

# Fact Sheet

## Continuity of Employment

This Guidance aims to give members a general overview of the legal considerations that normally occur during the course of employment under the NAEI. In more complex situations, members are advised to seek further guidance. The Employment Rights Act 1996 Part XIV, defines continuity of employment (irrespective of what may have been agreed between the employer and employee). Therefore, when a dispute arises over the period of employment, for the purposes of determining statutory employment rights, a period of employment will only count as continuous if it complies with the Act.

### 1. Determining the start & end of employment

The contract of employment will define the start of employment, as employers are required to include an employment start date and any service that would count towards continuity of service. Any period prior to that stipulated start date, where the employee is 'preparing for work' such as training, induction or undertaking a welder skills test is not included for the purposes of continuity of employment.

The end of employment will be determined by the effective date of termination given by the employer in writing. For the purposes of calculating the right to claim unfair dismissal, or to claim redundancy payments, that date will be at the end of the nominal notice period unless the employee has been fairly dismissed (summarily) for gross misconduct. This remains the case even when a payment in lieu of notice has been made.

### 2. Breaks in employment

The general rule is that while a contract of employment is in place between employer and employee, even if no work has been undertaken, then continuity of employment exists. For there to be a clean break in the employment a fair termination needs to have taken place and a gap in employment of at least one statutory week which runs from Sunday to Saturday, needs to be included in that break. Therefore, an employee whose employment has been terminated

or who has resigned on a Monday and is re-employed or re-instated on Friday of the following week will have continuity by virtue of there not having been sufficient gap.



### There are some exemptions to this general rule

1. If an employee is re-instated on appeal or an order to re-instate is made by an Employment Tribunal, or a NJC Stage 4 Dismissal Arbitration Panel, then continuity is preserved
2. If an employee is offered future employment, whilst a contract of employment is still in place and that employment commences within the 4 week period following the effective date of termination, then continuity is preserved
3. If the employer changes due to a share acquisition or through a 'transfer'
4. Where there is a temporary cessation in the work being undertaken. There is no statutory definition of temporary cessation but an example would be the temporary closure of a fabrication facility, which then reopens, and employees are re-engaged. This can be complex so members are advised to seek guidance should this issue arise. In these cases, it would be for the employer to prove no continuity existed, as it is possible for an Employment Tribunal to assume continuity in the absence of evidence

### 3. Effect of Strikes and Lock outs

Strike action or lock outs will impact on the length of continuous employment. The legal definition of a strike, be it official or unofficial, is "a body of employed persons ceasing work in a combined or concerted effort to put pressure on an employer". So any days of strike or lock out are deducted when calculating the period of employment. That would include weekends if the strike starts before and ends after the weekend. Should the employer dismiss the employees during the strike, or prior to the lock out, then the rules of temporary cessation (see above) would take effect and preserve continuity [unless the strike is of a political nature then a dismissal will break service as long as the break is longer than the statutory week].