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Department for
**Employment
and Learning**
www.delni.gov.uk

ER3 Redundancy Entitlement Statutory Rights



June 2011

Introduction

This booklet gives general information about the:

- redundancy payments scheme;
- provisions relating to time off to look for work or to make arrangements for training when facing redundancy;
- way a complaint is settled and the help [The Redundancy Payments Service](#) can give an employer if he needs to reduce his workforce; and
- amendments as a result of The Employment Equality (Age) Regulations (Northern Ireland) 2006.

The booklet describes what might be available to you under the redundancy payments scheme which operates under the Employment Rights (Northern Ireland) Order 1996 (referred to as 'the Order' in this booklet). [The Redundancy Payments Service](#) whose address can be found at the end of this booklet can provide further information - see [Appendix 2](#).

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. Alternatively they may be obtained upon request from your local Jobs and Benefits office. For information on Jobs and Benefits offices: **FREEPHONE** 0800 353530.

For employees seeking advice there is the employee section of the NIDirect website: www.nidirect.gov.uk/index/employment which provides a single comprehensive source of information for employees about their rights and responsibilities.

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:

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

Alternatively, comments may be sent via e-mail to: erbooklets@delni.gov.uk

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REDUNDANCY

When is a redundancy payment due

Your employer must give you a lump-sum payment if you:

- are made redundant;
- have at least two years' continuous service; and
- meet the other conditions set out in this booklet.

You may also be entitled to other non-statutory payments, if this has been agreed in your contract of employment - see the section - '**What are the payments**'.

In 2005 the Government looked at whether the statutory redundancy payment scheme would be compliant with the Age strand of the Employment Directive and concluded that the age bands are objectively justified.

Evidence that the Government has gathered demonstrates that younger, prime age and older workers fall into three distinct economic categories, with older workers facing a particularly difficult position in the employment market.

Young workers tend not to be out of work for long and see only a small fall in pay when switching jobs. Older workers are much more likely to become long-term unemployed and to experience a substantial fall in pay when finding a new job. Prime age workers fall into the middle. The Government believes that it is sensible for the level of support provided through the scheme to reflect these three categories.

Removal of the Default Retirement Age

From 6 April 2011 the rules which enable employers to operate a default retirement age in Northern Ireland have changed. OFMDFM have made Regulations (The Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011)¹ which have removed the Default Retirement Age (DRA) of 65. These Regulations revoke and amend provisions in the Employment Equality (Age) Regulations (Northern Ireland) 2006 and amend certain provisions in the Employment Rights (Northern Ireland) Order 1996 which except certain dismissals from employment on the basis of retirement from constituting direct age discrimination and unfair dismissal. These amendments remove the DRA of 65. A new provision relating to insurance arranged by an employer for the employer's employees and other persons in connection with that employment is also made.

¹ S.R. No. 168

Who can qualify

You will receive payment only if you are an employee working under a contract of employment. Self-employed people and members of a partnership do not qualify under the Order though they may have separate contractual agreements. Directors and other office holders may be employees if they work under a contract of employment. They will not qualify if they do not work under a contract of employment.

Contracts of employment may be spoken or written and last for any length of time or be fixed. In law, employees generally have a contract as soon as they start work and by doing so prove that they accept the conditions offered by the employer.

For further details see the booklet - '**Contracts of employment: changes, breach of contract and deductions from wages**' ER21. A few groups of employees do not qualify for a statutory redundancy payment - see the section - '**Employees who may not be entitled to a redundancy payment**'.

What dismissal means

In general, to be due a payment, you must have been dismissed by your employer rather than have resigned and the reason for dismissal must have been redundancy. If you are laid off (that is you receive no wages) or put on short time (that is you receive less than half a week's pay) for four weeks in a row or six weeks out of thirteen weeks you may also claim a redundancy payment without waiting to be dismissed for redundancy.

You must make your claim in writing to your employer who may refuse to pay if he believes normal working is likely to return within four weeks. If you are on a fixed-term contract and it ends without being renewed this counts as a dismissal and you may be due a redundancy payment.

