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Department for  
**Employment  
and Learning**  
[www.delni.gov.uk](http://www.delni.gov.uk)

## ER 13

# Unfairly dismissed?



## Introduction

Employment legislation gives most employees the right not to be unfairly dismissed. This booklet provides information on certain types of dismissal, and on the steps that may be taken by employees who feel that they have been unfairly dismissed.

Employees who believe that their dismissal was on the grounds of their trade union membership or activities, or their non-membership of a trade union should consult the booklet **Union membership: rights of members and non-members (ER 31)**.

Employees who believe that their dismissal was unlawful because of disability discrimination should consult *The Disability Discrimination Act 1995: what employees and job applicants need to know (DLE 3)*, which is available from the Disability Rights Commission Helpline on 0845 762 2633 or textphone 0845 762 2644.

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 Labour Relations Agency (LRA). For the addresses of its two offices see [Appendix 2: Useful addresses](#).

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 Jobs and Benefits offices includes JobCentres.

This booklet, [others in the series](#) and [related publications](#) are free to download from the Departmental website at [www.delni.gov.uk/erpublications](http://www.delni.gov.uk/erpublications). Alternatively they may be obtained upon request from your local [Jobs and Benefits office](#). For information on [Jobs and Benefits offices](#): FREEPHONE 0800 353530.

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 ('ER') series of booklets is updated on a regular basis. As part of this updating process the Department would welcome any comment/s from members of the public regarding the content of these booklets.

All comments should be addressed to:

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Alternatively, comments may be sent via e-mail to: [erbooklets@delni.gov.uk](mailto:erbooklets@delni.gov.uk)

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## Meaning of dismissal

Dismissal is defined as the termination of employment by:

- the employer, with or without notice; or
- the employee's resignation, with or without notice, where the employee has resigned because the employer by his conduct, in breach of the contract of employment, has shown an intention not to be bound by the contract (this is commonly known as **constructive dismissal**, see page 4); or
- the expiry of a limited-term contract without its renewal. 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.

If, after being given notice of dismissal by the employer, an employee gives due notice, in writing or otherwise, to terminate the contract of employment at an earlier date than required by the employer, the employee will still be regarded as dismissed by the employer but the **effective date of termination** will be the date that the employee's own notice, rather than the employer's notice, takes effect.

### Who can complain of unfair dismissal?

Most employees have the right to complain of unfair dismissal to an industrial tribunal but there are certain exceptions (see **Who cannot complain of unfair dismissal** below). A complaint to an industrial tribunal must be made by the individual who was dismissed, but if the employee dies, a personal representative of the deceased can make the application to the tribunal or continue proceedings already started. An 'employee' is an individual who has entered into, works or worked under, a contract of employment. A contract of employment is a contract of service or apprenticeship. Its terms may be expressed in writing or orally, or may be implied.

Please note that employers and employees are generally required to follow a minimum process to ensure that workplace disputes are discussed prior to making a claim to an industrial tribunal. (See **Resolving disputes in the workplace** on page 30).

### Who cannot complain of unfair dismissal?

The following people cannot normally complain of unfair dismissal (but see **Note** on page 2 for a list of exceptions):

- Those who are not employees (for example an independent contractor or free-lance 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 **Dismissal relating to the**

**National Minimum Wage** on page 14; **Dismissal relating to the Working Time Regulations (Northern Ireland) 1998** on page 14; **Dismissal for making a public interest disclosure** on page 15; **Dismissal in connection with disciplinary and grievance hearings** on page 9; and **Dismissal relating to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000** on page 17.)

- Employees who have not completed one year's continuous employment (see **Continuous employment** on page 27) at their effective date of termination (see **Effective date of termination** on page 28). This qualification is reduced to four weeks where an employee is dismissed on medical grounds in consequence of certain health and safety requirements or recommendations.
- 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.
- Members of the police service (except in relation to dismissal for taking action on health and safety grounds) 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 covered by a dismissal procedures agreement which has been exempted from the unfair dismissal provisions by an Order made by the Department.

**Note: In the following types of case, employees may make a complaint regardless of their length of service:**

- dismissal for trade union membership, non-membership of a trade union, trade union activities or proposed trade union activities, or use or proposed use of trade union services;
- dismissal for failure to accept an unlawful inducement by an employer to relinquish trade union rights or to disapply collective agreements;
- dismissal for failure to accept an offer made by an employer to induce the employee to be a trade union member;
- dismissal for refusing to make a payment in lieu of union membership, or objecting to their employer deducting a sum from their wages or salary to make such a payment;
- dismissal for having sought, in good faith, to exercise a statutory employment protection right,

