EMPLOYMENT RIGHTS EXPLAINED

This is the fourth edition of this guide published by the Citizens Information Board (formerly Comhairle), the national agency responsible for supporting the provision of information, advice and advocacy services to members of the public on a wide range of social and civil services.

The Citizens Information Board supports the network of Citizens Information Services listed in Section 23 and the national Citizens Information Phone Service (Lo-Call 1890 777121). It also provides information on rights and entitlements on the Citizens Information website (www.citizensinformation.ie).

The Citizens Information Board gratefully acknowledges comments from the Department of Enterprise, Trade and Employment, Paul Joyce of Free Legal Advice Centres (FLAC) and the National Employment Rights Authority during the compilation of this publication.

Please note that this booklet is intended as a guide and does not cover the legislation in detail.

September 2007

YOUR KEY EMPLOYMENT RIGHTS

The right to a written statement of your terms and conditions of employment

Your full contract does not have to be in writing but you have the right to have certain terms and conditions of employment stated in writing within two months of starting employment. See Section 3.

The right to receive a written statement of pay

This payslip should set out gross pay and list any deductions made. See Section 6.

The right to a minimum wage

Most experienced adult workers in Ireland are entitled to be paid the national minimum wage of €8.65 per hour. Exceptions to the minimum wage include those employed by close relatives, people without experience, young people aged under 18 and trainees or apprentices. See Section 6.

The right to a maximum working week of 48 hours a week

This 48-hour week can be averaged over a four-month, six-month or twelve-month period and employers must keep a record of how many hours an employee works. See Section 7.

The right to unpaid breaks during working hours

Workers have the right to a 15-minute break after four and a half hours of work and a 30-minute break after six hours of work (which may include the first 15-minute break). See Section 7.

The right to leave from work

Full-time workers have the right to four working weeks paid annual leave. Part-time workers have the right to a proportional amount of annual leave based on the amount of time they work. Where applicable you may also be eligible for maternity leave, parental leave and carer's leave. See Sections 11, 12, 13 and 14.

The right to equal treatment

All employees have the right to be treated equally regardless of gender, marital status, family status, sexual orientation, age, disability, race, religious belief or membership of the Travelling community in work and when seeking work. Discrimination on any of these nine specified grounds during the recruitment and selection process or in the workplace is unlawful. See Section 15.

The right to equal pay for like work

Employees cannot be paid less than an equivalent employee doing the same job. Like work is defined as work 'that is the same, similar or work of equal value'. Employees cannot be paid less than an equivalent employee doing the same job. Equal pay claims can be taken on any of the nine discriminatory grounds. See Section 15.

The right to a safe workplace

Employers are responsible, as far as is reasonably possible, for ensuring a safe workplace for their employees. This includes protection from harassment, bullying and violence at work. See Section 9 and Section 15.

The right to receive a minimum amount of notice before dismissal and to bring an unfair dismissal claim

Workers are entitled to a minimum amount of notice if their employment ceases. Although the law does not protect you from dismissal, most workers are entitled to bring an unfair dismissal claim if they had been working for their employer for a year before being dismissed. You are protected against dismissal on discriminatory grounds from the start of employment. See Section 20.

The right to join a trade union and the right to seek redress for breach of your employment rights

The Irish Constitution recognises the right of every citizen to be a member of a union. Each chapter of this booklet includes a section on enforcing your rights which directs you to the various bodies that enforce employment rights legislation. These bodies are summarised in Section 1.

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This edition of Employment Rights Explained is dedicated to the memory of Dave Ellis, Community Legal Resource, who died earlier this year. Dave was the original author of earlier editions of the guide and made a most valuable contribution to the work of Comhairle (now the Citizens Information Board) and to the network of Citizens Information Services over the years. His expertise in social welfare and employment law was a great resource to information providers.

INTRODUCTION

All workers in Ireland have certain basic employment rights. This booklet explains these rights in a question-and-answer format. The questions are based on real queries that Citizens Information Services around the country answer daily.

It aims to be a first-step guide to your rights at work. By first step, we mean that it outlines your basic entitlements and directs you to further information. Each chapter also includes a list of the relevant legislation, a list of publications giving further details on the employment rights described, a section on where and how to enforce your rights and a case study that shows how the law works in practice.

The booklet addresses not just the rights of full-time employees but also those in part-time, agency and temporary employment and employees working under fixed-term or specified-purpose contracts. The booklet should be particularly useful for first-time employees. Many employers, especially those with small businesses, may also find it useful.

Foreign nationals who are legally employed in Ireland have the same rights under employment legislation as Irish workers and can enforce those rights in exactly the same way. This booklet should be a useful source of information for employees newly arrived in Ireland who may not be fully aware of their employment rights. It also contains a specific chapter on employment permits (Section 19).

Employment law can be complex at times but we have tried to make this booklet a jargon-free zone as far as possible. Where jargon cannot be avoided, we have given an explanation in the glossary at the back of the booklet (see p174). Terms which appear in the glossary are highlighted in ***bold italic*** in the booklet.

How to use this booklet

If you are starting work for the first time, you should look through the booklet and get an idea of the range of rights you have in work. Some important sections to consider when starting a job are:

- Section 2 – Are you an employee?
- Section 3 – Contract of employment
- Section 6 – Wages
- Section 7 – Hours of work

Otherwise, if you have a particular question, you should check the contents listing at the front of the booklet or the index at the back.

Some words and the names of certain agencies and government departments are highlighted in ***bold italic*** in the booklet. If you see a term such as PRSI in bold italic, this means the term is explained in the glossary at the back of the booklet. If you see the name of an agency, such as the Labour Court, in bold italic, this means the function of the agency is explained in greater detail in Section 1.

Notes on references to legislation

At the beginning of most sections, we give references for the relevant pieces of legislation discussed in the text. Each piece of legislation sets out to achieve certain aims. For example, the Terms of Employment (Information) Act 1994 requires employers to give their employees certain information on their terms of employment in writing.

An Act also usually allows for the introduction of further regulations. These regulations give further detail to develop the aims of the legislation and are referred to as Statutory Instruments or SIs. The reference to an SI also gives the number and year of the regulation. For example, the Terms of Employment (Information) Act 1994 Order SI 4/1997 is regulation number 4 of 1997 and it provides detail on particular written information to be supplied to young employees.

Copies of all legislation are available from:

Government Publications Sales Office,
Sun Alliance House, Molesworth Street, Dublin 2.
Tel: (01) 661 3111

The text of the Acts and Statutory Instruments up to 2005 is also available on www.irishstatutebook.ie. More recent Acts and Bills are available on www.irlgov.ie – through the Houses of the Oireachtas link. The www.acts.ie website offers electronic versions of Acts in both Irish and English. A further source is the Department of Enterprise, Trade and Employment website www.entemp.ie

Citizens Information

Citizens Information Services (CISs) provide free, confidential and impartial information on all aspects of rights and entitlements. A nationwide network of 42 CISs delivers information from 254 locations including 51 full-time centres. Each CIS is an independent organisation but all are supported by the Citizens Information Board, the statutory body which promotes and supports the delivery of information, advice and advocacy on social and civil services to the public. Further information is available from your local Citizens Information Service (see Section 23).

CISs give information on topics such as social welfare, health services, employment law and redundancy, income tax, housing, family law, consumer affairs, and local organisations and services. When necessary, staff can help you access your entitlements by contacting government departments or other agencies. They also help people who are appealing against decisions and can advocate on their behalf.

You can also call the Citizens Information Phone Service (CIPS) on Lo-Call 1890 777 121 or contact CIPS by email at information@citizensinformation.ie. The phone service is available from Monday to Friday, 9.00am to 9.00pm.

Online information is provided on the Citizens Information website (www.citizensinformation.ie) which gives detailed information on all the employment rights and entitlements covered in this booklet.

Feedback

Your comments and suggestions on the booklet are always very welcome. There is a feedback form at the back of this booklet and you can send feedback and comments to:

Information Publications
Citizens Information Board
7th Floor, Hume House, Ballsbridge, Dublin 4.
Email: publicationsfeedback@ciboard.ie

SECTION 1 ENFORCING YOUR EMPLOYMENT RIGHTS

Having a right, such as maternity leave, is not much use to you if your employer refuses to implement the legislation and you cannot obtain your rights. If a problem comes up, it may be possible to sort it out within the workplace without having to use formal complaint procedures. You should use any supports available, for example, a trade union or your local Citizens Information Service to try to solve the problem.

However, resolution within the workplace may not always be possible. In such circumstances, you may have no other choice but to bring a complaint to the appropriate enforcement body. This chapter lists the main enforcement bodies in Ireland and their roles. It also lists relevant government departments and agencies that can give you further information on your rights and entitlements.

Making a complaint

Where you make a complaint depends on the employment law that applies to the employment right. For example, your annual leave entitlement is set out under the Organisation of Working Time Act 1997 and you should apply to a Rights Commissioner if you have a complaint about your entitlements. Generally, you need to fill out a specific form detailing your complaint under the relevant legislation.

Each chapter in this booklet includes an *Enforcing your rights* section which tells you where to seek redress for breaches of that particular legislation. Redress means compensation for or remedy of an injustice and to 'seek redress' means to avail of your rights under the legislation.

Generally, the bodies which enforce employment rights have hearings that are less formal than the normal court setting and some of the hearings are held in private. As you can present your own case, it is not necessary to have a solicitor or other representative. However, you should consider using representation if you have access to it, for example through a union official or other advocate.

The bodies involved in hearing complaints and enforcing employment legislation are outlined below. When you see the names of departments and agencies highlighted in ***bold italic*** in the text of this booklet, you can refer to this section to find out more about their functions. You will find their contact details in Section 22 *Useful addresses*.

Rights Commissioner

Rights Commissioners are independent officers of the Labour Relations Commission who hear disputes on a wide range of employment rights matters. Apart from disputes under payment of wages legislation, hearings are held in private and the Rights Commissioner will try to reach a settlement of the dispute between the parties. If no such settlement is possible, the Rights Commissioner will make a decision or a recommendation on the case. If you are dissatisfied with the Rights Commissioner's decision, you have the right of appeal, usually to the Employment Appeals Tribunal but in some instances to the Labour Court.

Certain categories of workers employed by the State cannot bring cases to the Rights Commissioner Service under some legislation. Teachers, civil servants, the Gardaí and members of the Defence Forces and the Prison Service should take advice before submitting a claim.

Publication/Leaflet: *The Rights Commissioner Service* – The Labour Relations Commission

Employment Appeals Tribunal

The Employment Appeals Tribunal (EAT) is an independent body set up to provide a quick, inexpensive and relatively informal way for individuals to seek remedies for alleged infringements of their statutory employment rights. It hears a wide range of disputes such as minimum notice, dismissal and redundancy. The tribunal consists of three people – a chairperson who is a practising solicitor or barrister, and one representative each from panels formed by trade unions and employer organisations. The people sitting on the EAT cannot have a personal interest in the case. Hearings are generally open to the public and proceedings may be reported in the media.

Publication: *Explanatory Booklet on the Employment Appeals Tribunal* – Department of Enterprise, Trade and Employment

Labour Court

The main function of the Labour Court is the settlement of industrial relations disputes. The court also hears appeals under employment equality legislation on the decisions of the Equality Tribunal. It hears appeals on the recommendations of a Rights Commissioner in relation to such matters as organisation of working time, the national minimum wage, part-time work and fixed-term work legislation. Although the Labour Court's recommendations in trade disputes are not legally binding, its determinations under employment legislation and breaches of registered employment agreements are legally binding.

Publication: *Guide to the Labour Court* – Department of Enterprise, Trade and Employment

Labour Relations Commission

The Commission has an advisory role on industrial relations in general, and provides a conciliation service in the case of trade disputes. Most importantly from the point of view of this publication, the Commission is responsible for the Rights Commissioner Service. The Labour Relations Commission also offers the Workplace Mediation Service which aims to resolve workplace disputes and disagreements, particularly between individuals or small groups.

Publication: *Labour Relations Commission: Services & Information* (a series of leaflets) – The Labour Relations Commission

Equality Tribunal

The Equality Tribunal investigates complaints of discrimination. Complaints cases arising under both employment equality and equal status legislation may be referred to the Director of Equality Investigations. The Director may, if the parties agree, refer the case

for mediation if it appears possible to resolve the dispute in this way. Otherwise, the case will be investigated by the Equality Tribunal. Each case is assigned to an equality officer who will hold a hearing into the matter and make a decision on it. Equality officers also deal with mediation and are described as equality mediation officers for this purpose. Decisions of the Equality Tribunal and mediation settlements are binding and enforceable through the Circuit Court. Either party may, however, appeal a decision of the Equality Tribunal to the Labour Court. Employment equality cases taken on gender grounds may be referred directly to the Circuit Court.

Equality Authority

The Equality Authority differs from the other bodies listed above. It is not an enforcement body or agency. Instead it is a source of information and, where appropriate, representation. The Authority works to eliminate discrimination and to promote equality of opportunity on nine grounds. These are gender, marital status, family status, age, sexual orientation, religious belief, disability, race and membership of the Traveller community. The Authority provides information on equality matters and has a legal service that may at its discretion, where it considers the case to be of strategic importance, provide free legal advice and/or representation for those making complaints of discrimination under equality legislation.

Health and Safety Authority

The Health and Safety Authority (HSA) is the national body in Ireland with responsibility for securing health and safety at work. It is a state-sponsored body, operating under the Safety, Health and Welfare at Work Act 2005 and it reports to the Minister for Enterprise, Trade and Employment. The HSA has overall responsibility for the administration and enforcement of health and safety at work in Ireland. The HSA monitors compliance with legislation at the workplace and can take enforcement action (up to and including prosecutions).

Data Protection Commissioner

The Commissioner implements the data protection legislation to protect the privacy of individuals about whom there is personal information on computer or on file. The Commissioner deals with complaints such as a refusal to allow access to personal information or a refusal to correct inaccuracies in such information. The Commissioner also maintains a register that gives general details about how government departments, statutory bodies, financial institutions, and any person or organisation retain and manage sensitive personal data.

Office of the Information Commissioner

The Information Commissioner investigates complaints of non-compliance with the freedom of information (FOI) legislation and promotes a freedom of information culture within public bodies covered by that legislation.

Department of Enterprise, Trade and Employment

This Department holds overall responsibility for employment legislation. Some of its functions – the Employment Rights Unit, the Labour Inspectorate and its enforcement and prosecution function – have been taken over by the new National Employment Rights Authority (NERA).

National Employment Rights Authority

The role of the National Employment Rights Authority (NERA) is to ensure better compliance with employment rights legislation. It aims to do this through the provision of information, supported by enforcement. NERA has been established on an interim basis pending legislation to place it on a statutory footing. NERA has three main service areas:

- Information
- Inspection
- Enforcement and prosecution.

Information

NERA provides impartial information on a wide variety of employment rights legislation to employees and employers by telephone, in writing, by email and through ongoing public awareness programmes. NERA also provides an extensive range of explanatory leaflets and a comprehensive guide to labour law. NERA's information service replaces the former Employment Rights Unit in the Department of Enterprise, Trade and Employment.

Inspection

NERA is responsible for monitoring a range of employment rights for all workers in Ireland. The inspectors operate in a fair and impartial manner, carrying out a variety of routine planned inspections throughout the country and also investigating alleged employment rights breaches. NERA's inspection function replaces the former Labour Inspectorate in the Department of Enterprise, Trade and Employment.

Enforcement and prosecution

Where evidence of non-compliance with employment rights legislation is found, NERA inspectors seek redress from the employer for the employee. In some cases, NERA can initiate prosecutions against the employer. In some circumstances, NERA will also pursue the enforcement of awards made by the Labour Court and the Employment Appeals Tribunal.

Publication: *Guide to Labour Law* – Department of Enterprise, Trade and Employment/NERA

Department of Social and Family Affairs (DSFA)

This Department is responsible for the administration and delivery of social insurance and social assistance schemes including provision for unemployment, illness, maternity, caring, widowhood, retirement and old age. It pays, for example, Maternity Benefit and Illness Benefit. It is also responsible for the administration of social insurance or ***PRSI*** contributions and holds a record of PRSI contributions paid by employees.

If your employer is not paying PRSI on your behalf, you can contact the Social Welfare Inspectorate (through your Social Welfare Local Office) and request that an inspector investigate the matter. Social Welfare Inspectors are allowed to enter your workplace without notification and can interview your employer or anyone in the premises. It is an offence to obstruct or delay an inspector in the exercise of their functions.

Revenue Commissioners

This body is responsible for collecting taxes and PRSI, and enforcing tax laws. If your employer is not paying tax on your behalf, you can report them to your local inspector of taxes through your district tax office.

FÁS

FÁS is the national training and employment body. It provides a recruitment service to jobseekers and employers. FÁS is also responsible for employment schemes such as the Community Employment programme for long-term unemployed people and the Supported Employment Programme for people with disabilities.

SECTION 2 ARE YOU AN EMPLOYEE?

Importance of knowing who is an employee

Deciding who is an employee

Job scheme participants

Why is it important to decide if a person is an employee or not?

Asking if someone is an employee may sound like a silly question. Usually it is very obvious whether or not a person is an employee. However, sometimes the answer may be less clear. For example, a business anxious to avoid employment legislation, such as ***PAYE*** and ***PRSI***, may insist that all the people working for the firm are self-employed rather than employees.

Deciding whether a person is an employee or not has important implications for the person concerned. Firstly, most of the employment protection provided by law only applies to employees. So if you are not considered an employee, you do not have legal protection in areas such as annual leave entitlements, unfair dismissal and redundancy. Secondly, your PAYE and PRSI situation differs depending on whether you are an employee or not. For example, self-employed PRSI contributors are not covered for the social welfare Illness Benefit payment if they are unable to work due to illness.

Who decides?

Even though a business may insist that a person is not an employee (or the parties agree that this is the case), that is not the end of the matter. The ***Revenue Commissioners***, or the Scope Section of the ***Department of Social and Family Affairs***, or perhaps a court or tribunal will decide the matter by looking at the reality of the situation. So it could be that in law you are considered an employee, even though you have agreed with another person that you will work for him or her as a self-employed person.

How is the decision made?

The courts have looked at this question many times and have said that in making the decision the following questions need to be asked:

- Is the person (the possible employee) under the control of another (the possible employer) who directs how, when and where the work is to be carried out?
- Is the person supplied with the materials to do the work?
- Is the person supplied with the equipment to do the work?
- Is the person receiving an agreed weekly or monthly payment?
- Is the person paid sick or holiday pay?
- Is the payment subject to PAYE and PRSI deductions?
- Does the person have to do the work or can it be given to someone else to do?

If the answer to some or all of these questions is Yes, then it may be an employee/employer situation. It is only "may be" because it depends on all the circumstances of each case. In most cases, it is clear whether a person is an employee or not. However if this is a problem for you, then it is best to get more detailed legal advice or guidance from the Revenue Commissioners or the Department of Social and Family Affairs (Scope Section).

Scope Section,
Department of Social and Family Affairs,
Oisin House, 212-213 Pearse Street, Dublin 2.
Tel: (01) 704 3000
Email: info@welfare.ie

I am employed by a relative, what is my position?

If you are employed by a close family relative, your employment rights may be affected.

The national minimum wage legislation does not apply where the employee is a close relative of the employer.

The following legislation does not apply where the employee is employed by a close relative, and where the place of work is a private house or farm and both the employee and the employer reside there:

- Rest periods, weekly working hours, night work and zero-hours working under the Organisation of Working Time Act 1997
- Redundancy
- Minimum notice
- Unfair dismissals.

Restrictions on the employment of children and young people do not apply if the employment is by a close relative in a private house or on a farm, where both the employer and the employee live, and involves work in a family business other than industrial work.

You are not covered by PRSI if:

- You are employed by your spouse
- You are employed as an employee by a prescribed relative* and the family employment relates to a private dwelling house or a farm in or on which both you and the employer reside
- You assist or participate in the running of the family business, such as a shop, but not as an employee.

* *A prescribed relative is a parent, grandparent, step-parent, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister.*

Are people on job schemes such as Community Employment considered employees?

There are a variety of employment schemes in operation with different qualifying requirements and financial support systems. For example, under the Back to Work Allowance scheme, people receiving certain social welfare payments may return to work and have their wages supplemented by a part payment of the social welfare benefit for a set period. Under such a scheme, the participants are employees and entitled to the various employment protection measures outlined in this booklet – subject to the relevant qualifying conditions. However, they are not required to pay tax or PRSI. Employers may also qualify for the PRSI Exemption Scheme.

In other schemes such as Community Employment, the participant receives a subsidy, funded by FÁS through the scheme sponsor, to undertake work and training with an organisation approved by FÁS. Participants on such a scheme are employees of the sponsor. Participants pay Class A employee PRSI contributions and are treated as employees by the social welfare system. In addition, FÁS recognises that a range of employment measures apply to participants. These include a written statement of terms as required by the Terms of Employment (Information Act) 1994, public holidays, annual leave, maternity leave, health and safety, and minimum notice requirements. FÁS recognises that unfair dismissal and redundancy rights may also apply, subject to normal qualifying conditions. However, participants are not regarded as fixed-term workers under the Protection of Employees (Fixed-Term Work) Act 2003 (see Section 4). If you are a participant in a FÁS scheme and have a difficulty which cannot be resolved at local level, you can refer the dispute in writing to:

FÁS Client Services Commissioner,
PO Box 5656, 27-33 Upper Baggot Street, Dublin 4.
Tel: (01) 607 0500

ENFORCING YOUR RIGHTS

If you believe you are an employee but the person you are working for insists you are, for example, self-employed, you should refer the matter for decision to either the Revenue Commissioners or the Department of Social and Family Affairs (Scope Section).

Q Case study: Employed or self-employed?

Mary has promoted a food product in supermarkets. She has signed an agreement with the food company that she is not an employee of the company, and that she is a self-employed person. She is told which supermarket to go to and is paid on a commission basis for sales. The food company supplies the product and her cooking equipment. She is responsible for paying her own tax and PRSI contributions. She has worked in this way for many years. Now the company says that her services are no longer required. When she asked about notice and redundancy, she was told that the company does not employ her and that only employees can get such rights. Is she an employee or is the company right?