If your employer says that redundancies will be needed and asks for volunteers you will qualify for a payment if you volunteer as long as your employer actually dismisses you. If your employer changes in circumstances covered by the Transfer of Undertakings Regulations please seek further advice from the Labour Relations Agency - see **Appendix 2**.

If you have been given notice of redundancy, you may leave early by agreement with the employer and still qualify for payment but the minimum period of notice which the employer has to give, by contract or by law, must have started by the time you give your notice.

What redundancy means

You will be entitled to a payment under the Order only if the reason for your dismissal is redundancy. This means that your dismissal must be caused by your employer's need to reduce his workforce. Redundancy may happen because a workplace is closing down or because fewer employees are (or are expected to be) needed for work of a particular kind.

Normally, your job must have disappeared. It is not redundancy if your employer immediately takes on a direct replacement for you but it will not matter if your employer is recruiting more workers for work of a different kind or in another location (unless you were required by contract to move to the new location).

If you are dismissed because of a need to reduce the workforce and one of the remaining employees moves into your job you will still qualify for a redundancy payment so long as no vacancy exists in the area (type of work and location) where you worked.

General rules on length of service

You must generally have at least two years' continuous service with your employer to qualify for a payment. The rules on length of continuous service are described briefly in the section - '**What are the payments**'.

For more detail see the booklet - '**Continuous employment and a week's pay**' ER8.

If you are offered a new job

You may well not be entitled to a payment if you are offered a new job with the same employer, an associated employer, or an employer who takes over the business. However if the new job is with the same or an associated employer you will only lose the redundancy payment if the new job is offered before your old employment contract expires and starts within four weeks.

If you are offered a new job in this way you can put off the decision whether or not to accept it for a four-week trial period. If you need retraining the trial period may be extended beyond four weeks by written agreement between you and your employer. If at the end of the trial period you are still in the job you will be considered to have accepted it.

If the new job is not a suitable alternative to the old one (because of differences in capacity, location or terms and conditions of the contract of employment) and you turn it down before the end of the trial period, you will be considered to have been redundant from the date your original employment ended. If you refuse an offer of a job that is a suitable alternative without a good reason you will not be entitled to a redundancy payment.

Disputes about payments

If you and your employer disagree about whether or not you should receive a redundancy payment, or about the amount you should receive, an Industrial Tribunal can decide - see section - '**Applying to an Industrial Tribunal**'.

What are the payments

The amount of your lump-sum redundancy payment depends on:

- how long you have been continuously employed by your employer;

- how your years of continuous service relate to a particular age band; and
- your weekly pay up to a legal limit.

The amount of redundancy pay will be calculated as follows:

- 0.5 week's pay for each full year of service where age during the year is less than 22;
- 1.0 week's pay for each full year of service where age during the year is 22 or above, but less than 41; and
- 1.5 weeks' pay for each full year of service where age during the year is 41+.

How to work out your length of service

The maximum number of years' continuous service which can be counted for statutory redundancy payments' purposes is 20. Length of continuous service is counted backwards from the 'relevant date'. This is generally the date on which the notice given to you ends. If your employer gives you less than the legal minimum notice, the extra notice which you should have been given is added on. If under your contract of employment you were entitled to a longer period of notice and you received this notice but did not work it, the date up to which your continuous service is counted may be later still.

Certain absences, for example caused by sickness, pregnancy or temporary shortage of work, can count towards continuous service even if your contract of employment was suspended. When working out your continuous service for a redundancy payment remember that days lost through industrial disputes do not count (although they do not actually break the continuous service). Any days you were on strike will be taken away from your total length of service.

For more detail see the booklet - '**Continuous employment and a week's pay**' ER8.

What a 'week's pay' means

The amount of a week's pay to be taken into account is the amount you are entitled to under the terms of your contract of employment on the 'calculation date'.

