



Employment Act 2002

2002 CHAPTER 22

PART 4

MISCELLANEOUS AND GENERAL

Miscellaneous

47 Flexible working

- (1) The Employment Rights Act 1996 (c. 18) is amended as follows.
- (2) After Part 8 there is inserted—

“PART 8A

FLEXIBLE WORKING

80F Statutory right to request contract variation

- (1) A qualifying employee may apply to his employer for a change in his terms and conditions of employment if—
 - (a) the change relates to—
 - (i) the hours he is required to work,
 - (ii) the times when he is required to work,
 - (iii) where, as between his home and a place of business of his employer, he is required to work, or
 - (iv) such other aspect of his terms and conditions of employment as the Secretary of State may specify by regulations, and
 - (b) his purpose in applying for the change is to enable him to care for someone who, at the time of application, is a child in respect of whom he satisfies such conditions as to relationship as the Secretary of State may specify by regulations.

Status: Point in time view as at 06/04/2003.

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- (2) An application under this section must—
 - (a) state that it is such an application,
 - (b) specify the change applied for and the date on which it is proposed the change should become effective,
 - (c) explain what effect, if any, the employee thinks making the change applied for would have on his employer and how, in his opinion, any such effect might be dealt with, and
 - (d) explain how the employee meets, in respect of the child concerned, the conditions as to relationship mentioned in subsection (1)(b).
- (3) An application under this section must be made before the fourteenth day before the day on which the child concerned reaches the age of six or, if disabled, eighteen.
- (4) If an employee has made an application under this section, he may not make a further application under this section to the same employer before the end of the period of twelve months beginning with the date on which the previous application was made.
- (5) The Secretary of State may by regulations make provision about—
 - (a) the form of applications under this section, and
 - (b) when such an application is to be taken as made.
- (6) The Secretary of State may by order substitute a different age for the first of the ages specified in subsection (3).
- (7) In subsection (3), the reference to a disabled child is to a child who is entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992 (c. 4).
- (8) For the purposes of this section, an employee is—
 - (a) a qualifying employee if he—
 - (i) satisfies such conditions as to duration of employment as the Secretary of State may specify by regulations, and
 - (ii) is not an agency worker;
 - (b) an agency worker if he is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangement made between the agent and the principal.

80G Employer’s duties in relation to application under section 80F

- (1) An employer to whom an application under section 80F is made—
 - (a) shall deal with the application in accordance with regulations made by the Secretary of State, and
 - (b) shall only refuse the application because he considers that one or more of the following grounds applies—
 - (i) the burden of additional costs,
 - (ii) detrimental effect on ability to meet customer demand,
 - (iii) inability to re-organise work among existing staff,
 - (iv) inability to recruit additional staff,
 - (v) detrimental impact on quality,

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- (vi) detrimental impact on performance,
- (vii) insufficiency of work during the periods the employee proposes to work,
- (viii) planned structural changes, and
- (ix) such other grounds as the Secretary of State may specify by regulations.