A Mary is probably employed rather than self-employed. The fact that she signed an agreement that she was self-employed does not decide the matter. If she makes a claim for redundancy, the Employment Appeals Tribunal will have to decide whether she is an employee or not. The tribunal will take into account that she is told which supermarket to go to and that the product and equipment is supplied to her. In addition, she must do the work herself – she cannot pass it on to someone else. However, she is paying her own tax and PRSI and does not get holiday or sick pay. The tribunal will look at all the circumstances of the case, including those mentioned, and make its decision.

FURTHER INFORMATION

Publication: *Employed or Self-Employed? – a guide for tax and social insurance* – Revenue Commissioners and Department of Social and Family Affairs

Publication: *Code of Practice for determining employment and self-employment status of individuals* – Department of Enterprise, Trade and Employment

Publication: *Scope – Insurability of Employment* – Department of Social and Family Affairs – www.welfare.ie link through FOI under 'S'

SECTION 3 CONTRACT OF EMPLOYMENT

Contract of employment explained
Contract – written or oral
Probationary period
Changing the contract
Agency employees
Jobsharing
Domestic workers

PRINCIPAL LEGISLATION

Terms of Employment (Information) Act 1994 – as amended by the Protection of Employees (Part-time Work) Act 2001

Terms of Employment (Information) Act 1994 Order SI 4/1997 – requires young people and children to be given information on the law which regulates their employment

Terms of Employment (Additional Information) Order SI 49/1998 – requires information in relation to rest periods and breaks to be included in the written information available to employees

Data Protection Acts 1988 and 2003

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, that is not the full picture. The contract 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 and follow reasonable and lawful instructions from the employer
- Laws passed by the Oireachtas and EU laws may result in certain terms being part of the contract, for example, the right to take maternity leave or the right to equal pay and equal treatment. It is important to stress that such terms are part of the contract of employment even if they are not specifically included. Indeed, they override any agreement between the parties not to apply the particular law. For example, the statutory rights given by maternity leave legislation override any agreement between the parties that the employee will not take maternity leave. In this way, the legislation sets out the minimum rights to which an employee is entitled. An employee's contract may provide for greater entitlements than the statutory minimum but not less. For example, the Organisation of Working Time Act 1997 lays down that employees who have worked a set number of hours are entitled to four weeks' holidays. A contract could provide for more than four weeks' holidays in the circumstances, but it cannot provide for 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. See Section 6.

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.

Must a contract of employment be in writing?

While the complete contract of employment does not 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
- Pay – the rate or method of calculation of the employee's pay and the pay reference period for national minimum wage purposes
- That the employee may, as provided for in the National Minimum Wage Act 2000, request from the employer a written statement of his/her average hourly pay
- Frequency of pay
- Hours of work including overtime
- Details of paid leave
- Arrangements for payment when ill (sick pay) (if any)
- 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 the items within the box above, the employer may refer an employee to other documents, such as a pension scheme booklet or a collective agreement, provided that the employee has easy access to such documents.

While the statement of these terms must be signed and dated by the employer, there is no requirement for the employee to sign it.

The employer must keep a copy during the period of the employee's employment and for at least a year after it ceases.

If the employment started after 16 May 1994, the employer must give the employee the written details within two months as required by law. If the employee started before 16 May 1994, the employer must provide these details in writing within two months of the employee requesting them.

Even if an employment ends during the two-month period, the employee is still entitled to the required written statement.

Employees under 18 years of age must receive a statement of the details listed above, plus a copy of the law relating to the employment of children and young people, within one month of starting a job (see Section 18).

If an employee is asked to work abroad by the employer, he or she is entitled to receive certain terms in writing before departure. This includes the period of the employment outside the country, and the currency in which the wages will be paid.

Considerable difficulty can be avoided if employers and employees are clear about what has been agreed between them. It is in the interest of both the employer and the employee to have the terms spelled out clearly in writing. Any written documents concerning the terms of employment should be kept safely, available for reference when needed.

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. An employee on probation cannot rely on the unfair dismissals legislation unless he or she has more than a year's service, or is dismissed for trade union membership or activity, or for matters connected with the employee's pregnancy or claiming of maternity rights, or for seeking to avail of certain employment protections such as the national minimum wage. Other rights such as information on terms of employment, holidays, payslips and so on apply to an employee even while on probation.

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. The requirement for the consent of both the employer and the employee to changes to the terms of the contract is part of contract law. This principle is not affected by the Terms of Employment (Information) Act 1994 which sets out the procedures for the employer when informing the employee of any changes to the statement of the terms of employment.

It can happen that 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.

Where legislation requires an agreed change to the contract to be in writing, this should be given to the employee within one month of the change starting.

Agency workers – who are they?

An agency worker is a person who has an agreement with an agency to work for another person. For example, a secretary may have an agreement with a secretarial agency to do work for an office while one of their employees is on leave. It is obviously important for the secretary to know who is responsible for ensuring compliance with employment protection legislation – the agency or the firm for which he or she is working. There is a proposed EU Directive on the rights of agency workers but it has not yet been agreed.

Who is considered an agency worker's employer?

This depends on which rights the worker is seeking to enforce. Under the Unfair Dismissals (Amendment) Act 1993, the employer is the person for whom the employee actually works rather than the agency. Thus, in the example given above, the secretary's employer is the firm for which he or she is doing the temporary work.

Compliance with health and safety requirements is also the responsibility of the person or organisation for whom the agency worker is actually working.

Under all other employment legislation, the person who pays the wages is regarded as the employer of the agency worker. So, in the example of the secretarial agency given above, if the agency charges the office its fee and pays the actual wages of the secretary, then the agency is the employer and must fulfil the responsibilities of a normal employer. As a result, if the secretary wishes to take leave under the Maternity Protection Act 1994, she should serve the relevant notice on the agency because the agency pays her wages.

The Social Welfare (Miscellaneous Provisions) Act 2003 clarifies the ***PRSI*** position of agency workers. It provides that agency workers are insurably employed and the person who pays the wages is the employer for PRSI purposes.

Do I have a right to jobshare?

Jobsharing arises where one employment position is shared, usually between two employees. There is no statutory right to jobshare. However, a contract of employment may deal with jobsharing by stating, for example, that the employer will consider requests from employees to jobshare. In addition, custom and practice within a workplace may indicate that jobsharing has been allowed in the past. Jobsharing arrangements may not discriminate against employees on gender or any of the other grounds in the equality legislation.

If formal arrangements do not exist, an employee wishing to jobshare must negotiate this with the employer. Equally, the employer cannot force the employee to enter into a jobsharing arrangement. The details of any jobsharing arrangement should be fully discussed and agreed between the parties, including the conditions that apply if the employee wishes to go back to the previous working arrangement.

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. As a result, an employer may require an employee to seek approval before taking on additional employment.

Can an employer restrict the type of employment I take on after leaving?

Restrictions in your contract on your freedom to take up work after leaving your current employment must be reasonable in their scope, duration and location. In addition, if an employer attempts to stop or restrict an ex-employee setting up their own business, this may give rise to a breach under the competition legislation.

I am a domestic worker working for a person in their home. What are my employment rights?

The term domestic worker refers to people employed to carry out duties in a private home. These duties often include taking care of children or older people and cleaning.

As a domestic worker, you have broadly the same rights as all other workers in Ireland. The key difference is that it is not illegal to discriminate against a prospective domestic employee at the interview and selection stage. For example, an advertisement could state that a woman is required to look after children without being considered discriminatory. However once the person has taken up the job they are fully protected by anti-discrimination legislation (see Section 15).

The Code of Practice for Protecting Persons employed in other People's Homes states that employers should give employees written details of the hours of work, rate of pay, duties of the job, annual leave, place(s) of work and rest breaks. Employers must also supply payslips with details of the payment intervals, rates of pay per hour, any overtime payments made, PRSI and ***PAYE*** deductions and any other deductions.

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.

If your employer makes a significant change to your contract and you do not agree, you may feel that you have no option but to resign and claim unfair dismissal. This type of dismissal is known as ***constructive dismissal*** because, although you left the job, the employer forced you to leave by his or her actions. Before exercising this option, however, you should always seek detailed legal advice as proving constructive dismissal can often be difficult. Alternatively, you could refer the dispute to a Rights Commissioner under the Industrial Relations Acts to try to resolve the matter, and thus avoid resignation. This may be a wiser course of action as the attempts made by the employee to resolve a grievance before resigning are always relevant in an unfair dismissal claim involving constructive dismissal. You can read more on constructive dismissal in Section 20.

Case study: Changes to working hours

Q Michael has been in his job for 18 months. He works a 40-hour week, and his employer has asked him to increase his hours by working on Saturdays. He is not too keen on this, but his boss says that he agreed to be flexible when he started. Michael asked if he would get higher pay for working Saturdays, but the boss says that overtime was never mentioned when he started and they can't change the contract now. Michael has no record of what was agreed when he started, and no written contract. Must he accept the change to his working hours?

A As Michael started in the job after May 1994, his employer should have given him a written contract within two months of starting. In Michael's case, this would have included his working hours (including overtime) and his pay (including how it will be calculated). His employer says that Michael agreed to be flexible when he started the job, so this could be part of the contract. The problem for the employer is proving that this was agreed and, if so, how much flexibility was agreed. There is a big difference, for example, between being flexible by occasionally working half an hour extra and a permanent change to Saturday working. It is more than likely that if there was an agreement to be flexible, then it would not include such a major change as permanent weekend working. Michael could make a complaint to the Rights Commissioner that he had not received the terms in writing as required by law. If the employer dismissed him for not working on the Saturday, he could bring a claim for unfair dismissal. The example shows the advantage to both an employee and employer of having the contract of employment in writing to avoid misunderstandings or lapses of memory.

FURTHER INFORMATION

Publication: *Terms of Employment (Information) Act 1994 and 2001: Explanatory Booklet for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

Publication: *Terms of Employment (Information) Act 1994 to 2001 – Written Statement of Terms of Employment* – Department of Enterprise, Trade and Employment/NERA

Publication: *Code of Practice for Protecting Persons employed in other People's Homes* – Department of Enterprise, Trade and Employment

SECTION 4 FIXED-TERM OR SPECIFIED-PURPOSE CONTRACTS

Fixed-term or specified-purpose contracts – defined

General rights of employees on such contracts

Rights at the conclusion of the contract

Rights of employees whose contracts are renewed

PRINCIPAL LEGISLATION

Unfair Dismissals Acts 1977–2007

Terms of Employment (Information) Act 1994

Protection of Employees (Fixed-Term Work) Act 2003

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. The term, fixed-term contract, covers contracts that end on a specified date or when a specific task is completed, 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 Protection of Employees (Fixed-Term Work) Act 2003 applies to most employees on fixed-term contracts. However, it does not apply to agency workers, to apprentices and trainees, and to people in publicly funded employment schemes such as Community Employment.

The Act 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.

In order to invoke the anti-discrimination provisions in the Act, the fixed-term employee must find a comparator who is:

a) With either the same or an associated employer, or

b) In a ***collective agreement***, or

c) In the same sector or industry.

In the case of a) and c), the fixed-term employee must perform the same work, or similar work, or work of greater or equal value.

If you are a fixed-term employee and you have discovered that a permanent comparator (as described above) is receiving a condition of employment that you are not, you could claim that employment condition from your employer. The only way your employer could avoid granting you this condition of employment would be if they had objective

grounds for treating you less favourably than the comparable permanent employee.

The definition of comparable employees, the conditions attached and the enforcement mechanisms are similar for part-time employees (see Section 5).

Fixed-term employees are entitled to join a pension scheme unless their normal hours of work are less than 20% of the normal hours of the comparable permanent employees.

As far as is practicable, an employer should support a fixed-term employee to access training to enhance skills, career development and job mobility.

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.

Employers must inform fixed-term employees of vacancies for permanent positions. They can do this by means of a general announcement.

Does an employee who is dismissed at the end of a contract have any rights?

Unfair dismissals legislation applies as normal unless the employer has availed of the provision to exclude the operation of the legislation. To avail of the provision, the employer must put the contract in writing and include a clause stating that the Unfair Dismissals Acts 1977–2001 will not apply where the only reason for ending the contract is the expiry

of the fixed term or the completion of the specified purpose. Both the employer and the employee must sign the contract.

What happens if an employee is required to enter into a number of fixed-term or specified-purpose contracts by the same employer?

The relevant legislation is the Protection of Employees (Fixed-Term Work) Act 2003 which was enacted on 14 July 2003.

If you enter a fixed-term contract of employment on or after 14 July 2003 and are employed on two or more such contracts for four continuous years and if the contract is renewed again after that, then the contract is deemed to be one of indefinite duration. This applies unless the employer has objective grounds for renewing the contract again on a fixed-term basis.

If you entered a fixed-term contract before 14 July 2003 and were employed on such a contract for three continuous years, the contract can only be renewed one more time on a fixed-term basis for up to one year. If it is renewed again after that, it is deemed to be a contract of indefinite duration, unless your employer has objective grounds for renewing the contract again on a fixed-term basis.

The Unfair Dismissal Acts 1977–2001 contain a provision that aims to ensure that successive temporary contracts are not used to avoid that legislation. Where a fixed-term or specified-purpose contract expires and the individual is re-employed within three months, the employee may be considered in some cases to have continuous service.

Therefore, even where an employer excludes the unfair dismissals legislation in the manner described above, a ***Rights Commissioner*** or the ***Employment Appeals Tribunal*** will consider whether the use of such contracts was wholly or partly to avoid the employee having the protection of the unfair dismissals legislation. If it is considered that this was the case and the contracts were not separated by more than three months and the job was at least similar, then the case can be dealt with

as if there was continuous employment and the employer will be required to justify the dismissal in the normal manner.

ENFORCING YOUR RIGHTS

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 (see Section 20).

An employer is prohibited from victimising a fixed-term employee who seeks 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.

Q Case study: Fixed-term contracts

Paul was employed under a series of fixed-term contracts for 11 months, doing the same job, and with no more than a month's gap between contracts. He has now been dismissed at the end of a further 11-month contract because the employer says his work is not up to standard. He had received no complaint about his work up to that point. When he said he would make a claim under the Unfair Dismissals Act, the employer told him that he couldn't as he hadn't been employed for a year. What rights does he have?

A There are a number of questions that arise here concerning whether Paul's employer complied with the provisions of the Protection of Employment (Fixed-Term Work) Act 2003. Did the period of the various fixed-term contracts exceed the maximum period allowed? If so, can this be objectively justified by the employer? Did Paul receive the proper information, including a written statement justifying the renewals and the failure to give an open-ended contract?

If Paul's employer complied with the 2003 Act, the next question is whether there were written contracts which specifically excluded the Unfair Dismissals Acts. If not, then Paul may be entitled to rely on the unfair dismissal legislation by arguing that when his previous contract ended it was followed by re-employment within a month so that the continuity of the employment was not broken. Even if the employer has specifically excluded the Acts in Paul's contract, Paul may be able to rely on the provision that, where the use of such contracts is considered to be to avoid the Acts, the employment may be treated as continuous. As Paul was given a new contract within three months and he was doing the same work, it is quite possible that he will be able to rely on this provision. His employer would have to show that there was some valid reason for continually using fixed-term contracts other than just to avoid the Acts.

If it was decided that Paul's employer specifically excluded the Unfair Dismissals Act from the written contracts, the case would proceed as normal and Paul's employer would have to justify the dismissal. Given that Paul had received no warning that his work was not up to standard, this could prove a difficult task for the employer.

FURTHER INFORMATION

Publication: *Protection of Employees (Fixed-Term Work) Act 2003: Explanatory leaflet for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

SECTION 5 PART-TIME EMPLOYEES

Part-time employees – defined

Rights of part-time employees

PRINCIPAL LEGISLATION

Protection of Employees (Part-Time Work) Act 2001

Who is a part-time employee?

A part-time employee is an employee whose normal hours of work are less than the normal hours of a comparable employee.

Who is a comparable employee?

A comparable employee (called a ***comparator***) is one who is doing the same or similar work. The work of the part-time employee must be of equal or greater value compared with the comparator's work. The comparable employees must be employed by the same or an associated employer, or in the same industry or sector, or designated as such in a ***collective agreement***.

What rights do part-time workers have?

In general, a part-time employee may not be treated less favourably than a comparable full-time employee 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 part-time contract.

If you are a part-time employee and you have discovered that a comparator (as described above) is receiving a condition of employment that you are not, you could claim that employment condition from your employer. The only way your employer could avoid granting you this condition of employment would be if they had objective grounds for treating you less favourably than the comparable full-time employee.

In relation to a pension scheme or arrangement, an employee who normally works less than 20% of the normal hours of the comparable full-time employee can be treated in a less favourable manner. However, this does not prevent an employer and a part-time employee from entering into an agreement whereby the part-time employee receives the same pension benefits as a comparable full-time employee.

Where employers try to justify less favourable treatment on objective grounds, they have to show that the difference in treatment is:

- Based on grounds other than the part-time status of the employee,

and

- These grounds are for the purpose of achieving a legitimate objective of the employer, and are
- Appropriate and necessary for that purpose.

The entitlement of the part-time employee is in proportion to the entitlement of the full-time employee.

The legislation listed below applies to all employees regardless of the number of hours worked. Other qualifying conditions, such as length of service, continue to apply in the same way to all employees. For instance, this means that the previous condition in the Terms of Employment (Information) Act 1994 no longer applies – that the Act only covered employees working eight or more hours a week. However, the condition in the 1994 Act of at least one month's service still does apply.

Adoptive Leave Acts 1995 and 2005

Carer's Leave Act 2001

Employment Equality Acts 1998 and 2004

Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004

Minimum Notice and Terms of Employment Acts 1973 and 1984

National Minimum Wage Act 2000

Organisation of Working Time Act 1997

Parental Leave Act 1998 and Parental Leave (Amendment) Act 2006

Payment of Wages Act 1991

Protection of Employees (Employers' Insolvency) Acts 1984 to 1990

Protection of Young Persons (Employment) Act 1996

Redundancy Payments Acts 1967 to 2007

Terms of Employment (Information) Act 1994–2001

Unfair Dismissals Acts 1977 to 2007

Worker Participation (State Enterprises) Acts 1977 to 2001

Part-time employees cannot be ***victimised*** for invoking their rights under the Protection of Employees (Part-time Work) Act.

Part-time casual employees may be treated less favourably if such a difference in treatment can be objectively justified. Casual employees are those with fewer than 13 continuous weeks' service who are not in regular or seasonal employment or are regarded as casually based by a ***collective agreement*** to that effect.

Do I have a right to request part-time work?

No, you do not have a statutory right to request part-time work. An employer is not obliged to provide access to part-time work to his or her employees. However, the Code of Practice on Access to Part-Time Working aims to encourage employers and employees to consider part-time work and to provide guidance on procedures to improve access to part-time work for those employees who wish to work on a part-time basis.

ENFORCING YOUR RIGHTS

Complaints under the Protection of Employees (Part-Time Work) Act 2001 Act should be brought to a Rights Commissioner within six months of the date of the contravention of the Act or the date of termination of

employment, whichever is earlier. However the Rights Commissioner may extend this period by a further six months if there was reasonable cause for not bringing the complaint within the first six months.

Q Case study: Part-time workers and public holiday entitlements

Daniel has been working part-time since June. He works from Tuesday to Saturday each week, from 6pm to 9pm. The other staff who are all full-time had a day off when the shop was closed for the public holiday in August. Daniel found out that they were paid for this public holiday and they told him he should also be paid for that day. He asked his employer about this but the employer told him because he never worked on a Monday he had no right be paid for public holidays. Who is correct?

A Daniel's employer is wrong. Before the August public holiday, he had worked in the shop for 15 hours a week for 7 weeks which came to a total of 105 hours. This meant he was entitled to public holiday leave under the Organisation of Working Time Act 1997. As he was not due to work on the day of the public holiday, he is entitled to one-fifth of his normal weekly pay. Daniel should therefore receive an extra three hours' pay.

FURTHER INFORMATION

Publication: *Protection of Employees (Part-Time Work) Act 2001: Explanatory Booklet for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

Publication: *Code of Practice on Access to Part-Time Working* – Labour Relations Commission

SECTION 6 WAGES

Payslip

Deductions from wages

Pensions

Minimum wage

Joint Labour Committees

PRINCIPAL LEGISLATION

Payment of Wages Act 1991

National Minimum Wage Act 2000

Pensions (Amendment) Act 2002

Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2) (Contributions) Regulations 1999 SI 140/1999

You are entitled to be paid in accordance with your contract and 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. Your employer is not obliged to provide a pension scheme but must facilitate you if you wish to pay into a ***PRSA***.

Am I entitled to a payslip?

Yes, the Payment of Wages Act 1991 says that all employees are entitled to receive from their employers 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.

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 Siochána
- 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 and 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 (see Section 9).

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

You can start by checking 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 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:

Information Service
Department of Social and Family Affairs,
Social Welfare Services Office, College Road, Sligo.
Tel: (01) 704 3000

What happens 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, employees are entitled to get information about it. They 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.

What are my rights in relation to PRSAs?

All employees who are not already covered by an occupational pension scheme, or who have such a scheme but cannot contribute Additional Voluntary Contributions (AVCs), must be given access to at least one standard PRSA by their employers. The employer does not have to contribute to the PRSA but may do so.

The employer must:

- Make a contract with at least one standard PRSA provider to enable the employees to participate
- Notify employees of their right to contribute to the PRSA
- Give PRSA providers reasonable access to the employees in order to enable them to agree contracts and give the employees paid time off for this purpose
- Make the necessary deductions from the employee's salary (at the employee's request)
- Send the money to the PRSA within strict time limits
- Give information to the employee about amounts deducted and sent to the PRSA provider. This can be done in the usual way on payslips.

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 Section 21 for more on redundancy and employee consultation).

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). EROs deal with particular employment sectors and are negotiated by Joint ***Labour Committees (JLCs)*** (see below for more information).

** 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, go to www.employmentrights.ie or email info@employmentrights.ie.*

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.

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 (2007) 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
- Payment in kind or benefit in kind, other than board and/or lodgings
- 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 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 such 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. Some agreements also provide for a right to a set amount of sick pay.

Employees covered by Employment Regulation Orders include those in the Joint Labour Committees below.