The calculation date for your redundancy payment will generally be one of the following:

- the date you were given the minimum notice required by law. This notice is usually one week for each year of service up to a maximum of twelve weeks;

- if the notice you received was longer than this minimum, the date on which minimum notice would have had to have been given to end your employment on the same day as it actually ended; or
- the date the job ended if you were not given notice or were not given enough notice.

If you had normal working hours and your pay did not change, for example, with the amount of work you did, your week's pay is simply your basic weekly wage or salary. Overtime earnings are not included unless overtime was part of your normal working hours.

If your earnings changed from one week to another because of piecework or productivity bonus arrangements, your week's pay is worked out by multiplying the number of hours you normally worked in a week by your average hourly earnings over the 12 complete weeks of work before the calculation date. Only hours actually worked are taken into account. If the hours used in the calculation include hours outside normal working hours and paid at higher rates, the higher rate is ignored and the hours are worked out at the normal basic rate. If your normal working hours varied from week to week because of shift work and your earnings varied as a result, a similar calculation is done but the average hourly earnings are multiplied by the average weekly hours over the same 12 weeks. If you had no fixed working hours, your week's pay will be your average weekly earnings in the 12 weeks before the calculation date. If you are not sure see the booklet - '[Continuous employment and a week's pay](#)' ER8.

There is a limit on the amount of a week's pay that can be taken into account in working out your entitlement. The limit is currently *£400 - changes annually in line with the Retail Prices Index (up or down) as appropriate. For details of current limits on payments see 'Limits on payments and awards' ER19.

* **N. B.** The current weekly limit is *£400. The rate of a week's pay is *subject to annual revision*. This means that the rate quoted above can become out of date. This internet guidance will be updated as and when the rates are changed. Alternatively, for the current rates or other recent information on the updated rate of a week's pay contact: [Employment Relations Policy and Legislation on: 028 90 257678](#).

What if my employer cannot pay

If your employer is insolvent we will pay you and claim back the payment from the assets of the business. Ask your employer's representative (for example: liquidator, receiver or trustee) for a claim form 'RP1'. Fill it in as soon as possible after your employment has ended and send it to: [The Redundancy Payments Service](#).

Alternatively you can apply online at: www.redundancyni.gov.uk

How to claim a payment: time limits

Under the Order your employer must make the payment when, or soon after, you are dismissed. There is no need for you to make a claim unless your employer does not pay or says that you are not entitled to a payment. If this happens you should write to your employer asking for payment or take the matter to an Industrial Tribunal or both. You must act within six months of the date your employment ended. If you do not make a written claim, or do not apply to an Industrial Tribunal within six months, you may lose the right to a payment but an Industrial Tribunal will still have the power to decide that you should receive a payment if you take action within a further six months -see section: '[Applying to an Industrial Tribunal](#)' for further details.

If your employer is declared insolvent, or cannot or refuses to pay and you have done everything you can to get your payment, you can apply for a direct payment from the Northern Ireland National Insurance Fund. You must have applied in writing to your employer for a payment within six months of the date your employment ended, or applied successfully to an Industrial Tribunal within the six months after that.

Your pension

Pensions may not be offset against statutory redundancy payments made to employees dismissed on or after 1 October 2006.

Tax

You will not pay Income Tax on a statutory redundancy payment though other redundancy payments you receive from your employer may be taxable - see HM Revenue & Customs' booklet 'Income Tax and Redundancy: a Guide to Tax and National Insurance Contributions' (IR143). Normally, your employer may set the payments against tax as a business expense. For further details see the Business Income Manual in the Publications section of HM Revenue & Customs' website.

Jobseeker's Allowance

A statutory redundancy payment will have no effect on any entitlement you may have to contribution-based Jobseeker's Allowance.

If you die or your employer dies

If your employer is the only owner of the business and the business stops trading because he dies his personal representative is responsible for any redundancy payments due. If the representative carries on the business and offers you a new job which is acceptable and starts within eight weeks, you will not be entitled to a redundancy payment. If you die before you receive your redundancy payment the payment will be made to your personal representative. There are also special rules about what happens if you or your employer dies while you are laid off or on short time. [The Redundancy](#)

Payments Service (the address of which can be found at **Appendix 2**) can give you more information.

