



Employment Relations Act 2004

2004 CHAPTER 24

PART 3

RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

Inducements and detriments in respect of membership etc. of independent trade union

31 Detriment for use of union services or refusal of inducement

- (1) Section 146 of the 1992 Act (action short of dismissal on grounds related to union membership or activities) is also amended in accordance with subsections (2) to (4).
- (2) In subsection (1), omit “or” at the end of paragraph (b) and after that paragraph insert—
 - “(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or”.
- (3) In subsection (2)—
 - (a) for “(1)(b)” substitute “(1)”; and
 - (b) in paragraph (b), after “the activities of a trade union” insert “or (as the case may be) make use of trade union services”.
- (4) After subsection (2) insert—
 - “(2A) In this section—
 - (a) “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and
 - (b) references to a worker’s “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.
 - (2B) If an independent trade union of which a worker is a member raises a matter on his behalf (with or without his consent), penalising the worker for that is to be treated as penalising him as mentioned in subsection (1)(ba).

Status: This is the original version (as it was originally enacted).

- (2C) A worker also has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place because of the worker’s failure to accept an offer made in contravention of section 145A or 145B.
- (2D) For the purposes of subsection (2C), not conferring a benefit that, if the offer had been accepted by the worker, would have been conferred on him under the resulting agreement shall be taken to be subjecting him to a detriment as an individual (and to be a deliberate failure to act).”
- (5) In section 148 of the 1992 Act (consideration of complaint under section 146), omit subsections (3) to (5).
- (6) In section 151 of the 1992 Act, in subsection (1) (references in sections 146 to 150 to being etc. a member of a union to include being etc. a member of a branch or section) omit “; and references to taking part in the activities of a trade union shall be similarly construed”.
- (7) After that subsection insert—
- “(1A) References in those sections—
- (a) to taking part in the activities of a trade union, and
- (b) to services made available by a trade union by virtue of membership of the union,
- shall be construed in accordance with subsection (1).”
- (8) Omit section 17 of the Employment Relations Act 1999 (c. 26) (which is superseded by this section and section 32).