
DRAFT STATUTORY INSTRUMENTS

2010 No.

**The Employment Relations Act
1999 (Blacklists) Regulations 2010**

Refusal of employment or employment agency services

Refusal of employment

5.—(1) A person (P) has a right of complaint to an employment tribunal against another (R) if R refuses to employ P for a reason which relates to a prohibited list, and either—

- (a) R contravenes regulation 3 in relation to that list, or
- (b) R—
 - (i) relies on information supplied by a person who contravenes that regulation in relation to that list, and
 - (ii) knows or ought reasonably to know that the information relied on is supplied in contravention of that regulation.

(2) R shall be taken to refuse to employ P if P seeks employment of any description with R and R—

- (a) refuses or deliberately omits to entertain and process P's application or enquiry;
- (b) causes P to withdraw or cease to pursue P's application or enquiry;
- (c) refuses or deliberately omits to offer P employment of that description;
- (d) makes P an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted; or
- (e) makes P an offer of such employment but withdraws it or causes P not to accept it.

(3) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that R contravened regulation 3 or relied on information supplied in contravention of that regulation, the tribunal must find that such a contravention or reliance on information occurred unless R shows that it did not.

Refusal of employment agency services

6.—(1) A person (P) has a right of complaint to an employment tribunal against an employment agency (E) if E refuses P any of its services for a reason which relates to a prohibited list, and either—

- (a) E contravenes regulation 3 in relation to that list, or
- (b) E—
 - (i) relies on information supplied by a person who contravenes that regulation in relation to that list, and
 - (ii) knows or ought reasonably to know that information relied on is supplied in contravention of that regulation.

(2) E shall be taken to refuse P a service if P seeks to make use of the service and E—

- (a) refuses or deliberately omits to make the service available to P;
- (b) causes P not to make use of the service or to cease to make use of it; or
- (c) does not provide P the same service, on the same terms, as is provided to others.

(3) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that E contravened regulation 3 or relied on information supplied in contravention of that regulation, the tribunal must find that such a contravention or reliance on information occurred unless E shows that it did not.

Time limit for proceedings under regulation 5 or 6

7.—(1) Subject to paragraph (2), an employment tribunal shall not consider a complaint under regulation 5 or 6 unless it is presented to the tribunal before the end of the period of three months beginning with the date of the conduct to which the complaint relates.

(2) An employment tribunal may consider a complaint under regulation 5 or 6 that is otherwise out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(3) The date of the conduct to which a complaint under regulation 5 relates shall be taken to be—

- (a) in the case of an actual refusal, the date of the refusal;
- (b) in the case of a deliberate omission—
 - (i) to entertain and process P’s application or enquiry, or
 - (ii) to offer employment,

the end of the period within which it was reasonable to expect R to act;

- (c) in the case of conduct causing P to withdraw or cease to pursue P’s application or enquiry, the date of that conduct;
- (d) in a case where R made but withdrew an offer, the date R withdrew the offer;
- (e) in any other case where R made an offer which was not accepted, the date on which R made the offer.

(4) The date of the conduct to which a complaint under regulation 6 relates shall be taken to be—

- (a) in the case of an actual refusal, the date of the refusal;
- (b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect E to act;
- (c) in the case of conduct causing P not make use of a service or to cease to make use of it, the date of that conduct;
- (d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact was provided.

Remedies in proceedings under regulation 5 or 6

8.—(1) Where an employment tribunal finds that a complaint under regulation 5 or 6 is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—

- (a) an order requiring the respondent to pay compensation;
- (b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.

(2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.

(3) Where an award of compensation is made, the amount of compensation before any increase or reduction is made under paragraph (4), (5) or (6) shall not be less than £5,000.

(4) If the respondent fails without reasonable justification to comply with a recommendation under paragraph (1)(b), the tribunal may increase its award of compensation or, if it has not made such an award, make one.

(5) Where the tribunal considers that any conduct of the complainant before the refusal to which the complaint under regulation 5 or 6 relates was such that it would be just and equitable to reduce the award of compensation, the tribunal shall reduce that amount accordingly.

(6) The amount of compensation shall be reduced or further reduced by the amount of any compensation awarded by the tribunal under section 140 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the same refusal.

(7) The total amount of compensation shall not exceed £65,300.