



# *GUIDANCE ON* **COMPLAINTS TO THE LABOUR REGULATING AUTHORITY**

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## What is the Labour Regulating Authority?

The Labour Regulating Authority, or LRA for short, has a number of duties. One of these is to hear complaints made by employees against employers about the way they have been treated at work, or the way they have been dismissed

The LRA consists of three people, they are the Chief Magistrate, a member of an employee representative committee and someone who is from a larger private sector employer. The current members (2021) are Duncan Cooke, Zoe George and Barry Hubbard

## What can the Labour Regulating Authority do?

The LRA can:

1. order an employer to do certain things (e.g. pay the minimum wage);
2. fine employers; and
3. award compensation to an employee.

## Who can complain to the Labour Regulating Authority?

Any employee can complain to the LRA except there are some limitations if the claim is for unfair dismissal

## Who is an Employee?

An employee:

- i. usually has an employment contract from their employer, formed when they accept the job;
- ii. tends to be provided regular work by their employer;
- iii. is employed to do the work personally; and
- iv. must do the work

Just because the employer has not provided a statement of employment particulars does not mean the person working is not an employee. Some people may still be employees even if they have traditionally be seen as self-employed, for example fishermen.

There is a detailed definition of employee within the Employment Rights Ordinance 2010

## What if the claim is for unfair dismissal?

If the claim is for unfair dismissal then normally the employee must have worked for their employer for at least 12 months. This period includes any notice period the employer had or should have been given.

For example if an employer has a 1 month notice period in his or her contract of employment and is dismissed after 11 and a ½ months of working for an employer then the employment is taken as having ended after 12 and a ½ months, even if the employee did not work during his or her notice period.

A notice period may not apply in cases of gross misconduct where an employer had the right to terminate the contract without notice.

There is separate guidance on dismissals, including unfair dismissals, which can be found on the [Labour Regulating Authority](#) website

### **Does the 12 month period always apply?**

In some cases an employee can bring a claim for unfair dismissal even if they have worked for the employer for less than 12 months. These are:

1. Where the employee has been dismissed for asserting a statutory right (e.g. demanding the minimum wage)
2. Where the dismissal is to do with taking steps at work to ensure health and safety
3. Where the dismissal is to do with the employee disclosing information that is in the public interest, e.g. criminal offences or dangers to health or safety
4. Where the dismissal is to do with pregnancy, childbirth or maternity of the employee

If an employee believes that one of these exceptions applies then they can complain to the LRA who will decide if the exception does in fact apply. It is always best to seek advice if you are an employee and think one of the exceptions may apply to you.

# What can you complain to the Labour Regulating Authority about?

The following is a list of complaints that you can raise with the LRA and what the LRA can do about them

Complaint	What can the LRA do?
<b>Not providing a wage slip</b> or not providing an employee access to his or her pay records for the previous 12 months	Order the information to be produced Order compensation up to 80 times the minimum wage Fine the employer up to £200
<b>Not paying the minimum wage</b>	Order the employer pay to the employee what is owed Direct that the minimum wage be paid Order a fine up to £5,000 Order compensation to the employee up to £200
<b>Failure to provide a statement of initial employment particulars</b>	Direct the statement be provided Fine the employer up to £200 Order compensation to the employee up to £200
<b>Unlawfully making a deduction from wages</b> (NB – the complaint must be made within 3 months of the deduction)	Direct the money deducted be paid Fine the employer up to £200 Order compensation to the employee up to £200
<b>Not paying a woman at the same rate as a man for similar work</b> (NB – the complaint must be made within 30 days of becoming aware of the difference in pay unless the LRA allows a longer period)	Order the employer pay to the employee what she should have received Direct that the equal wage be paid Order a fine up to £5,000 Order compensation to the employee up to £200
<b>Not allowing the minimum leave period</b> (and exceeding working times) (NB - at the moment there are no maximum working hours but that may change. Complaints must be made within 3 months unless the LRA allows a longer period)	Order compensation to the employee Order a fine up to £200
<b>Suffering a 'detriment' for enforcing a right</b> under the Employment Rights Ordinance (NB – the complaint must be made within 3 months unless the LRA allows a longer period)	Order compensation to the employee

Complaint	What can the LRA do?
<b>Unfair Dismissal</b> (NB - the complaint must be made with- in 3 months unless the LRA allows a longer period)	Within 7 days of the dismissal an employee can ask for an order that wages be continued until the Unfair Dismissal claim is decided  If Unfair Dismissal is found then the Authority can: Order Compensation to the employee Order a fine up to £200

### How is compensation for unfair dismissal calculated?

Compensation is made up of two elements, a 'basic award' and a 'compensatory award'

