

## **GUIDANCE NOTE: COMPENSATION FOR UNFAIR DISMISSAL**

These guidelines explain how the tribunal calculates compensation when it finds that an employee has been unfairly dismissed contrary to article 61 of the Employment (Jersey) Law 2003 (the “Law”).

### **Time limit**

Complaints of unfair dismissal must be made to the tribunal within 8 weeks of the effective date of termination. The time limit for making the complaint can only be extended where it was not reasonably practical to make the application within the 8-week time limit (see article 76 of the Law).

### **Qualifying service**

The right to complain of unfair dismissal is subject to a qualifying period of one year’s service ending with the effective date of termination. The one-year service rule does not apply where the dismissal is automatically unfair e.g., the dismissal is discriminatory. For more information on automatic unfair dismissal see the JACS website <https://www.jacs.org.je/legislation/employment-jersey-law-2003/unfair-dismissal/>.

### **Remedies**

The remedies for unfair dismissal are set out below.

- Reinstatement, which is a direction that the employer shall treat the employee in all respects as if the dismissal had not taken place.
- Re-engagement, which is a direction that the employer shall re-engage the employee in comparable or other suitable employment.
- Compensation.

For more information on reinstatement and re-engagement see the JACS website <https://www.jacs.org.je/legislation/employment-jersey-law-2003/reduction-in-unfair-dismissal-award-reinstatement-or-re-engagement/>.

### **Maximum compensation**

The maximum compensation that can be awarded by the tribunal for unfair dismissal is set out in the Employment (Awards) (Jersey) Order 2009. The order provides for the following scale of compensation.

<b>Duration of service completed in the employer's service by the employee</b>	<b>Amount of wages to be awarded</b>
Not more than 26 weeks	An amount not exceeding 4 weeks' pay, in the discretion of the Tribunal, having regard to the actual length of service
More than 26 weeks but not more than 1 year	4 weeks' pay
More than 1 year but not more than 2 years	8 weeks' pay
More than 2 years but not more than 3 years	12 weeks' pay
More than 3 years but not more than 4 years	16 weeks' pay
More than 4 years but not more than 5 years	21 weeks' pay
More than 5 years	26 weeks' pay

Where there has been a direction for reinstatement or re-engagement and the direction has not been complied with the tribunal can award additional compensation of an amount up to 26 weeks' pay.

### **Reduction in compensation**

Article 77F of the Law says that the maximum award of compensation can be reduced in the following circumstances.

- The employee unreasonably refused an offer of reinstatement.
- The conduct of the employee contributed to his or her dismissal. The tribunal can consider conduct that came to light after notice was given or the dismissal took effect. To satisfy this ground the conduct must be culpable or blameworthy.
- The employee has agreed to receive a payment by way of settlement of the complaint.
- The employee is entitled to receive a redundancy payment.
- The employee has refused an offer made before the start of the proceedings for an amount equal to the maximum award that the tribunal could make.
- Any circumstances that the tribunal considers would be just and equitable to take into account.

## **Just and equitable circumstances**

Here are some examples of when a just and equitable reduction may be made. It is not an exhaustive list. Whether the tribunal will make a reduction and if so, how much depends on the facts of each case. A reduction can be up to 100% of the award.

- The dismissal is unfair because an unfair process was followed, but had a fair process been followed the employee would still have been dismissed. In such a case the award may be reduced to reflect the time it would have taken to go through a fair dismissal process.
- The tribunal will look at whether the loss has already been compensated for under another claim e.g., discrimination or wrongful dismissal.
- Any payments made by the employer to the employee in relation to the dismissal whether contractual or discretionary.

## **Week's pay**

For guidance on calculating a week's pay please follow the link below to the Jersey Advisory and Conciliation Service website:

[Calculating a Week's Pay | JACS](#)

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