

2003 No. 173

EMPLOYMENT

**Flexible Working (Procedural Requirements) Regulations
(Northern Ireland) 2003**

Made - - - - - *13th March 2003*

Coming into operation *6th April 2003*

The Department for Employment and Learning^(a) in exercise of the powers conferred on it by Article 112G(1), (2) and (3) of the Employment Rights (Northern Ireland) Order 1996^(b), and now vested in it^(c), and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2003 and shall come into operation on 6th April 2003.

Interpretation

2.—(1) In these Regulations –

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996;

“application” means an application under Article 112F of the 1996 Order (statutory right to request contract variation);

“contract variation” means a change in the terms and conditions of a contract of employment of a kind specified in Article 112F(1)(a) of the 1996 Order;

“electronic communication” means an electronic communication within the meaning of section 15(1) of the Electronic Communications Act 2000^(d);

“writing” includes writing delivered by means of electronic communication.

(2) For the purposes of these Regulations, unless the contrary is proved, an application is taken as having been made on the day the application is received.

(3) The reference in paragraph (2) to the day on which an application is received is a reference –

(a) in relation to an application transmitted by electronic communication, to the day on which it is transmitted;

(b) in relation to an application sent by post, to the day on which the application would be delivered in the ordinary course of post.

(a) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)
(b) S.I. 1996/1919 (N.I. 16); as amended by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(c) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
(d) 2000 c. 7

(4) For the purpose of these Regulations, unless the contrary is proved, a notice is taken as being given –

- (a) in relation to a notice transmitted by electronic communication, on the day on which it is transmitted;
- (b) in relation to a notice sent by post, on the day on which the notice would be delivered in the ordinary course of post.

The meeting to discuss an application with an employee

3.—(1) Subject to paragraph (2) and regulation 13, an employer to whom an application for a contract variation is made shall hold a meeting to discuss the application with the employee within 28 days after the date on which the application is made.

(2) Paragraph (1) does not apply where the employer agrees to the application and notifies the employee accordingly in writing within the period referred to in that paragraph.

(3) A notice under paragraph (2) shall specify –

- (a) the contract variation agreed to; and
- (b) the date from which the variation is to take effect.

4. Where a meeting is held to discuss an application the employer shall give the employee notice of his decision on the application within 14 days after the date of the meeting.

5. A notice under regulation 4 shall –

- (a) be in writing;
- (b) (i) where the employer’s decision is to agree to the application, specify the contract variation agreed to and state the date on which the variation is to take effect; or
(ii) where the decision is to refuse the application, state which of the grounds for refusal specified in Article 112G(1)(b) of the 1996 Order are considered by the employer to apply, contain a sufficient explanation as to why those grounds apply in relation to the application, and set out the appeal procedure; and
- (c) be dated.

Appeals

6. An employee is entitled to appeal against his employer’s decision to refuse an application by giving notice in accordance with regulation 7 within 14 days after the date on which notice of the decision is given.

7. A notice of appeal under regulation 6 shall –

- (a) be in writing;
- (b) set out the grounds of appeal; and
- (c) be dated.

8.—(1) Subject to paragraph (2), the employer shall hold a meeting with the employee to discuss the appeal within 14 days after the employee’s notice under regulation 6 is given.

(2) Paragraph (1) does not apply where, within 14 days after the date on which notice under regulation 6 is given, the employer –

- (a) upholds the appeal; and
- (b) notifies the employee in writing of his decision, specifying the contract variation agreed to and stating the date on which the variation is to take effect.

9. Where a meeting is held to discuss the appeal, the employer shall notify the employee of his decision on the appeal within 14 days after the date of the meeting.

10. Notice under regulation 9 shall –

- (a) be in writing;

- (b) (i) where the employer upholds the appeal, specify the contract variation agreed to and state the date on which the variation is to take effect; or
- (ii) where the employer dismisses the appeal, state the grounds for the decision and contain a sufficient explanation as to why those grounds apply; and
- (c) be dated.

11. The time and place of a meeting under regulation 3(1) or 8(1) shall be convenient to the employer and the employee.

Extension of periods

12.—(1) An employer and an employee may agree to an extension of any of the periods referred to in regulations 3, 4, 6, 8, 9 and 13.

- (2) An agreement under paragraph (1) shall be recorded in writing by the employer.
- (3) The employer's record referred to in paragraph (2) shall –
 - (a) specify what period the extension relates to;
 - (b) specify the date on which the extension is to end;
 - (c) be dated; and
 - (d) be sent to the employee.

13. Where the individual who would ordinarily consider an application is absent from work on annual leave or on sick leave on the day on which the application is made, the period referred to in regulation 3(1) commences on the day the individual returns to work or 28 days after the application is made, whichever is the sooner.

Right to be accompanied

- 14.—(1)** This regulation applies where –
- (a) a meeting is held under regulation 3(1) or 8(1); and
 - (b) the employee reasonably requests to be accompanied at the meeting.

(2) Where this regulation applies the employer shall permit the employee to be accompanied at the meeting by a single companion who is chosen by the employee and is within paragraph (3).

