
STATUTORY RULES OF NORTHERN IRELAND

1998 No. 386

Working Time Regulations (Northern Ireland) 1998

Part IV

Miscellaneous

Right not to suffer detriment

31.—(1) After Article 68 of the 1996 Order there shall be inserted—

“Working time cases

68A.—(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 the worker—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations (Northern Ireland) 1998,
 - (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
 - (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,
 - (d) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
 - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate,
 - (e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or
 - (f) alleged that the employer had infringed such a right.
- (2) It is immaterial for the purposes of paragraph (1)(e) or (f)—
- (a) whether or not the worker has the right, or
 - (b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for paragraph (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) This Article does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part XI, unless the dismissal is in circumstances in which, by virtue of Article 240, Part XI does not apply.”.

(2) After Article 71(1) of the 1996 Order (complaints to industrial tribunals) there shall be inserted the following paragraph—

“(1ZA) A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 68A.”.

(3) In Article 72 of the 1996 Order(1) (remedies)—

(a) in paragraph (2), for “paragraph (6)” there shall be substituted “paragraphs (5A) and (6)”, and

(b) after paragraph (5), there shall be inserted—

“(5A) Where—

(a) the complaint is made under Article 71(1ZA),

(b) the detriment to which the worker is subjected is the termination of his worker’s contract, and

(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part XI if the worker had been an employee and had been dismissed for the reason specified in Article 132A.”.

(4) In Article 237(2) of the 1996 Order (provisions applicable in relation to service in the armed forces), after sub-paragraph (a) there shall be inserted—

“(aa) in Part VI, Article 68A and Articles 71 and 72 so far as relating to that Article,”.

(5) In Article 243(1) of the 1996 Order(2) (which lists provisions of the 1996 Order which do not apply to employment in police service), after “Part VA,” there shall be inserted “Article 68A,”.

(6) In Article 244(2)(b) of the 1996 Order (restriction on disclosure of information in interest of national security etc.), for “Articles 68 and 70” there shall be substituted “Articles 68, 68A and 70,”.

(7) In Article 247 of the 1996 Order (remedy for infringement of certain rights) after paragraph (1) there shall be inserted the following paragraph—

“(1ZA) In relation to the right conferred by Article 68A, the reference in paragraph (1) to an employee has effect as a reference to a worker.”.

(1) Article 72 of the 1996 Order was prospectively amended by Article 7 of The Public Interest Disclosure (Northern Ireland) Order 1998 (S.I.1998/1763 (N.I. 17))

(2) Article 243(1) was amended by Article 8(2) of the Police (Health and Safety) (Northern Ireland) Order 1997, S.I. 1997/1774 (N.I. 16), and prospectively amended by Article 16 of the Public Interest Disclosure (Northern Ireland) Order 1998