
DRAFT STATUTORY RULES OF NORTHERN IRELAND

2016 No.

The Working Time Regulations (Northern Ireland) 2016

PART 4

Miscellaneous

Restrictions on contracting out

45.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an industrial tribunal.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where the Labour Relations Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996(1) (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within Article 20(1) (f) of the Industrial Tribunals (Northern Ireland) Order 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating compromise agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on the worker's ability to pursue rights before an industrial tribunal,
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions regulating compromise agreements under these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c) if that person—

- (a) is a qualified lawyer,

- (b) is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
 - (c) works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the worker—
- (a) if the person is, is employed by or is acting in the matter for the employer or an associated employer,
 - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or
 - (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received from that person.
- (6) In paragraph (4)(a), “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (7) In paragraph (4)(b), “independent trade union” has the same meaning as in the 1996 Order.
- (8) For the purposes of paragraph (5) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control; or
 - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.