



## EMPLOYMENT RIGHTS EXPLAINED

### Factsheet 2: Pay and wages

#### IN THIS SERIES

Terms and conditions of employment • **Pay and wages** • Holidays and leave from work • Leave for parents • Part-time workers • Employment permits • Leaving or losing your job • Redundancy

This factsheet gives information on pay and wages. It covers the national minimum wage, deductions and where to complain if you have difficulty obtaining your employment rights. **Factsheet 1: Terms and conditions of employment** gives more information about contracts and hours of work. 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)

You are entitled to be paid in accordance with your contract and, if you are an experienced adult worker, you must be paid at least the national minimum wage. You must also be given written information about your wages and any deductions from them.

## Am I entitled to a payslip?

Yes, the Payment of Wages Act 1991 says that all employees are entitled to receive a confidential written statement of the total gross wages, the details of all deductions (for example, PRSI, PAYE and pension contributions), and their net pay after deductions from their employers.

## What deductions can be made from my wages?

The Payment of Wages Act 1991 refers to situations where either deductions are made from wages or the employee is required to make a payment to the employer. Such deductions or payments are allowed where they are:

- Required by law, such as PAYE and PRSI
- Allowed by the employee's contract, such as trade union dues, pension contributions and voluntary health insurance contributions
- Made with the written consent of the employee, given before the deduction is made
- To recover an overpayment of wages or expenses
- Due to strike or industrial action by the employee
- Due to any statutory disciplinary procedures, such as regulations concerning discipline within the Garda Síochána
- Required by a court order – for example, an attachment of earnings order in relation to a family law maintenance claim

The Act also deals with the following situations:

- Where the employer suffers loss through the fault of the employee, for example, breakages or till shortages
- Where the employer supplies goods or services to the employee as part of the job, such as a transport service to and from work, uniforms

In such cases, a deduction (or payment by the employee) is only allowed if the following conditions are met by the employer:

- It is allowed by the employee's contract
- It is fair and reasonable

- The employee has written notice of the deduction

The following conditions also apply:

- If the deduction arose due to a mistake by the employee, the employee must have received at least one week's notice giving full details of the deduction
- The amount of the deduction must not be greater than any loss suffered by the employer or the cost of any goods or services supplied
- The deduction must take place within six months of coming to the employer's attention or within six months of the supply of the goods or services

Failure to pay all or part of the wages due to an employee is considered a deduction and a complaint can be made under the Payment of Wages Act. Likewise, unpaid notice, holiday pay, bonus and commission payments can also form part of a claim under the Act.

It is an employer's duty to provide personal protective equipment as required by the Safety, Health and Welfare at Work Act 2005. Such equipment must be provided free of charge where it is used only at work.

### **How can I check if my employer is deducting the correct amount of PRSI?**

You can ask your employer to give you a statement of your PRSI contributions once every three months. (Normally this is shown as a deduction on your payslip.)

You can also check your P60. Shortly after the end of each tax year (31 December) employees should receive a P60 form from their employers. This form sets out the gross amount of pay received in the year plus deductions for PAYE and PRSI. Employees have a legal right to this document. It is an important document and should be kept safely as it may be needed to claim social welfare benefits or tax refunds. It also provides proof of deductions made from an employee's pay. If you do not receive a P60 from your employer, you should ask for it. If the form is still not provided, you should refer the matter to your tax office. The P60 should be given to every employee within 46 days of the end of the contribution year.

You can also check your PRSI record by contacting:

### **Records Section**

Department of Social and Family Affairs, Gandon House, Amiens Street, Dublin 1

Tel: (01) 704 3000

### **What will happen if my employer does not forward the correct PRSI to the Revenue Commissioners?**

PRSI contributions are payable by the employer in respect of all employees aged 16 and over. PRSI is paid on all relevant payments to all employees such as wages and salaries, bonuses, fees, overtime payments, part-time pay, benefit in kind and Christmas bonuses.

It is the employer's responsibility to ensure that the correct PRSI is paid. If the amount of PRSI contributions paid is less than the amount due, the employer is responsible for making up the deficit. Failure to do so can result in penalties, prosecution, or both.

### **Am I entitled to a pension scheme?**

No. An employer is not obliged to provide a pension scheme for employees. However, employers are obliged to facilitate employees who want to contribute to Personal Retirement Savings Accounts (PRSA).

The contract of employment may include an entitlement to join an occupational pension scheme, or a requirement to join it.

If there is an occupational pension scheme, you are entitled to get information about it. You may contact the Pensions Board (the regulatory authority for occupational pensions) if there are problems. Subject to certain exceptions, occupational pension schemes may not discriminate on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community.

