



PAYMENT DATE: 7/1/06
PAY NO: 74

PAY SUMMARY TO GO

GROSS PAY	
NON-TAX DEDU	9466.65
TAXABLE PAY	0.00
TAX CREDIT TD	9466.65
GUT GRY TO	1,000.00
TAX PND	1,333.35
NO WITHD	833.33
OF INCOME	20
T INCOME	0.00
T INCOME	0.00
T INCOME	283.98
T INCOME	1039.36
TOTAL	1789.42

Employment Rights

from information to redress

SUMMARY REPORT

Employment Rights

from information to redress

A Comhairle Social Policy Report
August 2006



The report draws on the experience of Citizens Information Services (CISs) and the Citizens Information Phone Service (CIPS) in relation to employment protection issues. The most recent Survey of Citizens Information Services shows that 11% of queries relate to employment rights. It can be estimated that in 2005 there were over 90,000 employment rights queries nationally. CISs and the Citizens Information Phone Service also identify queries with a social policy feedback dimension and return social policy records to Comhairle accordingly. In 2005 over 25% of such records referred to employment related matters. (This has increased from 19% in 2003 and 22% in 2004).

Employment protection legislation has implications for employees, employers and their respective organisations as well as for the relevant institutions of the State. All concerned have to try to keep abreast of changes in the legislation and to work, on a practical day to day basis, with what is often quite complex legislation. Evidence from CISs cited in this report, which shows that employers in many instances are still not applying current legislation, illustrates the difficulties in this regard.

The people who seek information and advice in relation to employment protection matters from CISs are generally non-unionised employees (often migrant workers or people in low paid jobs and many of whom work for smaller employers) who are most at risk of not being able to exercise their rights under employment legislation. For such employees the gap between the theory of employment protection legislation and its implementation is widest.



The major issue arising from the experience of CISs and the Citizens Information Phone Service is that of the effectiveness of employment legislation enforcement. The cases cited throughout the report point to a significant gap between the legislative protection and the ability of employees to enforce their statutory rights. The bridging of this gap is of vital importance if legislative protection is to be meaningful for all employees.

The reasons for the gap in enforcement are varied but include such issues as a lack of resources (particularly in relation to workplace inspection), complexity of procedures, lack of adequate information on the part of employers and employees and the need for increased protection for employees (particularly those with less than one year's service) seeking to enforce rights.

As well as promoting the right of employees to bring their own claims under the various pieces of legislation, it is vitally important that the State be seen to monitor and maintain standards, especially in relation to persistent offenders.

There is a diverse range of agencies responsible for the inspection and enforcement of the different aspects of employment protection, including employment rights legislation, health and safety, and tax/social welfare matters. The

procedures for enforcing rights can be complex and confusing for the individual worker seeking to establish his/her rights under employment legislation. There is a general recognition that the resources available to date to the enforcement institutions have not kept pace with the level of increased demand arising from new employment protection measures. Likewise, the mechanisms available to deal with disputes and enforce rights have become more complex. These issues were widely debated during the recent (2006) partnership negotiations and the partnership agreement, *Towards 2016* contains a number of proposals to address them.

A review of the role and relationships of the employment rights bodies and their adjudication and enforcement frameworks was completed in 2005. A programme of work has been undertaken by the Department of Enterprise, Trade and Employment, in co-operation with the Office of the Attorney General, to simplify, harmonise and consolidate the corpus of employment rights legislation. A customer-focused working group has been established in each of the bodies concerned. The outcomes of this programme should result in an enhancement of the employment rights enforcement process.

Recommendations

As recommended by the Review Group on the Role and Functions of the Employment Rights Bodies, the establishment of a single point of contact has much merit and should be progressed. The bodies concerned are the Labour Court, the Rights Commissioner Service and all other services of the Labour Relations Commission and the Employment Appeals Tribunal. This single point of contact would be

useful not only for information provision, but also for receipt and distribution of requests for service.

The institutions involved in employment rights enforcement need to give greater attention to the specific issue of better access to their services by people throughout the country.

