
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 242

The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016

PART 2

Posted Workers in the Construction Sector

Restrictions on contracting out

7.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, or
- (b) to preclude a person from bringing proceedings under these Regulations before an industrial tribunal.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2) the conditions regulating compromise agreements under these Regulations are that—

- (a) the agreement must be in writing;
- (b) the agreement must relate to the particular complaint;
- (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on the ability of the worker to pursue the worker's rights before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice;
- (e) the agreement must identify the adviser; and
- (f) the agreement must state that the conditions regulating compromise agreements under these Regulations are satisfied.

(4) For the purposes of paragraph (3)(c) a “relevant independent adviser” is a person who is any of the following—

- (a) a qualified lawyer;
- (b) an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union;
- (c) an advice centre worker (including a volunteer) who has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre,

but this is subject to paragraph (5).

(5) A person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the worker in any of the following cases—

- (a) if the person is, is employed by, or is acting in the matter for, the employer or an associated employer;
- (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer;
- (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received.

(6) In paragraph (4)(a) “qualified lawyer” means any of the following—

- (a) as respects Northern Ireland a barrister within the meaning of section 46(2) of the Interpretation Act (Northern Ireland) 1954⁽¹⁾ or a solicitor within the meaning of Art 4 of the Solicitors (NI) Order 1976 ⁽²⁾
- (b) as respects England and Wales a person who, for the purposes of the Legal Services Act 2007⁽³⁾, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and
- (c) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(7) In paragraph (4)(b) “independent trade union” means a trade union (within the meaning given by Article 3 of the Industrial Relations (Northern Ireland) Order 1992⁽⁴⁾) which—

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers’ associations, and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatever) tending towards such control.

(8) For the purposes of paragraph (5) any two employers are “associated” if—

- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control.

(1) 1954 c. 33(N.I.)

(2) S.I. 1976/582 (N.I. 12)

(3) 2007 c. 29

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