



Employment Act 1990

1990 CHAPTER 38

Access to employment

1 Refusal of employment on grounds related to union membership

- (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) A person who is thus unlawfully refused employment has a right of complaint to an industrial tribunal.
- (3) 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 subsection (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.
- (4) 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.

- (5) 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.
- (6) 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 subsection (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 employment for that reason.
- (7) The provisions of this section apply in relation to an employment agency acting, or purporting to act, on behalf of an employer as in relation to an employer.

2 Refusal of service of employment agency on grounds related to union membership

- (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) A person who is thus unlawfully refused any service of an employment agency has a right of complaint to an industrial tribunal.
- (3) 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 subsection (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.
- (4) 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.
- (5) 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 subsection (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.

3 Interpretation and other supplementary provisions

(1) In sections 1 and 2—

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

“employment” means employment under a contract of service or apprenticeship, and related expressions shall be construed accordingly;

“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 subsection (3) below;

“member of a trade union” shall be construed in accordance with subsection (4) below;

“trade union” has the meaning given by section 28 of the Trade Union and Labour Relations Act 1974.

(2) 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 section 1 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” within the meaning of section 30(1) of the Trade Union and Labour Relations Act 1974, or

(b) in relation to which the duty in section 1 of the Trade Union Act 1984 (duty to hold elections) applies.

(3) For the purposes of sections 1 and 2 as they apply 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.

(4) References in sections 1 and 2 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.

(5) Further provisions supplementing sections 1 and 2 are contained in Schedule 1, where—

Part I deals with proceedings, remedies and related matters, and

Part II deals with the scope of application of those sections.

Expressions which are defined above for the purposes of those sections have the same meanings in that Schedule.