Employees who may not be entitled to a redundancy payment

The following categories of employees have no right to a redundancy payment under the Order:

- members of the Armed Forces;
- apprentices whose service ends at the end of the apprenticeship contract;
- employees at the end of a fixed-term contract which was agreed, renewed or extended before 1 October 2002 and lasts at least two years where they have already given written agreement to waive their entitlement to a redundancy payment at the end of the contract. Any waivers inserted into contracts agreed, renewed or extended after 1 October 2002 will not be valid and fixed-term employees will have a right to statutory redundancy payments if they have been continuously employed for two years or more and are made redundant - see 'Fixed-Term Work: A Guide to the Regulations';
- domestic servants working in a private home who are members of the employer's immediate close family;
- share fishermen paid only by a share in the proceeds of the catch;
- Crown servants or employees in a public office; and
- employees of the Government of an overseas territory.

Employment in Great Britain for the same employer, an associated employer or an employer who takes over the business can be counted as long as there was no break in service. Employment in Northern Ireland can count towards a redundancy payment under Great Britain law.

Applying to an Industrial Tribunal

- If you disagree with your employer about your entitlement to a redundancy payment, you can take the matter to an Industrial Tribunal. You can do this at any time but you may lose your right to a payment if you do not take certain steps within six months of the day your job ends, or the date any new job ends with your employer, an associated employer or an employer who takes over the business.
- If you have made a written claim to your employer or contacted an Industrial Tribunal within six months you cannot lose your right to a payment because of delay.

- If you do not take any of the steps mentioned above within the first six months but take one of those steps within the following six months an Industrial Tribunal may still decide that you should receive a payment.
- They will consider the reason for the delay and all the circumstances.
- If you want to apply to an Industrial Tribunal contact the **Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET)** for a claim form ET1 and an explanatory leaflet.
- When you make a claim to an Industrial Tribunal you should name your employer as 'respondent' on the claim form. If your employer is insolvent you should add the words 'in receivership' or 'in liquidation' to your employer's name, as appropriate. You should give the name and address of the receiver or liquidator separately, if you know it.
- If the Industrial Tribunal awards you a redundancy payment but you do not receive it contact **The Redundancy Payments Service** for further advice.

When you fill in the claim form please write the following in the 'respondent' box:

**Department for Employment and Learning
Redundancy Payments Service**

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 trade union representative (where there is one) to explore potential solutions. If the dispute goes beyond this point without being resolved, employers and employees should engage in a formal process to ensure that the workplace dispute is 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 or a Fair Employment Tribunal. However, where a dispute is likely to result in a claim being made to an Industrial Tribunal, parties to a dispute should note that the LRA offers a free and impartial Pre-claim Conciliation Service that is independent of the Tribunal process.

Advice about employment rights and what to do in the event of a dispute can be obtained from the LRA by contacting their helpline: **028 9032 1442**.

The Labour Relations Agency (LRA) Arbitration Scheme

The LRA Arbitration Scheme provides an entirely voluntary alternative to an Industrial Tribunal hearing in cases of unfair dismissal or flexible working. Arbitration is an effective method of resolving a dispute in which an independent arbitrator's decision is binding as a matter of law and has the same effect as a court judgement. The scheme is confidential, relatively fast, cost efficient, non-legalistic and informal. Detailed guidance on using LRA Arbitration for Unfair Dismissal or Flexible Working applications can be obtained on the LRA website or by ringing the LRA Arbitration Scheme section on: 028 9032 1442 - see Appendix 2.

ANNEX

Ready reckoner for calculating the number of weeks' pay due

Read off your age and number of complete years' service. The table will then show how many weeks' pay you are entitled to. The redundancy payment due to each employee under the statutory redundancy payment scheme depends on his age and length of service (up to twenty years). This determines the number of weeks pay due, which is then subject to a limit on weekly pay. To calculate the number of weeks pay due, you should use the following amounts:

- 0.5 week's pay for each full year of service where age during the year is less than 22;
- 1.0 week's pay for each full year of service where age during the year is 22 or above, but less than 41;
- 1.5 weeks' pay for each full year of service where age during the year is 41+.

