

## **Employment Law Fact sheet No.13**

### **How to claim unpaid wages, holiday pay and notice pay.**

This fact sheet explains how you can claim wages / holiday pay if you have left your job and your former employer owes you money for wages and / or holiday pay. It also explains how you can claim notice pay if your employer dismissed you without giving you the correct notice of dismissal or making a payment in lieu of (instead of) notice.

#### **What wages are you entitled to?**

You are entitled to all wages up to the date you left your job. This includes any "week in hand" that is due to you.

#### **Can you claim accrued holiday pay?**

##### **1. Contractual holiday pay.**

You are entitled to this if you can answer yes to each of the three questions below.

- i) Has your employer agreed to give you paid holidays? This may be a verbal or written agreement. It is probably also sufficient if you have had paid holidays in previous years.
- ii) Have you accrued any holidays in the current holiday year, which you have not yet taken?
- iii) Is it a term of your contract (whether in writing or not) that you are entitled to be paid for holidays accrued but not taken on the termination of your employment? (It may be that although nothing is written down it is custom and practice that employees get accrued holiday pay when they leave. This will probably be sufficient to establish that you are entitled to this)

##### **2. Statutory holiday pay.**

Under the Working Time Regulations 1998 you are entitled to; -

- A minimum of 4 weeks paid holiday per year (including bank holidays).
- From 1 October 2007 you are entitled to 4.8 weeks and
- From 1 April 2009 to 5.6 weeks
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This applies to part time and full time workers. If you leave part way through a holiday year and have not taken all the holidays you have accrued to that date you are entitled to receive a lump sum payment for your accrued holidays on the termination of your employment. It is also the case that employers may make payments in lieu of the new additional entitlement (the extra 0.8 weeks introduced on 1 October 2007) until April 2009 while you are still employed.

You are entitled to this even if there is no contractual term about it. If there is a contractual term, which says you are only entitled to a reduced amount or nil accrued holiday pay, you should contact the Law Centre for advice about this. We will advise you based on the case of *Witley & District WMC v Mackay* 2001 IRLR 595.

### **Can you claim notice pay?**

You can claim notice pay if your employer dismissed you without notice (notice is the period of time between your employer telling you that you are being dismissed and the date that your dismissal takes effect) or a payment in lieu of notice. The only time when you are not entitled to notice is when you are guilty of gross (i.e. serious) misconduct. If your employer claims you are guilty of gross misconduct they must be able to prove this to a tribunal.

### **How much notice pay can you claim?**

The period of notice that you are entitled to is the **longer** of the following two possibilities:-

- Whatever period of notice is stated in your contract of employment.
- Statutory minimum period of notice as stated in section 86 of the Employment Rights Act 1996. This is, after one month, and up to two years service - 1 week. Thereafter, an additional week for each complete year of service up to a maximum of 12 weeks in total. (E.g. after 2 years and two months you are entitled to 2 weeks' notice).

If the employer did not give you notice, or gave you less than the required amount of notice, then you can claim a week's pay for each week for which you should have received notice. NB If you found a job during the period for which you should have received notice then an employment tribunal will not award you pay for this period unless your pay at the new job is less than the old job in which case you will get the difference in pay.

However, if your contract provides for a payment in lieu of notice and you get a job in the notice period then it is possible a tribunal might not take account of the wages from the new job. (*Abrahams v Performing Rights Society Ltd* 1995 ICR 1028, CA). If this last sentence applies to you, you should contact the Law Centre for further advice.

### **What steps should you take to claim unpaid wages / holiday pay / notice pay?**

1. Keep your wage slips and contract of employment if you have these. If you go to an employment tribunal it will be helpful to have these.
2. You need to raise a written grievance with your employer in writing outlining your complaint. Failure to do this will result in any claim you make to tribunal being refused until this has been done.

We give an example below of the letter you should write outlining your grievance(s). (NB This letter assumes you are claiming wages and holiday pay and notice pay. You will have to leave out some bits if they don't apply to you).

**Sample letter**

Your name and address

Date

Name and address of former employer

*Dear Sir/Madam,*

*You dismissed me from my employment with you (or I left my employment with you) on (date). You have not paid me my final week's wages (and/or any wages for the last ....weeks I worked for you and/or my week in hand money and/or my accrued holiday pay).*

*I worked for you from (date you started work) to (date when you finished) when you dismissed me without notice (or without the correct amount of notice). I was entitled to ....weeks notice.*

*I wish to raise the above matters as formal grievances and look forward to hearing from you further. I am happy for this matter to be dealt with in writing.*

*Yours faithfully,*

3. Sign the letter, take a photocopy and send it to the employer.
4. If you do not receive a response within 28 days of the date you hand delivered, posted or emailed the grievance you can take a claim to an employment tribunal.
5. If your employer responds within 28 days, they should do one of two things:
  - invite you to a meeting to discuss your grievances further. You have a statutory right to be accompanied at this meeting by either a work colleague or trade union representative. The employer must arrange a meeting at a mutually convenient time and you are expected to make efforts to attend. Should you not be satisfied with the outcome of the meeting you can appeal the employer's decision. If you are not happy with the outcome of appeal, you can then proceed with a tribunal application. If you do not attend the meeting or appeal then any compensation a tribunal ultimately awards you may be reduced by between 10 – 50% because of this.
  - write to you setting out his response to the grievance. If you are unhappy with this response, you can then take a claim to employment tribunal without the need to appeal.
6. Once the grievance procedure has been completed, you can then make an application to tribunal if you are not satisfied with the outcome. Obtain an application form (form ET1) to go to an employment tribunal. You can get one of these from a job center or you can download a form or apply on line at

[www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk) the hard copy forms come with a booklet called 'How to apply to an employment tribunal'.

