
STATUTORY INSTRUMENTS

1999 No. 2790

The Employment Relations (Northern Ireland) Order 1999

Disciplinary and grievance hearings

Right to be accompanied

12.—(1) This Article applies where a worker—

- (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
- (b) reasonably requests to be accompanied at the hearing.

(2) Where this Article applies the employer must permit the worker to be accompanied at the hearing by a single companion who—

- (a) is chosen by the worker and is within paragraph (3),
- (b) is to be permitted to address the hearing (but not to answer questions on behalf of the worker), and
- (c) is to be permitted to confer with the worker during the hearing.

(3) A person is within this paragraph if he is—

- (a) employed by a trade union of which he is an official within the meaning of the Trade Union and Labour Relations Order,
- (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or
- (c) another of the employer's workers.

(4) If—

- (a) a worker has a right under this Article to be accompanied at a hearing,
- (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
- (c) the worker proposes an alternative time which satisfies paragraph (5),

the employer must postpone the hearing to the time proposed by the worker.

(5) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.

(6) An employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under paragraph (1) (b).

(7) Articles 92(3) and (4), 93, 95 and 247(1) of the Employment Rights Order (time off for carrying out trade union duties) shall apply in relation to paragraph (6) as they apply in relation to Article 92(1) of that Order.

Complaint to industrial tribunal

13.—(1) A worker may present a complaint to an industrial tribunal that his employer has failed, or threatened to fail, to comply with Article 12(2) or (4).

(2) A tribunal shall not consider a complaint under this Article in relation to a failure or threat unless the complaint is presented—

- (a) before the end of the period of three months beginning with the date of the failure or threat, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a tribunal finds that a complaint under this Article is well-founded it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.

(4) Chapter IV of Part I of the Employment Rights Order (calculation of a week's pay) shall apply for the purposes of paragraph (3); and in applying that Chapter the calculation date shall be taken to be—

- (a) in the case of a claim which is made in the course of a claim for unfair dismissal, the date on which the employer's notice of dismissal was given or, if there was no notice, the effective date of termination, and
- (b) in any other case, the date on which the relevant hearing took place (or was to have taken place).

(5) The limit in Article 23(1) of the Employment Rights Order (maximum amount of week's pay) shall apply for the purposes of paragraph (3).

(6) No award shall be made under paragraph (3) in respect of a claim which is made in the course of a claim for unfair dismissal if the tribunal makes a supplementary award under Article 162A(2) of the Employment Rights Order (internal appeal procedures).

Detriment and dismissal

14.—(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he—

- (a) exercised or sought to exercise the right under Article 12(2) or (4), or
- (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that Article.

(2) Article 71 of the Employment Rights Order shall apply in relation to contraventions of paragraph (1) as it applies in relation to contraventions of certain Articles of that Order.

(3) A worker who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he—

- (a) exercised or sought to exercise the right under Article 12(2) or (4), or
- (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that Article.

(4) Articles 140 and 141 of that Order (qualifying period of employment and upper age limit) shall not apply in relation to paragraph (3).

(5) Articles 163 to 167 of that Order (interim relief) shall apply in relation to dismissal for the reason specified in paragraph (3)(a) or (b) as they apply in relation to dismissal for a reason specified in Article 163(1)(b) of that Order.

(6) In the application of Chapter II of Part XI of that Order in relation to paragraph (3), a reference to an employee shall be taken as a reference to a worker.

Interpretation

15.—(1) In Articles 12 to 14 and this Article “worker” means an individual who is—

- (a) a worker within the meaning of Article 3(3) of the Employment Rights Order,
- (b) an agency worker,
- (c) a home worker, or
- (d) a person in Crown employment within the meaning of Article 236 of that Order, other than a member of the naval, military, air or reserve forces of the Crown.

(2) In paragraph (1) “agency worker” means an individual who—

- (a) is supplied by a person (“the agent”) to do work for another (“the principal”) by arrangement between the agent and the principal,
- (b) is not a party to a worker’s contract, within the meaning of Article 3(3) of that Order, relating to that work, and
- (c) is not a party to a contract relating to that work under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any professional or business undertaking carried on by the individual;

and, for the purposes of Articles 12 to 14, both the agent and the principal are employers of an agency worker.

(3) In paragraph (1) “home worker” means an individual who—

- (a) contracts with a person, for the purposes of the person’s business, for the execution of work to be done in a place not under the person’s control or management, and
- (b) is not a party to a contract relating to that work under which the work is to be executed for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any professional or business undertaking carried on by the individual;

and, for the purposes of Articles 12 to 14, the person mentioned in sub-paragraph (a) is the home worker’s employer.

(4) For the purposes of Article 12 a disciplinary hearing is a hearing which could result in—

- (a) the administration of a formal warning to a worker by his employer,
- (b) the taking of some other action in respect of a worker by his employer, or
- (c) the confirmation of a warning issued or some other action taken.

(5) For the purposes of Article 12 a grievance hearing is a hearing which concerns the performance of a duty by an employer in relation to a worker.

(6) For the purposes of Article 12(5)(b) a working day is a day other than—

- (a) a Saturday or a Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland.

Contracting out and conciliation

16. Articles 12 to 15 shall be treated as provisions of Chapter I of Part VI of the Employment Rights Order for the purposes of—

- (a) Article 245(1), (2)(e) and (f) and (3) to (5) of that Order (restrictions on contracting out); and
- (b) Article 20(1)(c) of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation).

National security employees

17. Articles 12 to 15 shall not apply in relation to a person employed for the purposes of—

- (a) the Security Service; or
- (b) the Secret Intelligence Service.