JOINT LABOUR COMMITTEES

Aerated waters and wholesale bottling

Agricultural workers

Brush and broom

Catering

Contract cleaning

Hairdressing

Handkerchief and household piece goods

Hotels

Law clerks

Provender milling

Retail, grocery, and allied trades

Shirtmaking

Tailoring

Women's clothing and millinery

Security industry

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
Lo-Call: 1890 80 80 90
Tel: (057) 917 8800
Website: www.employmentrights.ie

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

A number of collective agreements are also registered with the Labour Court. These are known as Registered Employment Agreements (REAs). These agreements cover pay and conditions (including sick pay) in particular employment sectors such as:

- Drapery, footwear and allied trades (Dublin and Dun Laoghaire)
- Construction industry
- Printing (Dublin)
- Electrical contracting.

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, a complaint should be made to NERA.

Complaints about breaches of a Registered Employment Agreement should be referred to the Labour Court.

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.

Q

Case study: Calculating the minimum wage

Sean works 43 hours per week including three hours on a Saturday. He is entitled to the minimum wage of €8.65 an hour as he is over 18 and isn't on a training or study course. He is paid a gross wage of €375 per week. Sean's pay includes a €20 premium for working Saturdays. He asked his employer about the national minimum wage and his employer gave him the following information:

The pay reference period is weekly. Dividing the gross pay (€375) by the hours worked (43) gives an average hourly pay of €8.72. This is slightly above the current national minimum wage of €8.65 per hour.

Is Sean's employer correct?

A

No, Sean's employer is incorrect. The €20 premium for working on Saturdays should not be included for national minimum wage purposes. This means that only €355 should be divided by 43, giving an average hourly pay of €8.25 – below the national minimum wage of €8.65.

Sean's entitlement is a basic weekly wage of €372 (€8.65 x 43) plus €20 Saturday premium. This comes to a total of €392.

Q

Case study: Deductions from wages

Cathy works in a shop and gets a set wage each week. Last week her employer found that the till was short at the end of the day. When Cathy received her wages at the end of the week, she found that her wages had been reduced by the amount missing. She feels that this was unfair as another employee worked the till for part of the day and the loss may not have been her fault. Cathy does not have a contract of employment and does not receive a payslip so is unclear what deductions are usually made from her wages. Can her employer do this?

A

The Payment of Wages Act 1991 covers the deduction of wages when the employer suffers a loss through the fault of the employee. A deduction is only permitted if the employee's contract allows it, if it is fair and reasonable and if the employee has written notice of the deduction. In this case, Cathy has no contract dealing with these matters. She did not receive written notice of the deduction and the deduction is probably not fair and reasonable as it is not certain whether Cathy was responsible for the loss to her employer. In these circumstances, the deduction is probably not lawful and Cathy could raise this with her employer and look for the return of her wages. If her employer's response to this is not satisfactory, she can bring a complaint about the deduction to the Rights Commissioner Service.

She is entitled to receive a payslip (this is a written statement of her pay with the details of any deductions), so this should be requested from her employer. She should also get a written statement of her terms and conditions of employment. If her employer fails to provide the written statement and the payslip, she should complain to the National Employment Rights Authority (NERA).

FURTHER INFORMATION

Publication: *Payment of Wages Act 1991: Explanatory Booklet for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

Publication: *Detailed Guide to the National Minimum Wage Act 2000* – Department of Enterprise, Trade and Employment/NERA

Leaflet: *National Minimum Wage Act 2000* – Department of Enterprise, Trade and Employment/NERA

SECTION 7 HOURS OF WORK

Maximum working hours

Breaks in the working day

Rest periods (during the working day and week)

Night work and Sunday working

Zero-hours contracts

Short time or lay off

PRINCIPAL LEGISLATION

Organisation of Working Time Act 1997

Organisation of Working Time (Inclusion of Transport Activities) Regulations 2004 SI 817/2004

Organisation of Working Time (Inclusion of Offshore Work) Regulations 2004 SI 819/2004

Organisation of Working Time (General Exemptions) Regulations 1998 SI 21/1998

Organisation of Working Time (Exemption of Civil Protection Services) 1998 SI 52/1998 [Exemption applies to, for example, prison, fire, or harbour police services employees]

Organisation of Working Time (Code of Practice on Compensatory Rest and Related Matters) (Declaration) Order 1998 SI 44/1998

Organisation of Working Time (Breaks at Work for Shop Employees) Regulations 1998 SI 57/1998

Organisation of Working Time (Code of Practice on Sunday Working in the Retail and Related Matters) (Declaration) Order 1998 SI 444/1998

Redundancy Payments Acts 1967–2003

Safety, Health and Welfare at Work (Night Work and Shift Work Regulations 2000 SI 11/2000

Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001 SI 473/2001

There are rules about the maximum hours an employee may work. Employees are entitled to rest periods and there are particular rules for people who work at night or on shift.

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. Those covered by the six-month average include people working in the security industry, hospitals, prisons, gas, electricity, airport, docks and agriculture. Also included in the six-month average period are employees in businesses that have peak periods at certain times of the year, such as tourism. The 12-month period applies where there has been an agreement approved by the ***Labour Court*** between employers and employees to that effect.

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. The record must also contain:

- The employee's name, address, ***PPS Number*** and a brief description of their duties
- A copy of the document provided to each employee under the Terms of Employment (Information) Act 1994
- The details of any days and hours of leave (whether by way of annual leave or public holiday) in each week and the pay for such leave
- Details of notifications under the legislation of starting and finishing times.

Does the Organisation of Working Time Act 1997 apply to all employees?

No, the Act does not cover certain employees. These include:

- Gardaí
- Defence Forces
- Employees who control their own working hours
- Family employees on farms or in private homes.

There are separate regulations governing the working time of employees working at sea and trainee doctors.

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 further break of 15 minutes after more than six hours work. If you do not receive a 15-minute break after more than four and a half hours work, then you are entitled to combine the two 15-minute breaks and have a 30-minute break after more than six hours work.

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. So, a shop employee due to work from 9am to 5pm should have a break of one hour before

3pm and this break should begin between 11.30am and 2.30pm. 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.

Alternatively, instead of giving the 24-hour rest period in the first seven days, an employer may grant two 24-hour rest periods in the following seven-day period. Although, in this alternative, the two rest periods must occur in the second seven-day period, they need not be combined. If they are combined, the two 24-hour rest periods should be preceded by a rest period of 11 consecutive hours. If they are not combined, each 24-hour rest period should be preceded by a rest period of 11 consecutive hours. 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, but we need first to clarify what is meant by night work and night worker. 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.

Before employing a person to do night work and at regular intervals while an employee is a night worker, an employer is required to make available an assessment of the effects, if any, on the health of the employee. This assessment must be made available, free of charge, to the employee. Alternatively, if the employee is entitled to have the assessment carried out by the State free of charge, the employer must make arrangements to allow the employee to access this entitlement.

If a night worker becomes ill as a result of night work, the employer should, whenever possible, assign duties to the employee that do not involve night work and which are suited to that employee.

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
- Reasonable paid time off work.

What is reasonable depends on all the circumstances. It is a matter for negotiation between the employer and the employee and, where applicable, their trade unions. Some guidance may be obtained by referring, where possible, to an agreement applying to comparable employees elsewhere in similar employment.

Do employees working under zero-hours contracts have any special rights?

A zero-hours contract is one where there is a formal arrangement that the employee is required to be available for a certain number of hours per week, or when required, or a combination of both. The protection given by the legislation does not apply to ***casual employment***.

The Organisation of Working Time Act 1997 requires that an employee under a zero-hours contract who works less than 25% of their hours in any week should be compensated. The level of compensation depends on whether the employee got any work or none at all. If the employee got no work, then the compensation should be either for 25% of the possible available hours or for 15 hours, whichever is less. If the employee got some work, they should be compensated to bring them up to 25% of the possible available hours.

For example, an employee required to be available for 20 hours per week, but who got no work, would be entitled to be compensated for 15 hours or 25% of the 20 hours (that is, four hours), whichever is the less. In this case, four hours is the lesser amount. If, on the other hand, the employee got three hours out of the 20, they would be entitled to be compensated by one hour to bring them up to 25% of the contract hours.

Can my employer cut my hours or lay me off work?

Yes, in certain circumstances. Short-time working occurs when there is a decrease in the available work and the employee earns less than 50% of their normal wage as a result. Lay off occurs where an employer is unable to provide the employee with work and where the employer believes that this lack of work will not be permanent.

Employees may be able to claim redundancy payment if they have been laid off or kept on short time for more than four consecutive weeks, or for a series of six weeks or more in a period of 13 weeks (see Section 21).

Employees must be selected for short time or lay off in a non-discriminatory way.

ENFORCING YOUR RIGHTS

You should refer disputes in relation to any of the matters discussed above (apart from redundancy payment) to a ***Rights Commissioner*** under the Organisation of Working Time Act 1997. A complaint should be made within six months of the dispute occurring. However a Rights Commissioner may extend this time limit for up to 12 months if there was reasonable cause for not bringing the complaint within the first six months.

Disputes concerning redundancy may be referred to the ***Employment Appeals Tribunal*** (see Section 21).

Case study: Working hours and rest breaks

Q A group of Polish employees work in a meat factory. They have complained about the length of the working week. They are working very long hours – sometimes up to 65 hours a week – and feel they do not receive adequate time between shifts. One worker reported that he finished his 8-hour shift at 10pm and was rostered to start his morning shift at 5.30am. Their employer says that the shift patterns at the factory require them to be flexible and that they are paid overtime when they do night work. Is their employer right?

A In this case, the Polish employees should average their working hours over a four-month period. If the average number of hours worked are more than 48 hours a week in the period, then their employer is in breach of the Organisation of Working Time Act 1997. The worker who finished his shift and started another seven and a half hours later is entitled to 11 hours of rest in a 24-hour period as well as rest breaks during his shift. The workers can refer their case to a Rights Commissioner if their employer does not reduce their working hours and give adequate rest periods between shifts.

FURTHER INFORMATION

Publication: *Code of Practice on Compensatory Rest Periods and Related Matters* – Department of Enterprise, Trade and Employment

Publication: *Code of Practice on Sunday Working in the Retail Trade* – Department of Enterprise, Trade and Employment

Publication: *Organisation of Working Time Act 1997: Explanatory Leaflet for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

Publication: *Maximum Working Hours* – Department of Enterprise, Trade and Employment

Publication: *Sunday premium provision of information – zero hours* – Department of Enterprise, Trade and Employment/NERA

SECTION 8 PRIVACY AT WORK

Access to employment files and records

Surveillance and monitoring

Internet and email use

Medical information and drug testing

Behaviour outside work

PRINCIPAL LEGISLATION

Bunreacht na hÉireann (Irish Constitution) Article 40.3.1

The Children Act 2001

European Convention on Human Rights Act 2003

Data Protection Acts 1988–2003

Freedom of Information Acts 1997–2003

Employment Equality Acts 1998–2004

Safety, Health and Welfare at Work Act 2005

Can I 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.

Employees of public bodies, covered by the ***freedom of information*** (FOI) legislation, have the right under that legislation to access their personal files on a similar basis to that which applies under data protection legislation.

Can I see references supplied to my employer?

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

Can a third party access my employment file without my consent?

Although there is a general restriction on third parties accessing your employment file without your consent, there are certain exceptions under data protection legislation. For example, the Gardaí may access your file in order to investigate an offence. The ***Revenue Commissioners*** may also access your file concerning tax payments or ***PRSI*** contributions.

The exceptions do not include the ***Department of Social and Family Affairs*** which cannot access your employment file without your consent.

Can my employer monitor my timekeeping and other aspects of my work performance?

Yes. Employers in Ireland have a legal duty to keep detailed records of employees' starting and finishing times, the number of hours worked by employees and any leave taken by employees. This duty is set down in the Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001. Employers who fail to keep records under these regulations are guilty of an offence and are liable on summary conviction to a fine.

Monitoring arrangements should be introduced in consultation with employees. They should be transparent, necessary and reasonable.

Important decisions concerning you, such as rating work performance, may not be made solely by computer or automated means unless you consent.

At work, can I make personal use of the Internet, email or phone?

Whether you can use the Internet, email or the phone for personal use is a matter for your contract of employment. You need to note, however, that the terms of that contract may be based on a spoken agreement, a written document or both.

An employer who allows employees to access the Internet for personal use should provide them with a clear statement of the policy that applies to such usage. The policy should also set out the consequences for an employee who breaches its terms.

If you are allowed to use these facilities for personal use, you should be careful not to cause offence within the workplace or use them in a way that could amount to sexual harassment or harassment on one of the other grounds covered by the equality legislation. Equally, your usage should not be such that you could be said to be bullying another employee. Behaviour of this nature would justify disciplinary action by your employer. Your employer is legally liable for your behaviour under the laws of defamation or harassment.

Can my employer monitor my use of the Internet, email or phone?

Yes, your employer may monitor your internet, phone or email usage as part of a stated policy to which your attention has been clearly drawn, either in your contract of employment or in a staff handbook. The level of monitoring must be reasonable and hidden monitoring is not permitted. However internet, email and phone use may also be monitored without your consent where it forms part of a criminal investigation by the Gardaí.

The legal reason for telephone announcements saying "calls are being recorded for quality or training purposes" is to notify/warn the public that a recording is being made.

Can my employer use surveillance cameras in the workplace?

Yes, provided there is proper consultation with employees concerning the introduction of the cameras and proper procedures are established and observed in their use. The surveillance should be transparent. The legitimate interest of the employer to protect the business will not justify any level of surveillance. The level used must be necessary and reasonable in all the circumstances.

The handling of the data collected should conform to data protection legislation and the data itself should not be kept longer than is necessary.

An employer whose suspicions are raised by footage from such cameras must ensure that proper and fair procedures are followed: for example, allowing the employee to view the evidence (the film footage), putting the allegation to the employee, allowing for a response and completing a thorough investigation.

Can my employer require me to have a drugs test?

Under the Safety, Health and Welfare Act 2005, you must ensure that you are not under the influence of alcohol and/or drugs at work to the extent that you are a danger to yourself or any other person.

Section 13 of the Act provides for drug testing in the workplace. Regulations under the Act may be introduced which would provide for testing where an employee appears to be under the influence of drugs or alcohol, or where the employee is working in a safety-critical situation or is required to undergo periodic medical assessment of fitness to work. The legislation states that if reasonably required by his or her employer, the employee must submit to any appropriate, reasonable and proportionate tests by or under the supervision of a registered medical practitioner. This legislation is relatively new and has yet to be tested.

Can my employer request me to attend a medical examination?

Yes. A prospective employer may request a candidate to undergo a medical examination prior to an offer of employment. If the result of the examination leads to the employer not making a job offer on one of the nine discriminatory grounds, the candidate may have redress under the employment equality legislation.

If you have been absent from work, you may be requested by your employer to attend a medical examination. This may be provided for in your contract of employment or by way of a policy in a staff handbook. In any event, an employer should have reasonable grounds for making the request. For example, an employee would be expected to comply with a reasonable request to establish that a medical condition or injury was genuine where the employee's absence was ongoing or recurring.

Where the outcome could have serious consequences for the employee, the employer should make the employee aware of the situation and the possible consequences and consider getting a further medical opinion.

Can I access medical information about myself?

You have a right to access medical data about yourself that is held by the employer's doctor or medical officer unless the disclosure would cause you harm either physically or mentally.

Am I required to disclose a medical condition?

An employer should only be concerned about medical conditions that relate to the particular job on offer. For example, a job involving driving or operating machinery may justify the employer's need to know if a person has a particular condition or disability. However, it is important to stress that each case must be treated on its merits. An employer must avoid blanket bans on employing people with particular conditions and comply with employment equality legislation.

You have a duty under health and safety legislation to take reasonable care to protect your safety, health and welfare and that of others who may be affected by your acts or omissions at work. This could involve a duty to disclose a medical condition that might cause a risk in the workplace.

If you are asked about relevant medical conditions and you provide information, the employer is entitled to rely on it. If the employer later

discovers that the information was false, this may justify dismissal depending on the gravity of the omission.

Can my employer seek information about my behaviour outside work?

This question may first arise when you apply for a job. You may be asked to state if you have any previous criminal convictions.

An employer should only be concerned about convictions that relate to the particular job on offer. For example, a job involving driving may justify the employer asking about previous driving convictions. A job involving handling cash may justify the employer asking about any convictions for larceny (stealing). An employer needs to have regard for equality and data protection legislation in deciding whether to ask about previous convictions. Under data protection legislation, for example, information sought should be "adequate, relevant and not excessive."

If the recruitment process does not involve a request for details of previous convictions, you are under no legal obligation to disclose any such conviction.

If you are asked about previous convictions and you provide information, your employer is entitled to rely on it. If your employer later discovers that the information was false, this may justify dismissal.

The Children Act 2001 provides that, in certain circumstances, a person who was convicted when under 18 may be treated in law as a person who has not committed an offence.

The issue of behaviour outside work may also arise where an employee is involved in misconduct outside the workplace. If an employee is to be disciplined for such behaviour, there should generally be some connection between the misconduct and the workplace or employment relationship. This may involve a direct impact on the employee's job, such as a drink-driving conviction where the job involves driving. Alternatively, the impact of the misconduct might be less direct, but it might nevertheless be accepted that it had destroyed the employer's trust in the employee or severely affected the public face or reputation of the company or employer. Each case depends on the particular circumstances. In any event, the employer must always take care to follow fair ***disciplinary procedures***.

Under the employment equality legislation, the sexual or other harassment of a fellow employee outside the workplace but in the course of the employment (such as at a work-related training or social event) amounts to discrimination (see Section 15).

ENFORCING YOUR RIGHTS

If someone ignores your access request or refuses to correct information about you which is inaccurate or if you feel that any person or organisation is not complying with their responsibilities, then you may complain to the Data Protection Commissioner who will investigate the matter for you. The Commissioner has legal powers to ensure that your rights are upheld.

You also have the right to seek compensation through the courts if you suffer damage as a result of the mishandling of information about you.

Q

Case study: Appropriate use of email

Rachel had been with her employer for four years. The employer had a handbook that included an email policy. The policy gave the employer the right to monitor any employee's email account and stated that any email sent by an employee on the employer's system was not private. When Rachel was absent from work sick, her manager, with Rachel's knowledge, accessed her email to check on company business. During this check, it became clear that Rachel had been using her email to make derogatory remarks about other employees and allegations about certain managers. The employer commenced a full investigation under the company ***disciplinary procedures*** which were followed in detail. The employee's defence was that the emails were not

offensive and not intended to be seen by their targets. The outcome of the investigation was to dismiss Rachel, who lodged a claim for unfair dismissal.

A The Employment Appeals Tribunal rejected Rachel's claim for unfair dismissal. The Tribunal considered that the employer had conducted a thorough and fair investigation. In the Tribunal's view, the emails were at the very least offensive and had destroyed trust, which was fundamental to proper working conditions.

FURTHER INFORMATION

The Office of the Data Protection Commissioner – www.dataprivacy.ie

Publication: *Data Protection Acts 1988 and 2003 – A guide to your rights* – Data Protection Commission

Health and Safety Authority – www.hsa.ie

Office of the Information Commissioner – www.oic.ie

SECTION 9 HEALTH AND SAFETY AT WORK

Safety statement

Protective equipment

Visual display units (VDUs)

Employee duties

Reporting accidents

Pregnant employees

Bullying or violence in the workplace

Young people

PRINCIPAL LEGISLATION

Safety, Health and Welfare at Work Act 2005

Safety, Health and Welfare at Work (General Application) Regulations 2007 SI 299/2007 (comes into force 1 November 2007)

Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006 SI 386/2006

Safety, Health and Welfare at Work (Construction Regulations) 2006 SI 504/2006

How should employers check the safety in a workplace?

Under the Safety, Health and Welfare at Work Act 2005, every employer is required to prepare a safety statement for the workplace. This statement should contain an identification of the hazards that are present in the workplace. In addition, it should contain an assessment of the risks arising from these hazards, and the steps that are to be taken to deal with these risks. The statement should also contain the details of the people in the workplace responsible for safety issues. If bullying or violence at work are considered potential hazards, the safety statement should identify

them as such. Employees should have access to this statement and employers should review it on a regular basis. The safety statement must be reviewed and brought to the attention of employees at least annually (or when it is amended).

Employers must consult with employees concerning health and safety matters.

Employers, as far as is reasonably possible, must prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk.

The ***Health and Safety Authority*** can advise employers on all aspects of safety in the workplace including drawing up a safety statement.

Does an employer have to provide protective equipment?

An employer should tell employees about any risks that require the wearing of protective equipment. If these risks are present, the employer should provide protective equipment (protective clothing, headgear, footwear, eyewear, gloves, and so on) together with training on how to use it where necessary. The protective equipment should be provided free of charge to employees if it is intended for use at the workplace only. Usually, employees should be provided with their own personal equipment.

Does my employer have to provide any special protection for employees using visual display units (VDUs) such as computers?

Yes, an employer must take a range of measures with regard to VDUs. These include checking the reflection and glare, the operator's position in front of the VDU, the keyboard, and the software in use. Operators must get adequate breaks from the VDU. In addition, the employer must arrange for eye tests and glasses to be provided where necessary.

What are my responsibilities as an employee with regard to health and safety?

You are required to take reasonable care for your own health and safety, avail of training provided by the employer and use machinery, tools, and other equipment correctly. You should use protective equipment provided whenever necessary.

You have a duty not to be under the influence of drink or drugs in the workplace. In addition, you are required to undergo any reasonable medical or other assessment if your employer requests you to do so.

Employees are entitled to choose a safety representative to represent them in consultations with the employer concerning health and safety matters. A safety representative has various powers including the right to inspect the place of work provided they have given the employer reasonable notice.

Should accidents and injuries be reported?

Yes, all accidents should be reported to the employer who should record the details of the incident. You should report an accident even if at the time it does not seem to be serious. By doing this, you will protect yourself from a situation where an injury proves more serious than first thought but the failure to report it means that the employer has no record of the accident taking place. Reporting will help safeguard social welfare and other rights which may arise as a result of an occupational accident.

An employer is obliged to report any accident that results in an employee missing three consecutive days at work (not including the day of the accident) to the Health and Safety Authority.

Are there special health and safety provisions when an employee is pregnant?

An employer should carry out separate risk assessments in relation to pregnant employees. If there are particular risks to an employee's

pregnancy, these should be removed or the employee moved away from them. If neither of these options is possible, the employee should be given health and safety leave from work, which may continue up the beginning of maternity leave. If a doctor certifies that night work would be unsuitable for a pregnant employee, the employee must be given alternative work or health and safety leave.