7. Complete the application to the tribunal in black pen.
8. Once completed take a photocopy of the whole form. You will want this copy if your case ends up being heard in the tribunal.
9. Send the form to the address in the tribunal booklet. If you worked in Sheffield the address is:-  
Sheffield Office of Employment Tribunals  
14 East Parade,  
Sheffield.  
S1 2ET.

**NB: If you have not received an acknowledgement from the tribunal office within 7 days telephone them to check they have received it. The form must arrive at the tribunal office within 3 months of the date the money was due to be paid to you or 3 months of the date of dismissal, whichever is the shorter time.**

To calculate the 3-month time period, identify the date, subtract one day and add 3 months. E.g. time limit for a date of dismissal of 3/6/06 is 2/9/06. This time limit is strict. If you miss it a tribunal is unlikely to allow you to proceed with a claim unless you have a very good reason. (However, you may be able to pursue a claim in the county court where the time limit is 6 years. You will normally have to pay a fee in the county court but the tribunal is free).

If you have submitted a grievance within 3 months of the normal time limit, (which you must anyway) the time limit for submitting the tribunal application will be extended for a further 3 months. For example:

You are dismissed without notice on the 10<sup>th</sup> December 2007. You submit a written grievance on the 10<sup>th</sup> January 2008. The employer has 28 days in which to respond to the grievance but has still not done so by the 9<sup>th</sup> March 2008 (the normal 3 months' deadline for a tribunal claim). Because you have submitted a grievance, the time limit for tribunal application will be extended to 9<sup>th</sup> June 2008.

**NB: The 3 month extension of the time limit will generally not apply for claims for notice pay when you have been dismissed without notice. Note that if the expiry of the tribunal time limit falls on a weekend you should treat the deadline as the Friday before the weekend.**

What happens next?

- A few days after you send the form off you will receive the acknowledgement letter from the Office of Employment Tribunals telling you the reference number of the case.

- The tribunal will send a copy of your application form to the employer. Within four weeks of this, you should receive from the tribunal a form headed 'Response' (Form ET3). This is the employer's reply to your application where the employer has a chance to explain how they see the situation. NB During the tribunal proceedings (and perhaps in the ET3) you may be referred to as the *claimant* and the employer as the *respondent*.
- A few days after you receive the acknowledgement of your claim the tribunal will also send you a letter telling you the date it has set for the case to be heard. Read the letter carefully and reply if necessary, for example if you are unavailable on the date that has been set for the hearing. If there are any other dates when you will be unavailable you should tell the tribunal this in your letter. If the employer doesn't put in a response (ET3), it is likely the tribunal will make a finding in your favour without the need for a hearing. This is called a 'default judgment'. For this reason it is important that when you complete your application you should set out exactly how much money you are owed. If you do this, the tribunal will also be able to make a decision not just that you are owed money, but also how much. This means that the whole case can be concluded without you having to attend the tribunal.
- Whilst all this is going on, the Advisory, Conciliation and Arbitration Service (ACAS) will write to you. An ACAS officer will be assigned to your case. They may phone or write to you, or you can contact them yourself. Their role is to try and get the two parties to agree an out of court settlement. If the employer offers an amount of money less than you are claiming you will have to decide if this is acceptable to you. If you don't wish to accept the amount you should tell ACAS this.
- For some people appearing at the tribunal can be a stressful experience and there is no guarantee that you will win. If the employer has a different story to you the tribunal will have to decide who to believe so there is always a possibility of losing. You should think carefully about whether it would be better to settle for a lesser amount than you are claiming.
- Please be aware that there are time limits as to how long ACAS can negotiate between the two parties. Your ACAS officer and the tribunal will advise you of this. If no settlement is reached within these time limits, the ACAS officer will withdraw from the case. If you do reach an agreement to settle, ACAS will record the terms of the settlement, including a date by which the money should be paid, on a form called COT3. They will send you a number of copies of this to sign. You sign them and forward them on to the employer to sign.
- In case your claim is not settled it is a good idea to visit the tribunal before your hearing to see and listen to other people's cases and to see what happens. Tribunals are open to the public. You should telephone the tribunal office the day before you intend to go to check there is a case going to be heard that day. It is always a good idea to write out (or even better to word process) before

your hearing a statement containing the information you want to say to the tribunal. Doing this will ensure that you don't forget to mention anything. This document is known as a witness statement. You should take 6 copies of it with you to the tribunal.

- You may get a letter from the tribunal giving 'directions' about what you need to do before the hearing. They may require you to exchange your witness statement with the employer before the hearing and agree with the employer a 'bundle' of documents that are likely to be needed at the hearing.

**If you require assistance from Sheffield Law Centre, the telephone advice line (0114 2731888) is open Mon, Tues, Thurs, Fri 10am - 4pm.**