### **Am I entitled to disturbance money?**

There is no statutory requirement for an employer to pay disturbance money in relation to, for example, moving the workplace. Therefore, any payment will be based on the terms of the contract of employment or negotiation.

A significant change in the location of the workplace may give rise to a redundancy situation. In this case, employers must consult with employees about developments affecting employment in the workplace (see **Factsheet 8: Redundancy**).

### **Is there a minimum wage?**

Yes, there is a national minimum wage which, with some exceptions, means that employees are guaranteed at least €8.65\* gross per hour (from 1 July 2007). In addition many employees are guaranteed a minimum wage – generally more than the national minimum wage – in agreements known as Employment Regulation Orders (EROs) or REAs (see below for more information).

Of course, the national minimum wage does not stop an employer from paying a higher wage. It is a criminal offence for an employer not to pay at least the minimum wage except in certain defined circumstances.

\* *The national minimum wage rate changes from time to time. Information on the current rate is always available from the National Employment Rights Authority at (057) 9178990 or Lo-call 1890 80 80 90. Alternatively, please visit [www.employmentrights.ie](http://www.employmentrights.ie) or email [info@employmentrights.ie](mailto:info@employmentrights.ie)*

### **Are all employees entitled to receive the national minimum wage?**

No, there are some exceptions. The legislation does not apply to a person employed by a close relative such as a spouse, parent or grandparent. Nor does it apply to those in statutory apprenticeships such as apprentice carpenters and electricians.

In addition, some employees are only guaranteed a reduced national minimum wage rate. For example:

- Employees who are under 18 are only guaranteed at least 70% of the national minimum wage. This means €6.06 at current (2008) levels
- Employees who have reached 18 have their national minimum wage entitlement phased in. In the first year after reaching 18, the employee is guaranteed 80% (€6.92) and in the second year 90% (€7.79). This also applies to employees who are over 18 and enter employment for the first time

- Certain employees who are over 18 and undergoing a course of training or study authorised by the employer are guaranteed only a reduced national minimum wage at the following rates:
  - » 75 % (€6.49) for the first third of the training or study period
  - » 80 % (€6.92) for the second third of the training or study period
  - » 90 % (€7.79) for the final third of the training or study period

## NOTE

Each single period must last at least one month and cannot be for longer than 12 months.

### How can I check that I am getting at least the national minimum wage?

The basic method is to divide the gross pay by the total number of hours worked. However, it is also necessary to take into account the type of payment that is included, what hours are included and over what period.

### What counts as pay for the national minimum wage purposes?

For the purposes of the national minimum wage, your gross wage includes, for example, your basic salary and any shift premium, productivity-related bonus or service charge distributed through the payroll. However, a number of items that make up your pay and may be considered taxable are not included in the minimum wage calculation:

- Overtime premium
- Call-out premium
- Service pay
- Unsocial hours premium
- Tips which are placed in a central fund managed by the employer and paid as part of the employee's wages
- Premiums for working public holidays, Saturdays or Sundays
- Allowances for special or additional duties
- On-call or standby allowances
- Certain payments in relation to absences from work – for example, sick pay, holiday pay or pay during health and safety leave

- Payment connected with leaving the employment, including retirement
- Contributions paid by the employer into any occupational pension scheme available to the employee
- Redundancy payments
- An advance payment of, for example, salary – the amount involved will be taken into account for the period in which it would normally have been paid
- Payment in kind or benefit in kind, other than board and/or lodgings
- Payment not connected with the person's employment
- Compensation for injury or loss of tools
- Award as part of a staff suggestion scheme
- Loan by an employer to an employee

### What counts as working hours when calculating pay?

Whichever is the greater of these two:

- The hours set out in any document such as a contract of employment, collective agreement or statement of terms of employment provided under the Terms of Employment (Information) Act 1994, or
- The actual hours worked or available for work and paid

Working hours include:

- Overtime
- Travel time where this is part of the job
- Time spent on training authorised by the employer and during normal working hours

Working hours do not include:

- Time spent on standby other than at the workplace
- Time on leave, lay off, strike or after payment made instead of notice
- Time spent travelling to or from work

### **How is the average hourly pay calculated?**

The employer selects the period, known as the pay reference period, from which the average hourly pay will be calculated. This might be, for example, on a weekly or fortnightly basis, but cannot be for a period longer than a month. The employer must include details of the pay reference period in the statement of employment conditions to be given to an employee under the Terms of Employment (Information) Act 1994.

### **Can I get information from my employer about my rate of pay?**

Yes, you may request a written statement from your employer of your average rate of pay for any pay reference period within the last 12 months. The employer has four weeks to supply the statement.

