
STATUTORY INSTRUMENTS

2009 No. 2401

The European Public Limited-Liability Company
(Employee Involvement) (Great Britain) Regulations 2009

PART 9

MISCELLANEOUS

Restrictions on contracting out: Part 8

39.—(1) Any provision in any agreement (whether an employee’s contract or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of Part 8 of these Regulations, or
- (b) to preclude a person from bringing any proceedings before an employment tribunal under that Part.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal proceedings within section 18(1)(v) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available) if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating compromise agreements are as follows—

- (a) the agreement must be in writing;
- (b) the agreement must relate to the particular proceedings;
- (c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on the ability of the employee to pursue the employee’s rights before an employment tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
- (e) the agreement must identify the adviser;
- (f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.

(5) For the purposes of paragraph (4)(c) a “relevant independent adviser” is a person who is any of the following—

- (a) a qualified lawyer;
- (b) an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union;

- (c) a person who works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre;

but this is subject to paragraph (6).

(6) A person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the employee in any of the following cases—

- (a) if the person is, is employed by, or is acting in the matter for, the employer or an associated employer;
- (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer;
- (c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received.

(7) In paragraph (5)(a) “qualified lawyer” means any of the following—

- (a) as respects England and Wales—
 - (i) a barrister (whether in practice as such or employed to give legal advice);
 - (ii) a solicitor who holds a practising certificate;
 - (iii) a person, other than a barrister or solicitor, who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990);
- (b) as respects Scotland—
 - (i) an advocate (whether in practice as such or employed to give legal advice); or
 - (ii) a solicitor who holds a practising certificate.

(8) For the purposes of paragraph (6) any two employers are “associated” if—

- (a) one is a company of which the other (directly or indirectly) has control, or
- (b) both are companies of which a third person (directly or indirectly) has control,

and “associated employer” is to be construed accordingly.