 3	Redundancy payments
ER 4	Redundancy consultation and notification
ER 5	Your rights if your employer is insolvent
ER 6	Unjustifiable discipline by a trade union
ER 7	Time off for public duties
ER 8	Continuous employment and a week's pay
ER 9	Time off for job hunting or to arrange training when facing redundancy
ER 10	Suspension from work on medical or maternity grounds
ER 11	Transfers of undertakings: a guide to the regulations
ER 12	Pay statements: what they must itemise
ER 13	Unfairly dismissed?
ER 14	Guarantee payments
ER 15	Rights to notice and reasons for dismissal
ER 16	Maternity rights: a guide for employers and employees
ER 17	Help with meeting redundancy costs for employers in financial difficulty
ER 18	Dismissal: fair and unfair - a guide for employers
ER 19	Limits on payments
ER 20	Offsetting pensions against redundancy payments
ER 21	Contracts of employment: changes, breach of contract and deductions from wages
ER 22	Criminal records and employment
ER 23	Payment of union subscriptions
ER 24	Time off for dependants
ER 25	Parental leave: a guide for employers and employees
ER 26	Time off for study or training
ER 27	Industrial action and the law: a guide for employees

ER 28	Trade union executive elections
ER 29	Industrial action and the law: a guide for employers
ER 30	Industrial action and the law: a guide for individuals whose supply of goods or services is affected by unlawful industrial action
ER 31	Union membership: rights of members and non-members
ER 33	Trade union political funds
ER 34	Rights to paternity leave and pay
ER 35	Adoptive parents: a guide for employers and employees
ER 36	Flexible working: a guide for employers and employees

Other associated publications

[Code of Practice: Industrial Action Ballots and Notice to Employers](#)

[Fixed-Term Work: A Guide to the Regulations](#)

[Guide to the Public Interest Disclosure \(Northern Ireland\) Order 1998](#)

[Working time Regulations: A Detailed Guide \(Revised August 2003\)](#)

These booklets are available free of charge from JobCentres throughout Northern Ireland (see [Appendix 3](#)) and from the Department for Employment and Learning (see [Appendix 2](#)).

Appendix 2: Useful addresses

Certification Office for Northern Ireland

27-29 Gordon Street
Belfast
BT1 2LG

Tel: 028 9023 7773
Fax: 028 9023 2271
Textphone: (028) 9023 8411
Website: www.nicertoffice.com
Email: Cert_office@nicertoffice.fsnet.co.uk

Department for Employment and Learning

Employment Rights Branch
Room 203 Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7580
E-mail: erbooklets@delni.gov.uk

Department for Employment and Learning

[Redundancy Payments Service](#)

Room 203 Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7956
Fax: 028 9025 7555
Freephone: 0800 585811
E-mail: rpsquery@delni.gov.uk

The Equality Commission

Equality House
Shaftesbury Square
Belfast
BT2 7LB

Tel: 028 9050 0600
E-mail: information@equalityni.org

The Health & Safety Executive for Northern Ireland

83 Ladas Drive
Belfast
BT6 8FR

Tel: 028 9024 3249
Fax: 028 9023 5383
Textphone: 028 9054 6896
Freephone Helpline: 0800 0320121
Website: www.hseni.gov.uk

The Industrial Court

Room 203 Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599
Fax: 028 9025 7555
E-mail: enquiries@industrialcourt.gov.uk
Website: www.industrialcourt.gov.uk

Labour Relations Agency

Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: 028 9032 1442
Fax: 028 9033 0827
E-mail: info@lra.org.uk

Labour Relations Agency

Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Tel: 028 7126 9639
Fax: 028 7136 7729
E-mail: info@lra.org.uk

**Office of the Industrial Tribunals
and the Fair Employment Tribunal
(OITFET)**

Long Bridge House
20-24 Waring Street
Belfast
BT1 2EB

Tel: 028 9032 7666
Fax: 028 9023 0184

Appendix 3: JobCentres and Jobs and Benefits Offices in Northern Ireland

JobCentres

Andersonstown

Kennedy Centre
564-566 Falls Road
BT11 9AE

Tel: 028 9087 1880

Antrim

25-27 Church Street
BT41 4BE

Tel: 028 9446 2834

Armagh

Ulster Gazette Centre
56 Scotch Street
BT61 7PU

Tel: 028 3751 5970

Ballymena

35-39 Bridge Street
BT43 5EL

Tel: 028 2566 0777

Ballynahinch

20 High Street
BT24 8AB

Tel: 028 9756 2986

Banbridge

50 Newry Street
BT32 3HA

Tel: 028 4066 2149

Bangor

65 High Street
BT20 5BE

Tel: 028 9127 9999

Belfast East

Gloucester House
57 Chichester Street
BT1 4RA

Tel: 028 9025 2222

Belfast North

Gloucester House
57 Chichester Street
BT1 4RA

Tel: 028 9025 2222

Belfast South

Gloucester House
57 Chichester Street
BT1 4RA

Tel: 028 9025 2222

Carrickfergus

Davys Street
BT38 8DJ

Tel: 028 9335 6916

Coleraine

41 Church Street
BT52 1AW

Tel: 028 7032 2880

Cookstown

17 Oldtown Street
BT80 8EE

Tel: 028 8676 6950

Downpatrick

Rathkeltair House
Market Street
BT30 8LZ

Tel: 028 4461 8023

Enniskillen

Paget Square
BT74 7HS

Tel: 028 6632 3511

Larne

75 Main Street
BT40 1HH

Tel: 028 2827 3371

Limavady

43a Market Street
BT49 0AB

Tel: 028 7776 5967

Lurgan

10a High Street
BT66 8AW

Tel: 028 3834 4325

Newcastle

113 Main Street
BT33 0AE

Tel: 028 4372 5001

Newtownards

9 Conway Square
BT23 4DA

Tel: 028 9181 8653

Strabane

23 Upper Main Street
BT82 8AS

Tel: 028 7138 2332

Jobs and Benefits Offices

Ballymoney

37-45 John Street
BT53 6DT

Tel: 028 2766 1000

Foyle

Asylum Road
BT47 7EA

Tel: 028 7131 9500

Knockbreda

Crown Buildings
Upper Knockbreda Road
BT8 4SU

Tel: 028 9054 5600

Lisnagelvin

2 Crescent Road
BT47 2NJ

Tel: 028 7131 9107

Newry

Phoenix House
40 Bridge Street
BT35 8AJ

Tel: 028 3026 5522

Omagh

Crown Buildings
7 Mountjoy Road

Tel: 028 8225 4222

Shankill Road

15-25 Snugville Street
Belfast
BT13 1PP

Telephone: 028 9054 3456

Falls Road

19 Falls Road
BT12 4PH

Tel: 028 9054 2800

Kilkeel

Newry Street
BT34 4DN

Tel: 028 4176 1400

Lisburn

71 Bow Street
BT28 1BJ

Tel: 028 9262 3300

Magherafelt

31 Station Road
BT45 5DJ

Tel: 028 7930 2000

Newtownabbey

39-41 Church Road
BT36 7 LB

Tel: 028 9025 0888

Portadown

140 Jervis Street
BT62 3HA

Tel: 028 3839 7200

One Centre Dungannon

Crown Buildings
Thomas Street
BT70 1HN

Tel: 028 8775 4870

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