
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART IV

DISPUTE RESOLUTION, ETC.

Employment particulars

Particulars of procedures relating to discipline or dismissal

24.—(1) Article 35 of the Employment Rights Order (note about disciplinary rules and procedures) shall be amended as follows.

(2) In paragraph (1) (which requires a statement under Article 33 of that Order to include a note specifying the disciplinary rules and procedures applying to an employee), after sub-paragraph (a) there shall be inserted—

“(aa) specifying any procedure applicable to the taking of disciplinary decisions relating to the employee, or to a decision to dismiss the employee, or referring the employee to the provisions of a document specifying such a procedure which is reasonably accessible to the employee.”.

(3) In that paragraph, in sub-paragraph (b)(i) (which requires the note to specify a person for the employee to apply to if he is dissatisfied with a disciplinary decision) after “him” there shall be inserted “or any decision to dismiss him”.

(4) In paragraph (2) (which provides that the note does not need to specify the rules and procedures relating to health and safety at work) after “decisions,” there shall be inserted “decisions to dismiss”.

Removal of exemption for small employers

25. In Article 35 of the Employment Rights Order (note about disciplinary rules and procedures), paragraphs (3) and (4) (exemptions for undertakings with less than 20 employees) shall cease to have effect.

Use of alternative documents to give particulars

26. In Part III of the Employment Rights Order (employment particulars), after Article 39 there shall be inserted—

“Use of alternative documents to give particulars

39A.—(1) Paragraphs (2) and (3) apply where—

- (a) an employer gives an employee a document in writing in the form of a contract of employment or letter of engagement,

- (b) the document contains information which, were the document in the form of a statement under Article 33, would meet the employer's obligation under that Article in relation to the matters mentioned in paragraphs (3) and (4)(a) to (c), (d) (i), (f) and (h) of that Article, and
- (c) the document is given after the beginning of the employment and before the end of the period for giving a statement under that Article.

(2) The employer's duty under Article 33 in relation to any matter shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under that Article, would meet the employer's obligation under that Article in relation to that matter.

(3) The employer's duty under Article 35 shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under Article 33 and the information included in the form of a note, would meet the employer's obligation under Article 35.

(4) For the purposes of this Article a document to which paragraph (1)(a) applies shall be treated, in relation to information in respect of any of the matters mentioned in Article 33(4), as specifying the date on which the document is given to the employee as the date as at which the information applies.

(5) Where paragraph (2) applies in relation to any matter, the date on which the document by virtue of which that paragraph applies is given to the employee shall be the material date in relation to that matter for the purposes of Article 36(1).

(6) Where paragraph (3) applies, the date on which the document by virtue of which that paragraph applies is given to the employee shall be the material date for the purposes of Article 36(1) in relation to the matters of which particulars are required to be given under Article 35.

(7) The reference in Article 36(6) to an employer having given a statement under Article 33 shall be treated as including his having given a document by virtue of which his duty to give such a statement is treated as met.

Giving of alternative documents before start of employment

39B. A document in the form of a contract of employment or letter of engagement given by an employer to an employee before the beginning of the employee's employment with the employer shall, when the employment begins, be treated for the purposes of Article 39A as having been given at that time."

Failure to give statement of employment particulars, etc.: industrial tribunals

27.—(1) This Article applies to proceedings before an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4.

(2) If in the case of proceedings to which this Article applies—

- (a) the industrial tribunal finds in favour of the employee, but makes no award to him in respect of the claim to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change),

the tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

- (3) If in the case of proceedings to which this Article applies—
 - (a) the industrial tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order,the tribunal shall, subject to paragraph (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.
- (4) In paragraphs (2) and (3)—
 - (a) references to the minimum amount are to an amount equal to two weeks' pay, and
 - (b) references to the higher amount are to an amount equal to four weeks' pay.
- (5) The duty under paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.
- (6) The amount of a week's pay of an employee shall—
 - (a) be calculated for the purposes of this Article in accordance with Chapter IV of Part I of the Employment Rights Order; and
 - (b) not exceed the amount for the time being specified in Article 23 of that Order (maximum amount of week's pay).
- (7) For the purposes of Chapter IV of Part I of the Employment Rights Order as applied by paragraph (6), the calculation date shall be taken to be—
 - (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
 - (b) if he was not, the effective date of termination as defined by Article 129 of that Order.
- (8) The Department may by order—
 - (a) amend Schedule 4 for the purpose of—
 - (i) adding a jurisdiction to the list in that Schedule, or
 - (ii) removing a jurisdiction from that list;
 - (b) make provision, in relation to a jurisdiction listed in Schedule 4, for this Article not to apply to proceedings relating to claims of a description specified in the order;
 - (c) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

Failure to give statement of employment particulars, etc.: Fair Employment Tribunal

28.—(1) This Article applies to proceedings before the Fair Employment Tribunal relating to a complaint by an employee under Article 38 of the Fair Employment and Treatment Order.

- (2) If in the case of proceedings to which this Article applies—
 - (a) the Fair Employment Tribunal finds in favour of the employee, but makes no award to him in respect of the complaint to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change),

the Tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

- (3) If in the case of proceedings to which this Article applies—
 - (a) the Fair Employment Tribunal makes an award to the employee in respect of the complaint to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order,

the Tribunal shall, subject to paragraph (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

- (4) In paragraphs (2) and (3)—
 - (a) references to the minimum amount are to an amount equal to two weeks' pay, and
 - (b) references to the higher amount are to an amount equal to four weeks' pay.
- (5) The duty under paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.
- (6) The amount of a week's pay of an employee shall—
 - (a) be calculated for the purposes of this Article in accordance with Chapter IV of Part I of the Employment Rights Order; and
 - (b) not exceed the amount for the time being specified in Article 23 of that Order (maximum amount of week's pay).

(7) For the purposes of Chapter IV of Part I of the Employment Rights Order as applied by paragraph (6), the calculation date shall be taken to be—

- (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
- (b) if he was not, the effective date of termination as defined by Article 129 of that Order.

- (8) The Department may by order—
 - (a) make provision for this Article not to apply to proceedings relating to complaints under Article 38 of a description specified in the order;
 - (b) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.