Following an employee's return to work after maternity leave, if there is any risk to the employee because she has recently given birth or is breastfeeding, it should be removed. If this is not possible, the employee should be moved to alternative work. If it is not possible for the employee to be assigned alternative work, she should be given health and safety leave. If night work is certified by a doctor as being unsuitable after the birth, alternative work should be provided. If alternative work cannot be provided, the employee should be given health and safety leave. There are limitations on the length of leave arising in the above situations.

During health and safety leave, employers must pay employees their normal wages for the first three weeks, after which Health and Safety Benefit may be payable. The rate of payment of this benefit is equivalent to Illness Benefit, and is increased by additional payments for a dependent spouse or partner plus children, where appropriate.

What rights do employees have when faced with violence or bullying at work?

The possibility of violence towards employees should be addressed in the safety statement. For example, factors such as the isolation of employees, the location, and the presence of cash would all need to be taken into account. Thereafter, appropriate safeguards should be put in place to eliminate the risk as far as possible, and the employee provided with appropriate means to minimise the remaining risk, for example, with security glass and alarms.

The Health and Safety Authority has a ***Code of Practice*** detailing the procedures for addressing bullying in the workplace. The Code explains what bullying means and deals with the responsibilities of employers

and employees to prevent or resolve it. The Code reflects the legal requirement that employers carry out a risk assessment and, where bullying is identified as a hazard, that they ensure this is included in the safety statement.

The Code sets out guidance notes for effectively addressing bullying in the workplace and recommends that companies have a bullying prevention policy in place.

Workplace bullying is defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise. It may be carried out by one or more persons at the workplace and/or in the course of employment, for example, where employees are at an employment-related training event. The conduct complained of must be such that it could reasonably be considered as undermining the employee's right to dignity at work. An isolated once-off incident is not considered to be bullying.

An employer should have procedures in place to deal with workplace bullying. The Code recommends a phased approach to resolving bullying issues: firstly, by informal resolution in the workplace; secondly, through a formal complaints procedure if the issue cannot be resolved informally. If both these approaches fail, outside support can be requested to resolve the issue.

As part of the informal procedure, the employee could seek to resolve the situation by an approach to the perpetrator. Alternatively, the employee could discuss the problem with a contact person such as a work colleague or line manager, and this person might then approach the perpetrator on the employee's behalf.

The Code lays out the formal procedure to be followed by the company if the informal procedure does not solve the matter. The complaint needs to be made in writing and signed and dated by the complainant. Then a formal investigation takes place, based on the company's internal bullying prevention policy. An internal appeals procedure should be available to the parties.

The employer has a duty to provide a safe and healthy work environment and should act upon any such complaints immediately. Ignoring such complaints could expose the employer to a possible claim for damages by the employee. The employee could also refer the matter to a ***Rights Commissioner*** for investigation.

Sexual harassment or harassment in relation to an employee's race, religion, disability, marital status, family status, sexual orientation, age or membership of the Traveller community is considered to be discrimination under the Employment Equality Acts 1998–2004 (see Section 15).

Are there any special requirements in relation to young people?

Yes, an employer has a duty to assess any risk to a young person the same as to any other employee, but also to consider the young person's lack of experience, absence of awareness or lack of maturity. A young person is an employee under 18 years of age. A risk assessment should be carried out before a young person is employed, including an assessment of the appropriate training and level of supervision required. If certain risks are present, including any risks which it may be assumed cannot be recognised or avoided by the young person owing to lack of experience and so on, then the young person should not be employed.

ENFORCING YOUR RIGHTS

For problems with health and safety, contact the Health and Safety Authority (see the end of this section).

Employees can appeal to a Rights Commissioner against any form of penalisation (including dismissal) in their employment as a result of carrying out their duties in relation to safety matters.

If your employer does not have bullying and harassment policies and procedures in place, you can make a formal complaint to the Health and Safety Authority who will then request a copy of the policy from the employer. If this policy is deficient in any way, the Authority will issue recommendations on what changes are to be made.

If you make a complaint to your employer about bullying in line with existing policy and procedure but nothing happens and the bullying continues, you can contact a Rights Commissioner. They will look at the internal procedures carried out and may conduct a new investigation. If the complaint is made against a senior member of the organisation, external services may be required such as the mediation services of the ***Labour Relations Commission***.

Deductions made from your wages in connection with safety equipment are not allowed by law, and a complaint may be made to a Rights Commissioner (see Section 6).

Victimisation of employees exercising rights under the legislation, such as making a complaint, is prohibited.

An employee who suffers injury at work cannot seek compensation from the employer under the health and safety legislation. However, he or she may make a claim against the employer through the civil courts.

Case study: Health and safety at work

Tina works for a local gym as a cleaner. She works with two others. They are responsible for, among other things, the cleaning of the toilets and shower areas. However, they are having great difficulty in getting basic cleaning supplies from their employers who state they do not have funds to buy all that is required. Tina and her colleagues recently did not have disposable gloves to wear while cleaning. She was worried about contact with the strong chemicals used to clean the gym and bought some gloves out of her own money to protect her hands. What are her rights?

A Tina's employer owes her a ***duty of care*** to ensure a safe working environment.

Tina and her colleagues work with chemicals which are considered hazardous and her employer should have a safety statement in place that identifies this kind of hazard. The hazard cannot be eliminated since the chemicals are needed to carry out cleaning but any risks arising from the hazard should be identified in the safety statement and the risk of injury or accident connected with the hazard should be reduced as far as possible. Protective equipment such as gloves should certainly be provided free of charge. If the employer does not take the necessary safety steps, then Tina should raise the matter with her union representatives (if any) or contact the Health and Safety Authority.

FURTHER INFORMATION

Health and Safety Authority – Metropolitan Building, James Joyce Street, Dublin 1. Lo-Call 1850 289 389 or Tel: (01) 614 7000. www.hsa.ie

Regional Offices: Athlone, Cork, Kilkenny, Galway, Limerick, Sligo, and Waterford

Publications: *Guide to the Safety, Health and Welfare at Work Act 2005, A Short Guide to the Safety, Health and Welfare at Work Act 2005, Violence at Work, VDU – An Easy Guide for Employees, Pregnant at Work, Guidelines on risk assessments and safety statements and the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work* – Health and Safety Authority

Publication: *Code of Practice Detailing Procedures for Addressing Bullying in the Workplace* – Department of Enterprise, Trade and Employment

SECTION 10 LEAVE FROM WORK

Sick leave

Force majeure and compassionate leave

Jury service

Career break

PRINCIPAL LEGISLATION

Juries Act 1976

Parental Leave Act 1998 – force majeure leave

Parental Leave (Notice of Force Majeure Leave) Regulations 1998 SI 454/1998

Parental Leave (Amendment) Act 2006

Employees may be entitled to time off in certain circumstances but are not always entitled to be paid for such time off.

Am I entitled to be paid while off work sick?

There is no general right in legislation for an employee to be paid while off work sick. Your rights will generally depend on the terms of your contract of employment or any trade union/employer ***collective agreement***. You may have no sick pay entitlement, or you may receive payment for a specific length of time or at your employer's discretion. Certain ***Employment Regulation Orders*** (EROs) and Registered Employment Agreements (REAs) do provide for a legal entitlement to pay while you are ill and off work (see Section 6). Sometimes you may be entitled to receive sick pay based on ***custom and practice*** in the workplace.

Your employer is obliged to provide you with information on sick pay entitlements in your contract of employment.

If you are entitled to sick pay from your employer, you will probably be required to sign over any Illness Benefit payment from the ***Department of Social and Family Affairs*** to your employer for the duration of the sick pay.

If I have a family death or emergency, does my employer have to give me time off?

The Parental Leave Act 1998 contains a limited right to leave from work in a time of family crisis. This is known as force majeure leave. It arises where, for urgent family reasons, the immediate presence of the employee is indispensable owing to an injury or illness involving a close family member such as a spouse or partner, a parent, a son, daughter, brother, sister or grandparent. The Parental Leave (Amendment) Act 2006 extended the force majeure provisions to cover people in a relationship of domestic dependency, including same-sex partners. The maximum amount of such leave is three days in any 12-month period, or five days in a 36-month period. You are entitled to be paid while on force majeure leave.

Force majeure leave does not apply to the death of a close family member. Leave following a death (often called compassionate leave) is not an entitlement in legislation. Whether you can take time off in these circumstances depends on any provision in your contract providing for such leave, the existence of a custom and practice within the job, or the employer's discretion. In practice, many employers do allow for paid compassionate leave.

Does my employer have to allow me paid time off to go on jury service?

Yes, the Juries Act 1976 requires an employee or an apprentice who is called for jury service to be given time off to attend the court. The Act states that the employee or apprentice is to be treated as if present "during any period when he is absent from his employment or apprenticeship in order to comply with a jury summons". As a result, an employee or apprentice is entitled to be paid and should not suffer loss of any other employment entitlements. So, for example, the time spent on jury service will not mean any loss of annual leave entitlement.

Am I entitled to take a career break or study leave from a job?

There is no legal entitlement to take a career break or study leave. You must rely on any provision in your contract of employment or on negotiations with your employer. However, your employer should consider requests for a career break or study leave on an individual basis. Blanket refusals to consider such requests may give rise to issues under equality legislation if the refusal can be connected with one of the nine discriminatory grounds under the Employment Equality Acts (see Section 15).

ENFORCING YOUR RIGHTS

Problems arising from force majeure leave may be referred to a ***Rights Commissioner***. A complaint must be brought within six months of the dispute occurring.

Case study: Entitlement to compassionate leave

Q Anna's best friend was seriously ill in hospital following a road accident. Anna heard about this at work and was very upset. She asked her employer for time off to go to the hospital, but the employer said that he could not spare her and that she would have to go after work. Later in the week, Anna's friend died and she was given time off to attend the funeral, but the employer deducted this time off from her wages at the end of the week. Was Anna's employer correct?

A Anna had no entitlement to have time off to visit her friend in hospital unless there was any provision in her contract of employment for such leave, or an established custom and practice in her place of work. Although the Parental Leave Act 1998 allows for force majeure leave, this is confined to illness of a close relative of the employee. With regard to deducting pay for the time off for the funeral, unless there was a provision in Anna's contract of employment to the contrary, there would be no entitlement to pay.

SECTION 11 MATERNITY AND ADOPTIVE LEAVE

Medical visits and ante-natal classes

Leave entitlements and payment

Requirements for notice to employer

Returning to work

Breastfeeding

Protection of employment rights

Adoptive leave

PRINCIPAL LEGISLATION

Maternity Protection Act 1994

Maternity Protection (Disputes and Appeals) Regulations 1995 SI 17/1995

Maternity Protection (Amendment) Act 2004

Maternity Protection (Time off for Ante-Natal Classes) Regulations 2004 SI 653/2004

Maternity Protection (Postponement of Leave) Regulations 2004 SI 655/2004

Maternity Protection (Protection of Mothers who are Breastfeeding) Regulations 2004 SI 654/2004

Adoptive Leave Act 1995

Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2004 SI 667/2004

Adoptive Leave Act 2005

Employees are entitled to leave while pregnant and immediately after giving birth. Adoptive mothers are also entitled to leave, as are adoptive fathers if they are sole male adopters. You are then entitled to return to

the job you were doing before the leave began with the benefit of any improvements that may have taken place during the leave. There is no entitlement in legislation to pay from your employer during leave but most employees qualify for a social welfare payment.

Do I have to have worked a certain length of time before I am entitled to maternity leave?

No, a pregnant employee is entitled under legislation to take maternity leave provided she gives the required notice, irrespective of how long she has been working for her employer, what hours she works or the nature of her employment (permanent, fixed-term or casual).

Am I entitled to paid time off to attend ante-natal and post-natal medical check-ups when pregnant?

Yes. Once the pregnancy is confirmed, there is an entitlement to take paid time off during normal working time for medical visits connected with the pregnancy. The paid time off includes travel time to and from the visit.

The employee needs to provide her employer with medical evidence confirming the pregnancy. The employee should give at least two weeks' notice in writing of the date and time of her ante-natal appointments. If two weeks' notice is not given and the employee is not at fault, she is still entitled to attend the appointment provided she gives her employer notice within one week of the appointment together with an explanation. For any visit after the first appointment, the employer may ask to see the employee's appointment card or other written evidence of the appointments instead of being provided with two weeks' notice on each occasion.

There is a similar entitlement for medical visits after the birth. The entitlement lasts for 14 weeks following the birth including any period taken on maternity leave following the birth.

Is a pregnant employee entitled to paid time off to attend ante-natal classes?

Yes, an employee is entitled to take paid time off to attend one set of ante-natal classes (other than the last three in the set, which normally occur after maternity leave has started). The paid time off includes travel time to and from the classes. The employee should inform her employer in writing of the dates and times of the classes or the date and time of each class. This notification should be at least two weeks in advance of the first class or each class, depending on the method of notification adopted by the employee. The employee must also show her employer a document confirming the date and time of the classes if requested to do so.

The father is entitled to attend the last two classes in the set without loss of pay. The notification requirements for the father are the same as those outlined above.

If either the expectant mother or father fails to comply with the required notification procedures but the employee is not at fault, the entitlement can be retained provided notice together with an explanation is given to the employer within one week of the class.

The entitlement to paid time off, both for pregnant employees and fathers, is for one set of classes which covers all pregnancies. However, a pregnant employee may be unable to attend the full set of classes due to circumstances beyond her control including miscarriage, premature birth or illness. In these cases, she may attend the balance of the classes during a subsequent pregnancy.

How much maternity leave am I entitled to?

The basic period of maternity leave is 26 weeks. At least two weeks of this must be taken before the end of the week of the expected date of birth, and at least four weeks after the birth. How you take the remaining 20 weeks is a matter for you to decide. The usual practice is for employees to take two weeks before the birth and 24 weeks after.

Am I entitled to payment during maternity leave?

Your entitlement to pay during maternity leave depends on the terms of your contract of employment. Employers are not obliged to pay women on maternity leave.

You may qualify for a social welfare payment, Maternity Benefit, paid by the ***Department of Social and Family Affairs*** provided you have sufficient ***PRSI*** contributions. Maternity Benefit is generally paid for 26 weeks and should be claimed at least six weeks before the employee is due to go on leave (16 weeks if self-employed). Maternity Benefit is based on a rate of 80% of the employee's gross earnings subject to a minimum and maximum payment.

Your contract could provide for additional rights to payment during the leave period, so that, for example, you could receive full pay and sign over your Maternity Benefit to your employer.

I am working on a fixed-term contract. Am I entitled to maternity leave?

Yes, an employee on a fixed-term contract is entitled to full maternity leave. If your fixed-term contract ends before the last day of maternity leave, this counts as your last day of maternity leave. This does not affect your entitlement to the full 26 weeks of Maternity Benefit.

Can an employee take additional maternity leave?

Yes, up to 16 weeks' additional unpaid leave may be taken. This is not covered by the Maternity Benefit payment from the Department of Social and Family Affairs. Likewise, the employer is not obliged, unless there is an agreement to the contrary, to make any payment during this period.

An employee who is ill may request in writing that her employer allow her to terminate her additional leave. Such a request may only be made during the last four weeks of maternity leave or during the additional leave. The employer must inform the employee of the decision on the request in writing within a reasonable timeframe. If the employer

grants the request, the employee's absence from work is treated in the same manner as any absence from work due to illness. For example, the employee may be entitled to Illness Benefit. In addition, any entitlement to sick pay in her contract of employment will apply. Where the additional leave (or part of it) is terminated in this way, entitlement to such leave (or the balance of it) is lost.

Can I postpone maternity leave if my baby is in hospital?

Yes. If your baby is in hospital, you may request your employer in writing to postpone your maternity leave or additional maternity leave. If part of the maternity leave is being postponed, then you must have been on leave for a minimum of 14 weeks of which at least four must have been after the date of birth. You must also supply a letter from the hospital confirming the baby's hospitalisation.

Your employer must respond in writing to your request within a reasonable timeframe. If your employer grants the request, you may return to work on a date agreed with your employer.

The maximum period of postponement is six months. The postponed leave must be taken in one continuous period starting within seven days of the baby's discharge from hospital.

You must give written notice of your intention to recommence your leave. You must give this notice as soon as is reasonable but not later than the day on which the resumed leave is due to begin. Written confirmation of the date of the baby's discharge from hospital must be supplied to the employer.

What notice do I need to give my employer before taking maternity leave?

You need to give your employer at least four weeks' notice in writing of your intention to take maternity leave. A medical certificate confirming the pregnancy must be provided with the notice.

If you intend to take the additional 16 weeks' maternity leave, you must give your employer at least four weeks' notice of this in writing.

It is essential to comply with these notice requirements, as failure to do so may cause loss of rights.

What if I have my baby earlier or later than expected?

If the birth takes place four or more weeks earlier than expected, you are entitled to take 26 weeks' leave from the actual date of birth – less any leave already taken. Where the baby is born four or more weeks early, you will also be deemed to have fulfilled the notice requirements as long as you inform your employer within 14 days of the birth.

Where the birth is later than expected, you must get at least the minimum four weeks after the birth even if this means an extension of your leave.

If you have a stillbirth or miscarriage any time after the twenty-fourth week of pregnancy, you are entitled to the full maternity leave, including additional leave – currently 26 weeks plus 16 weeks. To apply for Maternity Benefit following a stillbirth, you need to send a letter from your doctor with the Maternity Benefit application form, confirming the expected date of birth, the actual date of birth and the number of weeks of pregnancy.

Do I have the right to return to work after maternity leave?

Yes, but you must give your employer at least four weeks' written notice of your intention to return. You have the right to return to the job that you had before going on leave. However, if it is not reasonably practicable for your employer to allow you to return to your job, your employer must provide you with suitable alternative work. This new position should not be on terms less favourable than the terms of the previous job.

It is essential to comply with the notice requirement, as failure to do so could take away your right to return to work. However, if a ***Rights Commissioner*** or the ***Employment Appeals Tribunal*** considers that there

are reasonable grounds for failing to give the proper notice (or for giving it late), then late notice may be accepted.

If there are no reasonable grounds for a failure or delay in giving the required notice, the Rights Commissioner or the Employment Appeals Tribunal may take this into account in any claim for unfair dismissal arising from the employer refusing to take the employee back after maternity leave.

Can I lose out in regard to my employment conditions when I return from maternity leave?

No. Apart from pay and superannuation, you are entitled to be treated as if you had been at work during your maternity leave and any additional maternity leave periods. Your employment conditions cannot be worsened because you have taken maternity leave. If pay or other conditions have improved while you have been on maternity leave, you are entitled to these benefits when you return to work.

Maternity leave cannot be counted as part of any other leave entitlement such as sick leave, annual leave or parental leave. The period spent on maternity leave may be used to accumulate annual leave entitlement as if it were a period of actual employment. Employees on maternity leave are entitled to have the credit of any public holiday(s) during the leave period. This means that the employee should receive an extra day's pay, a paid day off within a month, or an extra day's annual leave. This provision regarding public holiday entitlement does not include employees on health and safety leave. If you decide not to return to work after your period of maternity leave, you are required to give your employer notice in the usual manner.

Am I entitled to any time off if I am breastfeeding?

Yes, for a maximum period of 26 weeks following the birth, you are entitled to either paid time off or a reduction in hours without loss of pay if you are breastfeeding. The time off is for one hour per working day which can be taken as one break of 60 minutes, two breaks of 30 minutes, three breaks

of 20 minutes or as agreed with your employer. Time off or a reduction in hours for part-time employees is calculated on a pro-rata basis.

You should notify your employer of your intention to avail of this entitlement in writing not later than the date on which you are required to notify your employer of your intention to return to work.

Your employer may request proof of the date of birth of the child.

An employer is not required to provide facilities for breastfeeding in the workplace unless this can be done at no more than a nominal cost to the employer.

Are fathers ever entitled to leave on the birth of a baby?

Fathers are only entitled to maternity leave if the mother dies within 24 weeks of the birth. In these circumstances, the father may be entitled to a period of leave, the extent of which depends on the actual date of the mother's death. Where a father qualifies for leave under these circumstances, he also has an optional right to the additional leave of 16 weeks as already described in the case of the mother (see also Section 12 for information on parental leave for both parents).

What rights do adoptive parents have?

The employment rights of adoptive parents have been brought into line with the rights of birth parents. Normally, only the adoptive mother is entitled to leave unless a male employee is the sole adopter of the child. You are entitled to 24 weeks adoptive leave plus an additional 16 weeks' unpaid adoptive leave. Adoptive Benefit from the Department of Social and Family Affairs may be payable during adoptive leave. Adoptive leave begins on the date of placement, not before.

Adoptive parents can attend required preparation classes and pre-adoption meetings during work hours without loss of pay. You can postpone adoptive leave if your adopted child is hospitalised. Absence from work on additional adoptive leave will count for all employment rights (except remuneration and superannuation benefits) such as seniority and annual leave.

You have the same rights to return to work as with maternity leave, and you must also give four weeks' notice of your intention to return. You are entitled to return to the job you had immediately before the leave unless this is not reasonably practicable for the employer. Where this is the case, your employer must offer you a suitable and appropriate alternative. The terms and conditions of the alternative, and the capacity under which you are to be employed, must not be less favourable than the terms you had before going on leave.

ENFORCING YOUR RIGHTS

If you have a dispute with your employer about maternity or adoptive leave, you may refer the matter to a ***Rights Commissioner***. Complaints should be brought within six months of the date of the dispute occurring. A Rights Commissioner may extend the time limit by a further six months where exceptional circumstances prevented the complaint being taken within the first six months.

If you have been dismissed due to a matter connected with your pregnancy or for claiming your rights under the Maternity Protection Act 1994, you can claim redress under the unfair dismissals legislation and you may refer your case to either a Rights Commissioner or the ***Employment Appeals Tribunal***. Note that an employee dismissed in these circumstances does not need any particular period of service with the employer in order to bring a claim under the unfair dismissals legislation (see Section 20).

The Equality Authority is responsible for overseeing the implementation of the maternity leave legislation and can be contacted for further information.

Q Case study: Notification of return to work after maternity leave

Sheila took her maternity leave and then forgot to notify her employer of her intention to return to work. She thought her employer knew she was returning as she had called to the workplace about two months before she was due to return and was sure she said she would be coming back. However when she did return, her employer told her that she had been replaced and refused to take her back. Her employer said that the proper written notice of the intention to return had not been given in writing. What rights does Sheila have?

