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STATUTORY INSTRUMENTS

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**2009 No. 2402**

**The European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009**

**PART 8**

**PROTECTION FOR MEMBERS OF SPECIAL NEGOTIATING BODY ETC.**

**Detriment**

**31.**—(1) An employee to whom paragraph (2) or (5) applies has the right not to be subjected to any detriment by any act, or deliberate failure to act, by the employer, done on a ground specified in, respectively, paragraph (3) or (6).

(2) This paragraph applies to an employee who is any of the following—

- (a) a member of a special negotiating body;
- (b) a member of a representative body;
- (c) an information and consultation representative;
- (d) an employee member on a supervisory or administrative organ;
- (e) a candidate in an election in which any person elected will, on being elected, be such a member or representative.

(3) The grounds are—

- (a) that the employee performed or proposed to perform any functions or activities as such a member, representative or candidate (but see paragraph (4));
- (b) that the employee, or a person acting on behalf of the employee, made or proposed to make a request to exercise an entitlement conferred on the employee by regulation 26 or 27.

(4) Paragraph (3)(a) does not apply if—

- (a) the ground for the subjection to detriment is that in the performance, or purported performance, of the employee's functions or activities the employee has disclosed any information or document in breach of the duty in regulation 24, and
- (b) the case is not one where the employee reasonably believed the disclosure to be a "protected disclosure" within the meaning given by section 67A of the 1996 Order.

(5) This paragraph applies to any employee (whether or not paragraph (2) also applies).

(6) The grounds are that the employee did any of the following—

- (a) took, or proposed to take, any proceedings before an industrial tribunal to enforce any right conferred on the employee by these Regulations;
- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the Industrial Court or the High Court conferred by these Regulations or exercised, or proposed to exercise, the right to appeal in connection with any rights conferred by these Regulations;

- (c) acted with a view to securing that a special negotiating body, a representative body or an information and consultation procedure did or did not come into existence;
  - (d) indicated that the employee did or did not support the coming into existence of a special negotiating body, a representative body or an information and consultation procedure;
  - (e) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body or a representative body, an employee member on a supervisory or administrative organ, or an information and consultation representative;
  - (f) influenced, or sought to influence, by lawful means the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
  - (g) voted in such a ballot;
  - (h) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted;
  - (i) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (h).
- (7) It is immaterial for the purposes of sub-paragraph (a) of paragraph (6)—
- (a) whether or not the employee has the right, or
  - (b) whether or not the right has been infringed,
- but for that sub-paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.
- (8) This regulation does not apply where the detriment in question amounts to dismissal.