- dismissal for taking, or proposing to take, certain specified types of action on health and safety grounds;
- dismissal on maternity related grounds;
- dismissal relating to paternity leave;
- dismissal relating to adoption leave;
- dismissal on grounds related to the right to request flexible working arrangements;
- dismissal of a shop worker or betting worker for refusing, or proposing to refuse, to do shop work or betting 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 relating to an employee's role as an employee occupational pension scheme trustee;
- 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);
- dismissal for exercising rights under the Working Time Regulations (Northern Ireland) 1998;
- dismissal for making a protected disclosure within the meaning of the Public Interest Disclosure (Northern Ireland) Order 1998;
- 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;
- dismissal for reasons relating to the Tax Credits Act 2002;
- dismissal for taking or seeking to take parental leave;
- dismissal for taking or seeking to take time off for dependants;
- dismissal for taking lawfully organised official industrial action lasting twelve weeks or less (or more than twelve weeks, in certain circumstances);
- dismissal on grounds related to trade union recognition procedures;
- dismissal in connection with disciplinary and grievance hearings;
- dismissal 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;

- dismissal on grounds related to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000;
- dismissal on grounds relating to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002;
- dismissal on grounds relating to the European Public Limited-Liability Company Regulations (Northern Ireland) 2004;
- dismissal on grounds relating to the Information and Consultation of Employees Regulations (Northern Ireland) 2005 for undertakings with 50 or more employees;
- dismissal relating to jury service;
- dismissal on grounds relating to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 for undertakings with 50 or more employees;
- dismissal on grounds relating to the European Cooperative Society (Involvement of Employees) Regulations 2006 (see [Dismissal relating to the European Cooperative Society \(Involvement of Employees\) Regulations 2006](#)) on page 24;
- dismissal in connection with a meeting to discuss a request not to retire.

### **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 significant breach of the employment contract indicating that he intends no longer to be bound by one or more terms of 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.

### **Fair dismissal**

The dismissal of an employee will only be fair if the employer can show that the reason for it was one of those listed below (but see [Dismissal on the transfer of an undertaking or a service provision change](#) on page 5) and,

except where the reason for dismissal is the retirement of the employee, the tribunal is satisfied that the employer acted reasonably in the circumstances (including the size and administrative resources of the undertaking) in treating that reason as sufficient to justify dismissing the employee.

The reasons are:

- a reason related to the employee's capability or qualification for the job;
- a reason related to the employee's conduct;
- the retirement of the employee;
- redundancy (broadly, this is where the employer's need for employees to do certain work has ceased or diminished or is expected to do so);
- a statutory restriction on either the employer or the employee which prevents the employment being continued; or
- some other substantial reason which could justify the dismissal.

In deciding whether the employer acted reasonably in dismissing the employee, the tribunal will take account, amongst other factors, of whether he followed appropriate disciplinary procedures.

Where statutory dismissal and disciplinary procedures apply and are not treated as having been complied with, a dismissal will be unfair if an employee is dismissed without the statutory procedure having been followed (see **Dismissal without following statutory disciplinary, dismissal and grievance procedures** on page 21).

However, if an employer fails to follow a disciplinary procedure which goes beyond the statutory procedure, that failure will not by itself make the dismissal an unfair one – provided that properly following the procedure would have made no difference to the decision to dismiss, and that the dismissal was fair in all other respects.

Where retirement is shown to be the reason for dismissal, whether the dismissal is fair will depend on whether the employer complied with the duty to consider working beyond retirement (see **Retirement** on page 25).

### **Dismissal on the transfer of an undertaking or a service provision change**

When an undertaking or part of an undertaking has been transferred from one employer to another (for example, through the sale of the undertaking or part of the undertaking), the Transfer of Undertakings (Protection of Employment) Regulations 2006, and/or The Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 may apply. Under these Regulations, if an employee is dismissed, by either the old or the new employer because of the transfer or service provision change, or a reason

connected with either, the dismissal will be considered unfair unless it was for an economic, technical or organisational reason entailing changes in the workforce. If the dismissal was for such a reason it will be fair only if a tribunal decides that the employer acted reasonably in the circumstances in dismissing the employee.

### **Unfair selection for redundancy**

Dismissal on grounds of redundancy will be unfair if the employee was selected for redundancy when others in similar circumstances were not selected, and the reason for this was:

- his trade union membership, trade union non-membership, trade union activities or proposed trade union activities, or use or proposed use of trade union services;
- that he failed to accept an unlawful inducement by an employer to relinquish trade union rights or to disapply collective agreements;
- that he failed to accept an offer made by an employer to induce him to be a trade union member;
- that he refused to make a payment in lieu of union membership, or objected to his employer deducting a sum from his wages or salary to make such a payment;
- that he had sought, in good faith, to exercise a statutory employment protection right;
- that he took, or proposed to take, certain specified types of action on health and safety grounds;
- on maternity related grounds;
- that he took or sought to take paternity leave;
- that he took or sought to take adoption leave;
- that he requested flexible working arrangements;
- that he was a shop worker or a betting worker and was selected for redundancy for refusing or proposing to refuse to do shop work or betting work on Sundays or for giving, or proposing to give an 'opting-out' notice to his employer;
- that he performed, or proposed to perform, any duties relevant to his role as an employee occupational pension scheme trustee;
- that he performed, or proposed to perform, any duties relevant to his role as an employee representative or as a candidate to be a representative of this kind;