The Department of Enterprise, Trade and Employment should set up a specialist 'enforcement of awards' unit to assist employees, particularly those of modest means, to follow through on their awards, as many employees do not have the legal resources to do so and have insufficient knowledge to tackle the Circuit Court route themselves.



3.1 Work Permits

CICs report widespread abuse of the work permit system by employers with many people in Ireland on work permits being paid less than the statutory minimum wage and frequent breaches of other aspects of employment protection legislation. Excessive charges are being imposed by some employers in respect of work permit fees, accommodation and meal charges.

The *Annual Report of the Labour Relations Commission (LRC) 2004* referred to a significant increase in claims from migrant workers under the Payment of Wages Act 1991. Of the claims from migrant workers, 94% were successful. The LRC analysis also showed that the overwhelming majority of claimants were not in receipt of written terms of employment with many, also, not receiving payslips.

Additional protective mechanisms included in the Work Permits Bill 2005 would help to ensure that employers do not breach the terms of the permit. However, work permit holders are considerably less likely to be able to avail of their entitlements if they are tied to one employer. Employment rights will continue to be a problem for work permit holders unless there is a stronger enforcement of employment protection legislation generally. Also, the terms outlined in the work permit should constitute a binding contract.

The partnership agreement, *Towards 2016*,¹ includes a provision that "the Government has agreed that the Employment Permits Bill will be enacted at the earliest possible date and that economic migration policy will ensure ... that all workers will be allowed to apply for and reapply for their own permit...[and] that employment permit holders may transfer to another employment in case of unfair treatment." (p 104).

Recommendation

The Employment Rights Unit of the Department of Enterprise Trade and Employment should proactively encourage employers to make employment rights information fully available to all employees. In particular, employers should be encouraged to advise migrant workers of the information available from the Department in a range of languages². The Department should develop links with Comhairle and Citizens Information Services and other local information providers for this purpose.

3.2 Holiday Entitlements

The experience of CISs points to considerable problems concerning annual/ public holiday and leave entitlements, particularly amongst people on work permits and part-time employees. In addition, employees are often reluctant to insist on entitlements due to a fear of dismissal.

Recommendations

The Department of Enterprise, Trade and Employment - in conjunction with Comhairle, CISs and other information services - should set up proactive mechanisms to disseminate the details of the relevant legislation on holiday entitlement to both employees and employers on an ongoing basis.

¹ *Towards 2016, Ten Year Framework Social Partnership Agreement 2006-2016*, The Stationery Office Dublin, 2006.

² Currently (2006) employment rights information is available from the Department of Enterprise, Trade and Employment in Chinese, Czech, English, Hungarian, Irish, Latvian, Lithuanian, Polish, Portuguese, Romanian and Russian.

A person dismissed for requesting annual leave or public holiday is entitled to bring a claim under the Organisation of Working Time Act 1997 (with provision for up to two years compensation). This option should be highlighted and explored more frequently by organisations supporting people in enforcing employment rights.

3.3 Part-time Employees

There has been considerable progress in recent years towards applying all employment protection measures to all employees, regardless of hours worked. However, there continues to be confusion amongst both employees and employers as to what rights part-time employees enjoy. The principal problem remains access to information and, as always, the following through on the rights provided.

Recommendation

Industries (e.g., cleaning and catering) that tend to rely heavily on part-time employees should be targeted in relation to providing comprehensive information on the rights of part-time workers.

3.4 Documentation

There is evidence that many employees do not receive written terms of employment or a statement of pay as required by the legislation. Some workers also report difficulties getting P60s and P45s from employers. There is also a lack of information concerning what deductions from wages are legally allowable and some evidence of illegal deductions by employers, particularly in the case of those employed on work permits.

There are considerable advantages to be gained from ensuring that employers provide employees

with the written documentation required by law. For example, the formal written clarification of the basic terms of employment is likely to help avoid unnecessary disputes.