(2) Regulations under subsection (1)(a) shall include—

- (a) provision for the holding of a meeting between the employer and the employee to discuss an application under section 80F within twenty eight days after the date the application is made;
- (b) provision for the giving by the employer to the employee of notice of his decision on the application within fourteen days after the date of the meeting under paragraph (a);
- (c) provision for notice under paragraph (b) of a decision to refuse the application to state the grounds for the decision;
- (d) provision for the employee to have a right, if he is dissatisfied with the employer's decision, to appeal against it within fourteen days after the date on which notice under paragraph (b) is given;
- (e) provision about the procedure for exercising the right of appeal under paragraph (d), including provision requiring the employee to set out the grounds of appeal;
- (f) provision for notice under paragraph (b) to include such information as the regulations may specify relating to the right of appeal under paragraph (d);
- (g) provision for the holding, within fourteen days after the date on which notice of appeal is given by the employee, of a meeting between the employer and the employee to discuss the appeal;
- (h) provision for the employer to give the employee notice of his decision on any appeal within fourteen days after the date of the meeting under paragraph (g);
- (i) provision for notice under paragraph (h) of a decision to dismiss an appeal to state the grounds for the decision;
- (j) provision for a statement under paragraph (c) or (i) to contain a sufficient explanation of the grounds for the decision;
- (k) provision for the employee to have a right to be accompanied at meetings under paragraph (a) or (g) by a person of such description as the regulations may specify;
- (l) provision for postponement in relation to any meeting under paragraph (a) or (g) which a companion under paragraph (k) is not available to attend;
- (m) provision in relation to companions under paragraph (k) corresponding to section 10(6) and (7) of the Employment Relations Act 1999 (c. 26) (right to paid time off to act as companion, etc.);
- (n) provision, in relation to the rights under paragraphs (k) and (l), for the application (with or without modification) of sections 11 to 13 of the Employment Relations Act 1999 (provisions ancillary to right to be accompanied under section 10 of that Act).

(3) Regulations under subsection (1)(a) may include—

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- (a) provision for any requirement of the regulations not to apply where an application is disposed of by agreement or withdrawn;
- (b) provision for extension of a time limit where the employer and employee agree, or in such other circumstances as the regulations may specify;
- (c) provision for applications to be treated as withdrawn in specified circumstances;

and may make different provision for different cases.

- (4) The Secretary of State may by order amend subsection (2).

80H Complaints to employment tribunals

- (1) An employee who makes an application under section 80F may present a complaint to an employment tribunal—
 - (a) that his employer has failed in relation to the application to comply with section 80G(1), or
 - (b) that a decision by his employer to reject the application was based on incorrect facts.
- (2) No complaint under this section may be made in respect of an application which has been disposed of by agreement or withdrawn.
- (3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this section may be made until the employer—
 - (a) notifies the employee of a decision to reject the application on appeal, or
 - (b) commits a breach of regulations under section 80G(1)(a) of such description as the Secretary of State may specify by regulations.
- (4) No complaint under this section may be made in respect of failure to comply with provision included in regulations under subsection (1)(a) of section 80G because of subsection (2)(k), (l) or (m) of that section.
- (5) An employment tribunal shall not consider a complaint under this section unless it is presented—
 - (a) before the end of the period of three months beginning with the relevant date, 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.
- (6) In subsection (5)(a), the reference to the relevant date is—
 - (a) in the case of a complaint permitted by subsection (3)(a), the date on which the employee is notified of the decision on the appeal, and
 - (b) in the case of a complaint permitted by subsection (3)(b), the date on which the breach concerned was committed.

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80I Remedies

- (1) Where an employment tribunal finds a complaint under section 80H well-founded it shall make a declaration to that effect and may—
 - (a) make an order for reconsideration of the application, and
 - (b) make an award of compensation to be paid by the employer to the employee.
 - (2) The amount of compensation shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.
 - (3) For the purposes of subsection (2), the permitted maximum is such number of weeks' pay as the Secretary of State may specify by regulations.
 - (4) Where an employment tribunal makes an order under subsection (1)(a), section 80G, and the regulations under that section, shall apply as if the application had been made on the date of the order.”
- (3) After section 47C there is inserted—

“47E Flexible working

- (1) An employee 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 the employee—
 - (a) made (or proposed to make) an application under section 80F,
 - (b) exercised (or proposed to exercise) a right conferred on him under section 80G,
 - (c) brought proceedings against the employer under section 80H, or
 - (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.
 - (2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10.”
- (4) After section 104B there is inserted—

“104C Flexible working

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) made (or proposed to make) an application under section 80F,
- (b) exercised (or proposed to exercise) a right conferred on him under section 80G,
- (c) brought proceedings against the employer under section 80H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.”

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Commencement Information

II S. 47 in force at 6.4.2003 by S.I. 2002/2866, art. 2(3), **Sch. 1 Pt. 3** (with Sch. 3)

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