- related to the National Minimum Wage;
- related to the Working Time Regulations (Northern Ireland) 1998;
- that he made a protected disclosure within the meaning of the Public Interest Disclosure (Northern Ireland) Order 1998;
- that he or she took or sought to take parental leave, time off for dependants, ordinary maternity leave or additional maternity leave;
- that he took lawfully organised official industrial action lasting twelve weeks or less (or more than twelve weeks, in certain circumstances);
- that he exercised or sought to exercise rights relating to trade union recognition procedures;
- that he performed or proposed to perform any duties relating to his 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 that he took certain actions in connection with these Regulations, or that he proposed to take or failed to take such actions;
- related to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000;
- related to the Tax Credits Act 2002;
- related to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002;
- related to the European Public Limited-Liability Company Regulations (Northern Ireland) 2004;
- related to the Information and Consultation of Employees Regulations (Northern Ireland) 2005 for undertakings with 50 or more employees;
- that he was chosen for redundancy for reasons relating to jury service;
- related to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 for undertakings with 50 or more employees;
- that he was chosen for redundancy for reasons relating to the European Cooperative Society (Involvement of Employees) Regulations 2006; or
- that he exercised or sought to exercise the right to be accompanied at a meeting to consider a request not to retire, or that he exercised or sought to exercise the right to accompany a fellow employee at such a meeting.

Furthermore, dismissal on the grounds of redundancy may also be held to be unfair (depending upon the circumstances) for some other reason (for example, if the employer failed to give adequate warning of redundancy or failed to consider alternative employment for the employee).

### **Dismissal relating to trade union membership, activities and related matters or non-membership of a union**

A dismissal will be held to be unfair if the reason, or the main reason, for it was:

- that 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 or had made use, or proposed to make use, of its services if the activities or services were outside working hours or in accordance with an arrangement with the employer permitting the employee to take part in such activities or make use of its services during working hours; that the employee was not a member of a trade union, or had refused or proposed to refuse to become or remain a member;
- that the employee failed to accept an unlawful inducement made by the employer to relinquish his trade union rights or to disapply collective agreements, or failed to accept an offer made by an employer to induce him to be a trade union member; or
- that the employee refused to make a payment (e.g. to a union or charity) in lieu of union membership, or objected to his employer deducting a sum from his wages or salary to make such a payment.

There is no qualifying period of service or qualifying hours per week for employees who wish to complain that they have been dismissed for any of these reasons. Both employees and workers who are not employees are also protected against detriment on these grounds.

### **Dismissal on grounds of trade union recognition**

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 relief <sup>1</sup> 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 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 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 by the employer for the hearing.

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, regardless of 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](#) (available from the LRA website – see [Appendix 2](#)).

## **Dismissal relating to activities as an occupational pension scheme trustee**

Employee occupational pension scheme trustees have the right to reasonable paid time off for the performance of their duties and to undergo training.

A dismissal will be held to be unfair if the main reason for it was that an employee performed, or proposed to perform, any duties relevant to his role as an employee occupational pension scheme trustee. There is no qualifying period of service 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 these reasons.

## **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;
- perform or propose to perform any functions they have as official or employer-acknowledged health and safety representatives or committee members;
- 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;
- in the event of danger which they reasonably believe to be serious and imminent and which they would 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 or 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 for employees who wish to complain that they have been dismissed for any of the above reasons.

### **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 by either 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 main rights covered by the protection are those relating to:

- written statements of employment particulars;
- itemised pay statements;
- 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 an employer;
- protection against detriment in health and safety cases;
- minimum periods of notice;
- deduction of unauthorised or excessive union subscriptions;

- requiring the employer to stop payment of a contribution to a union's political fund;
- action short of dismissal on trade union grounds;
- time off for trade union duties and activities;
- dismissal, selection for redundancy or other detrimental action for refusing or proposing to refuse to do shop work or betting work on a Sunday;
- 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;
- maternity, paternity and adoption leave;
- parental leave;
- time off for dependants; and
- the right to request flexible working arrangements.

There is no qualifying period of service for employees who wish to complain that they have been dismissed for any of these reasons. Similar protection is provided for where action is taken to enforce an employee's right to the national minimum wage or working tax credit or where an employee takes certain actions under the Transnational Information and Consultation of Employees Regulations 1999, the European Public Limited-Liability Company Regulations (Northern Ireland) 2004, the Information and Consultation of Employees Regulations (Northern Ireland) 2005, the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006, or the European Cooperative Society (Involvement of Employees) Regulations 2006.

