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STATUTORY INSTRUMENTS

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**2022 No. 1145**

**The Exclusivity Terms for Zero Hours Workers  
(Unenforceability and Redress) Regulations 2022**

**PART 4**

**Redress and Remedies**

**Unfair dismissal and the right not to be subjected to a detriment**

7.—(1) An employee who works under a specified contract is to be regarded for the purpose of Part 10 of the 1996 Act as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is the reason specified in paragraph (3).

(2) A worker who works under a specified contract has the right not to be subjected to any detriment by, or as a result of, any act, or any deliberate failure to act, of an employer done for the reason specified in paragraph (3).

(3) The reason is that the worker breached an exclusivity term of their specified contract.

(4) Paragraph (2) does not apply where the detriment in question amounts to a dismissal of an employee within the meaning of Part 10 of the 1996 Act.

(5) Section 108 of the 1996 Act (qualifying period of employment) does not apply in relation to a dismissal to which paragraph (1) applies.

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**Commencement Information**

**II** Reg. 7 in force at 5.12.2022, see [reg. 1\(2\)](#)

**Complaints to employment tribunals**

8.—(1) Subject to regulation 7(4), a worker may present a complaint to an employment tribunal that an employer has infringed the right conferred on the worker by regulation 7(2).

(2) Subject to paragraph (3), an employment tribunal must not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, or where that act or failure is part of a series of similar acts or failures, the last of them.

[<sup>F1</sup>(2A) Regulation 8A (extension of time limit to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2).]

(3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of paragraph (2)—

(a) where an act extends over a period, the “date of the act” means the last day of that period; and

- (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (5) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
- (a) when P does an act inconsistent with doing it, or
- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.
- (6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground on which any act, or deliberate failure to act, was done.

**F1** [Reg. 8\(2A\)](#) inserted (5.12.2022) by [The Employment Tribunals Act 1996 \(Application of Conciliation Provisions\) Order 2022 \(S.I. 2022/1181\)](#), arts. 1(2), [3\(2\)](#)

**Commencement Information**

**I2** [Reg. 8](#) in force at 5.12.2022, see [reg. 1\(2\)](#)

**[<sup>F2</sup>Extension of time limit to facilitate conciliation before institution of proceedings**

- 8A.**—(1) In this regulation—
- (a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
- (b) Day B is the day on which the worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
- (2) In working out when the time limit set by regulation 8(2) expires the period beginning with the day after Day A and ending with Day B is not to be counted.
- (3) If the time limit set by regulation 8(2) would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
- (4) The power conferred on the employment tribunal by regulation 8(3) to extend the time limit set by paragraph (2) of that regulation is exercisable in relation to that time limit as extended by this regulation.]

**F2** [Reg. 8A](#) inserted (5.12.2022) by [The Employment Tribunals Act 1996 \(Application of Conciliation Provisions\) Order 2022 \(S.I. 2022/1181\)](#), arts. 1(2), [3\(3\)](#)

**Remedies**

- 9.**—(1) Where an employment tribunal finds that a complaint presented to it under regulation 8 is well founded, it must take such of the following steps as it considers just and equitable—
- (a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates; and
- (b) ordering the employer to pay compensation to the complainant.

(2) Subject to paragraphs (5) and (6), where a tribunal orders compensation under paragraph (1)(b), the amount of compensation awarded must be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement to which the complaint relates; and
- (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss must be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and
- (b) loss of any benefit which the complainant might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss the tribunal must apply the same rule concerning the duty of a person to mitigate loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) the law of Scotland.

(5) Where—

- (a) the detriment to which the worker is subjected is the termination of their specified contract, but
- (b) that contract is not a contract of employment,

any compensation awarded under paragraph (1)(b) must not exceed the limit specified in paragraph (6).

(6) The limit is the total of—

- (a) the sum which would be the basic award for unfair dismissal, calculated in accordance with section 119 of the 1996 Act, if the zero hours worker had been an employee and the specified contract terminated had been a contract of employment; and
- (b) the sum for the time being specified in section 124(1ZA)(1) of the 1996 Act which is the limit for a compensatory award to a person calculated in accordance with section 123 of the 1996 Act.

(7) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it must reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

#### Commencement Information

**I3** Reg. 9 in force at 5.12.2022, see [reg. 1\(2\)](#)

(1) Section 124(1ZA) was inserted by the Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013, (S.I. 2013/1949), articles 2(1) and (3). Section 124(1ZA)(a) was amended by the Employment Rights (Increase of Limits) Order 2022, (S.I. 2022/182), Article 3 and Schedule 1, paragraph 6.

**Changes to legislation:**

There are currently no known outstanding effects for the The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022, PART 4.