STATUTORY INSTRUMENTS

2015 No. 2021

TERMS AND CONDITIONS OF EMPLOYMENT

The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015

Made - - - - 14th December 2015

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 27B(1) and (5) and 209(1) of the Employment Rights Act 1996(**1**), makes the following Regulations.

A draft of these Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996(**2**) and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015.

(2) These Regulations come into force at the end of the period of 28 days beginning with the day on which they are made.

(3) In these Regulations "the 1996 Act" means the Employment Rights Act 1996.

Unfair dismissal and the right not to be subjected to detriment

2.—(1) An employee who works under a zero hours contract is to be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is the reason specified in paragraph (3).

(2) A worker who works under a zero hours contract has the right not to be subjected to any detriment by, or as a result of, any act, or any deliberate failure to act, of an employer done for the reason specified in paragraph (3).

(3) The reason is that the worker breached a provision or purported provision of the zero hours contract to which section 27A(3)(**3**) of the 1996 Act applies.

(4) Paragraph (2) does not apply where the detriment in question amounts to a dismissal of an employee within the meaning of Part 10 of the 1996 Act.

(**1**) 1996 c.18; section 27B was inserted by the Small Business, Enterprise and Employment Act (c.26), section 153(1) and (2).
(**2**) Section 236(3) was amended by the Small Business, Enterprise and Employment Act, section 153(1) and (3).
(**3**) Section 27A was inserted by the Small Business, Enterprise and Employment Act, section 153(1) and (2).

(5) Section 108 of the 1996 Act (qualifying period of employment) does not apply in relation to a dismissal to which paragraph (1) applies.

Complaints to employment tribunals

3.—(1) Subject to regulation 2(4), a worker may present a complaint to an employment tribunal that an employer has infringed the right conferred on the worker by regulation 2(2).

(2) Subject to paragraph (3), an employment tribunal must not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them.

(3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of paragraph (2)—

(a) where an act extends over a period, the "date of the act" means the last day of that period; and

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(5) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

(6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground on which any act, or deliberate failure to act, was done.

Remedies

4.—(1) Where an employment tribunal finds that a complaint presented to it under regulation 3 is well founded, it must take such of the following steps as it considers just and equitable—

(a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates; and

(b) ordering the employer to pay compensation to the complainant.

(2) Subject to paragraphs (5) and (6), where a tribunal orders compensation under paragraph (1)(b), the amount of the compensation awarded must be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the infringement to which the complaint relates; and

(b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss must be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and

(b) loss of any benefit which the complainant might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss the tribunal must apply the same rule concerning the duty of a person to mitigate loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) the law of Scotland.