### **Dismissal for refusing to do shop work on a Sunday**

The Shops (Sunday Trading & c.) (Northern Ireland) Order 1997 gives shop workers the right not to be dismissed, selected for redundancy or subjected to other detrimental treatment for refusing or proposing to refuse to work on Sundays. Employees who were employed at the time the legislation came into operation (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. These rights do not apply to those employed to work only on Sundays. (For further information see the leaflet '**The Shops (Sunday Trading & c.) (Northern Ireland) Order 1997 – new employment rights for shop workers (ST1)**', available from the Department for Employment and Learning – see [Appendix 2.](#))

### **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 (i.e. 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. They do not, however, apply to those employed to work only on Sundays.

### **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 their participation in the election of such a representative. Further details can be found in **Redundancy consultation and notification (ER4)**. There is no qualifying period of service for employees who wish to complain that they have been dismissed for a reason relating to activities as an employee representative. 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. The Directive 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 if he was, within the meaning of these Regulations, a member of a

special negotiating body of 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 for employees who wish to complain that they have been dismissed for a reason relating to the Transnational Information and Consultation of Employees Regulations 1999. It is also unlawful for an employer to subject an employee to any other detrimental treatment on these grounds.

### **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 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**, available from the Department for Business, Enterprise and Regulatory Reform 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. **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 for employees who wish to complain that they have been dismissed for any 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 2008)**', available from the Department for Employment and Learning (see [Appendix 2](#)).

### **Dismissal for making a public interest disclosure**

The Public Interest Disclosure (Northern Ireland) Order 1998, 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, with 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 for employees who wish to complain that they have been dismissed for making a public interest disclosure.

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**

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;*
- *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*
- *that their employer was prosecuted or fined as result of such action.*

There is no qualifying period of service 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 etc.;
- declined to sign a workforce agreement for the purposes of the Regulations; or
- performed (or proposed to perform) any functions or activities as a workforce representative or as a candidate to be such a representative for the purposes of the Regulations.

There is no qualifying period of service for employees who wish to complain that they have been dismissed for any 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 a reasonable amount of time off work to deal with certain situations involving a dependant.

There is no qualifying period of service 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 (ER24)**.

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

Broadly, the aim of the Regulations 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 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;
- 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 which falls short of dismissal or termination of contract for these reasons. Further information can be found in '**Part-time Work, the Law and Best Practice: A detailed guide for employers and employees**', available from the Department for Employment and Learning (see Appendix 2).

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

The aim of the Regulations 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 21 days, a written statement from their employer giving reasons for the treatment.

Employees will be held to be unfairly dismissed (or selected for redundancy), regardless of 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;
- they gave evidence or information in connection with proceedings brought by an employee under the Regulations;
- 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](#)).

### **Dismissal on grounds of pregnancy or maternity**

A woman will automatically be regarded as unfairly dismissed if her employer dismisses her, or selects her for redundancy, in any of the following circumstances:

- where the dismissal is for a reason connected with her pregnancy;
- where the dismissal is on the grounds that she has given birth and takes place during her ordinary or additional maternity leave;
- where 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;

- where the dismissal is on grounds of a health and safety provision which could give rise to a maternity suspension;
- where she is unfairly selected for redundancy for any of the above reasons;
- where the dismissal is on grounds of redundancy, it takes place during her statutory maternity leave, and the employer has not first complied with the requirement to offer her any suitable alternative vacancy which is available; or
- for a woman whose expected week of childbirth began on or after 1 April 2007, the dismissal is because she undertook, considered undertaking or refused to undertake up to 10 days' work during her statutory maternity leave period ('work' may include training or any other activity undertaken to assist the employee in keeping in touch with the workplace).

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

- her employer hasn't properly notified her of the date it ends and she reasonably believes it hasn't ended; or
- her employer has given her less than 28 days' notice of the date it ends and it isn't reasonably practicable for her to 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.

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.

A detailed description of the maternity provisions may be found in the booklet **Maternity Rights: A guide for Employers and Employees (ER16)**.

### **Dismissal relating 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 relating 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:

- he took or sought to take adoption leave;
- his employer believes that he is likely to take adoption leave;
- his employer failed to give him appropriate notice of his return date and he reasonably believed that the period had not ended; or
- his employer gave him less than 28 days' notice of the date on which his adoption leave would end, and it was not reasonably practicable for him to return on that date.

In addition, employees have the right to not be subjected to detrimental treatment on these grounds.

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 his employer to continue to employ him under his 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 ends.

