



Employment Rights Act 1996

1996 CHAPTER 18

[^{F1}PART 5A

PROTECTION FOR APPLICANTS FOR EMPLOYMENT ETC IN THE HEALTH SERVICE

[^{F1}49B Regulations prohibiting discrimination because of protected disclosure

- (1) The Secretary of State may make regulations prohibiting an NHS employer from discriminating against an applicant because it appears to the NHS employer that the applicant has made a protected disclosure.
- (2) An “applicant”, in relation to an NHS employer, means an individual who applies to the NHS employer for—
 - (a) a contract of employment,
 - (b) a contract to do work personally, or
 - (c) appointment to an office or post.
- (3) For the purposes of subsection (1), an NHS employer discriminates against an applicant if the NHS employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract, office or post.
- (4) Regulations under this section may, in particular—
 - (a) make provision as to circumstances in which discrimination by a worker or agent of an NHS employer is to be treated, for the purposes of the regulations, as discrimination by the NHS employer;
 - (b) confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal;
 - (c) make provision for or about the grant or enforcement of specified remedies by a court or tribunal;
 - (d) make provision for the making of awards of compensation calculated in accordance with the regulations;
 - (e) make different provision for different cases or circumstances;

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- (f) make incidental or consequential provision, including incidental or consequential provision amending—
- (i) an Act of Parliament (including this Act),
 - (ii) an Act of the Scottish Parliament,
 - (iii) a Measure or Act of the National Assembly for Wales, or
 - (iv) an instrument made under an Act or Measure within any of subparagraphs (i) to (iii).
- (5) Subsection (4)(f) does not affect the application of section 236(5) to the power conferred by this section.
- (6) “NHS employer” means an NHS public body prescribed by regulations under this section.
- (7) “NHS public body” means—
- (a) [^{F2}NHS England];
 - ^{F3}(b) an integrated care board;
 - (c) a Special Health Authority;
 - (d) an NHS trust;
 - (e) an NHS foundation trust;
 - (f) the Care Quality Commission;
 - ^{F4}(g)
 [the Health Services Safety Investigations Body;]
 - ^{F5}(ga)
 - (h) the Health Research Authority;
 - ^{F6}(i)
 - (j) the National Institute for Health and Care Excellence;
 - ^{F7}(k)
 - (l) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
 - (m) the Common Services Agency for the Scottish Health Service;
 - (n) Healthcare Improvement Scotland;
 - (o) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
 - (p) a Special Health Board constituted under that section.
- (8) The Secretary of State must consult the Welsh Ministers before making regulations prescribing any of the following NHS public bodies for the purposes of the definition of “NHS employer”—
- (a) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006;
 - (b) an NHS trust established under section 18 of that Act;
 - (c) a Local Health Board established under section 11 of that Act.
- (9) The Secretary of State must consult the Scottish Ministers before making regulations prescribing an NHS public body within any of paragraphs (m) to (p) of subsection (7) for the purposes of the definition of “NHS employer”.
- (10) For the purposes of subsection (4)(a)—
- (a) “worker” has the extended meaning given by section 43K, and

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- (b) a person is a worker of an NHS employer if the NHS employer is an employer in relation to the person within the extended meaning given by that section.]

Textual Amendments

- F1** Pt. 5A (s. 49B) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 149(2), 164(1); S.I. 2015/1329, reg. 2(e)
- F2** Words in s. 49B substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F3** S. 49B(7)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 4 para. 47; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F4** S. 49B(7)(g) omitted (1.4.2023) by virtue of The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), Sch. 1 para. 7 (with reg. 7)
- F5** S. 49B(7)(ga) inserted (1.10.2023) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 15 para. 6(2); S.I. 2023/1035, reg. 2(c)
- F6** S. 49B(7)(i) omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), Sch. para. 8(2) (with reg. 3)
- F7** S. 49B(7)(k) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 7; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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Changes and effects yet to be applied to :

- s. 49B heading words inserted by 2017 c. 16 s. 32(3)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 8 Ch. 5 inserted by 2023 c. 20 Sch. para. 2
- Pt. 8A Ch. 1 heading inserted by 2023 c. 46 s. 1(3)
- Pt. 8A Ch. 2 inserted by 2023 c. 46 s. 1(4)
- Pt. 8A Ch. 3 inserted by 2023 c. 46 s. 2
- Pt. 8A Ch. 4 inserted by 2023 c. 46 s. 3(2)
- s. 43K(1)(ca) and word omitted by 2013 c. 24 s. 20(5) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 43K(2)(ba) omitted by 2013 c. 24 s. 20(6) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 47C(2)(cc) inserted by 2023 c. 20 Sch. para. 22
- s. 47H inserted by 2020 c. 7 Sch. 7 para. 9
- s. 47AA inserted by 2008 c. 25 s. 37
- s. 47EA inserted by 2023 c. 46 Sch. para. 4
- s. 47EB inserted by 2023 c. 46 Sch. para. 5
- s. 48(1C) inserted by 2020 c. 7 Sch. 7 para. 10(a)
- s. 48(1C) inserted by 2023 c. 46 Sch. para. 6(2)
- s. 48(1D) inserted by 2023 c. 46 Sch. para. 6(3)
- s. 49(8) inserted by 2020 c. 7 Sch. 7 para. 11(b)
- s. 49(8) inserted by 2023 c. 46 Sch. para. 7(4)
- s. 49C inserted by 2017 c. 16 s. 32(4)
- s. 75I(3)(g) and word inserted by 2023 c. 20 Sch. para. 23(b)
- s. 80C(2)(bc) inserted by 2023 c. 20 Sch. para. 24(2)
- s. 80C(4)(bc) inserted by 2023 c. 20 Sch. para. 24(3)
- s. 80EB(2)(f) and word inserted by 2023 c. 20 Sch. para. 25(b)
- s. 99(3)(cc) inserted by 2023 c. 20 Sch. para. 28
- s. 101B inserted by 2008 c. 25 s. 38
- s. 104H inserted by 2020 c. 7 Sch. 7 para. 14
- s. 104CA inserted by 2023 c. 46 Sch. para. 9
- s. 105(4B) inserted by 2008 c. 25 s. 39(3)
- s. 105(7BC) inserted by 2020 c. 7 Sch. 7 para. 15
- s. 105(7BAA) inserted by 2023 c. 46 Sch. para. 10
- s. 108(3)(gia) inserted by 2023 c. 46 Sch. para. 11
- s. 108(3)(de) inserted by 2008 c. 25 s. 39(4)
- s. 108(3)(gn) inserted by 2020 c. 7 Sch. 7 para. 16
- s. 110(3A) inserted by 2002 c. 22 s. 44
- s. 163(6) inserted by 2022 c. 35 Sch. 5 para. 27
- s. 205A(2)(ba) inserted by 2023 c. 46 Sch. para. 16(2)
- s. 205A(8A) inserted by 2023 c. 46 Sch. para. 16(3)
- s. 225(7)(8) inserted by 2023 c. 46 Sch. para. 17

– s. 227(1)(zb)(zc) inserted by [2023 c. 46 Sch. para. 18](#)