A Sheila is required by law to give at least four weeks' written notice of her intention to return to work. She obviously failed to do this and so is in real danger of losing her right to return. The law does allow the Rights Commissioner or Employment Appeals Tribunal to extend the time for giving notice if there are reasonable grounds for the failure to give notice in the proper manner. What are reasonable grounds depends on all the facts of each case; for example, reasonable grounds may be that proper notice was not given because the baby had been very ill. In Sheila's case, it looks as if she either forgot to give the notice or decided it was not necessary after she had talked to her employer.

It would be a matter for the Rights Commissioner or Employment Appeals Tribunal to decide if, in all the circumstances, either of these reasons could be considered reasonable grounds for failure to comply with the notice requirement. If it were decided that there were no reasonable grounds for the failure to give notice, then this would be taken into account in any decision on the case. This could mean that Sheila would lose her right to return to work and might, at best, only get reduced compensation. The best policy for an employee is always to follow the notice requirements strictly.

FURTHER INFORMATION

Publication: *About the Maternity Protection Acts 1994 and 2004* – Equality Authority

SECTION 12 PARENTAL LEAVE

Entitlement to parental leave

Amount of leave

Requirements of notice to employer

Protection of employment rights

PRINCIPAL LEGISLATION

Parental Leave Act 1998

Parental Leave (Disputes and Appeals) Regulations 1999 SI 6/1999

European Communities (Parental Leave) Regulations 2000 SI 231/2000

Parental Leave (Amendment) Act 2006

When can parental leave be taken, and is it paid leave?

The Parental Leave Act 1998, as amended by the Parental Leave (Amendment) Act 2006 allows parents in Ireland to take parental leave from employment in respect of certain children. A person acting in loco parentis (that is, in place of the parents – such as a guardian) is also eligible.

Since 18 May 2006, you can take leave in respect of a child up to eight years of age (previously five years). If a child is adopted between the age of six and eight, leave in respect of that child may be taken up to two years after the date of the adoption order. In the case of a child with a disability, leave may be taken up until the child is 16 years of age. If you become ill while on parental leave and as a result are not able to care for the child, you can suspend the parental leave during your illness and restart the parental leave when your illness is over.

Parental leave must be used only to take care of the child concerned. Where leave is taken and used for another purpose (for example, to do other work), your employer is entitled to cancel the leave.

The Parental Leave Acts 1998–2006 provide for the minimum entitlement. Your contract may provide for more extensive rights.

Employees on parental leave are not entitled to pay from their employer, nor is there any social welfare payment equivalent to Maternity or Adoptive Benefit.

Are all employees entitled to take parental leave?

Employees with one year's service are entitled to take full parental leave. However, if you have less than one year's service but more than three months' service, you may be allowed a reduced leave entitlement of one week's leave for each month of service if your child is approaching the upper age limit.

If you change employer and have used part of your parental leave entitlement, you can take the remainder after one year's employment with the new employer provided your child is still under the qualifying age.

How much leave can I take?

Parental leave is available for each child and amounts to 14 weeks for each child. However, unless a multiple birth is involved, no more than 14 weeks may be taken in a 12-month period regardless of the number of children, except where the employer consents. Each parent has an equal entitlement to 14 weeks' parental leave for each child but the entitlements cannot be combined and taken by one parent only unless both parents work for the same employer and that employer consents.

Do I have to take the leave in one period of 14 weeks?

No, you can take the 14 weeks for each child in one continuous period or in separate blocks of a minimum of six weeks. If your employer agrees, you can separate your leave into periods of days or even hours.

Do I have to give notice of taking parental leave?

Yes, you should inform your employer in writing of your intention to take parental leave at least six weeks before it is due to start. The notice

should state the proposed starting date for the leave, and how long it will last.

The next step is that, not less than four weeks before the leave is due to start, you and your employer should sign a confirmation document giving the details of the leave.

Can my employer refuse to allow parental leave?

Your employer may consider that you are not entitled to parental leave because, for example, you do not have the required amount of service. In such a case, your employer must give you an opportunity to make representations. Following this, if your employer continues to believe that you are not entitled to parental leave, he or she must inform you of this and give a summary of the reasons.

However where you are entitled to the leave and before the confirmation document is signed for the leave, your employer may postpone the leave for up to six months. This must be for one or more of a stated number of reasons including the lack of a replacement, the fact that there are other employees on parental leave or there is a variation in the amount of work. You are entitled to four weeks' notice of such a postponement. Normally, only one postponement is allowed although seasonal variation in the workload may justify a maximum of two postponements.

Does taking parental leave affect other employment rights I may have?

Apart from the loss of pay and superannuation while on parental leave, you must be regarded for employment rights purposes as still working. This means that you can build up annual leave while on parental leave. If your annual holidays fall due during parental leave, you can take them later. A public holiday that falls while you are on parental leave and on a day when you would normally be working is added to your period of leave.

Am I entitled to return to my previous job at the end of the leave?

Yes, unless it is not reasonably practicable for your employer to allow you to return to your particular job. If this is the case, your employer must offer you suitable alternative employment on terms that are not less favourable compared to the previous job.

ENFORCING YOUR RIGHTS

If there is a dispute concerning parental leave, either the employee or the employer may refer the matter to a ***Rights Commissioner***. This must be done within six months of the dispute occurring.

Case study: Parental leave

Q

John and Joan want to take parental leave in respect of their son, Michael, who is five. John has been working for his employer for nine months and wants to take the leave in two months' time. The employer has told John that he cannot spare him at this time, and, anyway, he is not entitled to parental leave until he has been working for him for a year.

Joan has been with her employer for 15 months. Her employer, however, says that parental leave is only for emergencies and, in any case, it doesn't apply if the employee has already had maternity leave. What are John and Joan's rights?

A

John's employer is correct about the length of service. After three months' service an employee is entitled to reduced leave if the child is nearing the upper age limit. However, as Michael will not be eight for three years, this will not apply to John's claim. So John should consider taking his leave when he has one year's service. John's employer could postpone the leave then on the grounds of, for example, the nature of John's duties. However, unless John is involved in work with a seasonal variation, the leave could only be postponed once for up to six months.

Joan's employer is mistaken. Parental leave is not confined to emergency situations, and the only stipulation is that the parent uses the leave to care for the child. Possibly, Joan's employer is confusing parental leave with force majeure leave (covered in Section 10). In addition, the fact that Joan took maternity leave does not affect parental leave as they are two separate leave entitlements. As a first step, Joan should give her employer written notice of her intention to take parental leave, its starting date, and its duration. If she is taking this leave in February 2008, she should give the notice in early December 2007 at latest to come within the requirement for at least six weeks' notice. Joan should keep a copy of this notice. If she has continuing difficulties with her employer, Joan should refer the case to a Rights Commissioner.

FURTHER INFORMATION

Publication: *About the Parental Leave Act 1998* – Equality Authority

Leaflet: *New changes to Parental Leave and Force Majeure Leave* – Equality Authority

SECTION 13 CARER'S LEAVE

- Leave entitlement
- Levels of care required
- Requirements for notice to employer
- Returning to work
- Protection of employment rights

PRINCIPAL LEGISLATION

Carer's Leave Act 2001

The Carer's Leave Act 2001 allows employees in Ireland to leave their employment temporarily to provide care for someone in need of full-time care and attention. The person being cared for does not have to be a relative or spouse; they can be a friend, partner or colleague.

Do all employees qualify for carer's leave?

No. In order to qualify for carer's leave, you must have worked for your current employer for a continuous period of at least 12 months.

What level of care is required?

You must propose to provide full-time care and attention to an incapacitated person. The ***Department of Social and Family Affairs*** decides if the person is sufficiently incapacitated to need a full-time carer.

The person for whom you will provide the full-time care and attention must be so disabled as to require:

- Continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or
- Continual supervision in order to avoid danger to themselves.

You must apply to the Department of Social and Family Affairs for a decision that the person requiring the care needs the type of full-time care and attention referred to above. You must then give this decision to your employer.

A doctor must certify the nature and extent of the person's disability, except where the person to be cared for is under 16 and Domiciliary Care Allowance is being paid for that person.

What notice must I give my employer?

You must give your employer at least six weeks' notice in writing of your intention to take carer's leave. In exceptional or emergency situations where it is not reasonably practicable to give six weeks' notice, you should give notice as soon as it is reasonably possible. The initial notice to the employer is followed, at least two weeks before the leave is to start, by a written confirmation of the leave and the details of its duration and form. Both you and your employer must sign this confirmation document.

If your employer considers that you do not meet the requirements for carer's leave, they are required to notify the Department of Social and Family Affairs. The Department will then investigate the matter and issue a decision. Either you or your employer may appeal this decision. Appeals must be made to the Social Welfare Appeals Office.

If you fail to give notice or give notice but not in the required form, your employer has discretion whether to treat the leave as carer's leave. In such a case, the protection of the law will apply. An employer who refuses to treat the leave as carer's leave must have reasonable grounds for such a refusal and must specify the grounds in writing to the employee.

If you fail to comply with the notice requirements and your employer exercises his or her discretion to accept the leave as carer's leave, a confirmation document must also be prepared and signed by both you and your employer. In such circumstances, the legislation requires this to be done as soon as possible.

How much carer's leave am I entitled to?

Since 24 March 2006, the minimum period of leave is 13 weeks and the maximum period is 104 weeks. You may apply to take carer's leave in one continuous period of 104 weeks or for a number of periods not exceeding a total of 104 weeks. If you do not take carer's leave in one continuous period, there must be a gap of at least six weeks between the periods of carer's leave. Your employer may refuse (on reasonable grounds) to allow you to take a period of carer's leave which is less than 13 weeks' duration. Where your employer refuses this leave, they must specify in writing the grounds for refusing you this leave.

You may usually only be on carer's leave in respect of any one person in need of full-time care at any one time. An exception is allowed where two people live together and both are in need of full-time care and attention. In this situation the total amount of carer's leave is 208 weeks (104 for each person being cared for).

If your carer's leave for someone has ended, you cannot begin another period of carer's leave to care for a different person until six months after the end of the previous period of carer's leave.

Am I entitled to payment during carer's leave?

Unless you have an agreement with your employer to the contrary, you are not paid by your employer during the period of carer's leave. Carer's Benefit is paid by the Department of Social and Family Affairs to employees who fulfil the qualifying conditions, including social insurance contributions. Employees who do not qualify for Carer's Benefit may qualify for Carer's Allowance which is means tested. You can take carer's leave even though you may not be entitled to either Carer's Benefit or Carer's Allowance.

Can carer's leave be ended?

The leave usually ends on the date set out in the confirmation document. Carer's leave may also end in the following circumstances:

- At a date agreed between the employer and the employee
- Where the person being cared for no longer meets the conditions

- Where the employee is no longer in a position to provide full-time care and attention
- Where the person being cared for dies. In these circumstances, the carer's leave will end six weeks after the death or on the date specified in the confirmation document – whichever is earlier
- Where an employer is of the opinion that the employee, or the person receiving the care, no longer meets the conditions for carer's leave. In such a situation, the employer may refer the matter to the Department of Social and Family Affairs for a decision.

Following the ending of the carer's leave, the employer must give notice of this fact (including the date of return) in writing to the Department of Social and Family Affairs.

Can I work during carer's leave?

Yes, but only for a maximum of 15 hours per week. The earnings from such employment or self-employment must not exceed a weekly limit set by the Department of Social and Family Affairs (€320 net at present). The employer from whom you are taking carer's leave is not obliged to provide these hours. You can seek employment elsewhere.

Alternatively, you may attend an educational or training course or take up voluntary or community work during carer's leave, again for a maximum of 15 hours per week.

You should inform the Department of Social and Family Affairs if you take up any of these options.

Do I have the right to return to work after carer's leave?

Yes, but you must give your employer at least four weeks' notice in writing of your intention to return to work. It is not necessary to give notice if the Department of Social and Family Affairs gives a ruling that you are no longer entitled to carer's leave.

Following carer's leave, you are entitled to return to your previous job or a suitable alternative which is not less favourable to the employee.

You are protected against being victimised for taking carer's leave, or proposing to take it. Being ***victimised*** includes dismissal, unfair treatment and an unfavourable change in your conditions of employment. You may not be dismissed for taking carer's leave.

Can I lose out in regard to employment conditions after returning from carer's leave?

No. As a general rule, you must be treated as if you had been in work during the carer's leave, except that you are not entitled to pay and are only entitled to annual leave and public holidays in respect of the first 13 weeks of carer's leave.

ENFORCING YOUR RIGHTS

Disputes with your employer concerning carer's leave should be referred to a ***Rights Commissioner***.

Disputes relating to a decision by the Department of Social and Family Affairs should be referred to the Social Welfare Appeals Office if they concern:

- Whether full-time care and attention is being provided or required by the person to be cared for
- Whether the carer is fulfilling the requirement not to engage in work other than at the allowable scale
- Where the employer has referred a case to the Department because the employer does not believe the requirements are being met for carer's leave relating to full-time care and attention or involvement in work (other than to the extent allowable).

An employee who wishes to refer a dispute concerning carer's leave to a Rights Commissioner should do this within six months of the date on which the dispute arose. A further period of up to six months for bringing the complaint may be allowed where a Rights Commissioner thinks this is reasonable in all the circumstances of the case.

Appeals to the Social Welfare Appeals Office should be made within 21

days of the date of the decision by the Department of Social and Family Affairs. The Chief Appeals Officer has the power to extend the period for bringing an appeal.

Disputes arising from the dismissal of an employee for issues relating to carer's leave are dealt with under the provisions of the Unfair Dismissals Acts and not under the Carer's Leave Act 2001. However, disputes arising from other forms of victimisation are dealt with under the Carer's Leave Act 2001.

Q **Case study: Carer's leave and annual leave**

Tom took carer's leave to look after his father who was seriously ill. He took his full entitlement of 104 weeks. Tom returned to work in July and asked his employer about annual leave which he wanted to take later in the year. His employer said that, as he understands it, an employee cannot take annual leave in the same calendar year that the carer's leave ends. Is Tom's employer correct?

A Tom's employer is not correct. Provided Tom has accumulated sufficient hours of work during the year, he is entitled to take annual leave, even if this occurs in the same calendar year as the conclusion of the carer's leave. In Tom's case, only the first 13 weeks of the period spent on carer's leave count towards establishing entitlement to annual leave. In the same way, Tom only has rights in respect of public holidays falling in the first 13 weeks of his carer's leave.

FURTHER INFORMATION

Publication: *The Carer's Leave Act 2001: Explanatory Booklet for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

Publication: *SW 49: Carer's Benefit* – Department of Social and Family Affairs

SECTION 14 HOLIDAYS

Calculating annual leave entitlement

Part-time employees and annual leave

Payment during annual leave

When annual leave can be taken

Public holidays

Annual leave entitlement when changing jobs

PRINCIPAL LEGISLATION

Organisation of Working Time Act 1997 Sections 19-23 plus 2nd and 3rd Schedule

Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997 SI 475/1997

How is annual leave entitlement calculated?

The Organisation of Working Time Act 1997 provides for a basic paid annual leave entitlement of four working weeks. This is the statutory minimum and your contract of employment could provide for more.

Under the legislation, your annual leave entitlement is based on your working hours during what is called the leave year. This runs from April each year to the following March although many employers use the calendar year. An employee who has worked 1,365 hours in the leave year qualifies for the basic annual leave. For example, an employee working a 40-hour week will build up the required number of hours in just under 35 weeks. Another way to calculate annual leave is to give annual leave of one third of the working week for each calendar month in which the employee works at least 117 hours. The third possibility is to base the entitlement on 8% of the hours worked in the leave year, subject to a maximum of four working weeks.

An employee who has worked for at least eight months in a leave year is entitled to an unbroken period of two weeks' annual leave.

Are part-time employees entitled to annual leave?

Yes. The entitlement is calculated as described above. For most part-time or casual employees, the leave entitlement is 8% of the hours worked subject to a maximum of four working weeks.

For example, a person who works 10 hours a week over 52 weeks will qualify for the following annual leave entitlement. The employee has worked 520 hours and 8% of those hours are 41.6 hours. However, holiday entitlement calculated on this basis is subject to a maximum of four working weeks, so the entitlement is four weeks' leave (40 hours).

Part-time workers' entitlement to holidays is governed by the Organisation of Working Time Act 1997, just like all other employees. The Protection of Employees (Part-Time Work) Act 2001 is the principal legislation covering other aspects of part-time work. It requires that a part-time employee must not be treated less favourably than a comparable full-time employee. For more details on the rights of part-time workers, see Section 5.

Am I entitled to be paid while on annual leave?

Yes, you are entitled to pay in advance of annual leave. The pay is based on the rate for your normal working week. If your pay varies from week to week, pay received while on annual leave is the average weekly payment for your normal working hours in the 13 weeks immediately preceding the leave.

If your pay takes into account board or lodgings provided by your employer, the holiday pay you receive will compensate you for board or lodgings not received during annual leave.

Who decides when annual leave can be taken?

The employer decides when annual leave may be taken, subject to a number of conditions. The employer is required to take into account the family responsibilities of the employee, the opportunities for rest and recreation available to the employee, and to consult with the employee (or their union) at least one month before the leave is to be taken.

In addition, annual leave should be taken within the appropriate leave year, or, with the employee's consent, within six months of the relevant leave year. Further holding over of annual leave at the wish of the employee would be a matter for agreement between the employee and the employer.

Do I have a right to time off for public holidays?

You are entitled to time off for public holidays. You employer can decide on one of the following options:

- A paid day off on the public holiday*
- A paid day off within a month of the public holiday
- An additional day of annual leave
- An additional day's pay
- The nearest church holiday to the public holiday as a paid day off.

**This option does not apply if you do not normally work on the day on which a public holiday falls (for example, if you do not normally work on a Saturday or Sunday and if the public holiday falls on these days or, in the case of a part-time employee, if the public holiday falls on a day on which the employee is not normally due to work).*

The Organisation of Working Time Act 1997 provides that you may ask your employer, at least 21 days before a public holiday, which option will apply to you. Your employer should respond at least 14 days before the public holiday. If not, you are entitled to take the public holiday as a paid day off.

Part-time employees who have not worked at least 40 hours in total during the five weeks before the public holiday are not entitled to paid leave on that public holiday.

Where the public holiday falls on a day on which the employee normally works, the public holiday pay entitlement is the pay for the normal daily working hours last worked before the public holiday.

Where the public holiday falls on a day on which the employee does not normally work, the public holiday pay entitlement is the pay for one fifth of the normal weekly working hours last worked before the public holiday.

If, for example, a public holiday falls on a Monday, a part-time employee who works Tuesdays, Wednesdays and Thursdays for 4 hours each day is entitled to one fifth (20%) of 12 hours – that is, 2.4 hours pay in place of the public holiday.

Does taking other leave, such as maternity leave, affect my annual leave entitlement?

No, annual leave is not affected by other leave provided for by law. This includes maternity, adoptive (including additional unpaid maternity and adoptive leave), parental and force majeure leave. Time spent on all of these forms of leave is treated as time in employment and can be used to accumulate annual leave entitlement. However carer's leave does affect annual leave (see Section 13).

How is annual leave affected by time off work during illness?

If you are ill during annual leave, you should get a medical certificate to cover the days of illness and give it to your employer. If you do this, the sick days do not count as annual leave and will, therefore, be available to you at a later date.

Sickness during the leave year reduces your hours worked and therefore may affect your entitlement to annual leave. However, an employee working 40 hours a week will establish the required 1,365 working hours in the leave year after just under 35 weeks working. As a result, absence through sickness would need to be extensive (18 weeks or more) before it affected that employee's annual leave.

What happens if I leave a job and have not taken my holidays?

If you leave your job, you are entitled to receive payment for any outstanding annual leave and public holidays due to you. This is the only occasion where an employee can receive pay in lieu of holidays.

ENFORCING YOUR RIGHTS

You can refer a complaint about holiday entitlements to a ***Rights Commissioner***. You should bring the complaint within six months of the date the dispute arose. This period may be extended by a further 12 months if the Rights Commissioner thinks there were reasonable circumstances for the delay.

Alternatively, you can take your claim to the ***Employment Appeals Tribunal*** if it is connected with a claim in relation to another employment matter such as dismissal, maternity, notice, or redundancy.

Case study: Calculating annual leave entitlement

Q Angela started working for her employer 10 months ago. She works a 35-hour week but was off work sick for three weeks during this time. When she asked for holidays, her employer told her she could have the odd week off when business was slack. However, as she had been off work sick, she could not expect to get all her annual leave. What are Angela's rights in this situation?

A Provided Angela does not have a contract of employment that gives her greater rights, she is relying on the Organisation of Working Time Act 1997 provisions. In the 10 months, she worked 1,505 hours (43 weeks x 35) less 105 hours (3 x 35) when she was off work sick, giving a total of 1,400 hours worked. This gives her an entitlement to four weeks' leave, including at least two weeks' unbroken leave as she has been employed for more than eight months. However, her entitlement might be affected by

the actual time of the year she started the employment. Under the legislation, the leave year runs from April to March although some employers use the calendar year. If, for example, she started work in January, and was out of work sick in June, her annual leave entitlement is as follows below:

- ***1st leave year:*** Angela worked from January to March. As she worked more than 117 hours in these three months, she is entitled to one third of a week x 3 which equals one week's annual leave.
- ***2nd leave year:*** Angela worked from April to October. She does not yet have the required 1,365 hours to be entitled to four weeks' annual leave in the current leave year. Although she was sick in June, she has worked more than 117 hours in six of the seven months. This gives her an entitlement to one third of a week x 6 which equals two weeks' holidays.

Thus so far, over the two leave years involved, she has earned a total of three weeks' holidays. This is not affected by the fact that Angela was off work sick for three weeks. As she has worked more than eight months in the leave year, she is entitled to take at least two weeks' unbroken leave. In addition, her employer, in deciding when the leave may be taken, must take into account any family responsibilities that Angela may have, as well as the opportunities that may be available to Angela for rest and recreation.

Angela would also be entitled to holidays equal to 8% of the hours she worked in June. If Angela has difficulty in getting her annual leave entitlement, she should refer her case to a Rights Commissioner.

