



# Employment Relations Act 1999

## 1999 CHAPTER 26

### *Disciplinary and grievance hearings*

#### **10 Right to be accompanied**

- (1) This section applies where a worker—
  - (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
  - (b) reasonably requests to be accompanied at the hearing.
- (2) Where this section applies the employer must permit the worker to be accompanied at the hearing by a single companion who—
  - (a) is chosen by the worker and is within subsection (3),
  - (b) is to be permitted to address the hearing (but not to answer questions on behalf of the worker), and
  - (c) is to be permitted to confer with the worker during the hearing.
- (3) A person is within this subsection if he is—
  - (a) employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992,
  - (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or
  - (c) another of the employer's workers.
- (4) If—
  - (a) a worker has a right under this section to be accompanied at a hearing,
  - (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
  - (c) the worker proposes an alternative time which satisfies subsection (5),the employer must postpone the hearing to the time proposed by the worker.

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- (5) An alternative time must—
  - (a) be reasonable, and
  - (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.
- (6) An employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under subsection (1)(b).
- (7) Sections 168(3) and (4), 169 and 171 to 173 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for carrying out trade union duties) shall apply in relation to subsection (6) above as they apply in relation to section 168(1) of that Act.

## **11 Complaint to employment tribunal**

- (1) A worker may present a complaint to an employment tribunal that his employer has failed, or threatened to fail, to comply with section 10(2) or (4).
- (2) A tribunal shall not consider a complaint under this section in relation to a failure or threat unless the complaint is presented—
  - (a) before the end of the period of three months beginning with the date of the failure or threat, or
  - (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 months.
- (3) Where a tribunal finds that a complaint under this section is well-founded it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.
- (4) Chapter II of Part XIV of the Employment Rights Act 1996 (calculation of a week's pay) shall apply for the purposes of subsection (3); and in applying that Chapter the calculation date shall be taken to be—
  - (a) in the case of a claim which is made in the course of a claim for unfair dismissal, the date on which the employer's notice of dismissal was given or, if there was no notice, the effective date of termination, and
  - (b) in any other case, the date on which the relevant hearing took place (or was to have taken place).
- (5) The limit in section 227(1) of the Employment Rights Act 1996 (maximum amount of week's pay) shall apply for the purposes of subsection (3) above.
- (6) No award shall be made under subsection (3) in respect of a claim which is made in the course of a claim for unfair dismissal if the tribunal makes a supplementary award under section 127A(2) of the Employment Rights Act 1996 (internal appeal procedures).

## **12 Detriment and dismissal**

- (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 he—
  - (a) exercised or sought to exercise the right under section 10(2) or (4), or

- (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that section.
- (2) Section 48 of the Employment Rights Act 1996 shall apply in relation to contraventions of subsection (1) above as it applies in relation to contraventions of certain sections of that Act.
- (3) A worker who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he—
  - (a) exercised or sought to exercise the right under section 10(2) or (4), or
  - (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that section.
- (4) Sections 108 and 109 of that Act (qualifying period of employment and upper age limit) shall not apply in relation to subsection (3) above.
- (5) Sections 128 to 132 of that Act (interim relief) shall apply in relation to dismissal for the reason specified in subsection (3)(a) or (b) above as they apply in relation to dismissal for a reason specified in section 128(1)(b) of that Act.
- (6) In the application of Chapter II of Part X of that Act in relation to subsection (3) above, a reference to an employee shall be taken as a reference to a worker.

### **13 Interpretation**

- (1) In sections 10 to 12 and this section “worker” means an individual who is—
  - (a) a worker within the meaning of section 230(3) of the Employment Rights Act 1996,
  - (b) an agency worker,
  - (c) a home worker,
  - (d) a person in Crown employment within the meaning of section 191 of that Act, other than a member of the naval, military, air or reserve forces of the Crown, or
  - (e) employed as a relevant member of the House of Lords staff or the House of Commons staff within the meaning of section 194(6) or 195(5) of that Act.
- (2) In subsection (1) “agency worker” means an individual who—
  - (a) is supplied by a person (“the agent”) to do work for another (“the principal”) by arrangement between the agent and the principal,
  - (b) is not a party to a worker’s contract, within the meaning of section 230(3) of that Act, relating to that work, and
  - (c) is not a party to a contract relating to that work under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any professional or business undertaking carried on by the individual;and, for the purposes of sections 10 to 12, both the agent and the principal are employers of an agency worker.
- (3) In subsection (1) “home worker” means an individual who—
  - (a) contracts with a person, for the purposes of the person’s business, for the execution of work to be done in a place not under the person’s control or management, and

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- (b) is not a party to a contract relating to that work under which the work is to be executed for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any professional or business undertaking carried on by the individual;
- and, for the purposes of sections 10 to 12, the person mentioned in paragraph (a) is the home worker's employer.
- (4) For the purposes of section 10 a disciplinary hearing is a hearing which could result in—
- (a) the administration of a formal warning to a worker by his employer,
  - (b) the taking of some other action in respect of a worker by his employer, or
  - (c) the confirmation of a warning issued or some other action taken.
- (5) For the purposes of section 10 a grievance hearing is a hearing which concerns the performance of a duty by an employer in relation to a worker.
- (6) For the purposes of section 10(5)(b) in its application to a part of Great Britain a working day is a day other than—
- (a) a Saturday or a Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in that part of Great Britain.

#### **14 Contracting out and conciliation**

Sections 10 to 13 of this Act shall be treated as provisions of Part V of the Employment Rights Act 1996 for the purposes of—

- (a) section 203(1), (2)(e) and (f), (3) and (4) of that Act (restrictions on contracting out), and
- (b) section 18(1)(d) of the Employment Tribunals Act 1996 (conciliation).

#### **15 National security employees**

Sections 10 to 13 of this Act shall not apply in relation to a person employed for the purposes of—

- (a) the Security Service,
- (b) the Secret Intelligence Service, or
- (c) the Government Communications Headquarters.