



ER 15

Rights to notice and reasons for dismissal



Introduction

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.

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

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

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Rights to notice

The Employment Rights (Northern Ireland) Order 1996 (S.I. 1919 (NI16)) gives the right both to employers and employees of a minimum period of notice of termination of employment, provided that the employee has been continuously employed for one month or more.

If a contract of employment gives the employer or the employee rights to longer notice than the minimum in the legislation, then the longer period of notice applies.

The legislation does not prevent either employers or employees from waiving their rights to notice or from accepting a payment in lieu of notice. Nor does the legislation affect the right of either party to terminate the contract without notice if the conduct of the other justifies it. The question of whether termination without notice is justified depends on the circumstances of the individual case and in the event of dispute can be finally determined only by the courts or industrial tribunals.

Where the right to minimum notice does not apply

The employee's right to a minimum period of notice does not apply to:

- anyone who is not an employee, for example an independent contractor or free-lance agent;
- a person employed as a seaman on a ship registered in the United Kingdom under a crew agreement; the provisions and form of which are of a kind approved by the Secretary of State for Transport;
- Crown servants and members of the armed forces;
- generally, employees who have fixed-term contracts (see [Fixed-term contracts](#) on page 2).

Continuous employment

A period of continuous employment forms the basic qualification for a number of individual rights under the employment protection legislation, including rights to notice and to receive a written statement of reasons for dismissal; each right has its own qualifying period. The booklet **Continuous employment and a week's pay (ER8)**, sets out the method of calculating the period of continuous service.

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 point may be obtained from the Labour Relations Agency (LRA).

Notice to be given by an employer

An employer is required to give an employee:

- at least one week's notice if the employee has been employed by the employer continuously for one month or more but for less than two years;
- at least two weeks' notice if the employee has been employed by the employer continuously for two years; and
- one additional week's notice for each further complete year of continuous employment for a period of less than 12 years' continuous employment; and at least 12 weeks' notice if the employee has been employed by the employer continuously for 12 years or more.

Notice to be given by an employee

An employee is required to give his employer at least one week's notice if employed continuously for one month or more by that employer. This minimum is unaffected by longer service.

Fixed-term contracts

Generally, no notice of the *expiry* of a fixed-term contract will need to be given, but if the contract is terminable by notice before its expiry, the minimum notice provisions (see above) will apply to such early termination.

Employees who were originally engaged on a contract specifying a fixed term of one month or less, but who are continuously employed for three months or more, are regarded for the purpose of the legislation as being employed for an indefinite period and are therefore entitled to a minimum period of notice. This benefits employees who are employed under a series of short-term contracts.

Apprentices

Apprentices come within the definition of employee in the legislation. Normally a contract of apprenticeship will in effect be a fixed-term contract of some years' duration and no notice will need to be given under the legislation on its completion. If, however, it is terminated before completion, the minimum period of notice provisions (see above) will apply. If an apprentice remains with the employer after completing apprenticeship, the period as an apprentice counts for the purpose of qualifying for rights to notice under the legislation.

When notice can be given

Unless a contract states otherwise, notice can be given on any day. Normally the period of notice will run from the start of the following day so that if, for example, a week's notice is given on a Monday, the period of notice will begin on the Tuesday and expire at the end of the following Monday. There may be conditions in the contract to be taken into account, however. The contract

may, for example, say that notice can only be given so as to expire at the end of a pay week.

Termination of employment on redundancy

An employee who is being dismissed as redundant is still entitled to receive due notice of termination under his contract or the legislation, whichever provides the longer period. However, it is important to note that where the employment is terminated because of redundancy, there are, or may be, certain other requirements. See the booklets **Redundancy consultation and notification (ER4)** and **Redundancy payments (ER3)**.

Transfer of an undertaking

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. The new owner takes over the employment liabilities of the old owner, with the exception of criminal liabilities and occupational pension rights.

Right to minimum pay during the notice period

An employee whose contract of employment specifies normal working hours and who works throughout those hours during the period of notice is entitled to receive normal pay for that period in accordance with the terms of the contract.

