
STATUTORY INSTRUMENTS

1998 No. 1833

The Working Time Regulations 1998

PART IV

MISCELLANEOUS

Restrictions on contracting out

35.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an employment tribunal.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under [^{F1}any of sections 18A to 18C] of the Employment Tribunals Act 1996 (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within [^{F2}section 18(1)(j)] of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating [^{F3}settlement] agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating [^{F4}settlement] agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal,
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions regulating [^{F4}settlement] agreements under these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is a qualified lawyer,

- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
 - (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the worker—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
 - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or
 - (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received from him.
- (6) In paragraph (4)(a), “qualified lawyer” means—
- (a) as respects England and Wales, [^{F5}a person who, for the purposes of the Legal Services Act 2007), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)]; and
 - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- [^{F6}(6A) A person shall be treated as being a qualified lawyer within paragraph (6)(a) if he is a Fellow of the Institute of Legal Executives [^{F7}practising in a solicitor’s practice (including a body recognised under section 9 of the Administration of Justice Act 1985)].]
- (7) For the purposes of paragraph (5) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control; or
 - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

Textual Amendments

- F1** Words in reg. 35(2)(a) substituted (6.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2014 (S.I. 2014/386), art. 1, **Sch. para. 5**
- F2** Words in reg. 35(2)(b) substituted (6.4.2014) by The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), art. 1, **Sch. para. 19**
- F3** Word in reg. 35(2) substituted (30.8.2013) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956), art. 1, **Sch. para. 2**
- F4** Word in reg. 35(3) substituted (30.8.2013) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956), art. 1, **Sch. para. 2**
- F5** Words in reg. 35(6)(a) substituted (1.1.2010) by The Legal Services Act 2007 (Consequential Amendments) Order 2009 (S.I. 2009/3348), arts. 2(1), 23, **Sch. 2**
- F6** Reg. 35(6A) inserted (1.10.2004) by The Working Time Regulations 1998 (Amendment) Regulations 2004 (S.I. 2004/2516), regs. 1(1), 2
- F7** Words in reg. 35(6A) substituted (16.12.2009) by The Legal Services Act 2007 (Consequential Amendments) Order 2009 (S.I. 2009/3348), arts. 2(2), 22, **Sch. 1**

Changes to legislation:

There are currently no known outstanding effects for the The Working Time Regulations 1998, Section 35.