FURTHER INFORMATION

Publication: *Explanatory Booklet on Holidays and Public Holidays for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

SECTION 15 EQUALITY IN WORK

Types of discrimination

Exceptions

Sexual and other harassment

PRINCIPAL LEGISLATION

Employment Equality Act 1998

Equality Act 2004

Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002 SI 78/2002

What does discrimination mean and what types of discrimination are prohibited?

The Employment Equality Acts 1998 and 2004 outlaw discrimination in a wide range of employment and employment-related areas. Under the legislation, discrimination means treating one person in a less favourable way than another person on any of the following nine grounds:

- Gender
- Marital status
- Family status, for example, as a parent of a child
- Sexual orientation
- Age (does not apply to a person under the age of obligatory school attendance – currently 16)
- Disability
- Race including race, nationality, national or ethnic origin
- Religion
- Membership of the Traveller community.

Discrimination may be direct or indirect or by association. For example, a requirement that any person aged over 50 cannot apply for a job may be direct discrimination on grounds of age. A requirement that no person with grey hair need apply could be indirect discrimination on grounds of age (unless the requirement was essential to the job on offer) as the effect of the requirement would be to exclude many more older people than younger ones.

Discrimination against an individual for seeking to avail of their rights under legislation ***(victimisation)*** is also covered.

What employment situations are covered by the legislation?

Discrimination is prohibited in job opportunities. This applies to:

- Job advertising
- Access to employment – recruitment and selection
- Employment agencies.

Discrimination is prohibited within employment. This applies to:

- Conditions of employment – including dismissal
- Training and experience
- Promotion and regrading
- Classification of posts
- Pay, where two people are doing like work. Like work occurs where:
  – people perform the same work
  – their work is of similar nature
  – their work is different but of equal value.

Does the legislation only apply to employers?

No. The legislation also prohibits discrimination by trade unions and professional and trade associations in relation to membership and other benefits.

Are there any exceptions allowed by the legislation?

Yes. The Act allows certain exceptions. These include:

- Where there is a genuine occupational requirement. For example, the sex of the person is an occupational requirement for a job modelling clothes
- Special treatment of women connected with pregnancy, maternity or adoption
- Access to employment for the provision of personal services in another person's home where the services affect the private or family life of residents. For example, this exception would include a person employed in another's home to take care of children. Note the exception only applies to access to such employment. Once in the job, the employee has the full protection of the equality legislation
- Positive action to help prevent or compensate persons coming within one of the grounds covered by the legislation for disadvantages linked to that ground
- Discrimination by religious, educational, and medical institutions run by religious bodies in order to maintain the religious ethos of the institution
- Under the age ground, setting a minimum age of 18 when recruiting for a position and offering a fixed-term contract to a person over the compulsory retirement age for the particular employment concerned.

Does sexual or other harassment count as discrimination?

Sexual harassment is considered discriminatory. The Act defines sexual harassment as any form of unwanted verbal, non-verbal or physical contact of a sexual nature. The actions or conduct could involve acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material. The unwanted conduct must have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. Sexual harassment arising in employment is prohibited

whether by an employer, other employees, clients, customers or other business contacts. Sexual harassment provisions can extend beyond the workplace, for example, to conferences, training and work-related events. Less favourable treatment or victimisation because of an employee's reaction to sexual harassment is also prohibited.

Harassment arising from one of the other grounds of discrimination listed in the legislation is prohibited as well. These are marital status, family status, age, disability, sexual orientation, race, religious belief, or membership of the Traveller community. Harassment means any form of unwanted conduct in relation to one of the grounds listed above where this has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. The unwanted actions or conduct could involve spoken words, gestures, display or circulation of written words, pictures, badges, or isolation.

The intention of the perpetrator of either sexual harassment or other harassment is irrelevant if the unwanted conduct has the effect of creating such an environment.

The Employment Equality Act 1998 as amended by the Equality Act 2004 places an obligation on all employers in Ireland to prevent sexual harassment at work. Employers who have taken reasonable steps to prevent harassment occurring may have a defence. In order to avail of this defence, the employer must comply with the principles set out in the Code of Practice on Sexual Harassment and Harassment at Work. The Code states that an employer must show that they have comprehensive, accessible and effective policies that focus on prevention of harassment and remedial action; these must be coupled with an effective complaints procedure where harassment does arise.

What should I do if I have been sexually harassed at work?

Your employer's policy on sexual harassment should clearly set out what will happen when an employee wishes to make a complaint of sexual harassment, how the complaint will be investigated and who will carry out the investigation, taking into account issues of confidentiality and the rights of both parties.

If there is no formal procedure or policy on sexual harassment, you may be able to use general grievance procedures in the company or make your complaint in writing.

If you wish to take an informal approach initially, you could begin by making it very clear to the person concerned that you find his or her behaviour, conduct, material, and so on, unacceptable and offensive. If you find this uncomfortable or too difficult to do, you could ask someone to make an initial approach on your behalf – a sympathetic friend or colleague, a designated person at work or a trade union representative. An informal approach like this may sometimes resolve the issue. You should document these attempts to resolve the situation and keep notes of events as they occur.

Sometimes, an informal approach is not enough to resolve the issue and, if the sexual harassment continues, you may need to consider making a formal complaint.

ENFORCING YOUR RIGHTS

The ***Equality Authority*** has a general remit to promote equality and can give advice and, in some cases, legal assistance if you wish to bring a claim of sexual harassment. If you feel that your employer has not dealt with your complaint about sexual harassment properly, you can refer your complaint to the ***Equality Tribunal***.

Complaints in relation to gender discrimination may be referred to the Equality Tribunal or directly to the Circuit Court. Complaints should be brought within six months of the most recent occurrence of discrimination. The time limit may be extended for a further six months if there is reasonable cause for the delay. The extension does not apply to an equal pay claim.

Q Case study: Sexual harassment outside the workplace

Lily started work in a hotel in October. She went to the staff Christmas party in December and subsequently alleged that one of her managers had sexually harassed her during the party by asking her to come home with him. She felt upset and uncomfortable about the incident. She was not re-engaged by the hotel after a short closure in January and she believed that this was directly related to this incident at the Christmas party. She brought her case to the Equality Tribunal.

A The Equality Officer of the Equality Tribunal found that the manager's request fell within the Equality Acts' definition of sexual harassment as any unwanted verbal conduct of a sexual nature. Even though the harassment took place at a social event outside normal work hours, the Officer considered the Christmas party to be work related because Lily would not have been present if she had not been employed by the hotel. The Officer also found that the request had the effect of creating an intimidating environment for Lily. Ultimately, the Officer found that the hotel had discriminated against Lily on grounds of gender and that she had been treated adversely as a result. The Officer ordered that the hotel immediately put in place a code of practice on sexual harassment that all employees would be made aware of on starting work.

FURTHER INFORMATION

Publication: *Consolidated Text of the Employment Equality Acts 1998 and 2004* – Department of Justice, Equality and Law Reform

Publication: *Guide to the Employment Equality Acts 1998 and 2004* – Equality Authority

Publication: *Code of Practice on Sexual Harassment and Harassment at Work* – Equality Authority

SECTION 16 TRANSFER OF BUSINESS

Employee rights

Transfer of only part of the business

Pensions

Right to information and consultation

PRINCIPAL LEGISLATION

Transfer of Undertakings Directive 2001/23/EC

European Communities (Protection of Employees on Transfer of Undertakings) Regulations SI 131/2003

Employees (Provision of Information and Consultation) Act 2006

If my employer decides to sell the business, does the new employer have to give me employment?

Where the activity of the business will continue and it is sold as a going concern, then the legislation protects the interests of existing employees at the time of the changeover. This means that the new employer must honour the contracts of employment of existing employees, with the exception of pensions but including rates of pay, hours of work, annual leave entitlements, continuous service and so on.

Neither the previous nor the new employer can use the fact of the sale as a justification for dismissing employees unless there are valid economic, technical, or organisational grounds justifying changes in the workforce.

Dismissal on economic, technical, or organisational grounds is a redundancy and, if the employee qualifies, there may be an entitlement to a redundancy lump sum. An employee could also challenge, in an unfair dismissal claim, whether the changes in the workforce are justified on any of these grounds.

Do I have the same rights if the employer retains some of the business and transfers just part of the business?

The regulations also cover situations where only part of the business is sold, and they protect the employees working in that part in the same way as if the entire business was sold.

What happens to the pensions of employees where business is transferred?

Employee pension rights, apart from those provided for by social welfare legislation, do not transfer to the new employment and contributions by the new employer to an existing pension scheme or to a new pension scheme would only be made if the new employer agreed to this. However, where there is a pension scheme in operation in the original employer's business at the time of the transfer, the legislation provides that:

- If the scheme is an occupational pension scheme covered by the Pension Acts, the protections given by that legislation apply
- In the case of other pension schemes, the new employer must ensure that rights are protected.

Does my employer have to tell me about the transfer of the business before it happens?

Yes, under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, your employer does have to inform you about a proposed transfer of business and about the implications of the transfer for you at least 30 days before the transfer takes place. This includes the date of transfer and the reasons.

Your employer gives these details to your union, or to your employee representative if there is no union. Alternatively, if there is no union or employee representative, your employer must inform you directly in writing.

In addition, the Employees (Provision of Information and Consultation) Act 2006 provides a general right to information and consultation for employees from their employer on matters which directly affect them. However, the manner and amount of consultation under this particular Act depends on the number of employees in your workplace and whether you belong to a union.

The 2006 Act requires employers to inform and consult employees on any decisions likely to lead to substantial changes in work organisation or contractual relations – with particular reference to mergers and acquisitions and to collective redundancies. This means that employers are required to consult with employees before major decisions are made, including transfer of business. At present, the Act applies to employers with 100 or more employees and, from 23 March 2008, to those with at least 50 employees.

ENFORCING YOUR RIGHTS

If you are dismissed because of a transfer of business, you may bring a claim for unfair dismissal to either the ***Rights Commissioner*** or the ***Employment Appeals Tribunal*** (see Section 20). If you have less than one year's service, you may bring a claim against dismissal to a Rights Commissioner under the Transfer of Undertakings Regulations. If you have at least one year's service, you have the option of bringing a claim under the Unfair Dismissals Acts, either to a Rights Commissioner or directly to the Employment Appeals Tribunal.

If your terms and conditions of employment are changed unfavourably as a result of the transfer, you may bring a claim to a Rights Commissioner under the Transfer of Undertakings Regulations.

If your employer fails to inform or consult with the employees or their representatives in a transfer of business situation, a complaint may be brought to the Rights Commissioner under the Transfer of Undertakings Regulations and appealed to the Employment Appeals Tribunal. If relevant, the complaints procedure under the 2006 Act could also be pursued.

Complaints about pensions that are covered by the Pensions Acts should be referred to the Pensions Board. Complaints about other pensions should be referred to the Rights Commissioner.

Case study: Transfer of business

Q A factory has decided to let go all the workers it employed cleaning the factory and has transferred that part of the business to a cleaning contractor. The first that the cleaners knew about it was a week before the changeover when the factory management said they would finish at the end of the week. The factory has said that it will pay any notice money due to the staff. Can the factory management do this to the cleaning staff?

A The legislation provides that the transfer of an undertaking, business, or part of a business must not in itself constitute grounds for dismissal. The employees, therefore, would have a claim for unfair dismissal unless the employer can demonstrate that the dismissals were justified for valid economic, technical or organisational reasons entailing changes in the workforce.

FURTHER INFORMATION

Publication: *Guide to safeguarding of employee's rights on Transfer of Undertakings Regulations* – Department of Enterprise, Trade and Employment/NERA

Publication: *The Employees (Provision of Information and Consultation) Act 2006: Explanatory Booklet for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

SECTION 17 TRADE UNION MEMBERSHIP

Right to join a union

Right to stay out of a union

Dismissal for trade union activity

PRINCIPAL LEGISLATION

Article 40.6.1.iii of the Irish Constitution

Unfair Dismissals Acts 1977–2001

Can my employer stop me from joining a trade union?

No, an employee has a constitutional right to join a trade union. However, it can be a condition of accepting employment that a person not be a member of a trade union.

A trade union can be an important source of information and protection on employment rights, as well as negotiating with the employer for better pay and conditions. However, it should be noted that an employer has no legal obligation to negotiate with a union on behalf of an employee member unless previously agreed. This does not prevent a dispute about trade union recognition from being a lawful trade dispute.

If I am offered a job and told that I must join a particular union, can I refuse to join that union or any other one?

It can be made a condition of employment that a person join a particular union upon accepting a job offer and remain in that union while an employee. There is a view that this may not be constitutional, but it has not been tested in the courts.

If the employee was already in the job without being a union member and was later required to join a union by the employer, the employee could refuse as this may be unconstitutional.

If I am dismissed for being a union member or for taking part in a union, what rights do I have?

Dismissal for trade union activity or membership is automatically unfair under the Unfair Dismissals Acts. However, in the case of trade union activity, the protections apply only where the trade union activities are carried on outside work hours or during work hours at times that have been agreed in the employment contract.

ENFORCING YOUR RIGHTS

Where there is a dismissal for trade union activity, the employee may refer the matter either to a ***Rights Commissioner*** or to the ***Employment Appeals Tribunal*** (see Section 20).

Q Case study: Dismissal for trade union activity

Jan has been working part-time (10 hours a week) for six months with a takeaway restaurant. He decides that he will join a union because the conditions in the job are bad. None of the other employees is in a union. He is showing some information he got from the union to a fellow employee when his employer comes into the takeaway and sees what Jan is doing. At finishing time that day, the employer tells Jan he no longer needs his services as demand has dropped. Jan wants to know if he has any rights.

A Jan has been working for the employer for less than a year, so in normal circumstances he would not be able to bring a claim for unfair dismissal. However, this requirement does not apply to a dismissal for trade union activity. It would appear that Jan's dismissal is related to his employer's discovery that he had been in contact with a union. This gives Jan a strong case to argue that this discovery was the reason for the dismissal and not a drop in demand.

Jan could bring his application for unfair dismissal arising from trade union activity either to a Rights Commissioner or the Employment Appeals Tribunal.

SECTION 18 CHILDREN AND YOUNG PEOPLE

Children and young people – defined

Restrictions on employing children and young people

Employer's obligations

PRINCIPAL LEGISLATION

Protection of Young Persons (Employment) Act 1996

Safety, Health and Welfare at Work (Children and Young Persons) Regulations 1998 (SI 504/1998). Note: These Regulations will be revoked from 1 November 2007 and their content will be incorporated into the Safety, Health and Welfare at Work (General Application) Regulations 2007 (SI 299/2007) which will come into effect on that date

Protection of Young Persons (Employment) Act 1996 (employment in Licensed Premises) Regulations 2001 SI 350 /2001 – includes a Code of Practice for guidance of employers and employees in connection with the employment of young people on licensed premises

Protection of Young Persons (Employment of Close Relatives) Regulations 1997 (SI 2/1997)

Education (Welfare) Act 2000

Children and young people have specific rights under employment legislation. The Protection of Young Persons (Employment) Act 1996 is designed to protect the health of young workers in Ireland and ensure that work carried out during school years does not put young people's education at risk.

What do we mean by children and young people?

The Protection of Young Persons (Employment) Act 1996 defines children as being aged under 16, while young persons refers to those aged 16 or 17 years of age.

Are there restrictions on the employment of children or young people?

In general, the Protection of Young Persons (Employment) Act 1996 prohibits the employment of children. There are some exceptions to this general rule:

- Employment authorised by the Minister for Enterprise, Trade and Employment in advertising, cultural, artistic and sporting activities
- A child who is over 14 may do light work outside school term where the hours do not exceed 7 in any day or 35 in any week. Slightly longer hours are allowed in work experience programmes, for example, as part of a transition year programme. Such children must, however, have a complete break of at least 21 days during the summer holidays
- Children over 15, but under 16, may work up to eight hours a week doing light work in school term time
- Children may be employed by a close relative in, for example, a family business doing non-industrial work.

Even allowing for these exceptions to the general rule, a child under 16 may not work between 8pm and 8am. The Act also lays down minimum rest periods and breaks, including at least a 30-minute break after a four-hour work period.

Employment of young persons is less restricted than that of a child. However, there are still important points to note. For example, there is a maximum working day of 8 hours and a maximum working week of 40 hours. Generally, a young person may not be employed between the hours of 10pm and 6am. Rest periods and breaks must include at least a 30-minute break after a working period of four and a half hours.

A young person (that is, a 16 or 17 year old) who is employed on licensed premises may be required to work up to 11pm on any day which is not immediately followed by a school day for him or her. However, work on the following day cannot start before 7am. The work involved on the

licensed premises must be general duties only that do not involve the sale of alcoholic drink at the bar or in an off-licence.

What obligations does the employer of a child or young person have?

Employers must see a copy of the birth certificate for the young person or child, or other evidence of age, before employing him or her. For a child under 16, the employer must also get written permission from the child's parent or guardian.

While employing a child or young person, the employer must keep records that contain:

- The employee's full name
- The employee's date of birth
- The employee's starting and finishing times for work
- The wage rate and total wages paid to the employee.

The employer must keep these records for at least three years to show that they have complied with the law.

In addition, the employer should display the official summary of the relevant legal provisions at the workplace and give the child or young person a copy of the summary within one month of starting (see also Section 3). Copies of the official summary in both leaflet and poster form can be obtained from:

National Employment Rights Authority
Lo-Call: 1890 80 80 90 or Tel: (057) 917 8800
Email: info@employmentrights.ie

ENFORCING YOUR RIGHTS

An employer who employs a young person or child contrary to the Act is liable to prosecution. Inspectors from the ***National Employment Rights Authority*** have responsibility for enforcing the legislation.

If a child or young person considers that they have been ***victimised*** for seeking to have the legislation applied (for example, by refusing to work prohibited hours), then a complaint may be referred by their parent or guardian to a ***Rights Commissioner*** within six months of such penalisation. This period may be extended by a further six months if the Rights Commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the first six months.

Case study: Employing young people

Q Lorraine is aged 14 and she asked the owner of the local supermarket if she could work there during school holidays. She worked six hours a day three days a week over the summer holidays. But when she asked the owner for work during the Christmas holidays, the owner said that she had been told she should not be employing anyone under 16 so she cannot give Lorraine work. Is the supermarket owner correct?

A The supermarket owner is incorrect in thinking that she cannot employ a person of Lorraine's age at all. She can employ her to do light work, but only during school holidays. The maximum hours per day are seven, with a maximum working week of 35 hours. Lorraine should receive a 30-minute break after a maximum of four hours work. In addition, Lorraine should have had a break of at least three weeks from work during the summer holidays. Lorraine should not be asked to work between 8pm and 8am and should receive two days rest in any 7-day period.

Before employing Lorraine, the supermarket owner should see a copy of Lorraine's birth certificate and have the written consent of her parent or guardian. The owner must also keep a record of Lorraine's full name, date of birth, start and finishing times each day, and details of her pay. These records should be retained for at least three years after Lorraine ceases to work at the supermarket. Finally, the owner should display a summary of the legislation concerning the employment of children and young people at the premises, and meet the legal requirements regarding written terms of employment (see Section 3) and health and safety (see Section 9).

FURTHER INFORMATION

Publication: *Guide to Protection of Young Persons (Employment) Act 1996* – Department of Enterprise, Trade and Employment/NERA

Publication: *Code of Practice concerning the Employment of Young Persons in Licensed Premises* – Department of Enterprise, Trade and Employment

Publication: *Information for School Leavers* – Citizens Information Board

SECTION 19 EMPLOYMENT PERMITS

Permission to work in Ireland

Green Card permits

Work permits

Redundancy

Students

Posted workers

PRINCIPAL LEGISLATION

EU Directive 96/71/EC – Framework Directive on the Posting of Workers

Protection of Employees (Part-Time Work) Act 2001 Section 20

Employment Permits Act 2003

Employment Permits Act 2006

The employment rights discussed in this section apply to migrant workers who are legally employed in Ireland. To be legally employed, a migrant must satisfy the various requirements to be allowed to work in Ireland.

Who needs permission to work in Ireland?

Nationals from the European Economic Area (EEA) and Switzerland do not need permission to work in Ireland. The EEA consists of the European Union (EU) states plus Iceland, Liechtenstein and Norway. Nationals of Bulgaria and Romania may need permits to work in Ireland.

Nationals from countries other than EEA countries and Switzerland generally require permission to work in Ireland. There are some exceptions to the general need for non-EEA nationals to obtain permission to work. Examples of people who do not need this permission are people granted refugee status in Ireland, non-EEA spouses of EEA nationals working in Ireland and the children of EEA nationals working in Ireland.

What kinds of employment permits are there?

The type of permission required varies according to the type of work involved. These permissions are collectively called employment permits. There are two main types of permit – Green Card permits and work permits. There are also special arrangements for the spouses and dependants of employment permit holders and for the intra-company transfer of staff.

Green Card permits

Green Card permits are granted to people whose skills are highly in demand in Ireland. The Green Card permit replaces the working visa and work authorisation schemes, which have been discontinued. The main features of the Green Card permit scheme are:

- It is available for occupations with annual salaries of €60,000 or more
- It is also available for occupations with annual salaries of €30,000 to €59,999 in certain employment sectors – currently, information and communications technology, healthcare, industry, financial services and research. This list of occupations is liable to change
- There is no requirement for a labour market needs test (see below)
- Holders of a Green Card permit can have their spouses and families join them immediately.

Green Card permits are issued to the employee and are issued for two years. After the two years, they are generally renewed indefinitely.

Work permits

Work permits are issued for occupations with an annual salary of €30,000 or more that are not eligible for Green Card permits. Work permits are considered for a very limited number of occupations with salaries below €30,000. The ***Department of Enterprise, Trade and Employment*** reviews the list of occupational sectors that are not eligible for work permits on a regular basis. You should check the list on the Department's website as the sectors are liable to change.

A labour market needs test (see the next question below) is required for all work permit applications. Although the permit is issued to the employee, either the employer or the employee can apply for the work permit.

Spousal/dependant permits

A spousal/dependant work permit is a work permit specifically for spouses or dependants of employment permit holders. The spouse or dependant must be legally resident in the State on the basis of being a dependant of the primary employment permit holder. The employment permit holder must hold a valid employment permit and be working within the terms of their employment permit.