With certain exceptions (see [Where the provisions relating to minimum pay during the notice period do not apply](#) on page 5), in the case of an employee whose contract of employment specifies normal working hours, the legislation provides for a minimum hourly rate of pay during the minimum period of notice for any period during normal working hours that the employee is:

- ready and willing to work, but no work is provided;
- incapable of work because of sickness or injury;
- absent from work wholly or partly because of pregnancy, childbirth or on adoption, parental or paternity leave; or
- on holiday in accordance with the terms of employment.

The minimum average hourly rate of pay is calculated by dividing a week's pay by the number of normal weekly hours. Detailed provisions for calculating a week's pay under the legislation are set out in the booklet **Continuous employment and a week's pay (ER8)**.

Subject to the same exceptions, in the case of an employee whose contract of employment does not specify normal working hours, the legislation guarantees a week's pay for each week during the minimum period of notice when the employee is:

- ready and willing to do work of a reasonable nature and amount to earn a week's pay;
- incapable of work because of sickness or injury;
- absent from work wholly or partly because of pregnancy or childbirth or on adoption, parental or paternity leave; or
- on holiday in accordance with the terms of employment.

This right applies whether it is the employer who gives notice or the employee. Where it is the employee who gives notice, the legislation does not require the employer to make the minimum payment referred to unless and until the employee leaves the employer's service in accordance with the notice given.

Where the provisions relating to minimum pay during the notice period do not apply

The guarantee of minimum pay during the notice period under the legislation, outlined above, does not apply:

- to an employee whose contract of employment specifies a period of notice which is at least one week longer than the statutory minimum period (see **Notice to be given by an employer** on page 1). In this case, payment during the notice period will depend only upon the terms of the contract of employment;
- to an employee who, after giving notice, takes part in a strike of employees of the employer on or before the termination of the contract;
- to any time which employees are allowed off during the period of notice at their own request. Employees may, however, be entitled under separate provisions of legislation to payment for time off to look for work or to arrange training (if they are facing redundancy), to undertake union duties (if they are trade union officials) or for antenatal care. See the booklet **Individual rights of employees (ER1)** for a brief explanation of these rights.

Reduction of minimum pay during the notice period

An employee is not entitled to be paid twice for the same period. If, therefore, during the period of notice an employee is paid sick pay, maternity pay, paternity pay or adoption pay by the employer (in each case whether statutory or not), or is on holiday in accordance with the terms of the contract and is receiving holiday pay, the employer may reduce the notice pay by the amount of sick pay, maternity pay, paternity pay, adoption pay or holiday pay which is paid to the employee provided it is in respect of the same period.

Under some company sick pay schemes, employers take account of National Insurance sickness or industrial injury benefit in determining the amount of sick pay. In such cases, National Insurance benefits may be taken into account when calculating minimum pay during the notice period if an employee is away from work because of sickness or injury. Where, however, the employee has exhausted his entitlement to sick pay under the employer's scheme, or where the scheme does not provide for National Insurance benefits to be taken into account, the employer is not entitled to deduct such benefit from the minimum pay required to be paid under the legislation.

Again, these provisions do not apply where the employee's contract of employment specifies a period of notice which is at least one week longer than the statutory notice period.

Insolvency of an employer

Under the insolvency provisions of the legislation, the Department for Employment and Learning may pay from the Northern Ireland Redundancy Fund certain debts owed to employees by insolvent employers. These include arrears of pay (including sick pay), holiday pay and a compensatory notice payment if employees have suffered financially because they have not been given proper notice. The arrangements are explained in the booklet **Your rights if your employer is insolvent (ER5)**.

Making a complaint about notice and minimum pay

The rights to minimum notice and to minimum pay during the notice period can be enforced in the same way as terms specified in a contract of employment. In other words, employers or employees who consider that they have incurred loss because they have not been given the minimum notice (and/or, in the case of employees, the minimum pay) to which they are entitled under the legislation or under their contracts of employment, can bring actions for damages in the civil courts, or in the case of employees, industrial tribunals (if the employment has already ended). Further advice can be obtained from county court offices, Citizens Advice Bureaux or a solicitor. Further information about how to make a claim to an industrial tribunal can be obtained from the Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET), see page 6 and [Appendix 2](#).

