
STATUTORY INSTRUMENTS

1995 No. 2587

**The Collective Redundancies and Transfer of Undertakings
(Protection of Employment) (Amendment) Regulations 1995**

Employment rights of employee representatives

Right not to suffer detriment.

12.—(1) After section 22A of the 1978 Act insert—

“Right of employee representatives not to suffer detriment.

22AA.—(1) An employee 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, being—

- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

he performed, or proposed to perform, any functions or activities as such an employee representative or candidate.

(2) Except where an employee is dismissed in circumstances in which, by virtue of section 142, section 54 does not apply to the dismissal, this section shall not apply where the detriment in question amounts to dismissal.”

(2) In section 22B(1) of the 1978 Act, after “22A” insert “or 22AA”.

(3) In section 133(1)(a) of the 1978 Act, after “22A,” insert “22AA,”.

(4) In section 149(2A) of the 1978 Act—

- (a) for “sections 22A to 22C” substitute “section 22A”,
- (b) for “those sections” substitute “that section”, and
- (c) for “they apply” substitute “it applies”.

Time off work

13.—(1) After section 31A of the 1978 Act insert—

“Time off for employee representatives.

31AA.—(1) An employee who is—

- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or

- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

shall be entitled to be allowed by his employer reasonable time off during the employee's working hours in order to perform his functions as such an employee representative or candidate.

(2) Subject to subsection (3), subsections (4) to (10) of section 31A shall apply to an employee who is allowed time off in accordance with this section as they apply to an employee who is permitted to take time off in accordance with subsection (1) of that section.

(3) In its application by virtue of subsection (2)—

- (a) subsection (4) of section 31A shall have effect as if for the reference to the period of absence there were substituted a reference to the time taken off, and
- (b) subsection (7) of that section shall have effect as if for the reference to the day of the appointment concerned there were substituted a reference to the day on which it is alleged that the time off should have been allowed or the day on which the time off was taken."

(2) In section 32 of the 1978 Act, for "31A" substitute "31AA".

(3) In section 133(1)(a) of the 1978 Act, after "31A," insert "31AA,".

(4) In section 138(4) of the 1978 Act, for "and 31A" substitute ", 31A and 31AA".

(5) In section 146A(2)(b) of the 1978 Act, for "and section 31A" substitute ", 31A and 31AA".

(6) In paragraph 7(1) of Schedule 14 to the 1978 Act, after paragraph (cc) insert—

"(ccc) where the calculation is for the purposes of section 31A as it applies by virtue of section 31AA, the day on which it is alleged that the time off should have been allowed or the day on which the time off was taken;".

Unfair dismissal

14.—(1) After section 57A of the 1978 Act insert—

"Dismissal of employee representatives.

57AA. The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee, being—

- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

performed, or proposed to perform, any functions or activities as such an employee representative or candidate."

(2) In sections 59(2) and 64(4) of the 1978 Act, after "57A(1) (read with (2) and (3))," insert "57AA,".

(3) In sections 71(2B), 72(3), 73(6B), 77(1) and 77A(1) of the 1978 Act, after "section 57A(1) (a) and (b)" insert "or section 57AA".

(4) In sections 138(4) and 146A(2)(e) of, and paragraph 2(2) of Schedule 9 to, the 1978 Act, after "section 57A," insert "57AA,".

(5) In section 138A(1) of the 1978 Act, after "sections 57A" insert ", 57AA".

- (6) In section 149(2) of the 1978 Act, after “57A,” insert “57AA,”.
- (7) In sections 237(1A) and 238(2A) of the 1992 Act—
 - (a) after “57A” insert “, 57AA”, and
 - (b) after “safety cases” insert “, employee representative cases”.