

2003 No. 174

EMPLOYMENT

**Flexible Working (Eligibility, Complaints and Remedies)
Regulations (Northern Ireland) 2003**

Made - - - - - *13th March 2003*

Coming into operation *6th April 2003*

The Department for Employment and Learning^(a) in exercise of the powers conferred on it by Articles 112F(1)(b), 112F(5) and (8)(a), 112H(3)(b) and 112I(3) of the Employment Rights (Northern Ireland) Order 1996^(b), and now vested in it^(c), and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003 and shall come into operation on 6th April 2003.

Interpretation

2.—(1) In these Regulations –

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996;

“the Procedure Regulations” means the Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2003^(d);

“adopter”, in relation to a child, means a person who has been matched with the child for adoption;

“application” means an application under Article 112F of the 1996 Order (statutory right to request contract variation);

“contract variation” means a change in the terms and conditions of a contract of employment of a kind specified in Article 112F(1)(a) of the 1996 Order;

“electronic communication” means an electronic communication within the meaning of section 15(1) of the Electronic Communications Act 2000^(e);

“foster parent” means a foster parent within the meaning of regulation 1(2) of the Foster Placement (Children) Regulations (Northern Ireland) 1996^(f) or, in relation to England and Wales, of regulation 2(1) of the Fostering Services Regulations 2002^(g) or, in relation to

(a) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)
(b) S.I. 1996/1919 (N.I. 16); Articles 112F, 112H and 112I were inserted by Article 15 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(c) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
(d) S.R. 2003 No. 173
(e) 2000 c. 7
(f) S.R. 1996 No. 467
(g) S.I. 2002/57; amended by S.I. 2002/865

Scotland, a foster carer within the meaning of regulation 2(1) of the Fostering of Children (Scotland) Regulations 1996(a);

“guardian” means a person appointed as a guardian under Article 159 or 160 of the Children (Northern Ireland) Order 1995(b) or, in relation to England and Wales, under section 5 of the Children Act 1989(c) or, in relation to Scotland, under section 7 or 11 of the Children (Scotland) Act 1995(d);

“partner” in relation to a child’s mother, father, adopter, guardian or foster parent, means a person (whether of a different sex or the same sex) who lives with the child and the mother, father, adopter, guardian or foster parent in an enduring family relationship but is not a relative of the mother, father, adopter, guardian or foster parent of a kind specified in paragraph (2);

“writing” includes writing delivered by means of electronic communication.

(2) The relatives of a child’s mother, father, adopter, guardian or foster parent referred to in the definition of “partner” in paragraph (1) are the mother’s, father’s, adopter’s, guardian’s or foster parent’s parent, grandparent, sister, brother, aunt or uncle.

(3) References to relationships in paragraph (2) –

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption; and

(b) include the relationship of a child with his adoptive, or former adoptive, parents;

but do not include any other adoptive relationships.

Entitlement to request contract variation

3.—(1) An employee is entitled to make an application to his employer for a contract variation if he –

(a) has been continuously employed for a period of not less than 26 weeks;

(b) is either –

(i) the mother, father, adopter, guardian or foster parent of the child; or

(ii) married to, or the partner of the child’s mother, father, adopter, guardian or foster parent; and

(c) has, or expects to have, responsibility for the upbringing of the child.

(2) The reference in paragraph (1) to a period of continuous employment is to a period computed in accordance with Chapter III of Part I of the 1996 Order, as if that paragraph were a provision of that Order.

Form of the application

4. An application shall –

(a) be made in writing;

(b) state whether a previous application has been made by the employee to the employer and, if so, when; and

(c) be dated.

Date when an application is taken as made

5.—(1) Unless the contrary is proved, an application is taken as having been made on the day the application is received.

(2) The reference in paragraph (1) to the day on which an application is received is a reference –

(a) S.I. 1996/3263

(b) S.I. 1995/755 (N.I. 2)

(c) 1989 c. 41

(d) 1995 c. 36; section 11 was amended by the European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001 (S.S.I. 2001/36)

- (a) in relation to an application transmitted by electronic communication, to the day on which it is transmitted;
- (b) in relation to an application sent by post, to the day on which the application would be delivered in the ordinary course of post.

Breaches of the Procedure Regulations by the employer entitling an employee to make a complaint to an industrial tribunal

6. The breaches of the Procedure Regulations which entitle an employee to make a complaint to an industrial tribunal under Article 112H of the 1996 Order, notwithstanding the fact that his application has not been disposed of by agreement or withdrawn, are –

- (a) failure to hold a meeting in accordance with regulation 3(1) or 8(1);
- (b) failure to notify a decision in accordance with regulation 4 or 9.

Compensation

7. The maximum amount of compensation that an industrial tribunal may award under Article 112I of the 1996 Order where it finds a complaint by an employee under Article 112H of the Order well-founded is 8 weeks' pay.

Sealed with the Official Seal of the Department for Employment and Learning on 13th March 2003.

(L.S.)

R. B. Gamble

A senior officer of the Department for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations relate to the new statutory right to request a variation to the terms and conditions of an employee's contract of employment to enable the employee to care for a child. This new right is provided for in the Employment (Northern Ireland) Order 2002 and the relevant provisions are incorporated by that Order into the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order").

Entitlement to request a contract variation is available under regulation 3 to an employee with 26 weeks' qualifying service, who is either the mother, father, adopter, guardian, or foster parent of the child, or the partner or spouse of any of these relatives, and who has or expects to have responsibility for the upbringing of the child.

Regulation 4 imposes requirements as to the form of the application.

Regulation 5 provides when an application is taken as having been made by the employee.

Regulation 6 specifies which breaches of the Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2003 entitle the employee to make a complaint to an industrial tribunal notwithstanding the fact that his application has not been disposed of by agreement or withdrawn.

Regulation 7 provides that the maximum amount of compensation that an industrial tribunal may award, where it finds a complaint under Article 112H well-founded, is 8 weeks' pay. For this purpose, the maximum amount of a week's pay is calculated in accordance with Chapter IV of Part I of the 1996 Order.

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