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

## ER 8

# Continuous employment and a week's pay



## Introduction

This booklet outlines the rules for calculating a period of continuous employment and a week's pay.

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:

Department for Employment and Learning  
Employment Relations Policy and Legislation Branch  
Room 203  
Adelaide House  
39-49 Adelaide Street  
Belfast  
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Alternatively, comments may be sent via e-mail to: [erbooklets@delni.gov.uk](mailto:erbooklets@delni.gov.uk)

This booklet was last updated: **May 2008**.

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## The contract of employment

Under employment protection legislation, employees have a number of individual rights. Many of these rights apply only to employees who have a *minimum period of continuous employment*. The rights, with their minimum periods, are set out in the [table](#) on page 5.

### Continuous employment

*Continuous employment* usually means working for the same employer without a break, but it does not always mean this. Sometimes employment can be regarded as continuous in spite of short breaks (see [Reinstatement or re-engagement after unfair dismissal](#) and [Industrial disputes \(strikes and lock-outs\)](#) on page 3). Time with a previous employer can sometimes be added on to time with the present employer (see [Time with a previous employer which may count](#) on page 4). To build up the minimum periods of continuous employment and to qualify for the rights, employees must meet certain conditions (see pages 2-4).

Qualification dates are explained in [Length of continuous employment](#) on page 2 of this booklet and are listed in the [table](#) on page 5. All of the rights have other conditions besides the length of continuous employment - to find out about these you should read the booklet about the particular right you are interested in. Titles of the booklets are listed in the final column of the [table](#) on page 5. The booklets may be obtained from Jobs and Benefits Offices or from the Department for Employment and Learning (see [Appendix 2](#)).

### A week's pay

This booklet also explains what the legislation means by *a week's pay*. Entitlements to redundancy pay, guarantee pay, some types of compensation awarded by industrial tribunals, pay during notice and during time off for job-hunting or antenatal care are all related to an employee's 'week's pay', defined as the amount of pay the employee is due per week under his contract of employment. This is not necessarily the same as average pay, or pay in a typical week. (The section [Rules for calculating a week's pay](#) from page 8 to 10 explains how to work out a week's pay under this definition).

### Contract of employment

This booklet refers often to the *contract of employment*, or to hours worked or pay due under the contract. Contracts of employment may be oral or written. They may be of indefinite duration, or for fixed terms. They may be for training, apprenticeship or other purposes. In law, employees have a contract of employment as soon as they start work even where the written statement of employment particulars required by the legislation has not been given to the employee.

## Continuous employment

### Length of continuous employment

To work out how long an employee has been continuously employed, the first step is to establish his *qualification date* for the purpose of the right in question. The qualification date is defined differently for different rights; the [table](#) on page 5 gives a summary. To make sure of getting the correct qualification date, you should refer to the booklet about the right you are interested in (for example the booklet [Unfairly dismissed? \(ER13\)](#)).

Length of service is calculated in months and years, starting from the day the employee began to work for the present employer (or any previous employer from whom service may be carried forward) and ending with the qualification date. Where the period of continuous employment includes days which do not count towards the total length of service but which do not break continuity (for example days on strike - see [Industrial disputes \(strikes and lock-outs\)](#) on page 3), the starting date is treated as postponed by that number of days.

Any dispute about whether the length of an employee's continuous service qualifies him for a particular right can be settled by an industrial tribunal.

### **Has an employee's service been continuous? Does the service include any time which does not count for employment protection purposes?**

To find out whether all the service from the start of the employee's employment to the qualification date has been continuous and whether it all counts, it must be considered on a week by week basis. For this purpose weeks end with a Saturday. If at any point continuity has been broken, **none** of the weeks before the break count towards the employee's continuous service. In any industrial tribunal proceedings where continuity is an issue, the tribunal will assume the employment was continuous until it is shown that it was not continuous.

### **General rules about working hours**

A week counts towards a period of continuous employment if in that week the employee actually works, or the employee's relations with the employer are governed by a contract of employment.

