

# WHAT IS INTERIM RELIEF?

## Introduction

In this Bulletin we will be looking at Interim Relief which can be available in cases of automatically unfair dismissal.

The law around interim relief can be complex which means that this Bulletin only introduces the subject to make it known to those people to which it could be applicable.

In the event a TSSA member is dismissed for an automatically unfair reason, our solicitors would provide professional legal advice on individual cases.

## When does Interim Relief apply?

Interim Relief applies in circumstances of automatically unfair dismissal where the reason or principle for the dismissal is alleged to be any of:

- For acting as a health & safety rep
- Carrying out lawful trade union activities
- Acting as a trustee of an occupational pension scheme
- Acting as a rep for collective consultation over redundancies or TUPE
- Whistleblowing
- Blacklisting

## What is Interim Relief?

Sections 128–132 of the Employment Rights Act 1996 and sections 161–166 of Trade Union and Labour Relations

(Consolidation) Act 1992 provide that an employee who has been dismissed for the circumstances described in the last section can apply to an Employment Tribunal to order:

- Reinstatement (getting their old job back)
- re-engagement (the employer to give the employee a suitable alternative job) or
- the continued payment of wages until the claim for unfair dismissal has been heard ('interim relief').

A guide to Interim Relief published by specialist employment law barristers at Nine St John Street Employment in Manchester advises that in practice the order is “usually for continuation of the terms and conditions of employment until final determination of the claim (i.e. ongoing contractual payments and benefits) rather than a reinstatement or re-engagement order.”

## If I meet the circumstances, are there any preconditions of applying for interim relief?

A precondition of applying for interim relief is that the employee should also have submitted an unfair dismissal complaint to the Tribunal.

## What are the timescales for making a complaint?

A claim for interim relief has to be

made within seven days of the effective date of termination.

If the employee has been given notice of their dismissal, they can make a claim earlier than the termination date (ie, during their notice period) but the deadline will not be extended.

What this means – and one of the reasons for producing this Bulletin – is that members must realise they need to act quickly if they have the right to apply for interim relief.

### **What criteria is the Employment Tribunal looking for in determining whether an interim relief order should be made?**

The Tribunal will make an interim relief order when it concludes that the Tribunal at the final unfair dismissal hearing will “likely” find that the reason the claimant was dismissed was one of the automatically unfair reasons.<sup>1</sup>

The definition of “likely” has been defined by case law<sup>2</sup> as a “pretty good chance of success”.

However, a subsequent case added further meaning to a “pretty good chance of success” by stating it requires “a significantly higher degree of likelihood that just ‘more likely than not’”<sup>3</sup>

The upshot is that the standard of proof is more onerous for interim relief cases than for the final unfair dismissal case.

### **Who has the burden of proof in an interim relief case?**

Unlike in unfair dismissal cases where

the burden of proof rests with the employer, in an interim relief hearing, the claimant has to prove that their case meets the legal tests described above.

### **When do the hearings for interim relief take place?**

Employment law cases can suffer significant delays with reports in October 2024 that more complex cases are taking as long as two years before they get to a Tribunal. For Interim Relief, however, cases are usually heard very quickly.

### **Reps’ action**

All TSSA reps in the UK should receive a copy of this Bulletin and we would ask that if you are ever facing the threat of disciplinary action or dismissal you must ensure that you report it immediately to your organiser or TSSA’s Helpdesk (0800 328 2673).

TSSA has agreements with many companies that in the event one of our reps is placed under disciplinary investigation, the appropriate union official is notified. However, we would still ask each rep in this circumstance to make sure they report the matter immediately to TSSA.

### **Acknowledgments**

In preparing this Reps Bulletin we want to acknowledge the Labour Research Department’s publication “Law at Work 2023” and the online document “Interim Relief – A concise practical guide” compiled by Nine St John Street Employment.

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<sup>1</sup> available at:  
<https://www.9sjs.com/assets/Uploads/Interim-Relief-Guide.pdf>

<sup>2</sup> Taplin -v- C Shippam Limited [1978] ICR1068 (Labour Research Department “Law at Work 2023”)

<sup>3</sup> Ministry of Justice v Sarfraz [2011] IRLR 562, EAT.