The Terms of Employment (Information) Act 1994 is arguably one of the most neglected pieces of legislation on the statute book. Its aim is simple: to ensure that employees, who would not ordinarily receive a full written contract of employment, should at the least receive a written statement of their basic terms of employment. While this is clearly to the mutual benefit of both employee and employer, providing clarity about the essentials of the job, there appears to be large numbers of workers throughout Ireland who have no written statement as required by the Act.

There should be a much more pro-active approach to enforcement, particularly in relation to persistent offenders.

Recommendation

The Department of Enterprise, Trade and Employment should proactively promote the importance of compliance with the law in relation to documentation and highlight the consequences for employers in continuous breach of the legislative provisions.

3.5 Payment of Wages

The legislation sets out certain requirements in relation to methods of payment, allowable deductions and employee information. Some workers, particularly those with less than one year's service, experience difficulty in enforcing this legislation. The partnership agreement *Towards 2016* includes a proposal "to prescribe the form in which payroll and working time

records must be kept by employers...consistent with the existing record keeping requirements for employers in relation to, for example, taxation and social welfare." (p. 94). This would be an important development.

Another issue that arises from time to time in CISs is that awards made under employment protection legislation may not be recovered if the employer company does not go into liquidation but ceases to trade and becomes 'informally' insolvent.

Recommendation

There should be a role for the Director of Corporate Enforcement to investigate situations where complaints are made in relation to limited companies that have become 'informally' insolvent and whose employees are, as a result, not protected by the Protection of Employees (Employers' Insolvency) Acts 1994-2003.

3.6 National Minimum Wage

Somewhat surprisingly, perhaps, workers are not always aware about their entitlement to the national minimum wage. There may also be situations where workers and employers collude to have some of the wages paid 'under the counter' which only comes to light when a dispute arises.

Recommendation

Employers should be required to provide information on the national minimum wage rates and display these details prominently in the workplace.

3.7 Unfair Dismissal Legislation

A significant gap in the existing legislative protection against unfair dismissal arises from the fact that an employee with less than one year's service could be dismissed for seeking even the most basic of employment entitlements, and have no redress.

In order to make employment protection legislation a reality for all employees, the general concept of protection from dismissal for seeking to enforce a statutory right regardless of length of service needs to be enacted. This concept is already accepted in certain of our legislation (for example the Maternity Protection Acts 1994 and 2004 and the National Minimum Wage Act 2000) and needs to be extended to embrace all aspects of employment legislation.

Recommendations

The Unfair Dismissals Acts 1977 - 2001 should be amended to remove the one year's service requirement in cases where an employee is dismissed for seeking to avail of or enforce employment legislation.

Employers should be required to display information about the exemptions to the requirement for employees to have one year's service in order to be able to avail of unfair dismissals legislation.

3.8 Bullying and Harassment in the Workplace

Bullying and harassment in the workplace are often not treated with the seriousness or alacrity that is required. The recent (2005) *Report of the Expert Advisory Group on Workplace Bullying* concluded that workplace bullying is an increasing problem and is not a normal industrial relations issue, that the response to the issue had so far been poor and that the impact of bullying on the individual is so severe that strong action on the part of the State and employers is called for. The recommendations include the suggestion that bullying should be part of an employer's risk assessment and policies and procedures to minimise it should be part of the employer's safety statement. It is also suggested that a formal model for handling bullying cases should be part of workplace dispute resolution procedures.

Recommendations

It should be mandatory for all employers to have a bullying and harassment prevention policy with a complaints procedure attached in line with the Code of Practice issued by the Health and Safety Authority and to apply these rigorously.

The recommendations of the Expert Advisory Group on Workplace Bullying should be implemented with due speed.

3.9 Safety, Health and Welfare at Work

Seventeen years after the Safety, Health and Welfare at Work Act 1989 was enacted, there are still numerous employers in Ireland without any safety statement. There is evidence of a

continuing failure on the part of many employers to deal adequately with health and safety issues including the drawing up of safety statements. There is a need, not only for the dissemination of appropriate information, but also for adequate enforcement of the requirement for all employers to have a safety statement. Ensuring the provision of a safety statement in all workplaces should be the first priority in order to put in place proper procedures.