Absence from work because of sickness, maternity leave, parental leave, temporary lay-off and holiday breaks all count automatically, provided the contract continues throughout.

### **Weeks when there is no contract**

Weeks may also count even though there is no contract of employment if:

- an employee is absent from work due to illness or injury and is then re-engaged within 26 weeks of the contract being terminated;
- work ceases temporarily (but for the rules relating to strikes, see **Industrial disputes (strikes and lock-outs)** below); or
- the employee is absent in circumstances in which his employment is regarded as continuing for some purposes, by arrangement or custom.

### **Reinstatement or re-engagement after unfair dismissal**

If an employee complains of unfair dismissal and is subsequently reinstated or re-engaged in the circumstances listed below by the employer, the employer's successor or an associated employer, then all the weeks which fall between the date when the employee's dismissal took effect and the date when he resumes (or starts) work for the employer count towards the employee's period of continuous employment as though there had been no dismissal.

The relevant circumstances are that the reinstatement or re-engagement arises from:

- an order of a tribunal which has found the dismissal unfair;
- a claim made under a dismissals procedure designated by the Department;
- an agreement reached with the help of a Labour Relations Agency conciliation officer;
- the Labour Relations Agency arbitration scheme;
- a compromise agreement under the legislation;
- an applicable statutory dispute resolution procedure; or
- the statutory duty to consider a request to work beyond retirement or arising out of use of this procedure.

### **Industrial disputes (strikes and lock-outs)**

An employee's starting date is treated as postponed by the number of days between the last working day before the employee was on strike and the day on which he resumed work. The starting date is not postponed by periods in which the employee is locked out.

Therefore, although a period in which an employee was on strike may not count, it does not break the continuity of the period of employment (except in some circumstances where an employer dismisses the employee during the strike).

## **Rights already acquired**

When an employee has completed the minimum period of continuous employment needed to qualify for any of the rights in the [table](#) on page 5 of this booklet, he keeps those rights.

Some of the rights in the [table](#) on page 5 increase with further service (the right to notice, redundancy pay and the basic award of compensation for unfair dismissal). However, the amount of compensation is normally based on the contractual earnings at the time the contract ends.

## **Employment overseas**

Service abroad generally counts towards the period of continuous employment, but a week of such service only counts in determining rights to redundancy pay if the employee was classed as an employed earner for social security purposes during that week.

## **Time with a previous employer which may count**

Changes of employer normally break continuity, and mean that employees must start all over again to qualify for rights. But the following are examples of types of change which do not break continuity, so that continuous service before the change also counts if:

- a trade, business or undertaking or part of an undertaking is transferred to another employer;
- by or under an Act of Parliament or the Northern Ireland Assembly, one corporate body takes over from another as the employer;
- the employer dies and his personal representatives or trustees keep on the employee in employment;
- there is a change in the partners, personal representatives or trustees who employ the employee;
- the employee moves from one employer to another where at the time of the move the two employers are associated employers, that is if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; or
- the employee of a health service employer moves to another health service employer while undergoing training.

## **Continuous employment for redundancy pay purposes only**

Employment may be treated as continuous for redundancy pay purposes if, for example, an individual is employed by certain local government employers or certain other employers in the public sector.

## TABLE

### Employment rights referred to in this document

<b>Right</b>	<b>Minimum period of continuous employment needed to qualify</b>	<b>Qualification date</b>	<b>Calculation date used for calculating a week's pay</b>	<b>Booklet</b>
Guarantee payment. (Limits apply and are renewed annually.)	One month.	End of the last complete week before the day on which payment is due.	The day in respect of which the guarantee payment is due unless the contract has been varied or a new one entered into to provide for short-time working, in which case it is the last day on which the original contract was in force.	<a href="#">Guarantee payments (ER14).</a>
Remuneration on suspension on medical grounds.	One month.	End of last complete week before the day on which suspension begins.	The day before that on which the suspension began.	<a href="#">Suspension from work on medical or maternity grounds (ER10).</a>
Notice of termination.	One month.	Date notice given.	The day immediately preceding the first day of the period of notice.	<a href="#">Rights to notice and reasons for dismissal (ER15).</a>
Time off to look for work or to arrange training.	Two years.	The date when employee's notice expires or date when statutory minimum notice expires, whichever is the later.	The day on which the employer's notice was given.	<a href="#">Time off for job hunting or to arrange training when facing redundancy (ER9).</a>
Time off for antenatal care.	None.	Not applicable.	The day of the appointment concerned.	<a href="#">Maternity rights: a guide for employers and employees (ER16).</a>
Additional maternity leave (26 weeks from the end of ordinary maternity leave).	26 weeks.	The beginning of the 14th week before the expected week of childbirth.	Not applicable.	<a href="#">Maternity rights: a guide for employers and employees (ER16).</a>

