

# ***FACT SHEET***

## **COMPENSATION FOR UNFAIR DISMISSAL.**

### **The Awards**

Compensation for unfair dismissal consists of two main elements; the Basic Award and the Compensatory Award. The Basic Award is assessed in much the same way as a redundancy payment and is designed to reward the Claimant employee for past services to the Respondent employer. The Compensatory award is designed to compensate the Claimant for the losses suffered.

### **The Basic Award**

The starting point is that, working backwards from the date of dismissal, the Claimant is entitled to:

- 1.5 weeks gross pay for each complete year of employment in which the Claimant was aged 41 or over.
- 1 weeks gross pay for each year complete year in which the Claimant was aged 22 or over.
- 0.5 weeks gross pay for each year under the age of 22.

A maximum of 20 years service may be taken into account and the weekly gross pay is subject to a limit of £350.00 per week. The maximum Basic Award is therefore £10,500.00.

The amount which results from the application of this formula may then be subject to certain increases or reductions.

For certain dismissals such as those for trade union or health and safety dismissals, the basic award is subject to a minimum level.

Where the Respondent has failed to comply with the minimum statutory dismissal and disciplinary procedures, the dismissal will be deemed to be automatically unfair. The award will then be subject to a minimum of 4 weeks pay.

The basic award can also be reduced taking into account the Claimant's conduct prior to the dismissal or to offset any redundancy payment made to the Claimant.

### **Compensatory Award.**

Compensation will be assessed in relation to various individual aspects of the Claimant's loss known as 'heads of loss.'

The heads of loss are as follows:-

- **Immediate loss of net earnings.** This will be assessed from the date of the termination of the Claimant's employment up until the date of the Employment Tribunal hearing, or the date from which the Claimant started in new employment if this is earlier. If the Claimant's has started new employment but the wages are lower, the Claimant will be entitled to the net difference for this period.

- **Future loss of net earnings.** This is harder to quantify than immediate loss of net earnings. The Tribunal will have to estimate how long the Claimant's losses are likely to continue taking into account all the relevant circumstances such as the Claimant's age and skills, and local employment conditions. If the Claimant has taken less well paid employment, the Tribunal may award compensation for the difference in pay for such period as they think fit.
- **Loss of pension rights.** This head of loss is very difficult to quantify as it depends on a number of factors such as type of pension scheme. The Tribunal uses specific guidelines for this purpose.
- **Loss of benefits.** This will include the loss of such benefits as a company car, private health insurance and share options.
- **Expenses in looking for new employment.** The Tribunal will take into account any losses reasonably incurred such as travel, postage and telephone costs in looking for new work.
- **Loss of statutory rights.** The Tribunal can make an award which is usually in the region of £250 for the loss of statutory rights. This reflects the fact that there is normally an eligibility criterion of one year's continuous employment to bring a claim for unfair dismissal. Thus, if the Claimant is dismissed within the first year of their new employment, they will be unable to bring a claim for unfair dismissal.

Compensation can be reduced for certain reasons as follows:

- **Payments in lieu.** The Tribunal may reduce the compensatory award if the Respondent made a payment in lieu of wages to the Claimant.
- **Failure to mitigate loss.** The Claimant is under a duty to reduce their loss by taking reasonable steps

to obtain new employment and the Tribunal will not award compensation for any loss that should have been mitigated by the Claimant.

- **Failure to follow statutory procedures.** If the Claimant fails either to follow the statutory disciplinary and dismissal procedures or the statutory grievance procedure, then the Tribunal may reduce the award by between 10% and 50%.
- **Contributory fault.** The compensatory award must be reduced where the Claimant caused or contributed towards his dismissal due to his misconduct.
- **Misconduct discovered post dismissal.** The Tribunal may reduce the compensatory award taking into account any misconduct by the Claimant which was not discovered until after the Claimant's dismissal.
- **Accelerated receipt.** A reduction may be made in order to take account of the fact that the Claimant will receive damages in advance of the time when he would have earned that money as salary, and therefore has the opportunity to invest the money. This is likely to be applicable only in the case of a long term fixed term contract.
- **Recovery of social security benefits.** An amount paid to the Claimant in respect of job seekers allowance or income support will be paid back to the government out of the compensatory award.

Compensation may be increased due to the failure of the Respondent to follow the statutory disciplinary and dismissal procedures or grievance procedures. The increase can be between 10% and 50%.

The Compensatory award is subject to a maximum of £66,200.00.

### Summary.

**The rules relating to the assessment of compensation for unfair dismissal are**

**complicated! It may be fairly simple to ascertain how much the dismissed employee may potentially be due in terms of any the basic award and loss of earnings, but there are many other rules as to loss of other benefits and factors increasing or reducing awards to be taken into account. Your solicitor will further advise you as to any potential award of compensation.**

Lees Solicitors LLP provide this fact sheet free of charge.

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