Employers using the above amounts to calculate an employee's entitlement to redundancy pay should note that where an employee's service crosses two bands, the figures in each band should be added together.

Example 1:

If you are 25 with 7 years' service, you will be entitled to 5 weeks' redundancy pay. The 5 weeks' entitlement is based on 0.5 week's pay for each completed year of service between age 18 and 22 and 1 week's pay for each completed year of service between age 22 and 25. (The middle band of 1 week's pay only applies where an employee, who is entitled to a redundancy payment, has completed a year's service at age 22 or above.)

Example 2:

If you are 38 years old and have 12 years of service, you will be entitled to 12 weeks' redundancy pay. The 12 weeks is based on 1 week's pay for each completed year of service between age 26 and 38.

Example 3:

If you are 49 years old and have 15 years of service, you will be entitled to 19 weeks' redundancy pay. The 19 weeks' entitlement is based on 1 week's pay for each completed year of service between age 34 and 41 and 1.5 weeks' pay for each completed year of service between age 41 and 49.

The maximum week's pay that an employee is entitled to under the statutory scheme is *£400. The limit changes every year in line with the Retail Prices Index. The increase of the limit on a week's pay will apply where the relevant date (including the projected date for redundancy payment purposes) falls on or after 1 February. For the definition of a week's pay see the section '**What a week's pay means**'.

***N. B.** The current weekly limit is *£400. The rate of a week's pay is *subject to annual revision*. This means that the rate quoted above can become out of date. This internet guidance will be updated as and when the rates are changed. Alternatively, for the current rates or other recent information on the updated rate of a week's pay contact: **Employment Relations Policy and Legislation on: 028 90 257678.**

This page is intended only as a guide and shows how statutory redundancy pay is calculated for people who are entitled to receive it. Whether or not you are entitled to redundancy pay will depend on your individual circumstances.

READY RECKONER TABLE

Service (Years)	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Age (Years)																			
18*[1]	1	1½																	
19	1	1½	2																
20	1	1½	2	2½															
21	1	1½	2	2½	3														
22	1	1½	2	2½	3	3½													
23	1½	2	2½	3	3½	4	4½												
24	2	2½	3	3½	4	4½	5	5½											
25	2	3	3½	4	4½	5	5½	6	6½										
26	2	3	4	4½	5	5½	6	6½	7	7½									
27	2	3	4	5	5½	6	6½	7	7½	8	8½								
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½							
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10½						
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11	11½					
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12	12½				
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13	13½			
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14	14½		
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15	15½	
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16	16½
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½
61*[2]	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

18*[1] - It is possible that an individual could start to build up continuous service before age 16, but this is likely to be rare, and therefore we have started the table at age 18.

61*[2] -The same figures should be used when calculating the redundancy payment for a person aged 61 and above.

Time off for job hunting or to arrange training when facing redundancy

Outline of provisions

The provisions relating to time off to look for work or to make arrangements for training are contained in Articles 80 to 82 of the Order. An employee who is given notice of dismissal because of redundancy is entitled to reasonable time off with pay during working hours to look for another job or make arrangements for training for future employment. The time off must be allowed during the period of notice. Employees are entitled to time off in this way only if they have had two years' continuous employment with their employer on the date their notice expires or the date when the statutory minimum period of notice due under the legislation expires, whichever is the later. For an explanation of the meaning of 'continuous employment', or in case of difficulty in deciding on the length of continuous employment - see the booklet - **'Continuous employment and a week's pay' ER8**. If the business or part of the business has been transferred from one employer to another in circumstances covered by the Transfer of Undertakings Regulations please seek further advice from the Labour Relations Agency - see **Appendix 2**.

