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STATUTORY INSTRUMENTS

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**2004 No. 2326**

The European Public Limited-  
Liability Company Regulations 2004

PART 3

EMPLOYEE INVOLVEMENT

CHAPTER 8

*PROTECTION FOR MEMBERS OF SPECIAL NEGOTIATING BODY, ETC.*

**Detriment**

**44.**—(1) An employee to whom paragraph (2) or (5) applies has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer, done on a ground specified in, respectively, paragraph (3) or (6).

(2) This paragraph applies to an employee who is—

- (a) a member of a special negotiating body;
- (b) a member of a representative body;
- (c) an information and consultation representative;
- (d) an employee member on a supervisory or administrative organ; or
- (e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative.

(3) The ground is that—

- (a) the employee performed or proposed to perform any functions or activities as such a member, representative or candidate; or
- (b) the employee or person acting on his behalf made or proposed to make a request to exercise an entitlement conferred on the employee by regulation 39 or 40.

(4) Paragraph (1) does not apply in the circumstances set out in paragraph (3)(a) where the ground for the subjection to detriment is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 37, unless the employee reasonably believed the disclosure to be a "protected disclosure" within the meaning given to that expression by section 43A of the 1996 Act.

(5) This paragraph applies to any employee, whether or not he is an employee to whom paragraph (2) applies.

(6) The grounds are that the employee—

- (a) took, or proposed to take, any proceedings before an employment tribunal to enforce any right conferred on him by these Regulations;

- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the CAC or the Appeal Tribunal conferred by these Regulations or to exercise the right to appeal in connection with any rights conferred by these Regulations;
  - (c) acted with a view to securing that a special negotiating body, a representative body or an information and consultation procedure did or did not come into existence;
  - (d) indicated that he did or did not support the coming into existence of a special negotiating body, a representative body or an information and consultation procedure;
  - (e) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body, a representative body, an employee member on a supervisory or administrative organ or be an information and consultation representative;
  - (f) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
  - (g) voted in such a ballot;
  - (h) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or
  - (i) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (h).
- (7) It is immaterial for the purposes of paragraph (6)(a)—
- (a) whether or not the employee has the right or entitlement; or
  - (b) whether or not the right has been infringed,
- but for that sub-paragraph to apply, the claim to the right and, if applicable, the claim that has been infringed must be made in good faith.
- (8) This regulation does not apply where the detriment in question amounts to dismissal.