

The Employment Law Changes Introduced on 6 April 2012

- 1) April is normally a time for change in employment law and this April was no exception. On 6 April some significant procedural changes and amendments came into force. Changes were made to tribunal procedure, unfair dismissal laws and the provisions of the *Equality Act 2010* relating to compromise agreements.
- 2) The principal changes are contained in four enactments:
 - The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012, SI 2012/468
 - The Employment Tribunals Act 1996 (Tribunal Composition) Order 2012, SI 2012/988
 - The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012, SI 2012/989
 - The Equality Act (Amendment) Order 2012
- 3) This paper will describe the changes made by each of these enactments. A marked up copy of all the relevant regulations and sections, together with an electronic version of this paper, is available on www.spencerkeen.com.

THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF PROCEDURE) (AMENDMENT) REGULATIONS 2012, SI 2012/468

- 4) These Regulations amend the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004* (“2004 Regulations”). The changes do not apply to any claim that is presented to a tribunal before 5th April 2012 (see Regulation 3 of SI 2012/468).

Maximum deposit increases from £500 to £1,000

- 5) A tribunal may order a party to pay a deposit if the tribunal determines that the contentions put forward by that party have little reasonable prospect of success. Regulation 2 of the *Employment Tribunal (Constitution and Rules of Procedure) (Amendment) Regulations 2012* amends the 2004 Regulations to increase the maximum amount of a deposit order from £500 to £1000. Regulation 20 of the 2004 Regulations now provides:

20 Requirement to pay a deposit in order to continue with proceedings

(1) At a pre-hearing review if a chairman considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have little reasonable prospect of success, the chairman may make an order against that party requiring the party to pay a deposit of an amount not exceeding ~~£500~~ £1000 as a condition of being permitted to continue to take part in the proceedings relating to that matter.

Witness statements to be taken 'as read'

- 6) Until April 2012 it was the Tribunal's practice to ask witnesses to read out their witness statements. This practice will now change. Unless the tribunal orders otherwise the written witness statement will now stand as the witness' evidence in chief and witnesses will no longer have to read out their statements to the tribunal before their cross-examination. Regulation 27 of the 2004 Regulations now provides:

27 What happens at the hearing

(1) Subject to rule 14(3), at the Hearing a party shall be entitled to give evidence, to call witnesses, to question witnesses and to address the tribunal.

(2) ~~Subject to rule 14(3), at the Hearing a party shall be entitled to give evidence, to call witnesses, to question witnesses and to address the tribunal.~~ Where a witness is called to give oral evidence, any witness statement of that person shall

stand as that witness's evidence in chief unless the tribunal or Employment Judge orders otherwise.

Witness expenses to be borne by the parties

- 7) Employment judges may now order a party to the litigation to reimburse a witness in respect of his/her costs of attending a tribunal hearing. Regulations 38 and 40 of the 2004 Regulations have been amended to provide:

38 General power to make costs and expenses orders

(1) *Subject to paragraph (2) and in the circumstances listed in rules 39, 40 and 47 a tribunal or chairman may make an order ("a costs order") that —*

(a) a party ("the paying party") make a payment in respect of the costs incurred by another party ("the receiving party");

(b) the paying party pay to the Secretary of State, in whole or in part, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the Employment Tribunals Act to any person for the purposes of, or in connection with, that person's attendance at the tribunal;

(c) the paying party make a payment to a witness in respect of some or all of the expenses that witness incurs for the purposes of, or in connection with, that witness's attendance at the tribunal.

40 When a costs or expenses order may be made

(1) *A tribunal or chairman may make a costs order when on the application of a party it has postponed the day or time fixed for or adjourned a Hearing or pre-hearing review. The costs order may be against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.*

(2) *A tribunal or chairman shall consider making a costs order against a paying party where, in the opinion of the tribunal or chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so*

considered, the tribunal or chairman may make a costs order against the paying party if it or he considers it appropriate to do so.

(3) The circumstances referred to in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.

(4) A tribunal or chairman may make a costs order against a party who has not complied with an order or practice direction.

(5) A tribunal or Employment Judge may make a costs order where a witness attends to give oral evidence at a hearing.