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, he may give up his 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**

It is unlawful for an employer to dismiss an employee, irrespective of his length of service, if the reason or main reason for the dismissal is that:

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

This protection against dismissal also applies if an employee is selected for redundancy on these grounds. It is also unlawful for an employer to subject an employee to any other detrimental treatment for these reasons. Further information can be found in the booklet **Flexible working: a guide for employers and employees (ER 36)**.

### **Dismissal without following statutory disciplinary, dismissal and grievance procedures**

Statutory disciplinary, dismissal and grievance procedures came into operation on 3 April 2005. Where the statutory procedures apply and the employer is deemed not to have complied with them, it will be unfair to dismiss an employee if failure to follow the procedures is wholly or mainly the fault of the employer. Employees who wish to complain that they have been unfairly dismissed for this reason must have completed one year's continuous employment at their effective date of termination.

The statutory procedures do not have to be followed in certain circumstances, for instance in some collective redundancies, in industrial action dismissals, constructive dismissals and retirement dismissals. There are also circumstances in which the procedures are treated as having been followed even though they have not been.

For further information on the statutory disciplinary, dismissal and grievance procedures see:

- **Resolving Disputes at Work: A New Guide for Employees;**
- **Key information for employers; and**

- Resolving Disputes at Work: Guidance on the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations 2004 and associated provisions in the Employment (Northern Ireland) Order 2003,

available from the Department for Employment and Learning – see [Appendix 2](#) for details; or to download from [www.delni.gov.uk/resolvingdisputes](http://www.delni.gov.uk/resolvingdisputes).

### **Dismissal relating to jury service**

Employees will be unfairly dismissed (or selected for redundancy) if the reason, or the principal reason, is that they have been summoned for jury service or have been absent from work on jury service. There is no qualifying period of service for employees who wish to complain that they have been dismissed for these reasons. This protection will not apply, however, if the employer shows that the employee's absence will cause substantial injury to his business and makes this known to the employee, who nevertheless unreasonably refuses, or fails, to apply to be excused from jury service or to have it deferred.

Employees are also protected against detrimental action or deliberate inaction by their employer because they have been summoned for jury service or have been absent from work on jury service. However, the protection does not cover failure to pay remuneration during absence on jury service unless the employee's contract of employment entitles him to be paid during such an absence.

### **Dismissal relating to The Information and Consultation of Employees Regulations (Northern Ireland) 2005**

The Information and Consultation of Employees Regulations (Northern Ireland) 2005 (Statutory Rule 2005 no.47, available from the Stationery Office) implement, in Northern Ireland, the Information and Consultation Directive. The Regulations apply to undertakings with 50 or more employees, and set out requirements for informing and consulting employees.

An employee will be held to be unfairly dismissed if he was acting as a representative of employees in connection with an agreement struck under the Regulations. Employees are also protected when standing as candidates to be such representatives under the Regulations.

The protections apply where the reason or the main reason for the redundancy or dismissal was that the employee performed or proposed to perform any functions or activities as such a 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 employees who take proceedings in good faith to an industrial tribunal to enforce their rights or who

apply, complain or appeal to the Industrial Court or the High Court under these regulations.

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

### **Dismissal relating to The European Public Limited-Liability Company Regulations (Northern Ireland) 2004**

The European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (Statutory Rule 2004 no. 417, available from the Stationery Office) implement in Northern Ireland the Directive on employee involvement (2001/86/EC), which supplements the European company Statute. The Regulations came into operation on 8 October 2004.

The Statute creates a legal framework for a new corporate entity, the European Company or "Societas Europea" (SE), available to companies operating in more than one Member State. The supplementary Directive provides for employee involvement (information, consultation and possibly participation arrangements) in the SE. In the first instance the arrangements are to be negotiated between the management and the employees, acting through a Special Negotiating Body (SNB). If a voluntary agreement is not reached, then certain "standard" rules will apply, provided management wants to carry on with registration of an SE.

Unfair dismissal provisions under these Regulations cover any employee acting as a member of the SNB (or other representative body), an information and consultation representative, or an employee representative on the company board. Employees are also protected when standing as candidates to be such representatives under the Regulations.

An employee will be regarded as being unfairly dismissed where 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 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 or who apply, complain or appeal to the Industrial Court or the High Court under these regulations.

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

## **Dismissal relating to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006**

The Regulations (Statutory Rule 2006 no. 48, available from the Stationery Office) prohibit the making of major changes to occupational pension schemes unless the scheme's members are consulted beforehand. They apply to undertakings with 50 or more employees.

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

- performed or proposed to perform any functions or activities under the Regulations;
- exercised their entitlement to take paid time off during working hours to perform such functions;
- made or proposed to make a request to exercise such an entitlement (or that someone acting on their behalf did so);
- sought to enforce their rights under the Regulations before an industrial tribunal;
- complained or proposed to complain to the Pensions Regulator about specified breaches of the Regulations;
- stood as a candidate in an election under the Regulations, voted in such an election, sought to influence its outcome by lawful means, expressed doubts about its conduct or proposed to do, failed to do or proposed to decline to do any of these things.

