



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Miscellaneous*

#### **48 Application of Act to superior employers**

Where—

- (a) the immediate employer of a worker is himself in the employment of some other person, and
  - (b) the worker is employed on the premises of that other person,
- that other person shall be deemed for the purposes of this Act to be the employer of the worker jointly with the immediate employer.

#### **49 Restrictions on contracting out**

- (1) Any provision in any agreement (whether a worker's contract or not) is void in so far as it purports—
  - (a) to exclude or limit the operation of any provision of this Act; or
  - (b) to preclude a person from bringing proceedings under this Act before an employment tribunal.
- (2) Subsection (1) above does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under—
  - (a) section 18 of the Employment Tribunals Act 1996 (conciliation), or
  - (b) in relation to Northern Ireland, Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996.
- (3) Subsection (1) above does not apply to any agreement to refrain from instituting or continuing before an employment tribunal any proceedings within—
  - (a) section 18(1)(dd) of the Employment Tribunals Act 1996 (proceedings under or by virtue of this Act where conciliation is available), or
  - (b) in relation to Northern Ireland, Article 20(1)(cc) of the Industrial Tribunals (Northern Ireland) Order 1996,

if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.

- (4) For the purposes of subsection (3) above the conditions regulating compromise agreements under this Act are that—
- (a) the agreement must be in writing,
  - (b) the agreement must relate to the particular proceedings,
  - (c) the employee or 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 a professional body, covering the risk of a claim by the employee or 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 this Act are satisfied.
- (5) A person is a relevant independent adviser for the purposes of subsection (4)(c) above—
- (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,
  - (c) if he works at an advice centre (whether as an employee or 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, or
  - (d) if he is a person of a description specified in an order made by the Secretary of State.
- (6) But a person is not a relevant independent adviser for the purposes of subsection (4)(c) above in relation to the employee or worker—
- (a) if he is employed by, or is acting in the matter for, the employer or an associated employer,
  - (b) in the case of a person within subsection (5)(b) or (c) above, if the trade union or advice centre is the employer or an associated employer,
  - (c) in the case of a person within subsection (5)(c) above, if the employee or worker makes a payment for the advice received from him, or
  - (d) in the case of a person of a description specified in an order under subsection (5)(d) above, if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (7) In this section “qualified lawyer” means—
- (a) as respects England and Wales—
    - (i) a barrister (whether in practice as such or employed to give legal advice);
    - (ii) a solicitor who holds a practising certificate; or
    - (iii) 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);

- (b) as respects Scotland—
    - (i) an advocate (whether in practice as such or employed to give legal advice); or
    - (ii) a solicitor who holds a practising certificate; and
  - (c) as respects Northern Ireland—
    - (i) a barrister (whether in practice as such or employed to give legal advice); or
    - (ii) a solicitor who holds a practising certificate.
- (8) For the purposes of this section 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.
- (9) In the application of this section in relation to Northern Ireland—
- (a) subsection (4)(c) above shall have effect as if for “advice from a relevant independent adviser” there were substituted “independent legal advice from a qualified lawyer”; and
  - (b) subsection (4)(d) above shall have effect as if for “contract of insurance, or an indemnity provided for members of a profession or a professional body,” there were substituted “policy of insurance”.
- (10) In subsection (4) above, as it has effect by virtue of subsection (9) above, “independent”, in relation to legal advice received by an employee or worker, means that the advice is given by a lawyer who is not acting in the matter for the employer or an associated employer.
- (11) The Secretary of State may by order repeal subsections (9) and (10) above and this subsection.

## **50 Publicity**

- (1) The Secretary of State shall arrange for information about this Act and regulations under it to be published by such means as appear to the Secretary of State to be most appropriate for drawing the provisions of this Act and those regulations to the attention of persons affected by them.
- (2) The information required to be published under subsection (1) above includes, in particular, information about—
- (a) the hourly rate for the time being prescribed under section 1 above;
  - (b) the method or methods to be used for determining under section 2 above the hourly rate at which a person is to be regarded for the purposes of this Act as remunerated by his employer in respect of his work in any pay reference period;
  - (c) the methods of enforcing rights under this Act; and
  - (d) the persons to whom section 3 above applies and the provision made in relation to them by regulations under that section.