



Employment Rights Act 1996

1996 CHAPTER 18

PART IV

SUNDAY WORKING FOR SHOP AND BETTING WORKERS

Protected shop workers and betting workers

36 Protected shop workers and betting workers.

- (1) Subject to subsection (5), a shop worker or betting worker is to be regarded as “protected” for the purposes of any provision of this Act if (and only if) subsection (2) or (3) applies to him.
- (2) This subsection applies to a shop worker or betting worker if—
 - (a) on the day before the relevant commencement date he was employed as a shop worker or a betting worker but not to work only on Sunday,
 - (b) he has been continuously employed during the period beginning with that day 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.
- (3) This subsection applies to any shop worker or betting worker whose contract of employment is such that under it he—
 - (a) is not, and may not be, required to work on Sunday, and
 - (b) could not be so required even if the provisions of this Part were disregarded.
- (4) Where on the day before the relevant commencement date an employee’s relations with his employer had ceased to be governed by a contract of employment, he shall be regarded as satisfying subsection (2)(a) if—
 - (a) that day fell in a week which counts as a period of employment with that employer under section 212(2) or (3) or under regulations under section 219, and

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- (b) on the last day before the relevant commencement date on which his relations with his employer were governed by a contract of employment, the employee was employed as a shop worker or a betting worker but not to work only on Sunday.
- (5) A shop worker is not a protected shop worker, and a betting worker is not a protected betting worker, if—
 - (a) he has given his employer an opting-in notice on or after the relevant commencement date, and
 - (b) after giving the notice, he has expressly agreed with his employer to do shop work, or betting work, on Sunday or on a particular Sunday.
- (6) In this Act “opting-in notice”, in relation to a shop worker or a betting worker, means written notice, signed and dated by the shop worker or betting worker, in which the shop worker or betting worker expressly states that he wishes to work on Sunday or that he does not object to Sunday working.
- (7) In this Act “the relevant commencement date” means—
 - (a) in relation to a shop worker, 26th August 1994, and
 - (b) in relation to a betting worker, 3rd January 1995.

37 Contractual requirements relating to Sunday work.

- (1) Any contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date 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 on or after that date, or
 - (b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday on or after that date.
- (2) Subject to subsection (3), any agreement entered into after the relevant commencement date between a protected shop worker, or a protected 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, or
 - (b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday.
- (3) Where, after giving an opting-in notice, a protected shop worker or a protected 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 protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

^{F1}(4)

- (5) For the purposes of section 36(2)(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, ^{F2}...

^{F1}(b)

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Textual Amendments

- F1** S. 37(4)(5)(b) repealed (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 6(a)(c), **Sch. 9(2)**; S.I. 1999/2830, art. 2(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)
- F2** Word “and” after s. 37(5)(a) repealed (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 6(b), **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

38 Contracts with guaranteed hours.

- (1) This section applies where—
- under the contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date, the employer is, or may be, required to provide him with shop work, or betting work, for a specified number of hours each week,
 - under the contract the shop worker or betting worker was, or might have been, required to work on Sunday before that date, and
 - the shop worker has done shop work, or the betting worker betting work, on Sunday in that employment (whether or not before that day) but has, on or after that date, ceased to do so.
- (2) So long as the shop worker remains a protected shop worker, or the betting worker remains a protected betting worker, the contract shall not be regarded as requiring the employer to provide him with shop work, or betting work, on weekdays in excess of the hours normally worked by the shop worker or betting worker on weekdays before he ceased to do shop work, or betting work, on Sunday.
- (3) For the purposes of section 36(2)(b), the appropriate date in relation to this section is any time in relation to which the contract is to be enforced.

39 Reduction of pay etc.

- (1) This section applies where—
- under the contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date, the shop worker or betting worker was, or might have been, required to work on Sunday before the relevant commencement date,
 - the shop worker has done shop work, or the betting worker has done betting work, on Sunday in that employment (whether or not before that date) but has, on or after that date, ceased to do so, and
 - it is not apparent from the contract what part of the remuneration payable, or of any other benefit accruing, to the shop worker or betting worker was intended to be attributable to shop work, or betting work, on Sunday.
- (2) So long as the shop worker remains a protected shop worker, or the betting worker remains a protected betting worker, the contract shall be regarded as enabling the employer to reduce the amount of remuneration paid, or the extent of the other benefit provided, to the shop worker or betting worker in respect of any period by the relevant proportion.

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- (3) In subsection (2) “the relevant proportion” means the proportion which the hours of shop work, or betting work, which (apart from this Part) the shop worker, or betting worker, could have been required to do on Sunday in the period (“the contractual Sunday hours”) bears to the aggregate of those hours and the hours of work actually done by the shop worker, or betting worker, in the period.
- (4) Where, under the contract of employment, the hours of work actually done on weekdays in any period would be taken into account in determining the contractual Sunday hours, they shall be taken into account in determining the contractual Sunday hours for the purposes of subsection (3).
- (5) For the purposes of section 36(2)(b), the appropriate date in relation to this section is the end of the period in respect of which the remuneration is paid or the benefit accrues.

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