The recent enactment of the Safety, Health and Welfare at Work Act 2005 is to be welcomed. The 2005 Act sets new standards for employers (and in many instances for employees too) in terms of a pro-active attitude to health and safety. Employers are now obliged to provide much more accessible information to employees. The Act specifies that details of hazards and risks and the measures being taken by the employer to control them must be put in a form and language that can easily be understood. Instruction and training of employees on issues relating to health and safety must also be provided in an accessible manner. However, the key to the success of this legislation will be the extent of its enforcement.

Recommendations

The rate of Health and Safety Benefit should be brought into line with that of Maternity Benefit, which is paid at a rate of 80% of gross earnings subject to a set minimum and a maximum rate.

In the case of health and safety leave, where there is a dispute between an employer and employee as to whether a risk exists to pregnancy, there should be provision for an immediate hearing under the Maternity Protection Acts 1994 and 2004 to determine the issue. In any such case,

the Health and Safety Authority should carry out an immediate inspection and give evidence of its opinion at any hearing.

3.10 Family-related Employment Legislation

Information concerning the principal features of the Maternity Protection Acts 1994 and 2004, such as the right to maternity leave and the right to return to work appears to be reasonably widely available. However, queries to CISs suggest that there is still a lack of information concerning entitlement to annual leave/public holidays while on maternity leave.

Recommendations

The co-ordinated dissemination of information on all issues relating to maternity protection legislation should be a priority for State agencies, employer organisations, trade unions and information providers.

At present a woman must be employed immediately before the first day of her maternity leave in order to be able to claim Maternity Benefit. Consideration should be given to allowing some relaxation of this requirement in cases where a woman was employed up to shortly before her leave was due to commence and would otherwise fulfil the contribution conditions for payment of benefit. For example, women who have been employed up to 20 weeks before the date of birth and who fulfil the contributions requirements could be allowed claim Maternity Benefit.

3.11 Employment Of Children and Young Persons

Many young persons engage in part-time work and it is frequently a positive experience. However, research shows that part-time employment, especially that involving longer hours, has a negative impact on young people's educational careers in terms of early school leaving and exam performance.

There is a general acceptance that legislation in respect of the employment of children and young persons is being widely breached and that effective enforcement is absent. The results can be detrimental to the educational needs of many young people.

Recommendations

The requirement for formal written consent from parents/guardians, currently required in the case of children, should be extended to the employment of young people (up to age 18) as well.

Employers of children/young persons should be required to inform parents/guardians of the details of the legislation as well as the employees themselves.

3.12 Information

Despite the fact that there is a guidebook on each piece of employment legislation and the general guide to Labour Law provided by the Department of Enterprise, Trade and Employment and the fact that Comhairle and other agencies publish information on employment rights, a recurring theme across all of the employment rights issues identified is an absence of precise information about entitlements and rights. This applies to

both employees and employers. This information deficit is particularly strong in respect of people employed on work permits and part-time workers. Also, somewhat surprisingly, perhaps, workers are not always aware about their entitlement to the national minimum wage. Many workers rely on their employers for their information and the latter may either not have the right information or deliberately choose to misinform workers.

The co-ordinated dissemination of information on workers' rights and entitlements should be a priority for State agencies, employer organisations, trade unions and information providers.

Recommendations

The Department of Enterprise, Trade and Employment should develop links with CISs and other independent information services with a view to providing current information on employment rights for both employers and employees at local level.

The Department of Enterprise, Trade and Employment should target smaller employers through their representative organisations - the Small Firms Association (SFA) and the Irish Small and Medium Enterprises Association (ISME) to ensure that they are fully informed on all employment rights legislation.

Comhairle is the national agency responsible for supporting the provision of information, advice and advocacy to the public on the broad range of social and civil services. Comhairle provides the Oasis website and is the support agency for the network of Citizens Information Centres and Citizens Information Phone Service. Comhairle supports the development of advocacy services for individuals, particularly those with a disability.

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