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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART VI

#### PROTECTION FROM SUFFERING DETRIMENT ETC. IN EMPLOYMENT

##### CHAPTER II

##### [<sup>F1</sup>DETRIMENT]

**F1** 2004 NI 19

#### [<sup>F2</sup>Detriment] on grounds related to union membership or activities

73.—(1) [<sup>F2</sup>A worker] has the right not to [<sup>F3</sup> be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place] for [<sup>F2</sup> the sole or main purpose] of—

- (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so.
- (b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so,<sup>F2</sup> . . .
- [<sup>F2</sup>(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or]
- (c) compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In paragraph [<sup>F2</sup> (1)] “an appropriate time” means—

- (a) a time outside the [<sup>F2</sup> worker's] working hours, or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union [<sup>F2</sup> or (as the case may be) make use of trade union services];

and for this purpose “working hours”, in relation to [<sup>F2</sup> a worker], means any time when, in accordance with his contract of employment [<sup>F2</sup> (or other contract personally to do work or perform services)], he is required to be at work.

[<sup>F2</sup>(2A) In this Article—

- (a) “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and
- (b) references to a worker's “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

**Status:** Point in time view as at 26/03/2006.

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(2B) If an independent trade union of which a worker is a member raises a matter on his behalf (with or without his consent), penalising the worker for that is to be treated as penalising him as mentioned in paragraph (1)(ba).

(2C) A worker also has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place because of the worker's failure to accept an offer made in contravention of Article 77A or 77B.

(2D) For the purposes of paragraph (2C), not conferring a benefit that, if the offer had been accepted by the worker, would have been conferred on him under the resulting agreement shall be taken to be subjecting him to a detriment as an individual (and to be a deliberate failure to act).]

(3) [<sup>F2</sup>A worker] also has the right not to [<sup>F3</sup> be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place] for [<sup>F2</sup> the sole or main purpose] of enforcing a requirement (whether or not imposed by [<sup>F2</sup> a contract of employment] or in writing) that, in the event of his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments.

(4) For the purposes of paragraph (3) any deduction made by an employer from the remuneration payable to [<sup>F2</sup> a worker] in respect of his employment shall, if it is attributable to his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as [<sup>F3</sup> a detriment to which he has been subjected as an individual by an act of his employer taking place] for [<sup>F2</sup> the sole or main purpose] of enforcing a requirement of a kind mentioned in that paragraph.

(5) References in this Chapter to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union and to being or becoming a member of one of a number of particular branches or sections of that union<sup>F2</sup>. . . .

[<sup>F2</sup>(5A) References in this Chapter—

(a) to taking part in the activities of a trade union, and

(b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (5).]

[<sup>F2</sup>(6) This Article does not apply where—

(a) the worker is an employee; and

(b) the detriment in question amounts to dismissal.

(7) In this Chapter—

“worker” means an individual who works, or normally works as mentioned in paragraphs (a) to (c) of the definition of “worker” in Article 2(2) of the 1995 Order; and

“employer” means—

(a) in relation to a worker, the person for whom he works;

(b) in relation to a former worker, the person for whom he worked.]

**F2** 2004 NI 19

**F3** 1999 NI 9

## Complaints to industrial tribunal

74.—(1) [<sup>F4</sup>A worker or former worker] may present a complaint to an industrial tribunal on the ground that [<sup>F5</sup> he has been subjected to a detriment] by his employer in contravention of Article 73.

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

- (a) before the end of the period of three months beginning with the date of the<sup>F5</sup> act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them], 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.
- <sup>F5</sup>(3) For the purposes of paragraph (2)—
- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;
  - (b) a failure to act shall be treated as done when it was decided on.
- (4) For the purposes of paragraph (3), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—
- (a) when he does an act inconsistent with doing the failed act; or
  - (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.]

**F4** 2004 NI 19  
**F5** 1999 NI 9

### Consideration of complaint

**75.**—(1) On a complaint under Article 74 it shall be for the employer to show<sup>F6</sup> what was the sole or main purpose] for which<sup>F7</sup> he acted or failed to act].

(2) In determining any question whether<sup>F7</sup> the employer acted or failed to act, or the purpose for which he did so], no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

*Paras. (3)-(5) rep. by 2004 NI 19*

**F6** 2004 NI 19  
**F7** 1999 NI 9

### Remedies

**76.**—(1) Where the industrial tribunal finds that a complaint under Article 74 is well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the complainant in respect of the<sup>F8</sup> act of failure] complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement complained of; and
- (b) any loss sustained by the complainant which is attributable to the<sup>F8</sup> act or failure] which infringed his right.

(3) The loss shall be taken to include—

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- (a) any expenses reasonably incurred by the complainant in consequence of the<sup>F8</sup> act or failure] complained of, and
  - (b) loss of any benefit which he might reasonably be expected to have had but for that<sup>F8</sup> act or failure].
- (4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.
- (5) In determining the amount of compensation to be awarded no account shall be taken of any pressure which was exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the<sup>F8</sup> act or failure] complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

**F8** 1999 NI 9

### Awards against third parties

- 77.—(1) If in proceedings on a complaint under Article 74—
- (a) the complaint is made on the ground that<sup>F9</sup> the complainant has been subjected to detriment by an act or failure by his employer taking place] for<sup>F10</sup> the sole or main purpose] of compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and
  - (b) either the complainant or the employer claims in proceedings before the tribunal that the employer was induced to<sup>F9</sup> act or fail to act in the way] 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 employer may request the 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 a declaration that the complaint is well-founded.
- (3) Where a person has been so joined as a party to proceedings and the tribunal—
- (a) makes an award of compensation, and
  - (b) finds that the claim mentioned in paragraph (1)(b) is well-founded,
- it may order that the compensation shall be paid by the person joined instead of by the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable in the circumstances.

**F9** 1999 NI 9

**F10** 2004 NI 19

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