- 8) No indication is given in the amended regulations as to how the discretion to make an award in respect of witness expenses should be exercised. There is not, for instance, a requirement for the tribunal to find that a party's behaviour has been unreasonable or vexatious before a witness expense order is made.
- 9) It is important to note that the tribunal was previously willing to reimburse a party for a broad range of expenses, including loss of earnings, the cost of overnight accommodation, the cost of childcare and in some circumstances the costs of a medical report. Although the tribunal previously capped many of these figures this was done as a matter of policy to reduce the expense to the tribunal service. The new provisions do not have a cap although they do specify that the witness has to attend to give oral evidence before the expense becomes payable.
- 10) It is important for practitioners to advise their clients about this new power at an early stage. It is arguable, if a medical expert is required to attend a hearing, that the expense of the report and the fee for attendance are all expenses incurred "in connection" with that witnesses attendance. This may well amount to a significant sum of money.

Power to award costs increased to £20,000

11) Prior to 6th April Tribunals could make an award of costs of up to £10,000. If a party wished to recover more costs than this it had to either get the other side to agree to pay more under Regulation 41(b) of the 2004 Regulations or ask the Tribunal to send the costs for a detailed assessment in the County Court under Regulation 41(c). For proceedings commenced after 6th April 2012 the Tribunal will be able to award costs of up to £20,000.

41 The amount of a costs or expenses order

(1) The amount of a costs order against the paying party shall be determined in any of the following ways —

(a) the tribunal may specify the sum which the paying party must pay to the receiving party, provided that sum does not exceed ~~£10,000~~ £20,000;

THE EMPLOYMENT TRIBUNALS ACT 1996 (TRIBUNAL COMPOSITION) ORDER 2012, SI 2012/988

12) This Order makes one small but significant amendment to the *Employment Tribunals Act 1996*. It has immediate effect.

Employment judges will sit alone in unfair dismissal claims

13) The *Employment Tribunals Act 1996 (Tribunal Composition) Order 2012* makes an amendment to the types of proceedings which must be heard by a tribunal judge sitting alone. The 2012 Order does this by inserting s.111 of the *Employment Rights Act 1996* (complaints of unfair dismissal) into the list of proceedings set out in s.4 of the *Employment Tribunals Act 1996*.

THE UNFAIR DISMISSAL AND STATEMENT OF REASONS FOR DISMISSAL (VARIATION OF QUALIFYING PERIOD) ORDER 2012, SI 2012/989

14) This order amends s.108 of the *Employment Rights Act 1996*. Regulation 4 of the Order sets out the transitional provisions. The time limit remains at 1 year for those whose employment began before 6th April 2012.

The qualifying period of employment for unfair dismissal

15) The qualifying period of employment that an employee must have before making a claim for unfair dismissal is one of employment law's favourite political footballs. Regulation 3 of the *Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012* amends s.108 of the *Employment Rights Act 1996* to raise the qualifying period to two years.

108 Qualifying period of employment

(1) Section 94 [the right not to be unfairly dismissed] does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than ~~one year~~ two years ending with the effective date of termination.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 64(2), subsection (1) has effect in relation to that dismissal as if for the words "~~one year~~" two years there were substituted the words "one month".

THE EQUALITY ACT 2010 (AMENDMENT) ORDER 2012

16) This order amends the Equality Act 2010. Regulation 1 of the Equality Act 2010 (Amendment) Order 2012 provides that the provision has effect from 6 April 2012.

Amendment of Section 147 of the Equality Act 2010

17) The wording of this section caused some confusion and debate when it was enacted. See Heather Platt's excellent article in the January 2011 edition of the Pump Court

Employment Newsletter (see www.pumpcourtcpd.com).

18) In order to compromise most complaints under the Equality Act 2010 settlement agreements have to comply with the provisions of s.147 of that Act. Prior to April 2012 the interpretation of s.147 gave rise to uncertainty as to whether a complainant's lawyer was precluded from being an "independent adviser" to the complainant for the purposes of making a valid compromise agreement. This Order seeks to clarify that the "person" referred to in s.147(5)(a) could not include the "complainant" and that, accordingly, a complainant's legal adviser is not precluded from being an "independent adviser" to the complainant. The relevant parts of s.147 now provide as follows:

147 Meaning of "qualifying compromise contract"

(2) A qualifying compromise contract is a contract in relation to which each of the conditions in subsection (3) is met.

