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STATUTORY INSTRUMENTS

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**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

**PART II**

**ACCESS TO EMPLOYMENT**

**Refusal of employment on grounds related to union membership**

**26.—(1)** It is unlawful to refuse a person employment—

- (a) because he is, or is not, a member of a trade union, or
- (b) because he is unwilling to accept a requirement—
  - (i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or
  - (ii) to make payments or suffer deductions in the event of his not being a member of a trade union.

(2) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

- (a) that employment to which the advertisement relates is open only to a person who is, or is not, a member of a trade union, or
- (b) that any such requirement as is mentioned in paragraph (1)(b) will be imposed in relation to employment to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks and is refused employment to which the advertisement relates, shall be conclusively presumed to have been refused employment for that reason.

(3) Where there is an arrangement or practice under which employment is offered only to persons put forward or approved by a trade union, and the trade union puts forward or approves only persons who are members of the union, a person who is not a member of the union and who is refused employment in pursuance of the arrangement or practice shall be taken to have been refused employment because he is not a member of the trade union.

(4) A person shall be taken to be refused employment if he seeks employment of any description with a person and that person—

- (a) refuses or deliberately omits to entertain and process his application or enquiry, or
- (b) causes him to withdraw or cease to pursue his application or enquiry, or
- (c) refuses or deliberately omits to offer him employment of that description, or
- (d) makes him an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or
- (e) makes him an offer of such employment but withdraws it or causes him not to accept it.

(5) Where a person is offered employment on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in paragraph (1)(b), and he

**Status:** Point in time view as at 06/04/2021.

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does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused employment for that reason.

(6) Where a person may not be considered for appointment or election to an office in a trade union unless he is a member of the union, or of a particular branch or section of the union or of one of a number of particular branches or sections of the union, nothing in this Article applies to anything done for the purpose of securing compliance with that condition although as holder of the office he would be employed by the union.

For this purpose an “office” means any position—

- (a) by virtue of which the holder is an official of the union, or
- (b) to which Part III of the Trade Union and Labour Relations Order applies (duty to hold elections).

(7) The provisions of this Article apply in relation to an employment agency acting, or purporting to act, on behalf of an employer as in relation to an employer.

### **Refusal of service of employment agency on grounds related to union membership**

**27.—**(1) It is unlawful for an employment agency to refuse a person any of its services—

- (a) because he is, or is not, a member of a trade union, or
- (b) because he is unwilling to accept a requirement to take steps to become or cease to be, or to remain or not to become, a member of a trade union.

(2) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

- (a) that any service of an employment agency is available only to a person who is, or is not, a member of a trade union, or
- (b) that any such requirement as is mentioned in paragraph (1)(b) will be imposed in relation to a service to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks to avail himself of and is refused that service, shall be conclusively presumed to have been refused it for that reason.

(3) A person shall be taken to be refused a service if he seeks to avail himself of it and the agency—

- (a) refuses or deliberately omits to make the service available to him, or
- (b) causes him not to avail himself of the service or to cease to avail himself of it, or
- (c) does not provide the same service, on the same terms, as is provided to others.

(4) Where a person is offered a service on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in paragraph (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused the service for that reason.

### **Complaints to industrial tribunal**

**28.—**(1) A person may present a complaint to an industrial tribunal—

- (a) that he has been unlawfully refused employment in contravention of Article 26(1); or
- (b) that he has been unlawfully refused any service of an employment agency in contravention of Article 27(1).

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

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- (a) before the end of the period of three months beginning with the date of the conduct to which the complaint relates, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) The date of the conduct to which a complaint under paragraph (1)(a) relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
  - (b) in the case of a deliberate omission—
    - (i) to entertain and process the complainant's application or enquiry, or
    - (ii) to offer employment, the end of the period within which it was reasonable to expect the employer to act;
  - (c) in the case of conduct causing the complainant to withdraw or cease to pursue his application or enquiry, the date of that conduct;
  - (d) in a case where an offer was made but withdrawn, the date when it was withdrawn;
  - (e) in any other case where an offer was made but not accepted, the date on which it was made.
- (4) The date of the conduct to which a complaint under paragraph (1)(b) relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
  - (b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;
  - (c) in the case of conduct causing the complainant not to avail himself of a service or to cease to avail himself of it, the date of that conduct;
  - (d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.
- [<sup>F1</sup>(5) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2)(a).]

**F1** [Art. 28\(5\)](#) added (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\)](#), s. 29(2), [Sch. 2 para. 12](#); S.R. 2020/1, art. 2(n)

## Determination of complaints

**29.—**(1) Where the industrial tribunal finds that a complaint under Article 28 is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—

- (a) an order requiring the respondent to pay compensation to the complainant of such amount as the tribunal may determine;
  - (b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.
- (2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.
- (3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.

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(4) The total amount of compensation shall not exceed the limit for the time being imposed by Article 158(1).

### **Complaint against employer and employment agency**

**30.**—(1) Where a person has a right of complaint against a prospective employer and against an employment agency arising out of the same facts, he may present a complaint against either of them or against them jointly.

(2) If a complaint is brought against one only, he or the complainant may request the tribunal to join the other as a party to the proceedings.

(3) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(4) Where a complaint is brought against an employer and an employment agency jointly, or where it is brought against one and the other is joined as a party to the proceedings, and the tribunal—

- (a) finds that the complaint is well-founded as against the employer and the agency, and
- (b) makes an award of compensation,

it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the tribunal may consider just and equitable in the circumstances.

### **Awards against third parties**

**31.**—(1) If in proceedings on a complaint under Article 28 either the complainant or the respondent claims that the respondent was induced to act in the manner complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the complainant or the respondent may request the industrial tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(3) Where a person has been so joined as a party to the proceedings and the tribunal—

- (a) finds that the complaint is well-founded,
- (b) makes an award of compensation, and
- (c) also finds that the claim in paragraph (1) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the tribunal may consider just and equitable in the circumstances.

(4) Where by virtue of Article 30 there is more than one respondent, the above provisions apply to either or both of them.

### **Interpretation and other supplementary provisions**

**32.**—(1) In this Part—

““advertisement” includes every form of advertisement or notice, whether to the public or not, and references to publishing an advertisement shall be construed accordingly:

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““employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but subject to paragraph (2).

(2) For the purposes of this Part as it applies to employment agencies—

(a) services other than those mentioned in the definition of ““employment agency” above shall be disregarded, and

(b) a trade union shall not be regarded as an employment agency by reason of services provided by it only for, or in relation to, its members.

(3) References in this Part to being or not being a member of a trade union are to being or not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions.

Any such reference includes a reference to being or not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

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