



Employment Relations Act 2004

2004 CHAPTER 24

PART 3

RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

Inducements and detriments in respect of membership etc. of independent trade union

29 Inducements relating to union membership or activities

After section 145 of the 1992 Act insert—

“Inducements

145A Inducements relating to union membership or activities

- (1) A worker has the right not to have an offer made to him by his employer for the sole or main purpose of inducing the worker—
 - (a) not to be or seek to become a member of an independent trade union,
 - (b) not to take part, at an appropriate time, in the activities of an independent trade union,
 - (c) not to make use, at an appropriate time, of trade union services, or
 - (d) 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 subsection (1) “an appropriate time” means—
 - (a) a time outside the 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 or (as the case may be) make use of trade union services.

Status: This is the original version (as it was originally enacted).

- (3) In subsection (2) “working hours”, in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services), he is required to be at work.
- (4) In subsections (1) and (2)—
 - (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.
- (5) A worker or former worker may present a complaint to an employment tribunal on the ground that his employer has made him an offer in contravention of this section.

145B Inducements relating to collective bargaining

- (1) A worker who is a member of an independent trade union which is recognised, or seeking to be recognised, by his employer has the right not to have an offer made to him by his employer if—
 - (a) acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result, and
 - (b) the employer’s sole or main purpose in making the offers is to achieve that result.
- (2) The prohibited result is that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union.
- (3) It is immaterial for the purposes of subsection (1) whether the offers are made to the workers simultaneously.
- (4) Having terms of employment determined by collective agreement shall not be regarded for the purposes of section 145A (or section 146 or 152) as making use of a trade union service.
- (5) A worker or former worker may present a complaint to an employment tribunal on the ground that his employer has made him an offer in contravention of this section.

145C Time limit for proceedings

An employment tribunal shall not consider a complaint under section 145A or 145B unless it is presented—

- (a) before the end of the period of three months beginning with the date when the offer was made or, where the offer is part of a series of similar offers to the complainant, the date when the last of them was made, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

145D Consideration of complaint

- (1) On a complaint under section 145A it shall be for the employer to show what was his sole or main purpose in making the offer.
- (2) On a complaint under section 145B it shall be for the employer to show what was his sole or main purpose in making the offers.
- (3) On a complaint under section 145A or 145B, in determining any question whether the employer made the offer (or offers) 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.
- (4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in section 145B(1), the matters taken into account must include any evidence—
 - (a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining,
 - (b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining, or
 - (c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer.

145E Remedies

- (1) Subsections (2) and (3) apply where the employment tribunal finds that a complaint under section 145A or 145B is well-founded.
- (2) The tribunal—
 - (a) shall make a declaration to that effect, and
 - (b) shall make an award to be paid by the employer to the complainant in respect of the offer complained of.
- (3) The amount of the award shall be £2,500 (subject to any adjustment of the award that may fall to be made under Part 3 of the Employment Act 2002).
- (4) Where an offer made in contravention of section 145A or 145B is accepted—
 - (a) if the acceptance results in the worker's agreeing to vary his terms of employment, the employer cannot enforce the agreement to vary, or recover any sum paid or other asset transferred by him under the agreement to vary;
 - (b) if as a result of the acceptance the worker's terms of employment are varied, nothing in section 145A or 145B makes the variation unenforceable by either party.
- (5) Nothing in this section or sections 145A and 145B prejudices any right conferred by section 146 or 149.

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

- (6) In ascertaining any amount of compensation under section 149, no reduction shall be made on the ground—
- (a) that the complainant caused or contributed to his loss, or to the act or failure complained of, by accepting or not accepting an offer made in contravention of section 145A or 145B, or
 - (b) that the complainant has received or is entitled to an award under this section.

145F Interpretation and other supplementary provisions

- (1) References in sections 145A to 145E to being or becoming a member of a trade union include references—
- (a) to being or becoming a member of a particular branch or section of that union, and
 - (b) to being or becoming a member of one of a number of particular branches or sections of that union.
- (2) References in those sections—
- (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 subsection (1).
- (3) In sections 145A to 145E—
- “worker” means an individual who works, or normally works, as mentioned in paragraphs (a) to (c) of section 296(1), 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.
- (4) The remedy of a person for infringement of the right conferred on him by section 145A or 145B is by way of a complaint to an employment tribunal in accordance with this Part, and not otherwise.”