Spousal/dependant work permits differ from other work permits in that all occupations are eligible, no labour market needs test is required and there is no fee. However, a spousal permit expires on the same date as the primary employment permit held by the spouse. Spousal/dependant permits can be renewed provided the original employment permit holder retains their permission to work in the State.

The scheme applies to dependants who have reached the age of 18 and who arrived in the State while still minors. These applications are dealt with on a case-by-case basis. The scheme does not apply to dependants over 18 who come to Ireland to join family members who hold employment permits.

Intra-company transfer permits

The intra-company transfer permit scheme is designed to allow the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch. The employees must have a minimum annual salary of €40,000 and must have been working for at least 12 months with the overseas company. Holders of intra-company transfer permits cannot work for other employers.

Permits are granted for up to 24 months and can be renewed for a further three years up to a maximum stay of five years in total.

What is a labour market needs test?

New applications for a work permit must be accompanied by documentary evidence that a labour market needs test has been carried out. The test requires that the vacancy has been advertised with the FÁS/ EURES employment network and in local and national newspapers for three days. This is to ensure that an EEA or Swiss national, in the first instance, or a Bulgarian or Romanian national, in the second instance, cannot be found to fill the vacancy. Applicants for spousal/dependant work permits are exempt from the labour market needs test. The Green Card permit does not require a labour market needs test.

How much do employment permits cost?

The fee for a Green Card permit is €1,000 and the fee for indefinite renewal after two years is €1,500.

The fee for new applications and renewals of work permits is €500 for a permit for up to six months, €1,000 for a permit of between six months and two years and €1,500 for a permit of between two and three years. After five years, there is no fee for an indefinite work permit.

There is no fee for a spousal/dependant permit.

Where do I apply for an employment permit?

Applications for employment permits must be made to the Employment Permits section of the Department of Enterprise, Trade and Employment.

All holders of employment permits must have the correct immigration status. For example, you must hold a visa if it is required.

You must also be registered with the local immigration registration office:

In Dublin, this is the Garda National Immigration Bureau, 13/14 Burgh Quay, Dublin 2.

Outside Dublin, this is the Garda Superintendent's office in the local Garda District headquarters (addresses are available on www.citizensinformation.ie).

After two years on a Green Card permit, you can apply for permanent residence. The Immigration and Citizenship Bureau of the Department of Justice, Equality and Law Reform deals with applications for residence.

Does Irish employment law apply to migrant workers?

Yes. Irish employment law, including the national minimum wage provisions, applies equally to all employees including migrant workers. All employees must meet any particular conditions attaching to the legislation, such as length of service. So, the rights described in this guide apply to migrant workers legally employed in Ireland in the same way as they apply to non-migrant workers.

Migrant workers cannot be denied rights in relation to such matters as holidays, maternity leave or employment due to the fact that they have come from outside the country to work or are working under an employment permit.

All employment permits contain a statement of your rights and entitlements. This statement includes information about when and how you can change job. It also includes details about your pay, your rights to the national minimum wage and any deductions from your pay (for accommodation, for example).

Do migrant workers pay tax and PRSI?

Yes, migrant workers generally pay ***PAYE*** and ***PRSI*** in the same way as other employees in Ireland.

Can I change jobs when working on an employment permit?

If you are working on your first employment permit in Ireland, you are expected to stay with your new employer for 12 months (unless there are exceptional circumstances). After that, you may move to a new employer provided that a new application for an employment permit has been made and a labour market needs test has been carried out (in the case of a work permit).

The Green Card permit is issued for two years and normally it will then be renewed indefinitely. A work permit is issued for two years and can then be renewed for three years. After five years, you can make an application for an indefinite work permit. Once you have an indefinite permit, you may move employment at any time.

I've been working in Ireland on a work permit since 2006 – what do the new rules mean for me?

If you are working on an existing work permit, you can continue to work until it expires. New arrangements now apply for its renewal as regards fees and duration. Either you or your employer can apply for a renewal, and a labour market needs test is not required. The list of ineligible categories applies only to new applications for work permits so you can look for work in other areas.

What rights does a migrant worker have if made redundant?

Entitlements under the redundancy legislation apply. In addition, a migrant worker with a work permit has the right to remain and seek new employment as long as the original work permit remains valid. In such a redundancy situation, there are few restrictions on the type of employment the migrant worker may seek. The new employer is not required carry out a labour market needs test and the application will be fast tracked.

Where a Green Card permit is involved, the migrant worker may seek new employment within the sector for which the permit was granted.

What rights do posted workers have?

A posted worker is an employee who, for a limited period, is working in an EU member state other than the state in which the employee normally works. A worker posted to Ireland from another EU member state has the protection of all Irish employment legislation in the same way as other employees in Ireland.

Are people coming to Ireland to study allowed to work?

Students from within the EEA may take up employment on the same basis as Irish students.

New students from outside the EEA may not take up employment unless they are attending a full-time course of at least one year's duration for a qualification recognised by the Department of Education and Science. A register of such courses is available on the Department's website at www.education.ie. If permitted to take up employment, it must be ***casual employment*** for up to 20 hours a week (full-time during normal vacation periods).

Third-level students from outside the EEA may apply to remain in Ireland for six months after they have received their examination results. This gives them them time to look for employment and, if they are successful, to apply for the appropriate employment permit. During the six-month period, they may work for up to 40 hours a week. The six-month period starts from the date on which the student receives their exam results. This scheme is called the Third Level Graduate Scheme.

Application for permission to remain under the Third Level Graduate Scheme must be made at the applicant's local immigration registration office:

In Dublin, this is the Garda National Immigration Bureau, 13/14 Burgh Quay, Dublin 2.

Outside Dublin, this is the Garda Superintendent's office in the local Garda District headquarters (addresses are available on www.citizensinformation.ie).

ENFORCING YOUR RIGHTS

The ***National Employment Rights Authority*** was set up to ensure better compliance with employment rights and better enforcement of rights for all workers including migrant workers. Labour inspectors investigate complaints from workers about breaches of employment legislation. You can contact the Authority to request an inspection of your workplace.

People newly arrived in Ireland may not always be aware of their rights. The Immigrant Council of Ireland and the Migrant Rights Centre both offer information and support services to immigrants to Ireland.

Immigrant Council of Ireland
2 St Andrew Street, Dublin 2.
Information service: (01) 674 0200
Administration: (01) 674 0202
Email: info@immigrantcouncil.ie
Website: www.immigrantcouncil.ie

Migrant Rights Centre
55 Parnell Square West, Dublin 1.
Tel: (01) 889 7570
Fax: (01) 889 7579
Email: info@mrci.ie
Website: www.mrci.ie

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Case study: Spousal permits

Alice came to Ireland from the Philippines with her husband who is employed on a Green Card permit. She has been looking for work and found a position with a family looking after children. The family looked into getting a work permit for Alice but have told her that it is too expensive for them to organise the work permit for her. Alice was very disappointed and went to her local Citizens Information Centre to get more information about work permits and her options.

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In fact, because Alice's husband is already working in Ireland on a Green Card permit, Alice is eligible for a spousal work permit. There is no fee for this permit and the employer does not have to advertise the role to see if an Irish or EEA citizen is available. Alice told her potential employers this and they have applied for and received a work permit for Alice. Now that Alice is working, Irish employment protection legislation applies to her in the same way that it applies to all other workers in Ireland.

FURTHER INFORMATION

Publication: *Rights to Family Reunification in Ireland, Rights to Long Term Residency and Citizenship in Ireland, Rights of International Students in Ireland, Rights to 'Leave to Remain' in Ireland* (Factsheets available in a number of languages) – Immigrant Council of Ireland

Publication: *Managing Diversity in the Workplace – Focusing on the Employment of Migrant Workers* – DAWN/Chambers of Commerce in Ireland/Institute of Technology (Blanchardstown) and NCCRI

Publication: *Know Your Rights: Information for Migrant Workers in Ireland* – Migrant Rights Centre

Publication: *Employment Rights Information* (booklet available in a number of languages including Chinese, Czech, Hungarian, Latvian, Lithuanian, Polish, Portuguese, Romanian and Russian) – Department of Enterprise, Trade and Employment

Publications: *Guide to Green Card Permits, Guide to Work Permits, Guide to Intra-Company Transfer Permits, Guide to Spousal/Dependant Permits, Guide to Graduate Scheme* – Department of Enterprise, Trade and Employment

Department of Enterprise, Trade and Employment website www.entemp.ie – information on employment permits, posted workers and relevant legislation

SECTION 20 LEAVING OR LOSING YOUR JOB

Minimum notice

Holiday entitlements

Unfair dismissal

PRINCIPAL LEGISLATION

Minimum Notice and Terms of Employment Acts 1973–2001

Organisation of Working Time Act 1997

Unfair Dismissal Acts 1977–2007

Code of Practice: Grievance and Disciplinary Procedures SI 146 /2000

You are entitled to notice if you are dismissed from your job. If you are dismissed from your employment, you may, under certain conditions, bring a claim for unfair dismissal against your employer. The unfair dismissals legislation in Ireland does not actually protect you from dismissal; rather, it provides a system of appeal whereby you can question the fairness of your dismissal after it has occurred.

What period of notice am I entitled to?

You are entitled to a statutory minimum period of notice under the Minimum Notice and Terms of Employment Act 1973 if you are dismissed from your job. The legislation covers employees who have worked for their employers for at least 13 weeks. This is the legal minimum; your contract of employment may contain provisions for a longer period of notice.

The minimum notice provided for is:

Duration of employment	Minimum notice
13 weeks to 2 years	1 week
2 years to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years to 15 years	6 weeks
15 years or more	8 weeks

Do I have to work out my notice?

You may be required to work the notice period or, if offered, you may accept payment instead of notice. If you accept a payment instead of notice, your employment is considered to have ended on the date on which the notice, if given, would have expired.

Can I be dismissed without notice?

Your employer may dismiss you without notice for gross misconduct although you may contest that there was gross misconduct. While legislation does not define gross misconduct, possible examples might include assault, drunkenness, stealing, bullying, harassment, or serious breach of the employer's policies or practices. Your contract of employment may contain further information concerning gross misconduct.

Do I have to give notice if I'm leaving?

Yes. The Minimum Notice and Terms of Employment Act 1973 requires an employee to give an employer a minimum of one week's notice of leaving. However, your contract of employment may require you to give more notice. In these circumstances, the period set down in your contract is the amount of notice you must give. Either the employer or the employee may waive their right to notice.

If my employment is ending, am I entitled to holiday pay for annual leave not taken?

If your employment is ending, you are entitled to receive a payment to cover annual leave entitlement earned but not taken. The payment should equal the amount that would have been paid had the annual leave been taken. Note that ending of employment is the only situation where it is legal to pay an employee instead of giving annual leave.

If your employment stops during the week ending on the day before a public holiday and you have worked for your employer for the previous four weeks, you should receive an additional day's pay for the public holiday. This also applies to part-time employees who have established a right to the public holiday by working at least 40 hours in the previous five weeks.

Do I have any rights if I resign due to conditions at work?

Yes. If you leave your job without being dismissed, you may still have a claim for unfair dismissal. This is known as ***constructive dismissal*** and arises where you consider that you have no alternative but to leave because the conditions in work are being made so unbearable for you.

If an employer dismisses an employee, the onus is on the employer to prove that the dismissal was fair. In a constructive dismissal claim, however, the onus of proof is on the employee. In order to establish constructive dismissal, an employee must only leave as a last resort having used all available means to try to resolve the problem. This is a complex area of law and an employee should seek detailed advice before leaving the job.

Are all employees covered by the unfair dismissals legislation?

In general, all employees are covered by the legislation but each employee must meet certain conditions. Normally, an employee must have been in the same employment for at least a year in order to bring a claim for unfair dismissal. However, there are important exceptions to this general rule. If you have less than 12 months' continuous service, you

may bring a claim for unfair dismissal if you are dismissed for:

- Trade union membership or activity
- Pregnancy, giving birth or breastfeeding or any matters connected with pregnancy or birth
- Availing of rights granted by the Maternity Protection Acts 1994 and 2004, the Adoptive Leave Acts 1995 and 2005, the National Minimum Wage Act 2000, the Parental Leave Act 1998 and 2006 and the Carer's Leave Act 2001.

Certain categories of employees are excluded from the legislation, such as members of the Gardaí and Defence Forces, and FÁS trainees who are not employed. Civil servants are now covered by this legislation as a result of the Civil Service Regulation (Amendment) Act 2005.

Am I entitled to be given the reasons for my dismissal?

Yes. Under the legislation, you may ask your employer for a written statement of the reasons for the dismissal. Your employer should provide this statement within 14 days of the request. There is, however, no penalty placed on an employer who fails to respond to such a request.

Do I have to prove that the dismissal was unfair?

No. Apart from a case involving constructive dismissal, a dismissal is presumed to be unfair unless your employer can show substantial grounds to justify it. An employer must be able to show that the reason for the dismissal was connected with the employee's capability, competence, qualifications, conduct, redundancy, or based on other substantial grounds. In addition, an employer may justify a dismissal by showing that continuation of the employment would be in breach of another law.

How might an employer prove that the dismissal was fair?

An employer could give the following reasons for dismissal:

- Capability – This includes factors such as lateness, absenteeism and persistent illness, either short term or long term. An employer faced with the problem of an employee with persistent illness can dismiss the employee but must be able to establish clear justification for such action. This will involve the employer being able to show that there is a pattern of absence, that this gives rise to a problem, that the situation is unlikely to get better and that the employee has been warned of the likelihood of dismissal. This may also involve the employer obtaining a second opinion on the employee's medical condition. However, it is important to note that if an employee's illness might be considered a disability under employment equality legislation, the employee's rights under that particular legislation would also have to be taken into consideration
- Competence – This involves the employee's ability to do the job. The employer needs to be able to show that the employee was aware of the standards expected and that any shortcomings had been brought to the employee's attention, giving the employee an opportunity to improve
- Qualifications – This could involve a situation where the employee misleads the employer about qualifications that were required when applying for the job. Alternatively, it could involve the employee's failure to obtain qualifications required by the employer having been given a reasonable opportunity to do so
- Conduct – This involves a wide area of behaviour in the job and misconduct by the employee. Gross misconduct may justify dismissal without notice
- Redundancy – Employers can defend themselves against claims for unfair dismissal if they can show that the reason for the dismissal was a redundancy situation (see Section 21)
- Contravening the law – An employer may dismiss an employee whose continued employment would not comply with the law. For example, it may be justifiable to dismiss a driver who has lost their driving licence on the grounds that their continued employment as a driver would be in breach of the law. However, whether such a dismissal would be justified or not would depend on the particular circumstances of the case

- Other substantial grounds – This category is designed to include any situations not already covered, but it is up to the employer to establish that there were other substantial grounds and that they justified the dismissal.

Certain reasons for dismissal are automatically considered to be unfair. These include:

- Trade union membership, or proposed membership and trade union activity (see Section 17)
- The employee's religious or political opinions
- Availing of rights under legislation, such as maternity protection, parental or health and safety leave
- Any dismissal connected with the employee's race, sexual orientation, age or pregnancy – even if the employer has given an alternative reason for the dismissal.

What happens if my dismissal is discriminatory?

Employment equality legislation prohibits dismissal based on any of the nine grounds for discrimination covered by that legislation (see Section 15). This may present an alternative route to taking a claim for unfair dismissal legislation. For example, if you have less than a year's service, it may not be possible to take action under unfair dismissal legislation but it could be possible under equality legislation.

If dismissal is being considered, does my employer have to listen to my side?

Yes. Your employer is expected to have ***disciplinary procedures*** in place and to follow them. Disciplinary procedures set out the stages and process the employer will follow in relation to alleged shortcomings of an employee. Generally, the procedure allows for informal warnings leading to written warnings and, ultimately, to dismissal.

The absence of such procedures may lead to a finding that the dismissal was unfair.

In addition, fair procedures must be followed, so, for example, you must be made fully aware of the allegations against you and given an opportunity to present your side. You must also be given the opportunity to be represented in any disciplinary procedures, for example by your trade union.

If my dismissal is unfair, can I get my job back?

If it is decided that your dismissal was unfair, you may be awarded compensation (up to two years' salary) – this is the most usual outcome. Alternatively, you could be given your job back either from the date of the dismissal (reinstatement) or from a specified date after the dismissal (re-engagement).

Re-engagement is normally considered where it is decided that the dismissal, though unfair, was partly your fault. Compensation may also be reduced where you were partly to blame for the dismissal.

ENFORCING YOUR RIGHTS

Disputes concerning minimum notice may be referred to the ***Employment Appeals Tribunal***.

Disputes in relation to pay for untaken holidays may be referred to a ***Rights Commissioner*** or to the Employment Appeals Tribunal if the employee's claim is connected with a claim under another employment matter such as dismissal, notice, or redundancy.

Claims for unfair dismissal may be brought to a Rights Commissioner if both the employer and employee agree to this. If either or both parties object to a Rights Commissioner hearing, the claim can be referred instead to the Employment Appeals Tribunal. A claim for unfair dismissal should normally be made within six months of the date of dismissal. The time limit may be extended to 12 months, but only where exceptional circumstances prevented the making of the claim within the normal six-month period.

Q

Case study: Unfair dismissal

Joe was employed as a crane driver for over a year. He was involved in a collision on site with another vehicle. The foreman considered that Joe's driving was reckless and posed a risk to safety on site. He reported the matter to the site manager who dismissed Joe. The site manager took into account that Joe's file showed he had received a previous spoken warning for timekeeping and a written warning for violation of the employer's health and safety policy. Was Joe's dismissal fair?

A

The Employment Appeals Tribunal thought not. This was because the employer had not followed fair procedures. Joe had not been given the allegations in writing, or a reasonable opportunity to respond. In addition, he had not been given a hearing, the right to representation, or a chance to inspect the statements made against him.

Q

Case study: Discrimination on the race ground

Stefan came to Ireland from Romania to work. He was dismissed from his job in a cafe after being accused of stealing food. He had been found with a sandwich from the kitchen which he claimed that he had intended to eat it before he left. Employees had a right to take food for consumption at work and the company didn't dispute this. However, the company maintained that they believed that Stefan was planning to take the sandwich with him when he finished work and that they were justified in dismissing Stefan. Was the dismissal fair?

A

The ***Labour Court*** found that the company's decision to dismiss Stefan from his job was discriminatory on the race ground. The Labour Court stated that he was not offered fair procedures in that he was not told that his dismissal was being considered before the decision was taken, he was not informed of his right to be represented at any disciplinary hearing, and there was no investigation in any meaningful sense into the allegation made against him. The Labour Court found that Stefan had been treated less favourably because of his race than other employees facing allegations of serious misconduct had been or would be treated in similar circumstances.

FURTHER INFORMATION

Publication: *Guide to Minimum Notice* – Department of Enterprise, Trade and Employment/NERA

Publication: *Explanatory Booklet for Employers and Employees on the Unfair Dismissals Acts 1977-2001* – Department of Enterprise, Trade and Employment/NERA

Publication: *Code of Practice: Grievance and Disciplinary Procedures* – Labour Relations Commission (website: www.lrc.ie)

SECTION 21 REDUNDANCY

Meaning of redundancy

Redundancy payments

Selection for redundancy

Offer of alternative work

Collective redundancies

Time off to look for new work

PRINCIPAL LEGISLATION

Redundancy Payments Acts 1967–2007

Protection of Employment Act 1977

Protection of Employment Order 1996 SI 370/1996

European Communities (Protection of Employment) Regulations 2000 SI 488/2000

Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007

Employees (Provision of Information and Consultation) Act 2006

What is redundancy?

Redundancy generally arises where an employee's job ceases to exist. The reasons for a job ceasing to exist might be due to the financial position of the firm, lack of work, the firm closing down, or a reorganisation within the firm.

Alternatively, the employer may have decided that the employee's job is going to be done in a different manner and the employee is being replaced by a person who has the necessary qualifications or training to deal with the new arrangement.

Are all employees entitled to a redundancy payment?

No, not all employees are legally entitled to a redundancy payment. In order to qualify for a statutory redundancy payment, an employee must:

- Have at least two years' continuous service with the employer
- Be aged 16 or over, and
- Be in insurable employment under the Social Welfare Acts.

There was an upper age limit of 66 for a redundancy payment but this was abolished by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007, with effect from 8 May 2007.

Not all redundancy payments are determined by the legislation. A redundancy payment may be negotiated between the employer and the employee or their union. Such negotiated payments may include employees not covered by the statutory redundancy scheme and may exceed the statutory minimum payment.

An employee's ***continuity of employment or service*** is not broken by such events as a period of sickness, lay off, holidays, adoptive leave, leave under the maternity protection legislation, parental leave, carer's leave or any leave authorised by the employer such as a career break.

Likewise, an employee's continuity of employment is not broken if they are reinstated or re-engaged under unfair dismissal legislation.

If an employee is dismissed for redundancy before reaching the required two years' service and then taken back within 26 weeks, their continuity of employment is not affected by the break.

There is no entitlement to a redundancy payment if an employee is dismissed within one month of ending an apprenticeship. If, however, the employer retains the former apprentice's services for more than one month after the apprenticeship finishes, the period of the apprenticeship counts in calculating any subsequent redundancy entitlement.

How much is the statutory minimum redundancy payment?

Since May 2003, when the Redundancy Payments Act 2003 came into effect, the statutory redundancy payment is a lump sum payment based on the pay of the employee and calculated in the following manner:

- Two weeks' pay (subject to a maximum of €600 per week or €31,200 per year) for each year worked (work prior to age 16 is not counted), plus
- One week's additional pay.

There is a difference between continuity of employment and reckonable service for redundancy purposes. Some absences from work in the three years before the notice of redundancy may not affect the continuity of employment. However, they may not count as reckonable service when it comes to calculating the amount of statutory redundancy pay. For example, absence from work due to sickness does not affect the employee's continuity of employment for redundancy purposes. However, any period of absence over 26 weeks due to illness will not be counted for the purposes of calculating the actual amount of redundancy.

The ***Department of Enterprise, Trade and Employment*** website (www.entemp.ie) provides a redundancy calculator that you can use to assess the statutory redundancy payment due in any particular case.

Can I be laid off or put on short time indefinitely?

No. In certain circumstances, you can opt to claim redundancy if you have been laid off or working short time.

If you have been laid off or on short time, you may be entitled to claim redundancy once the period of lay off or short time has lasted four consecutive weeks or at least six weeks in a 13-week period. Short time for these purposes means a reduction in the employee's normal hours or pay of more than 50%.

