



Employment Relations Act 2004

2004 CHAPTER 24

PART 1

UNION RECOGNITION

9 Additional duties on employers informed of ballots

- (1) Paragraph 26 of Schedule A1 to the 1992 Act (duties of employer informed of requirement to arrange ballot on recognition etc) is amended in accordance with subsections (2) to (4).
- (2) In sub-paragraph (1) for “three” substitute “ five ”.
- (3) After sub-paragraph (4) insert—
 - “(4A) The fourth duty is to refrain from making any offer to any or all of the workers constituting the bargaining unit which—
 - (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, and
 - (b) is not reasonable in the circumstances.
 - (4B) The fifth duty is to refrain from taking or threatening to take any action against a worker solely or mainly on the grounds that he—
 - (a) attended or took part in any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, or
 - (b) indicated his intention to attend or take part in such a meeting.
 - (4C) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraphs (4A) and (4B) if—
 - (a) it is organised in accordance with any agreement reached concerning the second duty or as a result of a step ordered to be taken under paragraph 27 to remedy a failure to comply with that duty, and
 - (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.

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- (4D) Without prejudice to the generality of the second duty imposed by this paragraph, an employer is to be taken to have failed to comply with that duty if—
- (a) he refuses a request for a meeting between the union (or unions) and any or all of the workers constituting the bargaining unit to be held in the absence of the employer or any representative of his (other than one who has been invited to attend the meeting) and it is not reasonable in the circumstances for him to do so,
 - (b) he or a representative of his attends such a meeting without having been invited to do so,
 - (c) he seeks to record or otherwise be informed of the proceedings at any such meeting and it is not reasonable in the circumstances for him to do so, or
 - (d) he refuses to give an undertaking that he will not seek to record or otherwise be informed of the proceedings at any such meeting unless it is reasonable in the circumstances for him to do either of those things.
- (4E) The fourth and fifth duties do not confer any rights on a worker; but that does not affect any other right which a worker may have.”
- (4) For sub-paragraph (8) substitute—
- “(8) Each of the powers specified in sub-paragraph (9) shall be taken to include power to issue Codes of Practice—
- (a) about reasonable access for the purposes of sub-paragraph (3), and
 - (b) about the fourth duty imposed by this paragraph.
- (9) The powers are—
- (a) the power of ACAS under section 199(1);
 - (b) the power of the Secretary of State under section 203(1)(a).”

(5) In paragraph 27(1) of that Schedule (remedial order in case of employer’s failure to comply with duties under paragraph 26) for “three duties imposed” substitute “ duties imposed on him ”.

(6) Paragraph 118 of that Schedule (duties of employer informed of requirement to arrange ballot on derecognition etc) is amended in accordance with subsections (7) to (9).

(7) In sub-paragraph (1) for “three” substitute “ five ”.

(8) After sub-paragraph (4) insert—

“(4A) The fourth duty is to refrain from making any offer to any or all of the workers constituting the bargaining unit which—

 - (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, and
 - (b) is not reasonable in the circumstances.

(4B) The fifth duty is to refrain from taking or threatening to take any action against a worker solely or mainly on the grounds that he—

 - (a) attended or took part in any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, or

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- (b) indicated his intention to attend or take part in such a meeting.
- (4C) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraph (4A) and (4B) if—
- (a) it is organised in accordance with any agreement reached concerning the second duty or as a result of a step ordered to be taken under paragraph 119 to remedy a failure to comply with that duty, and
 - (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.
- (4D) Without prejudice to the generality of the second duty imposed by this paragraph, an employer is to be taken to have failed to comply with that duty if—
- (a) he refuses a request for a meeting between the union (or unions) and any or all of the workers constituting the bargaining unit to be held in the absence of the employer or any representative of his (other than one who has been invited to attend the meeting) and it is not reasonable in the circumstances for him to do so,
 - (b) he or a representative of his attends such a meeting without having been invited to do so,
 - (c) he seeks to record or otherwise be informed of the proceedings at any such meeting and it is not reasonable in the circumstances for him to do so, or
 - (d) he refuses to give an undertaking that he will not seek to record or otherwise be informed of the proceedings at any such meeting unless it is reasonable in the circumstances for him to do either of those things.
- (4E) The fourth and fifth duties do not confer any rights on a worker; but that does not affect any other right which a worker may have.”
- (9) For sub-paragraph (8) substitute—
- “(8) Each of the powers specified in sub-paragraph (9) shall be taken to include power to issue Codes of Practice—
- (a) about reasonable access for the purposes of sub-paragraph (3), and
 - (b) about the fourth duty imposed by this paragraph.
- (9) The powers are—
- (a) the power of ACAS under section 199(1);
 - (b) the power of the Secretary of State under section 203(1)(a).”

(10) In paragraph 119(1) of that Schedule (remedial order in case of employer’s failure to comply with duties under paragraph 118) for “three duties imposed” substitute “duties imposed on him ”.

Commencement Information

II S. 9 in force at 1.10.2005 by S.I. 2005/2419, art. 3(a) (with art. 5)

Changes to legislation:

There are currently no known outstanding effects for the Employment Relations Act 2004, Section 9.