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

## **Dismissal relating to the European Cooperative Society (Involvement of Employees) Regulations 2006**

The Regulations (Statutory Instrument 2006 no. 2059, available from the Stationery Office) set out the provisions relating to the European Cooperative Society, a new form of cooperative which can operate across the European Economic Area on the basis of registration in one member state.

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

- performed or proposed to perform functions or activities under the Regulations;

- exercised their entitlement to take paid time off during working hours to perform such functions;
- made or proposed to make a request to exercise such an entitlement (or that someone acting on their behalf did so);
- sought to assert their rights under the Regulations before an industrial tribunal or by applying or complaining to the Industrial Court or the High Court;
- did anything to support or oppose the creation of a body or procedure under the Regulations, or indicated that they did or did not support its creation;
- stood as a candidate in an election under the Regulations, voted in such an election, sought to influence its outcome by lawful means, expressed doubts about its conduct or proposed to do, failed to do or proposed to decline to do any of these things.

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

### **Retirement**

Retirement is a potentially fair reason for dismissal. As with other reasons for dismissal, the employer must show what the reason for the dismissal is. The circumstances where retirement will be the only reason for the dismissal are where:

- the intended retirement date is on or after the employee's 65<sup>th</sup> birthday, or on or after the employer's normal retirement age (provided that, if the normal retirement age is below 65, it is objectively justified);
- the employer has notified the employee of the date on which it is intended to retire him within the specified time, and of his right to request not to retire on that date;
- the employer has then considered any such request, including meeting with the employee to discuss the request, in accordance with the specified procedure; and
- the retirement takes place on the intended date of retirement.

### **Dismissal in connection with meetings to discuss requests not to retire**

Employees are entitled to be accompanied by a fellow worker at a meeting to discuss a request not to be retired, or an appeal against the refusal of such a request, provided they make a reasonable request to be accompanied. Employees may also postpone the meeting for up to seven days to a time

convenient for employer, employee and companion, if a chosen companion is not available. Workers have the right to take time off during working hours in order to accompany employees who are employed by the same employer.

An employee will be unfairly dismissed, regardless of length of service, if an employer dismisses him:

- for exercising or seeking to exercise the right to be accompanied; or
- for accompanying or seeking to accompany an employee.

Employees are also protected against any other detrimental treatment on these grounds, as are workers who are not employees.

### **Dismissal during an industrial dispute**

It is automatically unfair to dismiss workers for taking legally organised official industrial action lasting twelve weeks or less. It is also unfair to dismiss them where they have taken action for more than twelve 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. For further information, see **Industrial action and the law: a guide for employees (ER27)**.

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 10);
- on maternity related grounds (see **Dismissal on the grounds of pregnancy or maternity** on page 18);

- 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 of the participation of the employee in the election of such a representative (see [Dismissal relating to activities as an employee representative](#) on page 13);
- 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 14);
- that the employee exercised rights prescribed in the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 (see [Dismissal relating to parental leave](#) on page 16, [Dismissal relating to time off for dependants](#) on page 17, and [Dismissal on the grounds of pregnancy or maternity](#) on page 18);
- for reasons related to paternity or adoption leave (see [Dismissal related to paternity leave](#) on page 19, and [Dismissal related to adoption leave](#) on page 20);
- that the employee asserted the right to time off for dependants (see [Dismissal relating to time off for dependants](#) on page 17);
- for reasons related to the right to request flexible working arrangements (see [Dismissal relating to the right to request flexible working arrangements](#) on page 21); or
- that the employee had been summoned for jury service or had been absent from work on jury service (see [Dismissal relating to jury service](#) on page 22).

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 he 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 15).

### **Dismissal on grounds of unlawful discrimination**

Where dismissed employees have made a complaint under the legislation relating to discrimination on grounds of sex, race, disability, religion or belief, sexual orientation, or age, and are also eligible to make a complaint of unfair dismissal they should do so, even if it is thought that the reason for dismissal was an unlawful act of discrimination.

### **Continuous employment**

An employee's period of employment is presumed to have been continuous unless there is evidence to the contrary. In most cases there will be no doubt as to whether or not an employee has worked for long enough to gain the

right to complain of unfair dismissal. If an employee is doubtful that his employment has been continuous, and needs further information on what is and what is not continuous employment, he should refer to the booklet **Continuous employment and a week's pay (ER8)**.

**Note:** The period spent by trainees on certain (but not all) Government training schemes does not count towards a period of continuous employment because the trainees are not employees (that is, they are not working under a contract of employment). Further information and advice on this matter is available from the Labour Relations Agency (see [Appendix 2](#)).

