



# Fair Employment (Northern Ireland) Act 1976

## 1976 CHAPTER 25

### PART III

#### UNLAWFUL DISCRIMINATION

*Legal proceedings to secure compensation for, or the remedying of, unlawful discrimination*

#### **30 Action in county court following breakdown of attempts at conciliation**

- (1) Where, within such period as the Agency considers reasonable.—
  - (a) an undertaking to comply with the terms of a settlement such as is mentioned in section 25(1)(b), or an undertaking accepted by the Agency under section 26(5) in substitution for revoked recommendations, has not been complied with ; or
  - (b) recommendations made by the Agency have not been complied with, the Agency, on behalf of the injured person (that is to say, the person against whom the unlawful discrimination was committed or, where that person is dead, his personal representative) may institute an action in the county court against the respondent by way of a claim in tort in respect of the unlawful discrimination.
- (2) Such an action shall not be instituted in consequence of failure to comply with recommendations—
  - (a) until the expiration of the period allowed by section 28 for an appeal against the finding which led to the recommendations; or
  - (b) if notice of such an appeal is given within that period, unless the appeal is abandoned or dismissed ; but this subsection does not apply to anything done after a case has been remitted by the court to the Agency under section 29(1)(b)(i).
- (3) Subsection (4) of section 24 (time when certain acts are to be treated as done) shall have effect for determining, for the purposes of the Statute of Limitations (Northern

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Ireland) 1958, when a cause or right of action under subsection (1) of this section accrued.

- (4) In an action under this section the court shall have power by its decree—
- (a) to award damages ; or
  - (b) to grant an injunction ; or
  - (c) to award damages and grant an injunction,
- in accordance with the provisions of section 31, or sections 31 and 46; and the damages may be awarded to the Agency as if it were the injured person, and it shall be for the Agency to take steps to recover the damages and, subject to section 31(6), to account to the injured person for any damages recovered.
- (5) The court shall state the reasons for its decree.

### **31 Powers of court as to damages and injunctions**

- (1) In an action under section 30, the amount of any damages awarded shall be such as the court considers just in all the circumstances to compensate the injured person for any loss or injury he has suffered in consequence of the act of unlawful discrimination in question, including (without prejudice to the generality of the foregoing provision of this subsection)—
- (a) compensation for expenses reasonably incurred by the injured person in connection with the subject-matter of the complaint which led to the action (which for the purposes of this section shall be taken to include compensation for loss of his time); and
  - (b) compensation for loss of opportunity, that is to say for loss of any employment, occupation or benefit which the injured person might reasonably be expected to have had but for the unlawful discrimination ;
- but—
- (i) any award of damages for loss of opportunity shall be subject to the application of the same rule concerning the duty of a person to mitigate his loss as applies in relation to damages recoverable at common law; and
  - (ii) compensation shall not be awarded for the same loss both by way of damages under this Act and by way of damages under any other enactment or at common law.
- (2) Where the undertaking or any of the recommendations mentioned in section 30(1) includes provision for the injured person to be given a benefit of any kind by the respondent, and that provision has not been complied with.—
- (a) if the court finds that the reason why the provision was not complied with was that the injured person refused an offer of benefit on the terms stated in that provision, and the court considers that he acted unreasonably in doing so, the court may reduce the assessment of his loss; or
  - (b) if the court finds that the reason why the provision was not complied with was that the respondent refused or failed to make such an offer, and the court considers that he acted unreasonably in doing so, the court may increase that assessment,
- to such extent (in either case) as in all the circumstances the court considers just and equitable.
- (3) Where it appears to the court in an action under section 30 that justice can be done to the injured person only by directing the defendant in the action to do, or refrain from

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doing, any particular act or acts, the court, if satisfied that in all the circumstances it is reasonable to do so, may make an order (to which section 46 shall apply) containing such a direction.

- (4) The powers conferred on the county court by subsections (1) and (2) may be exercised by that court notwithstanding anything to the contrary in any enactment which imposes limitations on the jurisdiction of a county court by reference to an amount claimed.
- (5) Where the injured person is the personal representative of the person (" the victim ") against whom the unlawful discrimination was committed, the reference in subsection (1) to any loss or injury the injured person has suffered shall be construed—
  - (a) in relation to any item of damages which compensates for the expenses mentioned in subsection (1)(a), as including a reference to the victim, and
  - (b) in relation to any item of damages which compensates for the loss mentioned in subsection (1)(b), as a reference to the victim.
- (6) An award of damages for expenses incurred as mentioned in paragraph (a) of subsection (1) (including that paragraph as modified by subsection (5)) may include compensation for expenses so incurred which have been defrayed by sums paid by the Agency under Schedule 5, paragraph 11; and so much of the damages as compensates for expenses so defrayed shall be identified by the court's decree as a separate item of damages and shall be retained by the Agency and applied for its benefit.
- (7) Section 26(8) shall apply to sums payable under a compromise or settlement arrived at to avoid or bring an end to an action under section 30 as it applies to a settlement such as is mentioned in section 25 or 26.

## **32 Power of court to revise contracts**

- (1) Where a term is included in or omitted from a contract in contravention of any provision of this Part or in consequence of such a contravention, then, notwithstanding that the making of the contract is an unlawful act, neither the contract nor any part of it is unenforceable by reason only of the contravention; but in an action under section 30—
  - (a) the Agency on behalf of the injured person ; or
  - (b) the defendant,may apply to the court to revise the contract or any of its terms.
- (2) On such an application the court may make such order as it considers just in all the circumstances revising the contract or any of its terms so as to secure that, as from the date of the order, the contract in no way contravenes, or has any effect in consequence of a contravention of, any provision of this Part.
- (3) Where the court makes an order under this section, every party to the contract, whether or not a party in the action, shall be bound by the order; but the court shall not make such an order which affects a party to the contract who is not a party in the action without giving him an opportunity of being heard.