(3) A person is within this paragraph if he is a worker employed by the same employer as the employee who chooses him.

- (4) Where –
- (a) an employee has a right under this regulation to be accompanied at a meeting;
 - (b) his companion will not be available at the time proposed by the employer for the meeting; and
 - (c) the employee proposes an alternative time which satisfies paragraph (5),

the meeting shall be held at the time proposed by the employee.

- (5) For the purposes of paragraph (4) an alternative time for a meeting shall –
- (a) be convenient for employer, employee and companion; and
 - (b) fall before the end of the period of seven days beginning on and including the day after the day proposed by the employer.

(6) An employer shall permit any companion to take time off during his working hours for the purpose of accompanying an employee to a meeting under this regulation.

(7) Articles 92(3) and (4), 93 and 95 of the 1996 Order (trade union duties and activities) shall apply in relation to paragraph (6) as they apply in relation to Article 92(1) of that Order^(a).

(a) S.I. 1996/1919 (N.I. 16); Article 92(1)(c) of the Employment Rights (Northern Ireland) Order 1996 was inserted by regulation 6 of the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 432)

(8) An employer shall permit any companion accompanying an employee to a meeting under this regulation –

- (a) to address the meeting (but not to answer questions on behalf of the employee); and
- (b) to confer with the employee during the meeting.

Complaint to industrial tribunal

15.—(1) An employee may present a complaint to an industrial tribunal that his employer has failed, or threatened to fail, to comply with regulation 14(2) or (4).

(2) A tribunal shall not consider a complaint under this regulation 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 regulation is well-founded it shall order the employer to pay compensation to the employee of an amount not exceeding two weeks' pay.

(4) Chapter IV of Part I of the 1996 Order (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 the date on which the relevant meeting took place (or was to have taken place).

(5) The limit in Article 23(1) of the 1996 Order (maximum amount of week's pay) shall apply for the purposes of paragraph (3).

Detriment and dismissal

16.—(1) A person 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 regulation 14(2) or (4); or
- (b) accompanied or sought to accompany an employee pursuant to a request under that regulation.

(2) Article 71 of the 1996 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 person who is dismissed shall be regarded for the purposes of Part XI of the 1996 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 his right under regulation 14(2) or (4); or
- (b) accompanied or sought to accompany an employee pursuant to a request under that regulation.

(4) Articles 140 and 141 of the 1996 Order (qualifying period of employment and upper age limit) shall not apply in relation to paragraph (3).

(5) Articles 163 to 167 of the 1996 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 the 1996 Order in relation to paragraph (3), a reference to an employee shall be taken as a reference to a worker.

Withdrawal of application by the employee

17.—(1) An employer shall treat an application as withdrawn where the employee has –

- (a) notified him, whether orally or in writing, that he is withdrawing the application;
- (b) without reasonable cause, failed to attend a meeting under regulation 3(1) or 8(1) more than once; or

(c) without reasonable cause, refused to provide the employer with information the employer requires in order to assess whether the contract variation should be agreed to.

(2) An employer shall confirm the withdrawal of the application to the employee in writing unless the employee has provided him with written notice of the withdrawal under paragraph 1(a).

Sealed with the Official Seal of the Department for Employment and Learning on 13th March 2003.

(L.S.)

R. B. Gamble

A senior officer of the Department for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations relate to the new statutory right to request contract variation to change the terms and conditions of an employee's contract of employment to allow for flexible working. This new right is provided for in the Employment (Northern Ireland) Order 2002 and the relevant provisions are incorporated by that Order into the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order").

The Regulations elaborate on the new Article 112G of the 1996 Order, by setting out the manner in which an employer should deal with an application for a contract variation made by an employee under new Article 112F.

Regulations 3-5 set out the employer's obligations in respect of a request for contract variation and provide that the employer must either hold a meeting to discuss the application or agree to the contract variation in writing within 28 days from the date on which the application is made. The employer must notify the employee in writing of his decision within 14 days after the date of the meeting.

Regulation 6-11 set out the employee's right to appeal against his employer's decision. The employee must appeal in writing, setting out the grounds of appeal, within 14 days after the date on which the notice of the decision is given. The employer must hold a meeting to hear the appeal within 14 days after the date on which the notice of appeal is given. The employer must notify the employee in writing within 14 days after the appeal hearing of his decision.

Regulation 12 provides for various periods in the Regulations to be extended by agreement.

Regulation 13 provides that where the individual who would normally consider the application is on sick leave or annual leave the period commences on the day the individual returns or 28 days after the application is made, whichever is the sooner.

Regulations 14-16 provide that an employee has the right to be accompanied by a companion at the meeting to discuss the application or the appeal. The companion must be a fellow worker employed by the same employer. The employee may bring a complaint to the industrial tribunal that his employer has failed or threatened to fail to allow a companion to accompany him to the meetings. Both the companion and the employee are protected against detriment or dismissal attributable to the fact that he took or sought to have a companion present or to act as a companion.

Regulation 17 sets out when an employer should treat an application as withdrawn.

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