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STATUTORY RULES OF NORTHERN IRELAND

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**1999 No. 148**

**Fair Employment (Monitoring)  
Regulations (Northern Ireland) 1999**

**PART III**

**OBTAINING AND RETAINING MONITORING  
INFORMATION AND OFFENCES**

**Confidentiality of monitoring information**

**16.—**(1) This regulation applies to—

- (a) information about an employee in a registered concern which is obtained in response to a question asked in pursuance of paragraph 2 of Part I of Schedule 2;
- (b) information about an applicant for employment in a registered concern which is obtained in response to a question asked in pursuance of paragraph 5 of Part II of Schedule 2;
- (c) the determination by an employer of the community to which any employee or applicant for employment or former employee in a registered concern is to be treated as belonging for the purposes of monitoring; and
- (d) information obtained in pursuance of regulation 18(1).

(2) Any person who discloses information which—

- (a) he holds or has held in his capacity as a person who is employed in a registered concern or as the employer; and
- (b) is information to which this regulation applies or has applied,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Nothing in this regulation applies to the disclosure of information—

- (a) to the Commission or the Labour Relations Agency; or
- (b) to any person—
  - (i) who is employed in the registered concern in question;
  - (ii) whose services have been made available for the purposes of the concern; or
  - (iii) is an official of a trade union, members of which are employed in the concern, if the nature of his duties renders it reasonable for the disclosure to be made to him; or
- (c) for the purposes of or in connection with—
  - (i) any actual or prospective proceedings before the Tribunal or an industrial tribunal; or
  - (ii) any actual or prospective civil or criminal proceedings before a court; or
- (d) to the person to whom it relates, whether under regulation 12 or otherwise; or

(e) where an employee or applicant for employment or former employee to whom the information relates has given his consent in writing to the disclosure.

(4) In paragraph (3)(b) “official” has the same meaning as in the Trade Union and Labour Relations (Northern Ireland) Order 1995<sup>(1)</sup> and “trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992<sup>(2)</sup>.

(5) It is a defence for a person charged with an offence under paragraph (2) to show that before the disclosure in question was made he had also obtained the information otherwise than in his capacity as an employee in the concern of the employer.

### **Records about employees and offences in respect of those records**

17.—(1) An employer in a registered concern shall retain—

(a) written information obtained by him (whether in pursuance of these Regulations or otherwise) about an employee in the concern which might be used if any of the methods prescribed by these Regulations for making a determination were applied to that person; and

(b) a record of the determination made by him in respect of any such person,

until the expiration of three years from the date on which the person to whom the information or determination relates ceases to be employed in the concern.

(2) Any person who, without reasonable excuse, fails to comply with the requirements of this regulation shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Information about applicants and offences in respect of that information**

18.—(1) An employer in a registered concern shall, for the purposes of Article 54(1), seek to obtain from each applicant for employment in the concern, his surname and other names and his address.

(2) An employer in a registered concern shall retain—

(a) any information—

(i) which he has obtained in pursuance of paragraph (1); or

(ii) which he used in applying any of the methods prescribed by these Regulations for making a determination in the case of any applicant for employment in the concern; and

(b) a record of the determination made by him in respect of any such person as is mentioned in sub-paragraph (a)(ii),

until the expiration of three years from the date of the application of the person to whom the information or determination relates.

(3) Any person who without reasonable excuse fails to comply with paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any person who—

(a) knowingly gives false information to another who is seeking to obtain information in pursuance of paragraph (1); or

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(1) S.I. 1995/1980 (N.I. 12)

(2) S.I. 1992/807 (N.I. 5)

- (b) knowingly includes any false information in any records kept in pursuance of paragraph (2)(a),

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Offence of employer serving a return not in accordance with Regulations**

**19.** An employer who, without reasonable excuse, serves on the Commission a monitoring return which is not prepared in accordance with these Regulations or does not contain the prescribed information shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £10,000.

### **Offence of giving and including in returns false information**

**20.** If a person—

- (a) knowingly gives any false information to another who, with a view to including any information on a monitoring return to be served on the Commission, is seeking information; or
- (b) without reasonable excuse, knowingly includes any false information in such a monitoring return,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Interpretation of Part III**

**21.** In this Part—

- (a) any reference to an applicant for employment in relation to any registered concern means a person who applied to fill a vacancy for employment in that concern whether or not that person is already an employee in that concern; and
- (b) any reference to a former employee in relation to any registered concern means a person who has ceased to be employed in that concern.