#### The Basic Award

- A. The number of years the employee has worked for the employer is calculated
- B. Allowing for each of those years (up to a maximum of 20) the following is ordered—
  - (i) one and a half weeks' pay for every year of employment in which the employee was aged 41 years or older;
  - (ii) one week's pay for every year of employment in which the employee was aged 22 years to 40 years inclusive; and
  - (iii) half a week's pay for every year of employment in which the employee was under 22 years
- C. The basic award cannot exceed £5000
- D. The LRA can reduce the basic award if it feels it is just to do so

#### The Compensatory Award

The compensatory award is an amount the LRA considers fair to compensate the employee for the loss of employment. It can include the loss of future earnings, pension rights and other benefits. There is no limit to these awards.

# Proceedings in the Labour Regulating Authority

## How to make a claim

Before any claim is issued the employee must try and resolve their complaint using the employer's grievance procedure (if any). The employer must be allowed 14 days to respond. If this process is not gone through the LRA may refuse to hear the claim

Claims are started by filling in a 'complaint or claim form' and lodging it with judicial services. If the applicant is out of time to issue proceedings and needs to apply to extend the time limit he or she must apply in writing to the LRA

A copy of the complaint or claim form is at the back of this guidance from page 7 and can also be obtained from Judicial Services.

## How to defend a claim

The LRA will send the employee's complaint or claim form to the employer. When an employer receives a complaint or claim form then he or she must respond using a 'response form' within 14 days

A copy of the response form is at the back of this guidance from page 15 and can also be obtained from Judicial Services

## What happens next?

The LRA can dismiss the claim at this stage if it is without merit but that is unusual. Normally a hearing will be fixed, unless the parties agree the matter can be decided on the papers.

At the first hearing the LRA will make directions as to how the final hearing will proceed. This will involve the LRA directing that certain evidence be served by certain dates or that parties provide the LRA with particular information.

At the first hearing the LRA will also fix a final hearing to decide the case. It is at this final hearing that evidence is given by both sides and the parties will have an opportunity to present their cases.

After all the evidence has been heard the LRA will issue a decision. This will be in writing and will come some days after the final hearing.

## Can I appeal the decision of the Labour Regulating Authority?

If you think the LRA has got their decision wrong and you want to appeal then you can do so to the Supreme Court. Should you wish to do this then you will have to contact Judicial Services and speak to the Registrar of the Supreme Court

## Legal advice

Anybody taking proceedings before the LRA is entitled to be represented by a lawyer or a Lay Advocate. It is often helpful to speak to a lawyer before you decide whether or not to issue any proceedings. If your income is low then you will usually be entitled to free legal advice from the Public Solicitors Office. Lay Advocates do not charge for their services.

# LABOUR REGULATING AUTHORITY

## COMPLAINT OR CLAIM FORM

### 1. Employee

1.1	Title and Date of Birth	
1.2	First Name(s)	
1.3	Surname	
1.4	Address	
1.5	Telephone	
1.6	Fax	
1.7	Email	

### 2. Employer

2.1	Title (if applicable)	
2.2	First Name(s) (if applicable)	
2.3	Surname/Business Name	
2.4	Address	
2.5	Telephone	
2.6	Fax	
2.7	Email	

**3. Employee's representative (if any)**

3.1	Title	
3.2	First Name(s)	
3.3	Surname	
3.4	Address	
3.5	Telephone	
3.6	Fax	
3.7	Email	

**4. Particular complaint or claim**

	Tick if applicable
Failure to provide statements (section 18)	
Failure to allow access to records (section 18)	
Failure to pay at least minimum wage (section 19)	
Failure to provide statement of employment particulars (section 22)	
Deduction or requiring payment (Section 26)	
Working hours or leave period (Section 28)	
Detriment (section 30)	
Unfair dismissal (section 41)	

**5. Number of persons employed by employer (if known)**

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**6. Date when employment commenced**

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**7. Date when employment ended (if applicable)**

**8. Job title**

**9. Number of hours on average worked each week**

**10. Normal amount of remuneration**

<b>Before taxation:</b>
<b>After taxation:</b>

**11. Period of notice worked**

**12. Details of employee's membership of employer's pension scheme**

**13. Any other benefits received**

**14. New job (if applicable)**

Start date:
Remuneration:

## 15. Remedies sought

	Tick if applicable
Order to provide statements (section 18)	
Compensation for failure to allow access to records (section 18)	
Order for payment and compensation relating to minimum wage (section 19)	
Order to provide statement of employment particulars and compensation (section 22)	
Order for payment and compensation relating to deduction or requiring payment (section 26)	
Compensation relating to working hours or leave periods (section 28)	
Compensation relating to detriment (section 30)	
Interim order for payment of salary relating to unfair dismissal (section 40)	
Compensation for unfair dismissal (sections 41 and 44)	
Reinstatement relating to unfair dismissal (sections 41 and 42)	
Re-engagement relating to unfair dismissal (sections 41 and 43)	

