

## **Trade Union and Labour Relations (Consolidation) Act 1992**

### **181 General duty of employers to disclose information**

- (1) An employer who recognises an independent trade union shall, for the purposes of all stages of collective bargaining about matters, and in relation to descriptions of workers, in respect of which the union is recognised by him, disclose to representatives of the union, on request, the information required by this section.

In this section and sections 182 to 185 "representative", in relation to a trade union, means an official or other person authorised by the union to carry on such collective bargaining.

- (2) The information to be disclosed is all information relating to the employer's undertaking (including information relating to use of agency workers in that undertaking)<sup>1</sup> which is in his possession, or that of an associated employer, and is information -
- (a) without which the trade union representatives would be to a material extent impeded in carrying on collective bargaining with him, and
  - (b) which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.
- (3) A request by trade union representatives for information under this section shall, if the employer so requests, be in writing or be confirmed in writing.
- (4) In determining what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by ACAS, but not so as to exclude any other evidence of what that practice is.
- (5) Information which an employer is required by virtue of this section to disclose to trade union representatives shall, if they so request, be disclosed or confirmed in writing.

### **182 Restrictions on general duty**

- (1) An employer is not required by section 181 to disclose information -
- (a) the disclosure of which would be against the interests of national security, or
  - (b) which he could not disclose without contravening a prohibition imposed by or under an enactment, or
  - (c) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
  - (d) which relates specifically to an individual (unless that individual has consented to its being disclosed), or
  - (e) the disclosure of which would cause substantial injury to his undertaking for reasons other than its effect on collective bargaining, or

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<sup>1</sup> Inserted by The Agency Workers Regulations 2010 with effect from 1 October 2011

- (f) obtained by him for the purpose of bringing, prosecuting or defending any legal proceedings.

In formulating the provisions of any Code of Practice relating to the disclosure of information, ACAS shall have regard to the provisions of this subsection.

- (2) In the performance of his duty under section 181 an employer is not required -
  - (a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document, or
  - (b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

### **183 Complaint of failure to disclose information**

- (1) A trade union may present a complaint to the Central Arbitration Committee that an employer has failed -
  - (a) to disclose to representatives of the union information which he was required to disclose to them by section 181, or
  - (b) to confirm such information in writing in accordance with that section.

The complaint must be in writing and in such form as the Committee may require.

- (2) If on receipt of a complaint the Committee is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the complaint to ACAS and shall notify the trade union and employer accordingly, whereupon ACAS shall seek to promote a settlement of the matter.

If a complaint so referred is not settled or withdrawn and ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the Committee of its opinion.

- (3) If the complaint is not referred to ACAS or, if it is so referred, on ACAS informing the Committee of its opinion that further attempts at conciliation are unlikely to result in a settlement, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its findings.
- (4) On the hearing of a complaint any person who the Committee considers has a proper interest in the complaint is entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned does not affect the validity of any decision of the Committee in those proceedings.
- (5) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify -
  - (a) the information in respect of which the Committee finds that the complaint is well founded,

- (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose or, as the case may be, to confirm in writing, any of the information in question, and
  - (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose that information, or, as the case may be, to confirm it in writing.
- (6) On a hearing of a complaint under this section a certificate signed by or on behalf of a Minister of the Crown and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security shall be conclusive evidence of that fact.

A document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

#### **184 Further complaint of failure to comply with declaration**

- (1) After the expiration of the period specified in a declaration under section 183(5)(c) the trade union may present a further complaint to the Central Arbitration Committee that the employer has failed to disclose or, as the case may be, to confirm in writing to representatives of the union information specified in the declaration.

The complaint must be in writing and in such form as the Committee may require.

- (2) On receipt of a further complaint the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether they find the complaint well-founded, wholly or in part, and stating the reasons for their finding.
- (3) On the hearing of a further complaint any person who the Committee consider has a proper interest in that complaint shall be entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Committee in those proceedings.
- (4) If the Committee find the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Committee find that that complaint is well-founded.

#### **185 Determination of claim and award**

- (1) On or after presenting a further complaint under section 184 the trade union may present to the Central Arbitration Committee a claim, in writing, in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim.
- (2) The right to present a claim expires if the employer discloses or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under section 183(5) or 184(4); and a claim presented shall be treated as withdrawn if the employer does so before the Committee make an award on the claim.

(3) If the Committee find, or have found, the further complaint wholly or partly well-founded, they may, after hearing the parties, make an award that in respect of any description of employees specified in the claim the employer shall, from a specified date, observe either

(a) the terms and conditions specified in the claim; or

(b) other terms and conditions which the Committee consider appropriate.

The date specified may be earlier than that on which the award is made but not earlier than the date specified in accordance with section 183(5)(b) in the declaration made by the Committee on the original complaint.

(4) An award shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters in respect of which the trade union making the claim is recognised by the employer.

(5) Terms and conditions which by an award under this section an employer is required to observe in respect of an employee have effect as part of the employee's contract of employment as from the date specified in the award, except in so far as they are superseded or varied -

(a) by a subsequent award under this section,

(b) by a collective agreement between the employer and the union for the time being representing that employee, or

(c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in terms and conditions having effect by virtue of the award.

(6) Where -

(a) by virtue of any enactment, other than one contained in this section, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that enactment, and

(b) by virtue of an award under this section any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this section, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

(7) No award may be made under this section in respect of terms and conditions of employment which are fixed by virtue of any enactment.