(3) Those conditions are that—

(a) the contract is in writing,

(b) the contract relates to the particular complaint,

(c) the complainant has, before entering into the contract, received advice from an independent adviser about its terms and effect (including, in particular, its effect on the complainant's ability to pursue the complaint before an employment tribunal),

(d) on the date of the giving of the advice, there is in force a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising from the advice,

(e) the contract identifies the adviser, and

(f) the contract states that the conditions in paragraphs (c) and (d) are met.

4) Each of the following is an independent adviser:

a) a qualified lawyer;

(b) an officer, official, employee or member of an independent trade union certified in writing by the trade union as competent to give advice and as authorised to do so on its behalf;

(c) a worker at an advice centre (whether as an employee or a volunteer) certified in writing by the centre as competent to give advice and as authorised to do so on its behalf;

(d) a person of such description as may be specified by order.

(5) Despite subsection (4), none of the following is an independent adviser to the complainant in relation to a qualifying compromise contract—

(a) a person (other than the complainant) who is a party to the contract or the complaint;

(b) a person who is connected to a person within paragraph (a);

(c) a person who is employed by a person within paragraph (a) or (b);

(d) a person who is acting for a person within paragraph (a) or (b) in relation to the contract or the complaint;

(e) a person within subsection (4)(b) or (c), if the trade union or advice centre is a person within paragraph (a) or (b);

(f) a person within subsection (4)(c) to whom the complainant makes a payment for the advice.

TRIBUNAL FEES

19) One of the most publicised changes has been the introduction of tribunal fees. The Government's consultation on tribunal fees resulted in two options being suggested. A copy of the consultation document is available on www.spencerkeen.com. It sets out two relatively complex options for the tribunal fee structure. The first options involves two fees, one payable at the presentation of a claim and the other payable when the final hearing is listed. The government has indicated that if this proposal is adopted the fees would be introduced in 2013. Option 2 involves a single fee payable on the presentation of a claim. The government has indicated that if this option is imposed it would be introduced in 2014. The consultation closed on 06 March 2012.

APPENDIX

List of Sections and Regulations Marked Up to Show Changes

THE EMPLOYMENT TRIBUNAL (CONSTITUTION AND RULES OF PROCEDURE) REGULATIONS 2004

(as amended by Employment Tribunal (Constitution and Rules of Procedure)(Amendment) Regulations 2012)

20 Requirement to pay a deposit in order to continue with proceedings

- (1) At a pre-hearing review if a chairman considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have little reasonable prospect of success, the chairman may make an order against that party requiring the party to pay a deposit of an amount not exceeding ~~£500~~ £1000 as a condition of being permitted to continue to take part in the proceedings relating to that matter.
- (2) No order shall be made under this rule unless the chairman has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to comply with such an order, and has taken account of any information so ascertained in determining the amount of the deposit.
- (3) An order made under this rule, and the chairman's grounds for making such an order, shall be recorded in a document signed by the chairman. A copy of that document shall be sent to each of the parties and shall be accompanied by a note explaining that if the party against whom the order is made persists in making those contentions relating to the matter to which the order relates, he may have an award of costs or preparation time made against him and could lose his deposit.
- (4) If a party against whom an order has been made does not pay the amount specified in the order to the Secretary either: —
 - (a) within the period of 21 days of the day on which the document recording the making of the order is sent to him; or
 - (b) within such further period, not exceeding 14 days, as the chairman may allow in the light of representations made by that party within the period of 21 days;a chairman shall strike out the claim or response of that party or, as the case may be, the part of it to which the order relates.
- (5) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 47 applies.

27 What happens at the Hearing

- (1) Subject to rule 14(3), at the Hearing a party shall be entitled to give evidence, to call witnesses, to question witnesses and to address the tribunal.
- (2) ~~Subject to rule 14(3), at the Hearing a party shall be entitled to give evidence, to call witnesses, to question witnesses and to address the tribunal.~~ Where a witness is called to give oral evidence, any witness statement of that person shall stand as that witness's evidence in chief unless the tribunal or Employment Judge orders otherwise.
- (3) The tribunal shall require parties and witnesses who attend the Hearing to give their evidence on oath or affirmation.
- (4) The tribunal may exclude from the Hearing any person who is to appear as a witness in the proceedings until such time as they give evidence if it considers it in the interests of justice to do so.
- (5) If a party fails to attend or to be represented (for the purpose of conducting the party's case at the Hearing) at the time and place fixed for the Hearing, the tribunal may dismiss or dispose of the proceedings in the absence of that party or may adjourn the Hearing to a later date.
- (6) If the tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (5), it shall first consider any information in its possession which has been made available to it by the parties.
- (7) At a Hearing a tribunal may exercise any powers which may be exercised by a chairman under these rules.