People not covered by the provisions

Certain workers are not covered, either because they are not employees, or because they are already covered by other arrangements, or because their terms and conditions of employment make the application of the provisions inappropriate.

These are:

- anyone who is not an employee, for example an independent contractor or freelance agent;
- members of the Police Service and the 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;
- merchant seamen; and
- employees who ordinarily work outside Northern Ireland under their contracts of employment.

Amount of time off

An employer should allow the employee 'reasonable' time off. The legislation does not specify what is reasonable since this will vary with the differing circumstances of employers and employees.

Some employees may need only to attend one interview or make one visit. Others may have to make a number of visits some of which may involve travelling some distance.

Payment for time off

Employees should be paid the appropriate hourly rate for the period of absence from work but an employer does not have to pay more than two-fifths of a week's pay regardless of the length of time off allowed. This is arrived at by dividing the amount of a week's pay by the number of normal working hours in the week. The method of calculation is similar to that used for computing redundancy payments. The week's pay is calculated by reference to a date known as 'the calculation date'. In computing pay for time off to look for work or arrange training this date is the one on which notice was given by the employer. An employer does not have to pay more than once for the same period. Any payment already made under an employee's contract of employment for a period of time off to look for work will be offset against the employer's liability under the provisions. If payment has been made by an employer for time off to look for work under the provisions, this will reduce any liability under the contract of employment.

Making a complaint

Employees who are unreasonably refused time off by their employers have a right to be paid the amount they would have been entitled to receive had they been allowed time off, subject to a limit of two-fifths of a week's pay. An employee can complain to an Industrial Tribunal in cases where the employer refuses either to allow time off or to make the appropriate payment. A complaint should be made within three months of the date on which time off should have been allowed but Industrial Tribunals have discretion to accept complaints made after the three-month period if they consider that it was not reasonably practicable for the employee to make the complaint earlier. Individuals who wish to make a complaint to an Industrial Tribunal may obtain a copy of an explanatory booklet and a claim form ET1 (both of which are available free of charge) from the [Office of the Industrial Tribunals and the Fair Employment Tribunal \(OITFET\)](#). Completed claim forms should be returned to OITFET – the address of which can be found at [Appendix 2](#).

Conciliation

The Industrial Tribunal will send a copy of the completed claim form to the Labour Relations Agency (LRA) who may attempt to get both sides to settle the complaint without the need for an Industrial Tribunal hearing. The services of an LRA conciliation officer will also be available in the absence of a formal complaint on form ET1, at the request of the employee or employer. In such a case the employee or employer can get in touch with a conciliation officer through the offices of the LRA - see [Appendix 2](#). Information given to conciliation officers in the course of their duties will be treated as confidential. It may not be divulged to the Industrial Tribunal without the consent of the person who gave it.

Industrial Tribunal hearing

If no settlement is reached the Industrial Tribunal will hear the case. See the section - '[Resolving Disputes in the Workplace](#)' on page 12.

Industrial Tribunal hearings are conducted informally. Both parties should attend and may claim travelling and other expenses including loss of earnings. The parties can be represented by anyone they wish including a representative of a trade union or employer's association. It is not necessary to engage a solicitor but there is no objection to either party doing so if legal representation is preferred.

Industrial Tribunal proceedings are conducted in such a way as to make it easy for individuals to conduct their own case if they wish.

Remedy

Where the Industrial Tribunal is satisfied that a complaint is justified, it will order the employer to pay the employee the money, or the balance of the money due.

Appendix 1: Booklets in this series

Booklets in this series are available online from 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 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

E-mail: info@nicertoffice.com

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

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

Freephone: 080 0585 811

Fax: 028 9025 7555

Website: www.redundancyni.gov.uk

E-mail: rpsquery@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

E-mail: information@equalityni.org

The Health and 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

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

E-mail: 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

E-mail: info@lra.org.uk

NIBUSINESS INFO

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

Website: 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

E-mail: 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 90250100

Website: www.employmenttribunalsni.org

people:skills:jobs:



Department for
**Employment
and Learning**
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

Website: www.delni.gov.uk