### **Effective date of termination**

The effective date of termination will be established in the following manner:

- if either the employer or the employee gave notice and the employee worked through the notice period, then the effective date is the date on which that notice expires (but see the exceptions below);
- if the contract was terminated without notice by the employer (except in cases where the employer should have given notice as required by law, when, for certain purposes, the effective date is the date that notice would have expired) the effective date is the date on which the employee was dismissed;
- if the employee has received a payment in lieu instead of working part or all of the notice period, then the effective date is generally the last day on which the employee worked for the employer;
- if the contract was terminated with or without notice by the employee then the effective date is the last day on which the employee worked for the employer (but see the exceptions below);
- in the case of the expiry without renewal of a limited-term contract, the effective date is the date of expiry. 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.

However, for the purpose of determining whether an employee has worked a sufficient qualifying period of continuous employment to make a complaint of unfair dismissal, and for certain other purposes (but *not* for the purpose of the time-limit within which a complaint must be made), there are two exceptions:

- in cases where the employer has given shorter notice than that required by law, the effective date is the date when the longer required notice would have expired if it had been given;
- in cases where the employee terminated the contract of employment and where the employer had not already given notice, the effective date will normally be the date of expiry of the statutory minimum notice

period, which the employer would have had to give if he had dismissed the employee on the same day as the employee resigned.

### **Closed shop**

A closed shop is an agreement or arrangement between an employer and a trade union which requires certain employees to be members of the union. The requirement to be a union member is not always contained in a formal written agreement and may be a matter of custom or practice. There is no statutory protection for the closed shop and it cannot be enforced against employees or prospective employees. The dismissal of any employee for not belonging to a union is automatically unfair, irrespective of whether or not they work in a so-called 'closed shop'.

## Resolving disputes in the workplace

Where there is a dispute about a workplace issue involving rights and responsibilities, those involved **should** try to sort out the matter between **themselves**. Whether the employee is complaining (raising a grievance) about something the employer has done or the employer has concerns about the employee's work or behaviour (a disciplinary matter), it is generally a good idea to talk the matter over informally and try to get it resolved as soon as possible. If this approach fails, it is normal to involve line management and a union representative (where there is one) to explore potential solutions.

If the dispute goes beyond this point without being resolved, employers and employees are generally required to follow a minimum formal process to ensure that workplace disputes are properly discussed. Even at this stage, it can be useful to seek outside assistance or advice from the Labour Relations Agency (**LRA**). The **LRA** may be able to help resolve the dispute.

If the dispute continues and the employee or the employer fails to follow the process, this could influence the outcome of a subsequent claim to an industrial tribunal. Tribunals have power in most situations to take action where the procedures have not been followed. For example, depending on the circumstances, they can reduce or increase an award, rule automatically against the employer, or **refuse to** accept the claim.

Detailed guidance about the procedures, including when they do not apply and when they are treated as having been followed, is available on the Departmental website [www.delni.gov.uk/resolvingdisputes](http://www.delni.gov.uk/resolvingdisputes). Further advice, including advice on employment rights and responsibilities generally, can be obtained from the LRA by contacting their helpline: 028 9032 1442.

## Making a claim to an industrial tribunal

A claim 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 state why you are doing so.

A Claim form IT1 (NI) may be obtained from any Jobs and Benefits Office or downloaded from the website of the Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET) at:

[www.employmenttribunalsni.co.uk](http://www.employmenttribunalsni.co.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 claim form.

For further information on what happens if the complaint reaches an industrial tribunal, see the booklet 'Industrial Tribunals Procedures' (available from OITFET - see Appendix 2).

### Interim relief

Employees may make an application to an industrial tribunal for interim relief<sup>1</sup> if they consider that the reason or principal reason for their dismissal was:

- trade union membership, trade union non-membership, trade union activities or proposed activities, or use or proposed use of trade union services;
- failure to accept an unlawful inducement by an employer to relinquish trade union rights or to disapply collective agreements;
- failure to accept an offer made by an employer to induce the employee to be a trade union member;
- refusing to make a payment in lieu of union membership, or objecting to their employer deducting a sum from their wages or salary to make such a payment;
- 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;

- that they performed or proposed to perform any functions they had as an occupational pension scheme trustee;
- 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;
- 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;
- that they made a protected disclosure within the meaning of the Public Interest Disclosure (Northern Ireland) Order 1998;
- that they exercised or sought to exercise rights relating to trade union recognition procedures;
- that they exercised or sought to exercise the 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; or
- that they exercised or sought to exercise the right to be accompanied to a meeting to discuss a request not to retire or that they accompanied or sought to accompany a fellow employee to such a meeting.

If the tribunal considers it likely that at the full hearing it will uphold the complaint for any of these reasons, the tribunal will either order reinstatement or re-engagement or will make an order for the temporary continuation of the contract of employment.

