



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XIII

#### MISCELLANEOUS

### CHAPTER II

#### OTHER MISCELLANEOUS MATTERS

##### *Contracting out etc. and remedies*

#### **203 Restrictions on contracting out**

- (1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—
  - (a) to exclude or limit the operation of any provision of this Act, or
  - (b) to preclude a person from bringing any proceedings under this Act before an industrial tribunal.
- (2) Subsection (1)—
  - (a) does not apply to any provision in a collective agreement excluding rights under section 28 if an order under section 35 is for the time being in force in respect of it,
  - (b) does not apply to any provision in a dismissal procedures agreement excluding the right under section 94 if that provision is not to have effect unless an order under section 110 is for the time being in force in respect of it,
  - (c) does not apply to any provision in an agreement if an order under section 157 is for the time being in force in respect of it,
  - (d) does not apply to any provision of an agreement relating to dismissal from employment such as is mentioned in section 197(1) or (3),

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*Status: This is the original version (as it was originally enacted).*

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- (e) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under section 18 of the Industrial Tribunals Act 1996, and
  - (f) does not apply to any agreement to refrain from instituting or continuing before an industrial tribunal any proceedings within section 18(1)(d) (proceedings under this Act where conciliation available) of the Industrial Tribunals Act 1996 if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.
- (3) For the purposes of subsection (2)(f) the conditions regulating compromise agreements under this Act are that—
- (a) the agreement must be in writing,
  - (b) the agreement must relate to the particular complaint,
  - (c) the employee or worker must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal,
  - (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice,
  - (e) the agreement must identify the adviser, and
  - (f) the agreement must state that the conditions regulating compromise agreements under this Act are satisfied.
- (4) In subsection (3)—
- “independent”, in relation to legal advice received by an employee or worker, means that the advice is given by a lawyer who is not acting in the matter for the employer or an associated employer, and
- “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate, and
  - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.