
STATUTORY INSTRUMENTS

1998 No. 1833

The Working Time Regulations 1998

PART IV

MISCELLANEOUS

Enforcement

28.—(1) In this regulation and regulation 29—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974⁽¹⁾;

“the relevant requirements” means the following provisions—

- (a) regulations 4(2), 6(2) and (7), 7(1), (2) and (6), 8 and 9; and
- (b) regulation 24, in so far as it applies where regulation 6(1), (2) or (7) is modified or excluded, and

“the relevant statutory provisions” has the same meaning as in the 1974 Act.

(2) It shall be the duty of the Health and Safety Executive to make adequate arrangements for the enforcement of the relevant requirements except to the extent that a local authority is made responsible for their enforcement by paragraph (3).

(3) Where the relevant requirements apply in relation to workers employed in premises in respect of which a local authority is responsible, under the Health and Safety (Enforcing Authority) Regulations 1998⁽²⁾, for enforcing any of the relevant statutory provisions, it shall be the duty of that authority to enforce those requirements.

(4) The duty imposed on local authorities by paragraph (3) shall be performed in accordance with such guidance as may be given to them by the Health and Safety Commission.

(5) The following provisions of the 1974 Act shall apply in relation to the enforcement of the relevant requirements as they apply in relation to the enforcement of the relevant statutory provisions, and as if any reference in those provisions to an enforcing authority were a reference to the Health and Safety Executive and any local authority made responsible for the enforcement of the relevant requirements—

- (a) section 19;
- (b) section 20(1), (2)(a) to (d) and (j) to (m), (7) and (8); and
- (c) sections 21, 22⁽³⁾, 23(1), (2) and (5), 24 and 26; and
- (d) section 28, in so far as it relates to information obtained by an inspector in pursuance of a requirement imposed under section 20(2)(j) or (k).

⁽¹⁾ 1974 c. 37.

⁽²⁾ S.I.1998/494.

⁽³⁾ Section 22 of the 1974 Act was amended by the Consumer Protection Act 1987 (c. 43), Schedule 3, paragraph 2.

(6) Any function of the Health and Safety Commission under the 1974 Act which is exercisable in relation to the enforcement by the Health and Safety Executive of the relevant statutory provisions shall be exercisable in relation to the enforcement by the Executive of the relevant requirements.

Offences

29.—(1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The following provisions of section 33(1) of the 1974 Act shall apply where an inspector is exercising or has exercised any power conferred by a provision specified in regulation 28(5)—

- (a) paragraph (e), in so far as it refers to section 20;
- (b) paragraphs (f) and (g);
- (c) paragraph (h), in so far as it refers to an inspector;
- (d) paragraph (j) in so far as it refers to section 28; and
- (e) paragraph (k).

(3) An employer guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4) A person guilty of an offence under a provision of section 33(1) of the 1974 Act as applied by paragraph (2) shall be liable to the penalty prescribed in relation to that provision by subsection (2), (2A) or (3) of section 33(4), as the case may be.

(5) Sections 36(1), 37 to 39 and 42(1) to (3) of the 1974 Act shall apply in relation to the offences provided for in paragraphs (1) and (2) as they apply in relation to offences under the relevant statutory provisions.

Remedies

30.—(1) A worker may present a complaint to an employment tribunal that his employer—

- (a) has refused to permit him to exercise any right he has under—
 - (i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4) or 13(1);
 - (ii) regulation 24, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is modified or excluded; or
 - (iii) regulation 25(3) or 27(2); or
- (b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—

- (a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.

(4) Subsection (2A) of section 33 of the 1974 Act was inserted by the Offshore Safety Act 1992 (c. 15), section 4(3).

(3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the worker.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the employer's default in refusing to permit the worker to exercise his right, and
- (b) any loss sustained by the worker which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or 16(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.

Right not to suffer detriment

31.—(1) After section 45 of the 1996 Act there shall be inserted—

“Working time cases.

45A.—(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998,
 - (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
 - (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,
 - (d) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
 - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate,
 - (e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or
 - (f) alleged that the employer had infringed such a right.
- (2) It is immaterial for the purposes of subsection (1)(e) or (f)—
- (a) whether or not the worker has the right, or
 - (b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for subsection (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

