

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Three: Rights of Trade Union Members, Workers and Employees

New section 145E

209. New section 145E contains the remedies that apply where an employment tribunal finds that there has been a contravention of one of the new rights given by sections 145A and 145B.
210. Subsections (1) and (2) have the effect that if the tribunal finds a complaint to be well-founded it is to make a declaration to that effect and make an award to be paid by the employer to the worker in respect of the offer complained of.
211. Subsection (3) has the effect that the award to be paid to the worker is a fixed sum of £2,500 but that the award can be subject to a reduction or increase under the provisions of the Employment Act 2002.
212. Subsection (4) relates to offers in contravention of sections 145A or 145B that have been accepted. Subsection (4)(a) has the effect that if the acceptance of the offer resulted in the worker agreeing to vary his terms of employment later, the employer cannot enforce the agreement to vary or recover any sum paid or other asset transferred that constituted the inducement.
213. Subsection (4)(b) has the effect that if the acceptance of the offer resulted in variations of the worker's terms of employment nothing in new sections 145A or 145B makes the variations unenforceable by either the employer or the worker.
214. Under section 146 as it is at present, an employee already has the right not to have action taken against him by his employer that subjects him to detriment where the ground for taking the action is membership or non-membership of a trade union or taking part in the activities of a trade union. It should be noted that section 146, as amended by section 30 of the Act, will include the right not to be subjected to detriment on the ground of making use of "trade union services" (as defined in section 146 as amended) or of a failure to accept an offer made in contravention of new section 145A or 145B.
215. Subsection (5) makes it clear that neither the rights given by new sections 145A and 145B nor the remedies contained in new section 145E prejudice any right conferred on a worker by section 146 or 149 of the 1992 Act. This ensures that any worker who is subjected to a detriment because he has not accepted an offer that is unlawful under new section 145A or 145B is able to complain to an employment tribunal both under section 146 and under new section 145A or 145B. This ability for the worker to claim under both the sections relevant to his circumstances means that his refusal of the offer need not have the result that he loses out financially. It also means that the incentive for workers to accept an offer that contravenes section 145A or 145B is reduced.
216. Subsection (6) provides that in ascertaining compensation under section 149, no reduction may be made on the ground that a complainant contributed to his loss

*These notes refer to the Employment Relations Act 2004
(c.24) which received Royal Assent on 16 September 2004*

by accepting or not accepting an offer contravening section 145A or 145B or that the complainant has received or is entitled to receive an award in respect of such a contravention.