### **Can employers pay less than the national minimum wage by claiming they cannot afford it?**

Yes, the Labour Court may exempt an employer from the provisions of the national minimum wage for between three months and one year. Only one exemption can be allowed. The employer may only apply to the Labour Court for the exemption with the consent of a majority of the employees, who must also agree to be bound by the Labour Court decision. The employer must demonstrate that they do not have the ability to pay the national minimum wage and, if compelled to do so, would have to lay off employees or end their employment.

Employers may seek exemption only from paying the full rate of the national minimum wage. They may not seek an exemption for cases covered by the reduced rate, such as employees who are under 18 years of age.

### **Can my employer reduce my hours of work to comply with minimum wage legislation?**

Your employer cannot reduce your working hours without a corresponding reduction in the duties or amount of work that you carry out. For example, if you are due an increase in pay under the Minimum Wage Act, your employer cannot reduce your working hours and still expect you to do the same amount of work or duties.

## Is an employee seeking entitlement to the national minimum wage protected from victimisation or dismissal?

Yes, victimisation is prohibited by the legislation. In addition, an employee who is dismissed for seeking the national minimum wage may bring a claim for unfair dismissal regardless of length of service or number of hours worked per week.

## Are there other situations in which the law regulates the amount of wages to be paid?

Some employees are covered by agreements made by Joint Labour Committees (JLCs). These agreements are known as Employment Regulation Orders (EROs); they deal with the pay and working conditions of the employees concerned and are binding on employers. A number of collective agreements are also registered with the Labour Court. These are known as Registered Employment Agreements (REAs). Some agreements also provide for a right to a set amount of sick pay.

Note that an Employment Regulation Order may sometimes be confined to employees within a sector in a specific location, rather than throughout the entire country. For example, there are two Employment Regulation Orders for catering – one covers those working in Dublin City and County and the second is for all other areas.

To check if a particular employment is currently covered by an Employment Regulation Order, contact:

### **National Employment Rights Authority**

Tel: (059) 9178990, Lo-call: 1890 808090

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

Where there is an Employment Regulation Order, the details of the agreement should be displayed in each workplace.

## ENFORCING YOUR RIGHTS

An employee may request an inspector from the National Employment Rights Authority (NERA) to investigate a claim that the national minimum wage is not being paid. Inspectors have powers to enter places of work and examine records and do not reveal, without the consent of the person making the complaint, whether the inspection is a routine one or the result of a complaint.

An employee may also refer a dispute to a Rights Commissioner. In the case of a dispute under the National Minimum Wage Act 2000, this may only be done where the employee has requested a written statement from the employer outlining the calculation of the average hourly pay. The employee must refer the case within six months of receiving the statement; the Rights Commissioner may extend the referral limit for up to 12 months. If the employer fails to provide the statement, the time starts from the date at which the employer should have provided the statement, that is, within four weeks of the request. The employee may choose whichever course of action he or she wishes to pursue but it is not possible to use both of the above services in the resolution of the same dispute.

An employee who alleges victimisation should request their employer to restore the employment conditions to the way they were before the alleged victimisation. If the employer fails to do this within two weeks of the request, the employee may refer the matter to the Rights Commissioner. This referral must take place within six months. This period may be extended to a maximum of 12 months by the Rights Commissioner.

If an employer fails to comply with an Employment Regulation Order or a Registered Employment Agreement, a complaint should be made to NERA.

An employer who fails to provide a payslip or provides one that is deliberately falsified is guilty of an offence under the Payment of Wages Act 1991 and may be fined. Complaints about payslips should be made to NERA.

Complaints about unauthorised deductions from wages under the Payment of Wages Act 1991 should be made to the Rights Commissioner. A complaint must be brought within six months of the date of the deduction. The Rights Commissioner may extend the time limit for up to a further six months, but only where there are exceptional circumstances which prevented the complaint being brought within the normal time limit.

Complaints about the operation of occupational pension schemes or any issues relating to PRSAs should be raised with the Pensions Board.

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.

## 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)

### **Labour Court**

Tom Johnson House,  
Haddington Road, Dublin 4

Tel: (01) 613 6666

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

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

### **Records Section**

Department of Social and Family Affairs,  
Gandon House, Amiens Street, Dublin 1

Tel: (01) 704 3000

**Citizens Information** 

**LOG ON**

[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

### **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)

### **Pensions Board**

Verschoyle House,  
28/30 Lower Mount Street, Dublin 2

Tel: (01) 613 1900

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

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

### **National Employment Rights Authority**

O'Brien Road, Carlow

Tel: (059) 917 8990,

Lo-call: 1890 808090

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