

## **GUIDANCE NOTE: COMPENSATION FOR NO WRITTEN TERMS OF EMPLOYMENT OR PAYSLEIPS**

These guidelines explain how the Tribunal calculates compensation where it finds that an employer has failed to provide written terms of employment or payslips.

Complaints about a failure to provide written terms of employment or payslips must be made to the Tribunal within 8 weeks of the employment ending. 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.

### **WRITTEN TERMS OF EMPLOYMENT**

Article 3(1) of the Employment Law says that an employer must give an employee a written statement of the terms of his or her employment within 4 weeks of beginning employment.

A written statement can be given to an employee by:

- handing it to the employee;
- posting it to an address provided by the employee;
- emailing it to an email address provided by the employee; or
- leaving it somewhere easily accessible to the employee and telling the employee where it has been left.

The statement must be provided even if the employment lasts less than 4 weeks (Article 3(7)).

Article 4 of the Employment Law requires an employer to provide written notice of any changes to the terms of employment no later than 4 weeks after the change has happened.

If the Tribunal finds that there has been a breach it can award compensation of an amount not exceeding 4 weeks' pay.

In determining how much compensation to award the Tribunal may consider the following factors if relevant:

- the reason for the employer's breach;
- where a defective statement is provided the extent of the defect i.e. what information is missing;
- how long the employee has been employed without a written statement;
- whether the employer has put in place proper procedures for ensuring that the Law is complied with;
- the size and administrative resources of the employer;
- although there is no obligation on the employee to do so, whether he or she requested a written statement and if so, how long after the request was it provided by the employer; and
- the impact on the employee of the breach.

Where the employer has a reasonable excuse for the breach e.g. ill-health of a key employee and there has been no adverse impact on the employee the compensation is likely to be zero or a small amount.

Where the reason for the breach is not particularly blameworthy e.g. an administrative oversight on the part of the employer, there is no systemic failure and there has been no adverse impact on the employee the compensation is unlikely to exceed a week's pay.

Compensation of more than one week's pay may be considered where the reason for the breach is blameworthy, the employer has failed to put in place proper procedures to ensure that the Law is complied with, or the breach has caused difficulties or distress to the employee.

The maximum compensation of four weeks' pay will only be awarded in the most serious of cases where there is a deliberate disregard for the Law, the employee's requests for a written statement have been ignored and the employer's breach has caused difficulties or distress to the employee.

## **PAYSLIPS**

Article 51 of the Employment Law says that an employer must give an employee a written itemised pay statement at or before the time at which any payment of wages is made. The Article sets out the information that must be included on the payslip.

A payslip can be given to an employee by:

- handing it to the employee;
- post to an address provided by the employee;
- email to an email address provided by the employee;
- via an online portal/HR system; or
- leaving it somewhere easily accessible to the employee and telling the employee where it has been left.

Article 53(4) says that any complaints about a failure to provide a payslip or to include the correct information on the payslip must be made to the Tribunal within 8 weeks of employment ending. 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.

If the Tribunal finds that there has been a breach it can award compensation of an amount not exceeding 4 weeks' pay (Article 54(1A)).

In determining how much compensation to award the Tribunal may consider the following factors if relevant:

- the reason for the employer's breach;
- where a defective payslip is provided the extent of the defect i.e. what information is missing or is incorrect;
- how many payslips have not been provided or are inaccurate;
- whether the employer has put in place proper procedures for ensuring that the Law is complied with;
- the size and administrative resources of the employer;
- although there is no obligation on the employee to do so, whether he or she requested the payslip and if so, how long after the request was it provided by the employer; and
- the impact on the employee of the breach.

Where the employer has a reasonable excuse for the late provision of the payslip e.g. ill-health of a key employee, the payslip was provided promptly on request and there has been no adverse impact on the employee the compensation is likely to be zero or a small amount.

Where the reason for the failure to provide a payslip is not particularly blameworthy e.g. an administrative oversight on the part of the employer, there is no systemic failure and no adverse impact on the employee compensation is unlikely to exceed a week's pay.

Compensation of more than one week's pay may be considered where the reason for the failure to provide a payslip is blameworthy, the employer has failed to put in place proper procedures to ensure that the Law is complied with, or the breach has caused difficulties or distress to the employee.

The maximum compensation of four weeks' pay will only be awarded in the most serious of cases where there is a deliberate disregard for the Law, the employee's requests for a playslip have been ignored and the employer's breach has caused difficulties or distress to the employee.

### **ONE 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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