

Whitepaper - Continuous Employment

Introduction

A person employed under a contract of employment is said to be in continuous employment. After defined periods of continuous employment an employee will qualify for the statutory rights available to all employees under legislation such as the Employment Rights Act 1996 and the Trade Union and Labour Relations (Consolidation) Act 1992.

The written statement of employment particulars which must be issued to all employees, must specify the date on which the employee's period of continuous employment began, taking account of any period of employment with a former employer that counts towards that period.

Start and End of Continuous Employment

A period of continuous employment begins on the day on which the employee starts work. Subject to certain exceptions, any week that "does not count" will break an employee's continuity of service and the calculation of continuous employment must begin again.

Any period of employment will be presumed by the tribunals to be continuous unless the contrary is proved.

Weeks that Count

Every week during the whole or part of which an employee's relations with his or her employer are governed by a contract of employment counts in computing the employee's total period of continuous employment. A "week" is the period of seven consecutive days that begins on a Sunday and ends at midnight on the following Saturday. Accordingly, continuity may be preserved even if the gap between the two periods of employment is longer than one week e.g. an employee who is dismissed on the Monday of one week and re-engaged on the Friday of the following week will have continuity even though the gap between the two periods is 10 days. In such circumstances, the continuity will preserve even if the employee worked for another employer (albeit briefly) during the intervening period.

In computing an employee's period of continuous employment, the issue of whether or not the employee's employment counts towards a period of continuous employment, or whether or not periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment, shall be determined week by week. However, where it is necessary to determine whether or not an employee has been continuously employed for a sufficient period to qualify for a particular statutory right, the length of the employee's period of employment is computed in months and years of 12 months.

Breaks in Employment that do not Break Continuity

There will be occasions when the interval between an employee's dismissal (or resignation) and his or her subsequent re-employment by the same (or an associated) employer does not break the continuity of the employee's period of employment - even if the period between termination and re-employment is longer than one week.

The continuity of a period of employment is not broken in the following circumstances:

- Where an employee resigns or is dismissed on grounds of ill health but is re-employed by the same employer within the next 26 weeks. This is the case even if the employee works for another employer during the intervening period.
- Where an employee is absent from work, for whatever length of time, because of a temporary cessation of work e.g. where the factory in which an employee worked was destroyed by fire and some of the workforce were dismissed and took temporary jobs with other employers pending rebuilding.
- Where an employee (such as a seasonal worker, or a supply teacher routinely re-employed at the beginning of every school year) is absent from work, for whatever period, in circumstances such that, by arrangement or custom, he or she is regarded as continuing in the employer's employment for any purpose.
- Where a dismissed employee is reinstated or re-employed by his or her former employer (or by a successor or associated employer) in consequence of an arbitration agreement, a COT3 agreement or a settlement agreement, or at the direction of an employment tribunal.

In these circumstances, the period of absence will be treated as part of the employee's total period of employment if the employee in question is re-employed by the same employer (or, in the case of the final points on the list, a successor or associated employer) at the end of the period of absence.

Continuity is also not broken if an employee takes part in a strike or other form of industrial action. However, the whole of the week in which the strike occurred or continued must be discounted, even if the strike lasted just one or two days or for no more than an hour or two. The strike does not need to be official.

It should be noted that as continuity of employment is a statutory concept, it is not open to the employer and employee to agree that two periods of employment will or will not be continuous.

There is also no break in the continuity of an employee's period of employment if, as a member of the Volunteer Reserve Forces, an employee has been called up for military operations and then exercises his or her statutory right to be reinstated in his or her former job within six months of demobilisation. However, the days between the employee's call-up and reinstatement do not count when computing the employee's total period of continuous employment.

Special Provisions Relating to Redundancy Payments

A redundant employee who is reinstated or re-engaged by the same employer (or by an associated or successor employer), in circumstances that do not otherwise destroy continuity, must either:

- Repay any statutory redundancy payment paid at the time of his or her dismissal or,
- forfeit continuity in respect of any future right to such a payment.

The effect of this is that although the break in service does not destroy continuity in relation to other statutory rights dependent on a period of continuous employment, the employee will not qualify again for a statutory redundancy payment until such time as he or she has completed a further two years' continuous service following re-employment. These rules do not apply to any form of 'redundancy payment' paid on a contractual or ex-gratia basis.

Changes of Employer Continuity

The continuity of an employee's period of employment is not broken in the following circumstances:

- If there is a change of employer or if the employer's business is acquired by, or transferred to, another employer.
- If the employer dies and the business continues to be managed by the deceased employer's personal representatives or trustees.
- If there is a change in the partners, personal representatives or trustees.
- If the employee transfers from one employer to another when, at the time of the transfer, the two employers are associated employers.

Two employers will be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.

Future Considerations

The Government has accepted a recommendation put forward in the Taylor Review of Modern Working Practices of 2017, to extend the time frame affecting continuity of employment beyond 1 week. This is likely to extend to 1 month however we are yet to receive confirmation of this or a date of implementation.

This information is provided for general reference purposes only. If you have a specific enquiry relating to this topic please contact Wirehouse on:

033 33 215 005 | info@wirehouse-es.com

Continuous Employment Whitepaper updated 27/06/2019