38 General power to make costs and expenses orders

- (1) Subject to paragraph (2) and in the circumstances listed in rules 39, 40 and 47 a tribunal or chairman may make an order ("a costs order") that —
 - (a) a party ("the paying party") make a payment in respect of the costs incurred by another party ("the receiving party");
 - (b) the paying party pay to the Secretary of State, in whole or in part, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the Employment Tribunals Act to any person for the purposes of, or in connection with, that person's attendance at the tribunal;
 - (c) the paying party make a payment to a witness in respect of some or all of the expenses that witness incurs for the purposes of, or in connection with, that witness's attendance at the tribunal.
- (2) A costs order may be made under rules 39, 40(1) to (4) and 47 only where the receiving party has been legally represented at the Hearing or, in proceedings which are determined without a Hearing, if the receiving party is legally represented when the proceedings are determined. If the receiving party has not been so legally represented a tribunal may make a preparation time order (subject to rules 42 to 45). (See rule 46 on the restriction on making a costs order and a preparation time order in the same proceedings.)
- (3) For the purposes of these rules "costs" shall mean fees, charges, disbursements or expenses incurred by or on behalf of a party including sums paid pursuant to an order

under paragraph 1(c), in relation to the proceedings. In Scotland all references to costs (except when used in the expression “wasted costs”) or costs orders shall be read as references to expenses or orders for expenses.

- (4) A costs order may be made against or in favour of a respondent who has not had a response accepted in the proceedings in relation to the conduct of any part which he has taken in the proceedings.
- (5) In these rules legally represented means having the assistance of a person (including where that person is the receiving party’s employee) who —
 - (a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) is an advocate or solicitor in Scotland; or
 - (c) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.
- (6) Any costs order made under rules 39, 40 or 47 shall be payable by the paying party and not his representative.
- (7) A party may apply for a costs order to be made at any time during the proceedings. An application may be made at the end of a hearing, or in writing to the Employment Tribunal Office. An application for costs which is received by the Employment Tribunal Office later than 28 days from the issuing of the judgment determining the claim shall not be accepted or considered by a tribunal or chairman unless it or he considers that it is in the interests of justice to do so.
- (8) In paragraph (7), the date of issuing of the judgment determining the claim shall be either —
 - (a) the date of the Hearing if the judgment was issued orally; or
 - (b) if the judgment was reserved, the date on which the written judgment was sent to the parties.
- (9) No costs order shall be made unless the Secretary has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send notice to that party if the party has been given an opportunity to give reasons orally to the chairman or tribunal as to why the order should not be made.
- (10) Where a tribunal or chairman makes a costs order it or he shall provide written reasons for doing so if a request for written reasons is made within 14 days of the date of the costs order. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

40 When a costs or expenses order may be made

- (1) A tribunal or chairman may make a costs order when on the application of a party it has postponed the day or time fixed for or adjourned a Hearing or pre-hearing review. The costs order may be against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.

- (2) A tribunal or chairman shall consider making a costs order against a paying party where, in the opinion of the tribunal or chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so considered, the tribunal or chairman may make a costs order against the paying party if it or he considers it appropriate to do so.
- (3) The circumstances referred to in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.
- (4) A tribunal or chairman may make a costs order against a party who has not complied with an order or practice direction.
- (5) A tribunal or Employment Judge may make a costs order where a witness attends to give oral evidence at a hearing.

