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STATUTORY RULES OF NORTHERN IRELAND

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**2000 No. 219**

**Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000**

**Part II**

**Rights and Remedies**

**Less favourable treatment of part-time workers**

5.—(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—

- (a) as regards the terms of his contract; or
- (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) The right conferred by paragraph (1) applies only if—

- (a) the treatment is on the ground that the worker is a part-time worker, and
- (b) the treatment is not justified on objective grounds.

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.

(4) A part-time worker paid at a lower rate for overtime worked by him in a period than a comparable full-time worker is or would be paid for overtime worked by him in the same period shall not, for that reason, be regarded as treated less favourably than the comparable full-time worker where, or to the extent that, the total number of hours worked by the part-time worker in the period, including overtime, does not exceed the number of hours the comparable full-time worker is required to work in the period, disregarding absences from work and overtime.

**Right to receive a written statement of reasons for less favourable treatment**

6.—(1) If a worker who considers that his employer may have treated him in a manner which infringes a right conferred on him by regulation 5 requests in writing from his employer a written statement giving particulars of the reasons for the treatment, the worker is entitled to be provided with such a statement within twenty-one days of his request.

(2) A written statement under this regulation is admissible as evidence in any proceedings under these Regulations.

(3) If it appears to the tribunal in any proceedings under these Regulations—

- (a) that the employer deliberately, and without reasonable excuse, omitted to provide a written statement, or
- (b) that the written statement is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the employer has infringed the right in question.

(4) This regulation does not apply where the treatment in question consists of the dismissal of an employee, and the employee is entitled to a written statement of reasons for his dismissal under Article 124 of the 1996 Order<sup>(1)</sup>.

### **Unfair dismissal and the right not to be subjected to detriment**

7.—(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part XI of the 1996 Order if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) 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 a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are—

(a) that the worker has—

- (i) brought proceedings against the employer under these Regulations; or
- (ii) requested from his employer a written statement of reasons under regulation 6; or
- (iii) given evidence or information in connection with such proceedings brought by any worker; or
- (iv) otherwise done anything under these Regulations in relation to the employer or any other person; or
- (v) alleged that the employer had infringed these Regulations; or
- (vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations, or

(b) that the employer believes or suspects that the worker has done or intends to do any of the things mentioned in sub-paragraph (a).

(4) Where the reason or principal reason for dismissal or, as the case may be, ground for subsection (2) is that mentioned in paragraph (3)(a)(v), or (b) so far as it relates thereto, neither paragraph (1) nor paragraph (2) applies if the allegation made by the worker is false and not made in good faith.

(5) Paragraph (2) does not apply where the detriment in question amounts to the dismissal of an employee within the meaning of Part XI of the 1996 Order.

### **Complaints to industrial tribunals**

8.—(1) Subject to regulation 7(5), a worker may present a complaint to an industrial tribunal that his employer has infringed a right conferred on him by regulation 5 or 7(2).

(2) Subject to paragraph (3), an industrial tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months (or in the case to which regulation 13 applies, six months) beginning with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.

(3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of calculating the date of the less favourable treatment or detriment under paragraph (2)—

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(1) Article 124(3) was amended by the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order (Northern Ireland) 1999 (S.R. 1999 No. 277). Article 124(4)(b) was amended by the Employment Relations (Northern Ireland) Order 1999, Article 11 and paragraph 6 of Part III of Schedule 4

- (a) where a term in a contract is less favourable, that treatment subject to sub-paragraph (b), shall be treated as taking place on each day of the period during which the term is less favourable; and
  - (b) where an application relies on regulation 3 or 4 the less favourable treatment shall be treated as occurring on, and only on, in the case of regulation 3, the first day on which the applicant worked under the new or varied contract and, in the case of regulation 4, the day on which the applicant returned; and
  - (c) a deliberate failure to act contrary to regulation 5 or 7(2) shall be treated as done when it was decided on.
- (5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of paragraph (4)(c) to decide not to act—
- (a) when he does an act inconsistent with doing the failed act; or
  - (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to have done the failed act if it was to be done.
- (6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground for the less favourable treatment or detriment.
- (7) Where an industrial tribunal finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable—
- (a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates;
  - (b) ordering the employer to pay compensation to the complainant;
  - (c) recommending that the employer take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.
- (8) Where a tribunal finds a complaint to be well founded on the ground that the complainant has been treated less favourably in respect of either the terms on which he is afforded access to membership of an occupational pension scheme or his treatment under the rules of such a scheme, the steps taken by a tribunal under paragraph (7) as regards that less favourable treatment shall not relate to a period earlier than two years before the date on which the complaint was presented.
- (9) Where a tribunal orders compensation under paragraph (7)(b), the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances (subject to paragraph (8)) having regard to—
- (a) the infringement to which the complaint relates, and
  - (b) any loss which is attributable to the infringement having regard, in the case of an infringement of the right conferred by regulation 5, to the pro rata principle except where it is inappropriate to do so.
- (10) The loss shall be taken to include—
- (a) any expenses reasonably incurred by the complainant in consequence of the infringement, and
  - (b) loss of any benefit which he might reasonably be expected to have had but for the infringement.
- (11) Compensation in respect of treating a worker in a manner which infringes the right conferred on him by regulation 5 shall not include compensation for injury to feelings.
- (12) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

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(13) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(14) If the employer fails, without reasonable justification, to comply with a recommendation made by an industrial tribunal under paragraph (7)(c) the tribunal may, if it thinks it just and equitable to do so—

- (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under paragraph (7)(b); or
- (b) make an order under paragraph (7)(b).