
STATUTORY INSTRUMENTS

2018 No. 579

**The Employment Rights Act 1996 (NHS Recruitment
– Protected Disclosure) Regulations 2018**

Discrimination by worker or agent of NHS employer

9.—(1) Discrimination by a worker⁽¹⁾ of an NHS employer is to be treated, for the purposes of these Regulations, as discrimination by the NHS employer where the discriminatory conduct occurs in the course of the worker’s employment.

(2) It does not matter whether the NHS employer knows about or approves the conduct of the worker.

(3) Discrimination by an agent of an NHS employer is to be treated, for the purposes of these Regulations, as discrimination by the NHS employer where the discriminatory conduct occurs with the authority of the NHS employer.

(4) In proceedings under regulation 4 or 8, in respect of anything alleged to have been done in the course of employment by a worker of an NHS employer, or anything alleged to have been done by an agent acting with the authority of the NHS employer, it is a defence for the NHS employer to show that it took all reasonable steps to prevent the worker or agent—

- (a) from doing that thing; or
- (b) from doing anything of that description.

(1) See sections 43K and 230 of the 1996 Act as to the definition of “worker” and “employment”. Section 43K was inserted by section 1 of the 1998 Act, amended by paragraph 65 of Schedule 11 to the Health and Social Care (Community Health and Standards) Act 2003 (c.43), paragraphs 177 and 178 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43), paragraphs 72 and 73 of Schedule 5 to the Health and Social Care Act 2012 (c.7) and section 20 of the Enterprise and Regulatory Reform Act 2013 (c.24) and by S.I. 2004/957, 2006/1056 (from a date to be appointed), 2007/961 and 2015/491, and modified by S.S.I. 2004/163. Section 230 of the 1996 Act was amended by section 15 of the 1998 Act and section 149 of the 2015 Act.