



## EMPLOYMENT RIGHTS EXPLAINED

# Factsheet 1: Terms and conditions of employment

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This factsheet covers the contract of employment (including fixed-term contracts) and hours of work. It also tells you where to complain if you have difficulty in securing any of the rights outlined. You can find more information about your employment rights in the booklet *Employment rights explained* (available from your local Citizens Information Centre), from the National Employment Rights Authority (NERA) at [www.employmentrights.ie](http://www.employmentrights.ie) or from the Citizens Information website at [www.citizensinformation.ie](http://www.citizensinformation.ie)

### What is a contract of employment?

When a person is offered employment in return for wages and accepts the offer that is a contract of employment. While the terms of that contract are those agreed by the parties, it may also include other items:

- **Implied terms** are terms that are taken to exist between the employer and employee. Such terms include the employer's duty to provide a safe workplace and the employee's duty to do his or her best in the job
- **Laws passed by the Oireachtas and EU laws** may result in certain terms being part of the contract, even if they are not specifically included, for example, the right to take maternity leave or the right to equal pay and equal treatment. An employee's contract may provide for greater entitlements than the statutory minimum but not less
- **Constitutional rights** are in every contract of employment, for example, the right of the employee to join a trade union
- **Custom and practice** in an employment may form part of the contract. For example, if the custom has been that employees get sick pay or a particular level of overtime pay for work undertaken after normal hours, then that becomes part of the contract of employment
- **Collective agreements** negotiated between unions and employers can form part of the contract of the employees concerned
- **Employment Regulation Orders** negotiated by Joint Labour Committees regulate conditions of employment and set minimum rates of pay for employees in certain employment sectors

So when checking to see what is in a contract of employment, it is important to look at what the parties agreed, and also the terms that the law, the Constitution, and custom and practice may make part of the contract.

### **Does my contract of employment have to be in writing?**

The Terms of Employment (Information) Act 1994 says that certain terms of the contract must be available to the employee in writing. This requirement does not apply to employees who have been employed for less than a month. For all other employees, the following terms should be available in writing:

- Full name of employer and employee
- Address of employer – registered office if the employer is a company
- The place of work, or, if it is the case, that the employee is required to work in various locations, a statement to this effect

- The job title or nature of the work
- The date the employment started
- If the contract is for a fixed term, the details
- If the contract is temporary, how long it is expected to last
- Details of rest periods and breaks required by law
- If the contract of employment is for a fixed term, the details
- The rate of pay or method of calculation of pay
- The pay reference period for the purposes of the National Minimum Wage Act, 2000
- Pay intervals\*
- Hours of work\*
- Details of paid leave\*
- Sick pay and pension\* (if any)
- Period of notice to be given by employer or employee\*
- Details of any collective agreements that may affect the employee's terms of employment\*

\* *In the case of these items instead of giving each employee the details in writing, the employer may refer an employee to other documents, for example, a pension scheme booklet or a collective agreement, provided that the employee has easy access to such documents.*

### **Can my contract include a probationary period?**

Yes, your contract may state that you are on probation for a stated period, for example, six months. The contract may also provide for the period of probation to be extended.

### **Can my contract be changed?**

Apart from changes in employment law that may affect the contract, other changes must be agreed between the parties. Neither the employee nor the employer can change the terms of the contract unless the other party agrees.

Changes may occur by implication rather than formal agreement. For example, an employee who is requested to start at 8.30am rather than 9.00am may do so and continue with this starting time. Although there has been no formal agreement to change the starting time in the contract, the fact that the employee has continued with the earlier starting time over a period could mean that there has been an implied change in the contract and the employee could be bound by it.

### **Can an employer stop me taking on an additional job?**

You have a right to work for another employer in your spare time. However, there is an implied term in each employee's contract of trust and confidence between the employee and employer. As a result, taking up additional work could be in breach of an employee's contract – it may be in competition with the employer or acting in a way that brings about a conflict of interest with the employer. There is a further implied term in a contract of employment regarding confidentiality.

In addition, the Organisation of Working Time Act 1997 makes it an offence for an employer to employ a person where the total working hours of that person, involved in two or more jobs, would exceed the permitted maximum (see below). As a result, an employer may require an employee to seek approval before taking on additional employment.

### **Have I the right to access my employment file?**

Under the Data Protection Acts 1988 and 2003, you generally have a right to obtain a copy of any information relating to you held by your employer on computer or in a manual filing system. There are certain exceptions to this rule: for example, information in computer or manual files held for the purpose of preventing, detecting or investigating offences. If you find that any of the information about you is inaccurate, you are entitled to have it corrected.

You generally have a right to access references received by the employer in relation to your job application (this applies whether you are an employee or a prospective employee). If access is denied, there must have been a clear statement that the information in the reference was being supplied on a confidential basis.

## **FIXED-TERM OR SPECIFIED-PURPOSE CONTRACTS**

Employees on fixed-term contracts have broadly similar rights to those on open-ended contracts.

### **What are fixed-term or specified-purpose contracts?**

Most employees work under open-ended contracts of employment. In other words, the contract continues until the employer or employee ends it. Many employees, however, work under fixed-term contracts. Generally, a fixed-term contract ends on an agreed date or when a specific event occurs. The period of such a contract may range from a matter of months up to a period of a year or more. However, a fixed-term contract can also involve a specified-purpose and so may not end on a specific date. Rather, it is agreed that the contract will finish when a particular stated task is completed, such as replacing an employee while she is on maternity leave. The term, fixed-term contract, includes specified-purpose contracts when used in this section.