- (4) This section does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X, unless the dismissal is in circumstances in which, by virtue of section 197, Part X does not apply.”
- (2) After section 48(1) of the 1996 Act there shall be inserted the following subsection—
- “(1ZA) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.”
- (3) In section 49 of the 1996 Act(5) (remedies)—
- (a) in subsection (2), for “subsection (6)” there shall be substituted “subsections (5A) and (6)”, and
- (b) after subsection (5), there shall be inserted—
- “(5A) Where—
- (a) the complaint is made under section 48 (1ZA),
- (b) the detriment to which the worker is subjected is the termination of his worker’s contract, and
- (c) that contract is not a contract of employment,
- any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 101A.”
- (4) In section 192(2) of the 1996 Act (provisions applicable in relation to service in the armed forces), after paragraph (a) there shall be inserted—
- “(aa) in Part V, section 45A, and sections 48 and 49 so far as relating to that section,”.
- (5) In sections 194(2)(c), 195(2)(c) and 202(2)(b) of the 1996 Act, for “sections 44 and 47” there shall be substituted “sections 44, 45A and 47”.
- (6) In section 200(1) of the 1996 Act (which lists provisions of the Act which do not apply to employment in police service), after “45,” there shall be inserted “45A,”.
- (7) In section 205 of the 1996 Act (remedy for infringement of certain rights), after subsection (1) there shall be inserted the following subsection—
- “(1ZA) In relation to the right conferred by section 45A, the reference in subsection (1) to an employee has effect as a reference to a worker.”

Unfair dismissal

- 32.—**(1) After section 101 of the 1996 Act there shall be inserted the following section—

“Working time cases.

101A. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998,
- (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(5) Section 49 of the 1996 Act was amended by the Public Interest Disclosure Act 1998 (c. 23), section 4.

- (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or
- (d) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
 - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate.”

(2) In section 104 of the 1996 Act (right of employees not to be unfairly dismissed for asserting particular rights) in subsection (4)—

- (a) at the end of paragraph (b), the word “and” shall be omitted, and
- (b) after paragraph (c), there shall be inserted the words—
“and

(d) the rights conferred by the Working Time Regulations 1998.”

(3) In section 105 of the 1996 Act (redundancy as unfair dismissal), after subsection (4) there shall be inserted the following subsection—

“(4A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 101A.”

(4) In sections 108(3) and 109(2) of the 1996 Act, after paragraph (d) there shall be inserted—
“(dd) section 101A applies.”.

(5) In sections 117(4)(b), 118(3), 120(1), 122(3), 128(1)(b) and 129(1) of the 1996 Act, after “100(1)(a) and (b),” there shall be inserted “101A(d),”.

(6) In section 202(2) (cases where disclosure of information is restricted on ground of national security)—

- (a) in paragraph (g)(i), after “100” there shall be inserted “, 101A(d)”, and
- (b) in paragraph (g)(ii), after “of that section,” there shall be inserted “or by reason of the application of subsection (4A) in so far as it applies where the reason (or, if more than one, the principal reason) for which an employee was selected for dismissal was that specified in section 101A(d)”.

(7) In section 209(2) of the 1996 Act (which lists provisions excluded from the scope of the power to amend the Act by order), after “101,” in paragraph (e) there shall be inserted “101A,”.

(8) In sections 237(1A) and 238(2A) of the Trade Union and Labour Relations (Consolidation) Act 1992(6) (cases where employee can complain of unfair dismissal notwithstanding industrial action at time of dismissal), after “100” there shall be inserted “, 101A(d)”.

(9) In section 10(5)(a) of the Employment Tribunals Act 1996(7) (cases where Minister’s certificate is not conclusive evidence that action was taken to safeguard national security), after “100” there shall be inserted “, 101A(d)”.

(6) 1992 c. 52: subsection (1A) of section 237 and subsection (2A) of section 238 were inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), Schedule 8, paragraphs 76 and 77.

(7) 1996 c. 17; section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) provides for the Industrial Tribunals Act 1996 to be cited as the Employment Tribunals Act 1996.

Conciliation

33. In section 18(1) of the Employment Tribunals Act 1996 (cases where conciliation provisions apply)—

- (a) at the end of paragraph (e), the word “or” shall be omitted, and
- (b) after paragraph (f), there shall be inserted the words—
 - “or
 - (ff) under regulation 30 of the Working Time Regulations 1998.”.

Appeals

34. In section 21 of the Employment Tribunals Act 1996 (jurisdiction of the Employment Appeal Tribunal)—

- (a) at the end of subsection (1) (which confers jurisdiction by reference to Acts under or by virtue of which decisions are made) there shall be inserted—
 - “or under the Working Time Regulations 1998.”;
- (b) in subsection (2), after “the Acts listed” there shall be inserted—
 - “or the Regulations referred to”.

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 section 18 of the Employment Tribunals Act 1996 (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within section 18(1) (ff) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating compromise 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 compromise 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, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990)⁽⁸⁾; 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.
- (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.

⁽⁸⁾ 1990 c. 41.