41 The amount of a costs or expenses order

- (1) The amount of a costs order against the paying party shall be determined in any of the following ways —
- (a) the tribunal may specify the sum which the paying party must pay to the receiving party, provided that sum does not exceed ~~£10,000~~ £20,000;
- (b) the parties may agree on a sum to be paid by the paying party to the receiving party and if they do so the costs order shall be for the sum so agreed;
- (c) the tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party with the amount to be paid being determined by way of detailed assessment in a County Court in accordance with the Civil Procedure Rules 1998 or, in Scotland, as taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order.
- (2) The tribunal or chairman may have regard to the paying party's ability to pay when considering whether it or he shall make a costs order or how much that order should be.
- (3) For the avoidance of doubt, the amount of a costs order made under paragraphs (1)(b) or (c) may exceed ~~£10,000~~ £20,000.

45 Calculation of a preparation time order

- (1) In order to calculate the amount of preparation time the tribunal or chairman shall make an assessment of the number of hours spent on preparation time on the basis of —
- (a) information on time spent provided by the receiving party; and
- (b) the tribunal or chairman's own assessment of what it or he considers to be a reasonable and proportionate amount of time to spend on such preparatory work and with reference to, for example, matters such as the complexity of the proceedings, the number of witnesses and documentation required.
- (2) Once the tribunal or chairman has assessed the number of hours spent on preparation time in accordance with paragraph (1), it or he shall calculate the amount of the award to be paid to the receiving party by applying an hourly rate of £25.00 to that figure (or such

other figure calculated in accordance with paragraph (4)). No preparation time order made under these rules may exceed the sum of ~~£10,000~~ £20,000.

- (3) The tribunal or chairman may have regard to the paying party's ability to pay when considering whether it or he shall make a preparation time order or how much that order should be.
- (4) For the year commencing on 6th April 2006, the hourly rate of £25 shall be increased by the sum of £1.00 and for each subsequent year commencing on 6 April, the hourly rate for the previous year shall also be increased by the sum of £1.00.

61 Notices, etc.

- (1) Any notice given or document sent under these rules shall (unless [an Employment Judge] or tribunal orders otherwise) be in writing and may be given or sent—
 - (a) by post;
 - (b) by . . . means of electronic communication; or
 - (c) by personal delivery.
 - (2) Where a notice or document has been given or sent in accordance with paragraph (1), that notice or document shall, unless the contrary is proved, be taken to have been received by the party to whom it is addressed—
 - (a) in the case of a notice or document given or sent by post, on the day on which the notice or document would be delivered in the ordinary course of post;
 - (b) in the case of a notice or document transmitted by . . . means of electronic communication, on the day on which the notice or document is transmitted;
 - (c) in the case of a notice or document delivered in person, on the day on which the notice or document is delivered.
 - (3) All notices and documents required by these rules to be presented to the Secretary or an Employment Tribunal Office, other than a claim, shall be presented at the Employment Tribunal Office as notified by the Secretary to the parties.
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- (8) In proceedings under the [Equality Act of the kind referred to in paragraph (9)], copies of every document sent to the parties under rules 29, 30 or 32 shall be sent by the Secretary to the Commission for Equality and Human Rights.
 - (9) The proceedings referred to in paragraph (8) are—
 - (a) proceedings on a complaint relating to a breach of an equality clause or rule within the meaning of the Equality Act;
 - (b) proceedings on a complaint relating to a contravention of that Act so far as relating to sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race or disability;

(c) proceedings on a complaint under section 146(1) of that Act so far as relating to sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race or disability.

(10) Paragraph (8) shall not apply in any proceedings where—

(a) a Minister of the Crown has given a direction, or a tribunal or an Employment Judge has made an order, under rule 54 in those proceedings; and

(b) either the Security Service, the Secret Intelligence Service or the Government Communications Headquarters is a party to those proceedings.

THE EMPLOYMENT TRIBUNALS ACT 1996

(As amended by The Employment Tribunals Act 1996 (Tribunal Composition) Order 2012)

4 Composition of a tribunal

(1) Subject to the following provisions of this section [and to section 7(3A)], proceedings before an [employment tribunal] shall be heard by—

(a) the person who, in accordance with regulations made under section 1(1), is the chairman, and

(b) two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with regulations so made.

(2) Subject to subsection (5), the proceedings specified in subsection (3) shall be heard by the person mentioned in subsection (1)(a) alone or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal.

(3) The proceedings referred to in subsection (2) are.....