**16. Date of incident or periods covered**

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**17. Background and details giving rise to complaint or claim**

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18. Same or similar complaints or claims against the same employer, if so give details (if known)

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19. Details of complaint or claim made directly to the Employer

Date:
Details:

20. List supporting material relevant to complaint or claim

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21. Explanation for complaint or claim being outwith the prescribed time limit

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22. Connected proceedings for wrongful dismissal or otherwise in a court in St Helena or elsewhere

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23. Declaration

<p>I understand that on receipt of this complaint or claim the Regulator will provide a copy of this form and any accompanying information to the Employer.</p> <p>I understand that the proceedings into this complaint or claim falls under the Regulator's jurisdiction and undertake to abide by all the Regulator's regulations and procedures.</p> <p>Signature of employee/ representative .....</p> <p>Date of complaint or claim .....</p>
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Return to: The Labour Regulating Authority, The Castle, Jamestown, St Helena STHL 1ZZ

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# LABOUR REGULATING AUTHORITY

## RESPONSE FORM

### 1. Employer

1.1	Title	
1.2	First Name(s)	
1.3	Surname	
1.4	Address	
1.5	Telephone	
1.6	Fax	
1.7	Email	

### 2. Employee

2.1	Title (if applicable)	
2.2	First Name(s) (if applicable)	
2.3	Surname/Business Name	
2.4	Address	
2.5	Telephone	
2.6	Fax	
2.7	Email	

**3. Employer's representative (if any)**

3.1	Title	
3.2	First Name(s)	
3.3	Surname	
3.4	Address	
3.5	Telephone	
3.6	Fax	
3.7	Email	

**4. Particular complaint or claim**

Do you resist any of the complaint or claim?	YES/NO/NA
Failure to Provide Statements (section 18)	
Failure to allow access to records (section 18)	
Failure to pay at least minimum wage (section 19)	
Failure to provide statement of employment particulars (section 22)	
Deduction or requiring payment (Section 26)	
Working hours or leave period (Section 28)	
Detriment (section 30)	
Interim Order for payment of salary (Section 40)	
Unfair dismissal (section 41)	

**5. Number of persons employed by employer**

**6. Date when employment commenced**

**7. Date when employment ended (if applicable)**

8. Job title

--

9. Number of hours on average worked each week

--

10. Normal amount of remuneration

Before taxation:
After taxation:

11. Period of notice worked

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12. Details of employee's membership of employer's pension scheme

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13. Any other benefits received

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14. New job (if applicable)

Do you accept what is claimed by the employee? YES/NO/NA If not detail below.

Start date (if known):
Remuneration (if known):

**15. Remedies sought**

Do you resist any of the remedies sought?	YES/NO/NA
Order to provide statements (section 18)	
Compensation for failure to allow access to records (section 18)	
Order for payment and compensation relating to minimum wage (section 19)	
Order to provide statement of employment particulars and compensation (section 22)	
Order for payment and compensation relating to deduction or requiring	
Compensation relating to working hours or leave periods (section 28)	
Compensation relating to detriment (section 30)	
Interim order for payment of salary relating to unfair dismissal (section 40)	
Compensation for unfair dismissal (sections 41 and 44)	
Reinstatement relating to unfair dismissal (sections 41 and 42)	
Re-engagement relating to unfair dismissal (sections 41 and 43)	

**16. Date of incident or periods covered**

Do you accept the date of the incident or periods covered as claimed by the employee?

YES/NO

If not detail below.

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**17. Response to background and details giving rise to complaint or claim**

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(continue on separate sheet if necessary)

**18. Same or similar complaints or claims against you, if so give details (if known)**

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**19. Details of complaint or claim to made directly to you**

Date:
Details:

**20. List supporting material relevant to the response to the complaint or claim**

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**21. Explanation for response being outwith the prescribed time limit**

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**22. Connected proceedings for wrongful dismissal or otherwise in a court in St Helena or elsewhere**

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**23. Declaration**

I/We understand that on receipt of this response the Regulator will provide a copy of this form and any accompanying information to the Employee.

I understand that the proceedings into this complaint or claim falls under the Regulator's jurisdiction and undertake to abide by all the Regulator's regulations and procedures.

Signature of employee/ representative .....

Date of complaint or claim .....

**Return to: The Labour Regulating Authority, The Castle, Jamestown, St Helena STHL 1ZZ**

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