### **Do employees on a fixed-term contract have the same rights as other employees?**

Yes. Generally speaking, people employed under such contracts have the same rights as other employees. For example, employees with fixed-term contracts have the normal entitlement to holidays, maternity leave, and wage slips. The Terms of Employment (Information) Act 1994 requires that employees with a fixed-term contract get written notice of the expiry date.

The Act also provides that fixed-term employees may not be treated less favourably than comparable permanent employees (comparators) in respect of conditions of employment, including pay and pensions, unless the employer can objectively justify the different treatment. Any justification offered cannot be connected with the fact that the employee is on a fixed-term contract.

### **What information does an employer have to give a fixed-term employee?**

An employer must state in writing what will cause the contract to end. This could be a specific date, completing a specific task or a specific event. The fixed-term employee must receive this statement as soon as possible. If an employer intends to renew a fixed-term contract, they must give the fixed-term employee a written statement stating the objective grounds justifying the renewal and the failure to offer an open-ended contract. The fixed-term employee must receive this statement on or before the renewal date.

## HOURS OF WORK

### **Is there a maximum numbers of hours that I can be asked to work?**

Yes, the maximum average working week cannot exceed 48 hours for many employees. This does not mean that a working week can never exceed 48 hours; it is the average that is important. The reference period for the calculation of 48 hours does not include annual leave, sick leave, maternity or adoptive leave. Generally, the average week is calculated over four months, but for some employees it may be calculated over a six-month or even 12-month period.

### **What records does my employer have to keep about my working hours?**

Under the Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001, an employer is obliged to keep information in relation to the hours worked on a daily and weekly basis by each employee (excluding meals and rest breaks). This record must be kept for three years.

### **Am I entitled to breaks during working hours?**

Yes, the general rule is that you are entitled to a break of 15 minutes after more than four and a half hours work and to a 30-minute break after six hours which may include the first 15-minute break.

There are exceptions to the general rule. For example, shop employees whose hours of work include the period from 11.30am to 2.30pm should not be required to work more than six hours without having a one-hour break, which must begin between those hours. These break times cannot be included in a break at the end of the working day. There is no entitlement to payment for such breaks. An employer is exempt from providing breaks where it is not possible due to exceptional circumstances or an emergency.

### **Am I entitled to rest periods during the working day and the working week?**

Yes, you are entitled to 11 consecutive hours rest in any period of 24 hours that you work for your employer. In addition, you are entitled to 24 consecutive hours rest in any period of seven days. This should normally follow on from one of the 11-hour periods mentioned already unless there is some reason this cannot be done due to the nature of the work. Rest period(s) should include a Sunday unless your contract provides otherwise. An employer is exempt from providing these rest periods if this is not possible due to exceptional circumstances or emergency.

### Are there particular rules that apply to night work?

Yes, night work is the period between midnight and 7am. A night worker is an employee who normally works at least three hours between midnight and 7am and who works at night for at least half of their working hours in a year. Normally, a night worker should not work more than an average of eight hours in a 24-hour period. The average is calculated over either a two-month period or a longer period if it is part of a collective agreement.

If the night work involves special hazards or physical or mental strain, then working hours cannot exceed eight hours in a 24-hour period. The employer is required to carry out a risk assessment in order to determine whether the night work involves special hazards, or physical or mental strain.

### Is an employee who does Sunday work entitled to any extra payment?

In the first place, this is a matter for agreement between the employee and the employer. If there is no agreement, then the Organisation of Working Time Act 1997 requires that the employee is given one or more of the following: a reasonable allowance, a reasonable pay increase or reasonable paid time off work. What is reasonable depends on all the circumstances.

## ENFORCING YOUR RIGHTS

If your employer fails to give you the written notice of terms as required by law, you may bring a complaint to a Rights Commissioner. This must be done while you are in the employment or within six months of leaving. See also **Factsheet 7: Leaving or losing your job.**

Claims under the Protection of Employees (Fixed-Term Work) Act 2003 may be brought to a Rights Commissioner, in the first instance, and appealed to the Labour Court. Claims for unfair dismissal may be brought either to a Rights Commissioner or to the Employment Appeals Tribunal. Disputes under the Organisation of Working Time Act 1997 should be referred to a Rights Commissioner within six months of the dispute occurring (12 months if there is reasonable cause for delay).

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

Employers are prohibited from victimising fixed-term employees who seek to avail of rights under the Protection of Employees (Fixed-Term Work) Act 2003. Victimisation includes dismissal in order to avoid a fixed-term contract being considered an open-ended contract.

## USEFUL ADDRESSES

### **Citizens Information Board Head Office**

George's Quay House  
43 Townsend Street, Dublin 2

Tel: (01) 605 9012

Website:

[www.citizensinformationboard.ie](http://www.citizensinformationboard.ie)

Email: [info@ciboard.ie](mailto:info@ciboard.ie)

### **National Employment Rights Authority**

O'Brien Road, Carlow

Tel: (059) 917 8800

Lo-call: 1890 220 100

Email: [info@employmentrights.ie](mailto:info@employmentrights.ie)

Website: [www.employmentrights.ie](http://www.employmentrights.ie)

### **Labour Relations Commission (including Rights Commissioner Service)**

Tom Johnson House, Haddington  
Road, Dublin 4

Tel: (01) 613 6700

Email: [info@lrc.ie](mailto:info@lrc.ie)

Website: [www.lrc.ie](http://www.lrc.ie)

**Citizens Information** 

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[www.citizensinformation.ie](http://www.citizensinformation.ie)

**LO-CALL**

**1890 777 121** Open Mon to Fri, 9am to 9pm

**DROP IN**

For your local centre see Golden Pages listing