Right to receive a written statement of reasons for dismissal

Legislation gives most employees (with some exceptions - see **Those who are not covered by the provisions relating to a written statement of reasons for dismissal**, below) whose employment is terminated with or without notice, or whose limited-term contracts expire without being renewed, the right to receive from their employers, on request, a written statement of the reasons for dismissal or the non-renewal of their limited-term contracts. 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. It is important to note that an employee who has been dismissed has no right to receive such a written statement unless he asks for one. The request can be oral or in writing.

Employers are required to comply with an employee's request for a written statement within 14 days of the request being made.

An employee dismissed at any time during pregnancy, statutory maternity leave or statutory adoption leave is entitled to receive, from his or her employer, a written statement of the reasons for his or her dismissal, regardless of whether or not he or she has requested one, and regardless of his or her length of service. The written statement can be used in evidence in any subsequent proceedings, for example in relation to a complaint of unfair dismissal.

Those who are not covered by the provisions relating to a written statement of reasons for dismissal

The right to a written statement of reasons for dismissal does not apply to:

- anyone who is not an employee, for example an independent contractor or free-lance agent;
- generally those who have not completed one year's continuous employment at the time of their effective date of termination (generally the last day on which the employee worked). For a fuller explanation of how to calculate the effective date of termination, see the booklet **Unfairly dismissed? (ER13)**;
- 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;
- members of the police service and the armed forces.

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. Further advice, including advice on employment rights and responsibilities generally, can be obtained from the LRA by contacting their helpline: 028 9032 1442.

The written statement of reasons for dismissal is not one of the cases in which industrial tribunals can impose financial penalties for failure to follow **statutory dispute resolution procedures**.

Making a claim to an industrial tribunal

If an employer refuses, or fails, to provide a written statement of the reasons for dismissal and the employee considers that the refusal or failure is unreasonable, the employee may complain to an industrial tribunal. A complaint may also be made by an employee if he is given a statement which he considers to be inadequate or untrue.

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 say why you are doing so.

The 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), www.employmenttribunalsni.gov.uk/.

You are asked to give certain other information, which will be helpful to the industrial tribunal, so complete the form as fully as possible and keep a copy of what you write.

You should read the notes on the form before completing it and remember to sign the claim form.

Further information is available in the booklet **Industrial Tribunals Procedures: for those concerned in Industrial Tribunal Proceedings** available from Jobs and Benefits Offices and OITFET (see [Appendix 2](#)).

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	<i>Individual rights and responsibilities of employees</i>
ER 2	<i>Written statement of employment particulars</i>
ER 3	<i>Redundancy entitlement statutory rights</i>
ER 4	<i>Redundancy consultation and notification</i>
ER 5	<i>Your rights if your employer is insolvent</i>
ER 6	<i>Unjustifiable discipline by a trade union</i>
ER 7	<i>Time off for public duties</i>
ER 8	<i>Continuous employment and a week's pay</i>
ER 10	<i>Suspension from work on medical or maternity grounds</i>
ER 12	<i>Pay statements: what they must itemise</i>
ER 13	<i>Unfairly dismissed?</i>
ER 14	<i>Guarantee payments</i>
ER 15	<i>Rights to notice and reasons for dismissal</i>
ER 16	<i>Maternity rights: a guide for employers and employees</i>
ER 17	<i>Help with meeting redundancy costs for employers in financial difficulty</i>
ER 18	<i>Dismissal: fair and unfair - a guide for employers</i>
ER 19	<i>Limits on payments and awards</i>
ER 21	<i>Contracts of employment: changes, breach of contract and deductions from wages</i>
ER 22	<i>Criminal records and employment</i>
ER 23	<i>Payment of union subscriptions through "check off"</i>
ER 24	<i>Time off for dependants</i>
ER 25	<i>Parental leave: a guide for employers and employees</i>
ER 26	<i>Time off for study or training</i>

- 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

Email: 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

E-mail: 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

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

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

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

NI Business 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 9023 0184

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