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STATUTORY INSTRUMENTS

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**1998 No. 1833**

**The Working Time Regulations 1998**

**PART IV**

**MISCELLANEOUS**

**Right not to suffer detriment**

**31.**—(1) After section 45 of the 1996 Act there shall be inserted—

**“Working time cases.**

**45A.**—(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 the worker—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998,
  - (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
  - (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,
  - (d) being—
    - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
    - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate,
  - (e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or
  - (f) alleged that the employer had infringed such a right.
- (2) It is immaterial for the purposes of subsection (1)(e) or (f)—
- (a) whether or not the worker has the right, or
  - (b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for subsection (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

- (4) This section does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X, unless the dismissal is in circumstances in which, by virtue of section 197, Part X does not apply.”
- (2) After section 48(1) of the 1996 Act there shall be inserted the following subsection—
- “(1ZA) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.”
- (3) In section 49 of the 1996 Act<sup>(1)</sup> (remedies)—
- (a) in subsection (2), for “subsection (6)” there shall be substituted “subsections (5A) and (6)”, and
- (b) after subsection (5), there shall be inserted—
- “(5A) Where—
- (a) the complaint is made under section 48 (1ZA),
- (b) the detriment to which the worker is subjected is the termination of his worker’s contract, and
- (c) that contract is not a contract of employment,
- any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 101A.”
- (4) In section 192(2) of the 1996 Act (provisions applicable in relation to service in the armed forces), after paragraph (a) there shall be inserted—
- “(aa) in Part V, section 45A, and sections 48 and 49 so far as relating to that section,”.
- (5) In sections 194(2)(c), 195(2)(c) and 202(2)(b) of the 1996 Act, for “sections 44 and 47” there shall be substituted “sections 44, 45A and 47”.
- (6) In section 200(1) of the 1996 Act (which lists provisions of the Act which do not apply to employment in police service), after “45,” there shall be inserted “45A,”.
- (7) In section 205 of the 1996 Act (remedy for infringement of certain rights), after subsection (1) there shall be inserted the following subsection—
- “(1ZA) In relation to the right conferred by section 45A, the reference in subsection (1) to an employee has effect as a reference to a worker.”

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(1) Section 49 of the 1996 Act was amended by the Public Interest Disclosure Act 1998 (c. 23), section 4.