



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART IV

#### SUNDAY WORKING FOR SHOP AND BETTING WORKERS

##### *Opting-out of Sunday work*

#### **40 Notice of objection to Sunday working**

- (1) A shop worker or betting worker to whom this section applies may at any time give his employer written notice, signed and dated by the shop worker or betting worker, to the effect that he objects to Sunday working.
- (2) In this Act “opting-out notice” means a notice given under subsection (1) by a shop worker or betting worker to whom this section applies.
- (3) This section applies to any shop worker or betting worker who under his contract of employment—
  - (a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice), but
  - (b) is not employed to work only on Sunday.

#### **41 Opted-out shop workers and betting workers**

- (1) Subject to subsection (2), a shop worker or betting worker is to be regarded as “opted-out” for the purposes of any provision of this Act if (and only if)—
  - (a) he has given his employer an opting-out notice,
  - (b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the day which, in relation to the provision concerned, is the appropriate date, and
  - (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker or a betting worker.

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*Status: This is the original version (as it was originally enacted).*

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- (2) A shop worker is not an opted-out shop worker, and a betting worker is not an opted-out betting worker, if—
- (a) after giving the opting-out notice concerned, he has given his employer an opting-in notice, and
  - (b) after giving the opting-in notice, he has expressly agreed with his employer to do shop work, or betting work, on Sunday or on a particular Sunday.
- (3) In this Act “notice period”, in relation to an opted-out shop worker or an opted-out betting worker, means, subject to section 42(2), the period of three months beginning with the day on which the opting-out notice concerned was given.

## 42 Explanatory statement

- (1) Where a person becomes a shop worker or betting worker to whom section 40 applies, his employer shall, before the end of the period of two months beginning with the day on which that person becomes such a worker, give him a written statement in the prescribed form.
- (2) If—
- (a) an employer fails to comply with subsection (1) in relation to any shop worker or betting worker, and
  - (b) the shop worker or betting worker, on giving the employer an opting-out notice, becomes an opted-out shop worker or an opted-out betting worker,
- section 41(3) has effect in relation to the shop worker or betting worker with the substitution for “three months” of “one month”.
- (3) An employer shall not be regarded as failing to comply with subsection (1) in any case where, before the end of the period referred to in that subsection, the shop worker or betting worker has given him an opting-out notice.
- (4) Subject to subsection (6), the prescribed form in the case of a shop worker is as follows—

### “SATUTORY RIGHTS IN RELATION TO SUNDAY SHOP WORK

You have become employed as a shop worker and are or can be required under your contract of employment to do the Sunday work your contract provides for.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to work in or about a shop on any Sunday on which the shop is open once three months have passed from the date on which you gave the notice.

Your notice must—

- be in writing;
- be signed and dated by you;
- say that you object to Sunday working.

For three months after you give the notice, your employer can still require you to do all the Sunday work your contract provides for. After the three month period has ended, you have the right to complain to an industrial tribunal if, because of your refusal to work on Sundays on which the shop is open, your employer—

- dismisses you, or

does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to work on Sunday or that you do not object to Sunday working and then agreeing with your employer to work on Sundays or on a particular Sunday.”

- (5) Subject to subsection (6), the prescribed form in the case of a betting worker is as follows—

“STATUTORY RIGHTS IN RELATION TO SUNDAY BETTING WORK

You have become employed under a contract of employment under which you are or can be required to do Sunday betting work, that is to say, work—

at a track on a Sunday on which your employer is taking bets at the track, or  
in a licensed betting office on a Sunday on which it is open for business.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to do Sunday betting work once three months have passed from the date on which you gave the notice.

Your notice must—

- be in writing;
- be signed and dated by you;
- say that you object to doing Sunday betting work.

For three months after you give the notice, your employer can still require you to do all the Sunday betting work your contract provides for. After the three month period has ended, you have the right to complain to an industrial tribunal if, because of your refusal to do Sunday betting work, your employer—

dismisses you, or  
does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to do Sunday betting work or that you do not object to doing Sunday betting work and then agreeing with your employer to do such work on Sundays or on a particular Sunday.”

- (6) The Secretary of State may by order amend the prescribed forms set out in subsections (4) and (5).

### **43 Contractual requirements relating to Sunday work**

- (1) Where a shop worker or betting worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it—
- (a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday after the end of the notice period, or
  - (b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday after the end of that period.

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

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- (2) Subject to subsection (3), any agreement entered into between an opted-out shop worker, or an opted-out betting worker, and his employer is unenforceable to the extent that it—
- (a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday after the end of the notice period, or
  - (b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday after the end of that period.
- (3) Where, after giving an opting-in notice, an opted-out shop worker or an opted-out betting worker expressly agrees with his employer to do shop work or betting work on Sunday or on a particular Sunday (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.
- (4) The reference in subsection (2) to an opted-out shop worker, or an opted-out betting worker, includes a reference to an employee who although not an opted-out shop worker, or an opted-out betting worker, at the time when the agreement is entered into—
- (a) had given her employer an opting-out notice before that time, and
  - (b) is an opted-out shop worker, or an opted-out betting worker, on the day on which she returns to work in accordance with section 79, or in pursuance of an offer made in the circumstances described in section 96(3), after a period of absence from work occasioned wholly or partly by pregnancy or childbirth.
- (5) For the purposes of section 41(1)(b), the appropriate date—
- (a) in relation to subsections (2) and (3) of this section, is the day on which the agreement is entered into, and
  - (b) in relation to subsection (4) of this section, is the day on which the employee returns to work.