

---

STATUTORY INSTRUMENTS

---

**2010 No. 493**

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

*Detriment*

**Detriment**

9.—(1) A person (P) has a right of complaint to an employment tribunal against P's employer (D) if D, by any act or any deliberate failure to act, subjects P to a detriment for a reason which relates to a prohibited list, and either—

- (a) D contravenes regulation 3 in relation to that list, or
- (b) D—
  - (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) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that D 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 D shows that it did not.

(3) This regulation does not apply where the detriment in question amounts to the dismissal of an employee within the meaning in Part 10 of the Employment Rights Act 1996.

**Time limit for proceedings under regulation 9**

10.—(1) Subject to paragraph (2), an employment tribunal shall not consider a complaint under regulation 9 unless it is presented before the end of the period of three months beginning with the date of the act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them.

(2) An employment tribunal may consider a complaint under regulation 9 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) For the purposes of paragraph (1)—

- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of the period;
- (b) a failure to act shall be treated as done when it was decided on.

(4) For the purposes of paragraph (3), in the absence of evidence establishing the contrary D shall be taken to decide on a failure to act—

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

## **Remedies in proceedings under regulation 9**

**11.**—(1) Where the employment tribunal finds that a complaint under regulation 9 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid by D to P in respect of the act or failure complained of.

(2) Subject to the following paragraphs, the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the act or failure complained of and to any loss sustained by P which is attributable to D's act or failure.

(3) The loss shall be taken to include—

- (a) any expenses P reasonably incurred in consequence of the act or failure complained of; and
- (b) loss of any benefit which P might reasonably be expected to have had but for that act or failure.

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

(5) Where an award of compensation is made, the amount of compensation before any increase or reduction is made under paragraphs (6), (7) and (8) of this regulation and section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 shall not be less than £5,000.

(6) Where the conduct of P before the act or failure complained of was such that it would be just and equitable to reduce the amount of compensation, the tribunal shall reduce that amount accordingly.

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

(8) The amount of compensation shall be reduced or further reduced by the amount of any compensation awarded by the tribunal under section 149 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the same act or failure.

(9) In determining the amount of compensation to be awarded no account shall be taken of any pressure exercised on D by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(10) Where P is a worker and the detriment to which P is subjected is the termination of P's contract, and that contract is not a contract of employment, the compensation awarded to P under this regulation shall not exceed £65,300.