Right	Minimum period of continuous employment needed to qualify	Qualification date	Calculation date used for calculating a week's pay	Booklet
Parental leave.	One year.	Any time after childbirth or adoption up to the child's 5th birthday or the fifth anniversary of adoption (extended to the 18th birthday where the child receives a Disability Living Allowance).	Not applicable.	<a href="#">Parental leave: a guide for employers and employees (ER25).</a>
Paternity leave.	26 weeks.	End of the 15th week before the expected week of childbirth.	Not applicable.	<a href="#">Rights to paternity leave and pay (ER34).</a>
Adoption leave.	26 weeks.	End of the week in which adopter was notified of having been matched with the child for adoption.	Not applicable.	<a href="#">Adoptive Parents: a guide for employers and employees (ER 35).</a>
Right to apply to work flexibly.	26 weeks.	Date of application.	Not applicable.	<a href="#">Flexible Working: a guide for employers and employees (ER 36).</a>
Written statement of reasons for dismissal.	One year. (None if dismissal occurs during an employee's pregnancy, statutory maternity leave or statutory adoption leave.)	Generally the last day on which the employee worked.	The date on which the employer's notice was given or, if notice was not given, the effective date of termination.	<a href="#">Rights to notice and reasons for dismissal (ER15).</a>
Not to be unfairly dismissed and compensation if unfairly dismissed and not reinstated or re-engaged. (Limits apply and are reviewed annually.)	One year. (None in certain special cases. One month where medical suspension could apply.)	See booklet <b>Unfairly dismissed? (ER13).</b>	Not applicable.	<a href="#">Unfairly dismissed? (ER13);</a> <a href="#">Suspension from work on medical or maternity grounds (ER10);</a> <a href="#">Union membership: rights of members and non-members (ER31).</a>

Right	Minimum period of continuous employment needed to qualify	Qualification date	Calculation date used for calculating a week's pay	Booklet
Redundancy payments. (Limits apply and are reviewed annually.)	Two years.	Depends on the circumstances. See booklet <b>Redundancy payments (ER3)</b> .	Depends on the circumstances.	<a href="#">Redundancy payments (ER3)</a> .
Paid annual leave.	None.	Starts on the first day of employment.	Payment based on a normal week's pay. Where working patterns fluctuate payment based on the average working week over the previous 12 weeks worked or if less than 12 weeks the period actually worked could be used.	<a href="#">Working Time Regulations: A detailed guide</a> .
To become a permanent employee on the renewal of a fixed-term contract (or re-engagement on a new fixed-term contract) and to a written statement confirming this.	Four years unless continuation of the fixed-term contract can be objectively justified. Service before 10 July 2002 does not count.	The date on which the employee acquired four years' continuous service.	Not applicable.	<a href="#">Fixed Term Work: A Guide to the Regulations</a> .

## Rules for calculating a week's pay

### Calculation date

As explained in the introduction, the legislation sets out how 'a week's pay' should be calculated for the purposes of many individual rights. The [table](#) on page 6 lists them. It also shows the date at which the week's pay should be calculated for the purposes of each right - known as the *calculation date*. Please note that this calculation date is only relevant to calculating a week's pay: it may well be different from the qualification date you need to calculate length of continuous service, which is given in the same table.