## **Endnotes**

1. 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

Booklets in this series are available online from [www.delni.gov.uk/erbooklets](http://www.delni.gov.uk/erbooklets) or can be obtained by contacting the Department.

- ER 1 *Individual rights and responsibilities of employees*
- ER 2 *Written statement of employment particulars*
- ER 3 *Redundancy entitlement statutory rights*
- 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 10 *Suspension from work on medical or maternity grounds*
- 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 and awards*
- 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 through "check off"*
- 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*

Additional employment rights publications, covering a range of other issues, can be found online at [www.delni.gov.uk/erpublications](http://www.delni.gov.uk/erpublications) or can be obtained from the Department.

## Appendix 2: Useful addresses

### Certification Officer for Northern Ireland

10-12 Gordon Street  
Belfast  
BT1 2LG

**Tel:** 028 9023 7773  
**Fax:** 028 9023 2271  
**Textphone:** 028 9023 8411  
**Website:** [www.nicertoffice.com](http://www.nicertoffice.com)  
**Email:** [info@nicertoffice.com](mailto:info@nicertoffice.com)

### Department for Employment and Learning

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

**Tel:** 028 9025 7956  
**Freephone:** 080 0585 811  
**Fax:** 028 9025 7555  
**Website:** [www.redundancyni.gov.uk](http://www.redundancyni.gov.uk)  
**E-mail:** [rpsquery@delni.gov.uk](mailto:rpsquery@delni.gov.uk)

### The Health & Safety Executive for Northern Ireland

83 Ladas Drive  
Belfast  
BT6 9FR

**Tel:** 028 9024 3249  
**Fax:** 028 9023 5383  
**Textphone:** 028 9054 6896  
**Freephone Helpline:** 080 0032 0121  
**Website:** [www.hseni.gov.uk](http://www.hseni.gov.uk)

### Department for Employment and Learning

Employment Relations Policy and Legislation Branch  
Room 203  
Adelaide House  
39-49 Adelaide Street  
Belfast  
BT2 8FD

**Tel:** 028 9025 7580  
**Website:** [www.delni.gov.uk/er](http://www.delni.gov.uk/er)  
**E-mail:** [erbooklets@delni.gov.uk](mailto:erbooklets@delni.gov.uk)

### The Equality Commission for Northern Ireland

Equality House  
7-9 Shaftesbury Square  
Belfast  
BT2 7DP

**Tel:** 028 9050 0600  
**Fax:** 028 9033 1544  
**Textphone:** 028 9050 0589  
**Website:** [www.equalityni.org](http://www.equalityni.org)  
**E-mail:** [information@equalityni.org](mailto:information@equalityni.org)

### Industrial Court

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

**Tel:** 028 9025 7599  
**Fax:** 028 9025 7555  
**Website:** [www.industrialcourt.gov.uk](http://www.industrialcourt.gov.uk)  
**E-mail:** [enquiries@industrialcourt.gov.uk](mailto:enquiries@industrialcourt.gov.uk)

### **Labour Relations Agency**

Head Office  
2-8 Gordon Street  
Belfast  
BT1 2LG

**Tel:** 028 9032 1442

**Fax:** 028 9033 0827

**Textphone:** 028 9023 8411

**Website:** [www.lra.org.uk](http://www.lra.org.uk)

**E-mail:** [info@lra.org.uk](mailto:info@lra.org.uk)

### **NI Business Info**

(website giving information on a wide range of issues for employers)

**Website:** [www.nibusinessinfo.co.uk](http://www.nibusinessinfo.co.uk)

### **Labour Relations Agency**

Regional Office  
1-3 Guildhall Street  
Londonderry  
BT48 6BJ

**Tel:** 028 7126 9639

**Fax:** 028 7126 7729

**Textphone:** 028 9023 8411

**Website:** [www.lra.org.uk](http://www.lra.org.uk)

**E-mail:** [info@lra.org.uk](mailto:info@lra.org.uk)

### **Office of the Industrial Tribunals and the Fair Employment Tribunal**

Killymeal House  
2 Cromac Quay  
Ormeau Road  
Belfast  
BT7 2JD

**Tel:** 028 9032 7666

**Fax:** 028 9023 0184

**Website:**

[www.employmenttribunalsni.org](http://www.employmenttribunalsni.org)

people:skills:jobs:



Department for  
**Employment  
and Learning**  
[www.delni.gov.uk](http://www.delni.gov.uk)



INVESTOR IN PEOPLE

**THE DEPARTMENT:**

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

**Further information:**

telephone: 028 9025 7580

e-mail: [employment.rights@delni.gov.uk](mailto:employment.rights@delni.gov.uk)

website: [www.delni.gov.uk](http://www.delni.gov.uk)