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STATUTORY INSTRUMENTS

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**2010 No. 93**

**The Agency Workers Regulations 2010**

**PART 3**

Liability, Protections and Remedies

**Complaints to employment tribunals etc**

**18.**—(1) In this regulation “respondent” includes the hirer and any temporary work agency.

(2) Subject to regulation 17(5), an agency worker may present a complaint to an employment tribunal that a temporary work agency or the hirer has infringed a right conferred on the agency worker by regulation 5, 12, 13 or 17 (2).

<sup>F1</sup>(3) .....

(4) Subject to paragraph (5), an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning—

- (a) in the case of an alleged infringement of a right conferred by regulation 5, 12 or 17(2) <sup>F2</sup>..., with the date of the infringement, detriment or breach to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the infringement, detriment or breach, the last of them;
- (b) in the case of an alleged infringement of the right conferred by regulation 13, with the date, or if more than one the last date, on which other individuals, whether or not employed by the hirer, were informed of the vacancy.

[<sup>F3</sup>(4A) Regulation 18A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (4).]

(5) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(6) For the purposes of calculating the date of the infringement, detriment or breach, under paragraph (4)(a)—

- (a) where a term in a contract infringes a right conferred by regulation 5, 12 or 17(2), <sup>F4</sup>... that infringement or breach shall be treated, subject to sub-paragraph (b), as taking place on each day of the period during which the term infringes that right or breaches that duty;
- (b) a deliberate failure to act that is contrary to regulation 5, 12 or 17(2) <sup>F5</sup>... shall be treated as done when it was decided on.

(7) In the absence of evidence establishing the contrary, a person (P) shall be taken for the purposes of paragraph (6)(b) to decide not to act—

- (a) when P does an act inconsistent with doing the failed act; or
- (b) if P has done no such inconsistent act, when the period expires within which P might reasonably have been expected to have done the failed act if it was to be done.

(8) Where an employment tribunal finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable—

- (a) making a declaration as to the rights of the complainant in relation to the matters to which the complaint relates;
- (b) ordering the respondent to pay compensation to the complainant;
- (c) recommending that the respondent take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

(9) Where a tribunal orders compensation under paragraph (8)(b), and there is more than one respondent, the amount of compensation payable by each or any respondent shall be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(10) Subject to paragraphs (12) and (13), where a tribunal orders compensation under paragraph (8)(b), the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement or breach to which the complaint relates; and
- (b) any loss which is attributable to the infringement.

(11) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the infringement or breach; and
- (b) loss of any benefit which the complainant might reasonably be expected to have had but for the infringement or breach.

(12) Subject to paragraph (13), where a tribunal orders compensation under paragraph (8)(b), any compensation which relates to an infringement or breach of the rights—

- (a) conferred by regulation 5<sup>F6</sup>...; or
- (b) conferred by regulation 17(2) to the extent that the infringement or breach relates to regulation 5<sup>F7</sup>...

shall not be less than two weeks' pay, calculated in accordance with regulation 19.

(13) Paragraph (12) does not apply where the tribunal considers that in all the circumstances of the case, taking into account the conduct of the claimant and respondent, two weeks' pay is not a just and equitable amount of compensation, and the amount shall be reduced as the tribunal consider appropriate.

(14) Where a tribunal finds that regulation 9(4) applies and orders compensation under paragraph (8)(b), the tribunal may make an additional award of compensation under paragraph 8(b), which shall not be more than £5,000, and where there is more than one respondent the proportion of any additional compensation awarded that is payable by each of them shall be such as the tribunal considers just and equitable having regard to the extent to which it considers each to have been responsible for the fact that regulation 9(4)(a) applies.

[<sup>F8</sup>(14A) In relation to an infringement or breach for which a tribunal orders a respondent to pay compensation under paragraph (8)(b), the tribunal may order the respondent also to pay a penalty under section 12A of the Employment Tribunals Act 1996 only if the tribunal decides not to exercise the power under paragraph (14) to make an additional award of compensation against the respondent.]

(15) Compensation in respect of treating an agency worker in a manner which infringes the right conferred by regulation 5, 12 or 13<sup>F9</sup>..., shall not include compensation for injury to feelings.

(16) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) the law of Scotland.

(17) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(18) If a temporary work agency or the hirer fails, without reasonable justification, to comply with a recommendation made by an employment tribunal under paragraph (8)(c) the tribunal may, if it thinks it just and equitable to do so—

- (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under paragraph (8)(b); or
- (b) make an order under paragraph (8)(b).

#### Textual Amendments

- F1** Reg. 18(3) omitted (6.4.2020) by virtue of [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **3(5)(a)** (with reg. 7)
- F2** Words in reg. 18(4)(a) omitted (6.4.2020) by virtue of [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **3(5)(b)** (with reg. 7)
- F3** Reg. 18(4A) inserted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, **Sch. para. 62**
- F4** Words in reg. 18(6)(a) omitted (6.4.2020) by virtue of [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **3(5)(c)** (with reg. 7)
- F5** Words in reg. 18(6)(b) omitted (6.4.2020) by virtue of [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **3(5)(d)** (with reg. 7)
- F6** Words in reg. 18(12)(a) omitted (6.4.2020) by virtue of [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **3(5)(e)** (with reg. 7)
- F7** Words in reg. 18(12)(b) omitted (6.4.2020) by virtue of [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **3(5)(f)** (with reg. 7)
- F8** Reg. 18(14A) inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 3 para. 6** (with s. 24(5)); [S.I. 2014/253](#), art. 3(h)
- F9** Words in reg. 18(15) omitted (6.4.2020) by virtue of [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **3(5)(g)** (with reg. 7)

#### Modifications etc. (not altering text)

- C1** Reg. 18 applied (with modifications) (6.4.2020) by [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **4(4)** (with reg. 7)
- C2** Reg. 18 applied (with modifications) (6.4.2020) by [The Agency Workers \(Amendment\) Regulations 2019 \(S.I. 2019/724\)](#), regs. 1(1), **5(7)** (with reg. 7)

**Changes to legislation:**

There are currently no known outstanding effects for the The Agency Workers Regulations 2010, Section 18.