### Limits

For some of the rights shown in the table, the payments and awards are subject to financial limits set by Regulations. These limits are regularly reviewed by the Department for Employment and Learning; see the booklet [Limits on payments \(ER19\)](#) for the current limit on payments. The booklet on the right in question will also tell you more about this.

### Employees paid a fixed wage or salary or entirely on an hourly rate

If an employee's pay for work done in normal working hours does not vary, a week's pay will be the pay due for the basic hours the employee is contracted to work. Any regular bonus or allowance (except an expense allowance) which does not vary with the amount of work done may be included. However, pay for overtime hours may *only* be included if the contract of employment obliges the employer to provide those hours of overtime work as well as obliging the employee to work overtime if the employer provides it.

### Employees paid by piece-rates, variable bonuses or commission

If an employee's pay varies with the amount of work done, as, for example, under piece-work systems, or when pay is partly made up of variable bonuses or commission related to output performance, then a week's pay for normal working hours (excluding overtime hours not binding on both sides, as above) is based on a specially calculated hourly rate. This rate is the *average hourly rate over a 12-week period*, ending on the calculation date if the calculation date is the last day of the pay week. If the calculation date falls during a pay week, the 12-week period ends on the last day of the previous week.

To get this special *average hourly rate*, only hours when the employee was working (including overtime hours) can be taken into account. If the employee has less than 12 weeks' service, other factors might be relevant such as the working hours of other employees of the same employer and/or the expected pattern of working based on the terms on which the job was offered. Any pay for hours not worked, for example under a guaranteed week agreement, must be left out. If overtime hours are included, the pay must be adjusted. (See [Adjusting pay for work done outside normal hours](#) on page 9).

Any week in which no work was done should be replaced by the last previous week when the employee did work, to bring the total number of weeks up to 12. 12/13 of any quarterly bonus, or 12/52 of any annual bonus, can be included, provided the bonuses are not paid specifically for some time outside the 12-week period. The hourly rate is calculated by dividing the pay to be taken into account over the 12-week period by the number of hours worked during the same period.

### **Shift or rota workers**

If at the calculation date an employee is contracted to work normal hours, but on days of the week or at times of the day which differ from week to week or over a longer time so that the pay for any week varies (for example when the normal hours worked at night or at the weekend attract a higher rate of pay), then a week's pay means pay for the average number of normal weekly working hours at the average hourly rate. To allow for variation of hours according to the shift worked, the average number of normal weekly working hours is calculated by dividing by 12 the total number of normal working hours during a period of 12 weeks, ending on the calculation date if the calculation date is the last day of the pay week. If the calculation date falls during a pay week, the 12-week period ends on the last day of the previous pay week. The *average hourly rate* is calculated in the same way as for piece-workers. (See **Employees paid by piece-rates, variable bonuses or commission** on page 8).

### **Adjusting pay for work done outside normal hours**

Work done outside normal working hours, for example voluntary overtime, will sometimes be included in arriving at the average hourly rate. Where pay for such work is higher than pay for the same work done in normal working hours, the pay must be adjusted, that is to say brought down to the level it would have been if the same work had been done in normal working hours. If there is more than one rate for work done in normal working hours, for example because the hourly or piece-rate goes up after a certain number of hours have been worked or units produced, the overtime pay should be brought down to the lower of the 'normal hours' rates.

### **Employees with no normal working hours**

For an employee with no normal working hours - for example an outdoor sales representative paid wholly by commission - the amount of a week's pay is the average weekly pay over a 12-week period, ending on the calculation date if the calculation date is the last day of the pay week. If the calculation date falls during a pay week, the 12-week period ends on the last day of the previous pay week. Any week for which no pay was due should be replaced by the last previous week for which pay was due, so as to bring the number of weeks to be averaged up to 12.

### **Work done for a previous employer**

Weeks worked for a previous employer can be included in the 12-week period over which the hourly rate is calculated, if the change of employer did not break the employee's continuity of employment (See [Time with a previous employer which may count](#) on page 4).

## 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:** [rhsquery@delni.gov.uk](mailto:rhsquery@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

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**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  
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BT48 6BJ

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**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**

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Ormeau Road  
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