(c) proceedings on a reference under section 11, 163 or 170 of the Employment Rights Act 1996, on a complaint under section 23, 34, 111 or 188 of that Act, on a complaint under section 70(1) of that Act relating to section 64 of that Act, on an application under section 128, 131 or 132 of that Act or for an appointment under section 206(4) of that Act,

(5) Proceedings specified in subsection (3) shall be heard in accordance with subsection (1) if a person who, in accordance with regulations made under section 1(1), may be the chairman of an [employment tribunal], having regard to—

(a) whether there is a likelihood of a dispute arising on the facts which makes it desirable for the proceedings to be heard in accordance with subsection (1),

(b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with subsection (2),

(c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those subsections, and

(d) whether there are other proceedings which might be heard concurrently but which are not proceedings specified in subsection (3),

decides at any stage of the proceedings that the proceedings are to be heard in accordance with subsection (1).

The Employment Rights Act 1996

(As amended by The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012)

92 Right to written statement of reasons for dismissal

- (1) An employee is entitled to be provided by his employer with a written statement giving particulars of the reasons for the employee's dismissal—
 - (a) if the employee is given by the employer notice of termination of his contract of employment,
 - (b) if the employee's contract of employment is terminated by the employer without notice, or
 - (c) if the employee is employed under a contract for a fixed term and that term expires without being renewed under the same contract

[[c] if the employee is employed under a limited-term contract and the contract terminates by virtue of the limiting event without being renewed under the same contract].
- (2) Subject to subsections (4) and (4A), an employee is entitled to a written statement under this section only if he makes a request for one; and a statement shall be provided within fourteen days of such a request.
- (3) Subject to subsections (4) and (4A), an employee is not entitled to a written statement under this section unless on the effective date of termination he has been, or will have been, continuously employed for a period of not less than ~~one year~~ two years ending with that date.

108 Qualifying period of employment

- (1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than ~~one year~~ two years ending with the effective date of termination.
- (2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 64(2), subsection (1) has effect in relation to that dismissal as if for the words ~~["one year"]~~ two years there were substituted the words "one month".

THE EQUALITY ACT 2010

(As amended by The Equality Act 2010 (Amendment) Order 2012)

147 Meaning of “qualifying compromise contract”

- (1) This section applies for the purposes of this Part.
- (2) A qualifying compromise contract is a contract in relation to which each of the conditions in subsection (3) is met.
- (3) Those conditions are that—
 - (a) the contract is in writing,
 - (b) the contract relates to the particular complaint,
 - (c) the complainant has, before entering into the contract, received advice from an independent adviser about its terms and effect (including, in particular, its effect on the complainant’s ability to pursue the complaint before an employment tribunal),
 - (d) on the date of the giving of the advice, there is in force a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising from the advice,
 - (e) the contract identifies the adviser, and
 - (f) the contract states that the conditions in paragraphs (c) and (d) are met.
- 4) Each of the following is an independent adviser:
 - a) a qualified lawyer;
 - (b) an officer, official, employee or member of an independent trade union certified in writing by the trade union as competent to give advice and as authorised to do so on its behalf;
 - (c) a worker at an advice centre (whether as an employee or a volunteer) certified in writing by the centre as competent to give advice and as authorised to do so on its behalf;
 - (d) a person of such description as may be specified by order.
- (5) Despite subsection (4), none of the following is an independent adviser to the complainant in relation to a qualifying compromise contract—
 - (a) a person (other than the complainant) who is a party to the contract or the complaint;
 - (b) a person who is connected to a person within paragraph (a);
 - (c) a person who is employed by a person within paragraph (a) or (b);

(d) a person who is acting for a person within paragraph (a) or (b) in relation to the contract or the complaint;

(e) a person within subsection (4)(b) or (c), if the trade union or advice centre is a person within paragraph (a) or (b);

(f) a person within subsection (4)(c) to whom the complainant makes a payment for the advice.

(6) A “qualified lawyer”, for the purposes of subsection (4)(a), is—

(a) in relation to England and Wales, a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation;

(b) in relation to Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(7) “Independent trade union” has the meaning given in section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992.

(8) Two persons are connected for the purposes of subsection (5) if—

(a) one is a company of which the other (directly or indirectly) has control, or

(b) both are companies of which a third person (directly or indirectly) has control.

(9) Two persons are also connected for the purposes of subsection (5) in so far as a connection between them gives rise to a conflict of interest in relation to the contract or the complaint.