You may serve a notice of intention to claim redundancy on the employer once the lay off or short time has continued for the required period, or within four weeks of the end of such a period. It is open to your employer to serve a counter notice that there will be at least 13 weeks' work within a period of four weeks. If your employer is unable to give such an undertaking, you will be entitled to redundancy subject to the normal qualifying conditions.

If you claim redundancy in these circumstances, you are considered to have left your job voluntarily and therefore will lose any right to notice under the Minimum Notice and Terms of Employment Acts 1973–2001.

What happens if I believe that I have been unfairly selected for redundancy?

When selecting a particular employee for redundancy, an employer should apply selection criteria that are reasonable and applied in a fair manner. You are entitled to bring a claim for unfair dismissal if you consider that you were unfairly selected for redundancy or consider that a genuine redundancy situation did not exist. Examples might be where the ***custom and practice*** in your workplace has been last in, first out and your selection did not follow this procedure, or where your contract of employment sets out criteria for selection that were not followed.

Under the unfair dismissals legislation, selection for redundancy based on certain grounds is considered unfair. These include redundancy due to the employee's trade union membership or activity, pregnancy, or religious or political opinions.

The employment equality legislation also prohibits selection for redundancy that is based on any of the nine grounds of prohibited discrimination under that legislation.

If you and fellow employees are being replaced by workers on lower pay or other less favourable terms, your case may be referred to a redundancy panel. In these circumstances, you may be able to take a claim under the unfair dismissals legislation (see *What are collective redundancies?* below).

Must my employer consider alternatives?

Yes. As with any dismissal, an employer must act reasonably when dismissing an employee in a redundancy situation. This requires prior consultation with you before the decision is made. In addition, your employer should consider all options including possible alternatives.

If I'm offered alternative work, must I accept it?

No, the offer must be a reasonable one. What is reasonable depends on the facts of each case. Generally speaking, alternatives which involve a loss of status or lessening of the terms and conditions would not be considered reasonable. Likewise, you may be justified in refusing an offer that involves you travelling an unreasonable distance to work.

You may take up an alternative on trial for up to four weeks. Where the alternative involves a reduction of 50% or more in hours or pay, working under the new arrangements for up to 52 weeks will not count as an acceptance.

If you accept a new contract or re-engagement with immediate effect and the terms do not differ from those of the previous contract, you will not be entitled to claim redundancy. This also applies if you refuse such an offer unreasonably.

If you accept an offer in writing from your employer for a new and different contract which will take effect within four weeks of the ending of the previous contract, you will not be entitled to claim redundancy. Equally, if you refuse such an offer unreasonably, you will lose your right to a redundancy payment.

What are collective redundancies?

A collective redundancy generally means a large-scale redundancy. Collective redundancies arise under legislation where an employer with a specified number of employees is making a set number of them redundant within a particular timescale – for example, at least five employees are being made redundant from a firm that employs between 21 and 49 employees within a 30-day period.

Where there is a collective redundancy, the legislation (the Protection of Employment Act 1977) requires that the Minister for Enterprise, Trade and Employment and employees or their representatives (generally a union) should be consulted at least 30 days in advance of the proposed redundancies. This legislation is separate from the Redundancy Payments Acts 1967–2007. The aim of the consultation is to consider whether there are any alternatives to the redundancies. The employer is also required to provide the employees with information on the redundancies. This includes giving the reasons for the redundancies, the numbers that will be affected and the timescale involved.

In addition, the Employees (Provision of Information and Consultation) Act 2006 requires employers to consult with employees on substantial changes in the workplace, including proposals for collective redundancies. This Act currently applies to employers of 100 or more people and, from 23 March 2008, to employers of 50 or more people.

Some collective redundancies may be referred to a panel that will determine whether the redundancies were (or are being) carried out in order to replace the employees with workers on lower pay or other less favourable terms and conditions. These are known as exceptional collective redundancies and are covered by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007. If the panel decides the redundancies were carried out for this reason, the employer will not receive a rebate on the lump sum payments and the employees concerned will be able to take action for unfair dismissal.

What procedures should an employer follow in a redundancy situation?

In addition to the requirement to follow fair procedures and observe the statutory provisions in relation to collective redundancies, your employer must:

- Give you at least two weeks' notice of the redundancy – the RP50 form may be used for this purpose

- On the date of dismissal, pay the lump sum due to you and give you a Redundancy Certificate, using the relevant part of the RP50 form. This will give you the details of how your redundancy payment has been calculated.

Am I entitled to time off in order to seek new work?

If you have at least two years' service and have been given notice of redundancy, you are entitled to reasonable paid time off in order to look for a new job or arrange for training. The time off may be taken in the two weeks before your notice expires. The employer may ask for evidence that you have been seeking alternative work or arranging training.

Can I leave before the end of the notice?

Between receiving your notice of redundancy and the expiry of that notice, you may give your employer notice that you wish to leave before the end of the notice period. This notice should be given using an RP6 form. Your employer has discretion whether to grant your request or not. You should note that leaving before the notice expires without your employer's agreement might affect your entitlement to redundancy.

ENFORCING YOUR RIGHTS

In the case of dispute, you should bring a claim for redundancy to the ***Employment Appeals Tribunal*** within one year of the dismissal. This period can be extended to two years if there is a reasonable cause for not taking the claim within the normal one-year period.

See Section 20 for information on claims for unfair dismissal arising from redundancy, such as unfair selection.

Q Case study: Redundancy payment and short-time working

Maria has worked for the same employer for the past 15 years. Two years ago she was put on a three-day week on the understanding that this was temporary and that full-time work would be resumed. She has now been told however that she is to be made redundant. Over the years she has never received a pay increase. How will her redundancy payment be calculated?

A

Maria is entitled to two weeks' pay for each year of service plus one extra week's pay. The present ceiling on earnings is €600 per week. The payment is normally calculated on her earnings at the time she is let go. She had been working full-time for 13 years, however, before being put on reduced working hours (that is, a three-day week). If she had been made redundant within one year of being put on reduced hours, her redundancy payment would have been based on her earnings for a full week. However, she is being made redundant after having been on a three-day week for more than a year.

How her payment will be calculated depends on whether she accepted being on reduced hours or not. If she fully accepted the reduced working hours as her normal week and never asked to return to full-time work, then her redundancy payment will be based on her gross pay for the reduced working hours. If, on the other hand, she never accepted the reduced working hours as her normal hours and continually asked to be put back on full-time working, then it is clear she did not accept her reduced working hours as normal. In this situation, her redundancy payment should be calculated based on her full-time rate of pay.

If she had asked to be placed on reduced working hours for her own reasons and the employer agreed, then the redundancy entitlement would be based on the reduced hours.

If she has a dispute about this with her employer she could make a claim to the Employment Appeals Tribunal.

FURTHER INFORMATION

Publication: *A Layperson's Brief Guide to the Redundancy Payments Scheme* – Department of Enterprise, Trade and Employment/NERA

Publication: *A Guide to the Redundancy Payments Scheme* – Department of Enterprise, Trade and Employment/NERA

Publication: *Protection of Employment Act 1977: Explanatory Booklet for Employers and Employees* – Department of Enterprise, Trade and Employment/NERA

SECTION 22 USEFUL ADDRESSES

Citizens Information

Citizens Information Services (CISs) throughout the country provide a free and confidential information service on rights, entitlements, benefits, taxation, local or other information. There is a list of CISs in Section 23. You can also find them in the Golden Pages.

Citizens Information Phone Service
Lo-Call: 1890 777 121 (within Ireland)
Tel: 00 353 21 452 1600 (outside Ireland)
SMS: 086 978 8300
Email: information@citizensinformation.ie

Citizens Information Board
7th Floor, Hume House, Ballsbridge, Dublin 4.
Tel: (01) 605 9000
Email: ciboard@ciboard.ie
Website: www.citizensinformationboard.ie

See **www.citizensinformation.ie** for online information.

Data Protection Commissioner

Canal House, Station Road, Portarlington, Co. Laois.
LoCall: 1890 25 22 31
Tel: (057) 868 4800
Email: info@dataprotection.ie
Website: www.dataprotection.ie

Department of Enterprise, Trade and Employment

Davitt House, 65a Adelaide Road, Dublin 2.
Tel: (01) 631 3131
Website: www.entemp.ie

Department of Justice, Equality and Law Reform

Asylum, Immigration and Citizenship
13-14 Burgh Quay, Dublin.
Lo-Call: 1890 551 500
Tel: (01) 616 7700

Department of Social and Family Affairs

Social Welfare Appeals Office
D'Olier House, D'Olier Street, Dublin 2.
Lo-Call: 1890 747 434
Tel: (01) 671 8633
Email: swappeals@welfare.ie

Information Service
Social Welfare Services Office, College Road, Sligo.
Tel: (01) 704 3000
Website: www.welfare.ie

Occupational Injuries Benefits
Social Welfare Services Office, Áras Mhic Dhiarmada, Store Street, Dublin 1.
Tel: (01) 704 3000

Maternity Benefit, Adoptive Benefit, Health and Safety Benefit
Social Welfare Services Office, Oliver Plunkett Road, Letterkenny , Co. Donegal.
Lo-Call: 1890 690 690
Tel: (01) 704 3000

Scope Section (Insurability of Employment)
Oisín House, 212-213 Pearse Street, Dublin 2.
Tel: (01) 704 3000

Employment Appeals Tribunal

Davitt House, 65a Adelaide Road, Dublin 2.
Lo-Call: 1890 220 222
Tel: (01) 631 3006
Website: www.entemp.ie

Equality Authority

2 Clonmel Street, Dublin 2.
Lo-Call: 1890 245 545
Tel: (01) 417 3333
Email: info@equality.ie
Website: www.equality.ie

Equality Tribunal

3 Clonmel Street, Dublin 2.
Lo-Call: 1890 34 44 24
Tel: (01) 477 4100
Email: info@equalitytribunal.ie
Website: www.equalitytribunal.ie

FÁS

Head Office, 27-33 Upper Baggot Street, Dublin 4.
Tel: (01) 607 0500
Email: info@fas.ie
Website: www.fas.ie

Free Legal Advice Centres (FLAC)

13 Lower Dorset Street, Dublin 1.
Tel: (01) 874 5690
Email: info@flac.ie
Website: www.flac.ie

Freedom of Information and Office of the Information Commissioner

18 Lower Leeson Street, Dublin 2.
Tel: (01) 639 5689
Email: info@oic.ie
Website: www.oic.gov.ie

Health and Safety Authority

The Metropolitan Building, James Joyce Street, Dublin 1.
Lo-Call: 1890 289 389
Tel: (01) 614 7000
Email: info@hsa.ie
Website: www.hsa.ie

Immigrant Council of Ireland

2 St Andrew Street, Dublin 2.
Information service: (01) 674 0200
Administration: (01) 674 0202
Email: info@immigrantcouncil.ie
Website: www.immigrantcouncil.ie

Irish Congress of Trade Unions

31-32 Parnell Square, Dublin 1.
Tel: (01) 889 7777
Fax: (01) 887 2012
Email: congress@ictu.ie
Website: www.ictu.ie

Irish National Organisation of the Unemployed

Araby House, 8 North Richmond Street, Dublin 1.
Tel: (01) 856 0088
Email: queries@inou.ie
Website: www.inou.ie

Labour Court

Tom Johnson House, Haddington Road, Dublin 4.
Tel: (01) 613 6666
Email: info@labourcourt.ie
Website: www.labourcourt.ie

Labour Relations Commission (including Rights Commissioner Service)

Tom Johnson House, Haddington Road, Dublin 4.
Tel: (01) 613 6700
Email: info@lrc.ie
Website: www.lrc.ie

Legal Aid Board

Quay Street, Caherciveen, Co. Kerry.
Lo-Call 1890 615 200
Tel: (066) 947 1000
Email: info@legalaidboard.ie
Website: www.legalaidboard.ie

Migrant Rights Centre

55 Parnell Square West, Dublin 1.
Tel: (01) 889 7570
Fax: (01) 889 7579
Email: info@mrci.ie
Website: www.mrci.ie

National Educational Welfare Board

16-22 Green Street, Dublin 7.
Tel: (01) 873 8700
Fax: (01) 873 8999
Email: info@newb.ie
Website: www.newb.ie

National Employment Rights Authority

O'Brien Road, Carlow.
Lo-Call: 1890 80 80 90
Tel: (059) 917 8800
Email: info@employmentrights.ie
Website: www.employmentrights.ie

Northside Community Law Centre

Northside Civic Centre, Bunratty Road, Coolock, Dublin 17.
Tel: (01) 847 7804
Fax: (01 847 7563
Email: info@nclc.ie
Website: www.nclc.ie

Pensions Board

Verschoyle House, 28/30 Lower Mount Street, Dublin 2.
Tel: (01) 613 1900
Email: info@pensionsboard.ie
Website: www.pensionsboard.ie

Revenue Commissioners

Central Telephone Information Service
PAYE Lo-Call
Dublin: 1890 333 425
East and South East: 1890 444 425
South West: 1890 222 425
Border Midlands West: 1890 777 425
Website: www.revenue.ie

SECTION 23 CITIZENS INFORMATION SERVICES

DUBLIN

Ballyfermot CIS

Ballyfermot Community Civic Centre, Ballyfermot Road, Dublin 10.
Tel: (01) 620 7181

Blanchardstown CIS

Westend House, Westend Office Park, Snugborough Road Extension, Blanchardstown, Dublin 15.
Tel: (01) 822 0449

City Centre (Dublin) CIS

13A Upper O'Connell Street, Dublin 1.
Tel: (01) 809 0633

Clondalkin CIS

Luke Cullen House, Unit 2, Oakfield Industrial Estate, 9th Lock Road, Clondalkin, Dublin 22.
Tel: (01) 457 9045

Crumlin CIS

146 Sundrive Road, Crumlin, Dublin 12.
Tel: (01) 454 6070

Dublin 246 CIS

Rathmines Community Partnership, 11 Wynnefield Road, Rathmines, Dublin 6.
Tel: (01) 498 2999

Dublin 8 and Bluebell CIS

90 Meath Street, Dublin 8.
Tel: (01) 473 4671

Dublin City North Bay CIS

2 Sybil Hill Road, Raheny, Dublin 5.
Tel: (01) 805 8574

Dublin North West CIS

Unit 7, Finglas Village, Dublin 11.
Tel: (01) 864 1970

Dun Laoghaire CIS

85-86 Patrick Street, Dun Laoghaire, Co. Dublin.
Tel: (01) 284 4544

Fingal (North County) CIS

Unit 26, Swords Plaza, Fingal, Co. Dublin.
Tel: (01) 840 6877

Northside CIS

Northside Civic Centre, Bunratty Road, Coolock, Dublin 17.
Tel: (01) 867 4301

Tallaght CIS

512 Main Street, Tallaght, Dublin 24.
Tel: (01) 451 5887

CARLOW

Co. Carlow CIS

St Catherine's Community Centre, St Josephs Road, Carlow Town.
Tel: (059) 913 8750

CAVAN

Co. Cavan CIS

Dublin Road, Cavan Town.
Tel: (049) 433 2641

CLARE

Co. Clare CIS

Bindon Lane, Bank Place, Ennis.
Tel: (065) 684 1221

CORK CITY AND COUNTY

Cork City Centre and South County CIS

80 South Mall, Cork.
Tel: (021) 427 7377

Cork City (North) CIS

Harbour View Road, Portacabin beside Community College, Knocknaheeny.
Tel: (021) 430 2301

Cork North and East County CIS

61 Lower Patrick Street, Fermoy.
Tel: (025) 32 711

West Cork County CIS

Wolfe Tone Square, Bantry.
Tel: (027) 52 100

DONEGAL

Co. Donegal CIS

Public Service Centre, Blaney Road, Letterkenny.
Tel: (074) 919 4281

GALWAY CITY AND COUNTY

Galway CIS

Augustine House, St. Augustine Street, Galway City.
Tel: (091) 563 344

KERRY

Co. Kerry CIS

4 Bridge Lane, Tralee.
Tel: (066) 712 3655

KILDARE

North Kildare CIS

Derroon House, Dublin Road, Maynooth.
Tel: (01) 628 5477

South Kildare CIS

Room 5, Parish Centre Station Road, Newbridge.
Tel: (045) 431 735

KILKENNY

Kilkenny CIS

4 The Parade, Kilkenny.
Tel: (056) 776 2755

LAOIS

Co. Laois CIS

27 Main Street, Portlaoise.
Tel: (057) 862 1425

LEITRIM

Co. Leitrim CIS

Bridge Street, Drumshanbo.
Tel: (071) 964 0995

LIMERICK CITY AND COUNTY

Limerick CIS

54 Catherine Street, Limerick City.
Tel: (061) 311 444

LONGFORD

Co. Longford CIS

Level One, Longford Shopping Centre, Longford Town.
Tel: (043) 41 069

LOUTH

Co. Louth CIS

4 Adelphi Court, Long Walk, Dundalk.
Tel: (042) 932 9149

MAYO

Co. Mayo CIS

Cavendish House, Link Road, Castlebar.
Tel: (094) 902 5544

MEATH

Co. Meath CIS

1 Brews Hill, Navan.
Tel: (046) 907 4086

MONAGHAN

Monaghan CIS

23 North Road, Monaghan Town.
Tel: (047) 82 622

OFFALY

Co. Offaly CIS

Level One, Bridge Centre, Tullamore.
Tel: (057) 935 2204

ROSCOMMON

Co. Roscommon CIS

18 Castle View, Castle Street, Roscommon Town.
Tel: (090) 662 7922

SLIGO

Co. Sligo CIS

8 Lower John Street, Sligo.
Tel: (071) 915 1133

TIPPERARY

Co. Tipperary CIS

34-35 Croke Street, Thurles.
Tel: (0504) 22 399

WATERFORD CITY AND COUNTY

Waterford CIS

37 Yellow Road, Waterford City.
Tel: (051) 351 133

WESTMEATH

Co. Westmeath CIS

St Mary's Square, Athlone, Co. Westmeath.
Tel: (090) 647 8851

WEXFORD

Co. Wexford CIS

28 Henrietta Street, Wexford.
Tel: (053) 914 2012

WICKLOW

Co. Wicklow CIS

Unit 3 & 4, The Boulevard, Quinsboro Road, Bray.
Tel: (01) 286 0666

GLOSSARY

Benefit in kind: This term is used by Revenue to refer to taxable non-cash payments to employees such as the use of a car, accommodation, entertainment or other services.

Bullying: Bullying in the workplace is repeated inappropriate behaviour conducted by one or more persons against another or others at the place of work and/or in the course of employment and which could reasonably be regarded as undermining the individual's right to dignity at work. Bullying may be direct or indirect, and verbal, physical or otherwise. An isolated incident of the behaviour may be an affront to dignity at work but, as a once-off incident, it is not considered to be bullying.

Casual employment: There is no definition of casual employees in employment law in Ireland. Generally, casual workers are on standby to do work as required without fixed hours or attendance arrangements. However, these workers are considered employees for employment rights purposes and employment legislation applies to them, for example, the right to receive a payslip.

Collective agreements: The agreements negotiated between unions and employers relating to terms and conditions of employment. Such agreements can form part of the contract of the employees concerned.

Code of practice: A code of practice establishes good practice in an area of employment law. Codes of practice are generally not legally binding although they are usually admissible in proceedings before industrial relations tribunals or courts of law.

Common law: Law derived from custom and, in particular, court decisions, rather than legislation.

Comparator: This term refers to a comparable employee – an employee who is doing the same or similar work as a fixed-term or part-time employee. Comparators must be employed by the same or an associated employer, or be in the same industry or sector, or designated as such in a collective agreement.

Constructive dismissal: Constructive dismissal arises where you terminate your contract of employment, with or without prior notice, due to your employer's conduct. Your employer's conduct, however, must have been such that it was reasonable for you to terminate your contract without giving notice. In any unfair dismissal case based on constructive dismissal, it is up to the employee to prove that the resignation was justified. (In cases where the employer dismisses the employee, it is up to the employer to prove that the grounds for the dismissal were fair.)

Continuity of employment or service: An employee's service or employment is continuous (that is, unbroken) unless he or she resigns, retires, is made redundant or is dismissed. Continuity of service is important from a statutory perspective because length of service determines an employee's entitlements to certain rights such as notice periods, unfair dismissal claims, parental leave, carer's leave, and redundancy payments.

Custom and practice: Some workplace terms are established by the usual behaviour in a workplace rather than by legislation or a written contract of employment (for example, an informal 10-minute coffee break at 11am).

Disciplinary procedures: These are the steps set down in writing that outline the stages and process the employer will follow in relation to the alleged shortcomings of an employee. Generally, the procedure allows for a verbal warning, leading to written warnings and ultimately to dismissal. The Labour Relations Commission has published a Code of Practice on Grievance and Disciplinary Procedures (SI 146/2000).

Discrimination: Unlawful discrimination is defined in the equality legislation as a situation where the treatment of one person is less favourable than the way in which another person is, has been or would be treated in the same situation. Discrimination can be direct, indirect or discrimination by association.

Duty of care: Your employer owes you a duty of care to provide a safe workplace. This means that you should not have to work in unsafe or unhealthy conditions. This can include protection against bullying or stress. This duty of care is implied by law in to all contracts of employment.

Employment Regulation Orders: These are negotiated by Joint Labour Committees to regulate conditions of employment and set minimum rates of pay for employees in certain employment sectors. An inspector from the National Employment Rights Authority (NERA) may bring proceedings against an employer who is in breach of an Employment Regulation Order. Employers may be fined for such breaches. Alternatively, an employee may sue an employer who is in breach of an order.

Freedom of information: Under the Freedom of Information Act 1997–2003, you have the right to access records held by government departments and certain public bodies. You do not have to give a reason for seeing any records. The government department or body must give you an explanation if you are not given what you ask for.

Harassment: Harassment is an attempt to intimidate people on the grounds of sex, race, ethnic origin, age, marital status, religion, sexual orientation, disability, parental status or membership of the Traveller community. It includes sexual harassment – defined as unwanted conduct of a sexual nature that affects the dignity of women and men at work. See Section 15.

Joint Labour Committees (JLCs): These committees regulate conditions of employment and set minimum rates of pay and other terms of employment for employees in certain employment sectors. Sectors covered by JLC regulations (known as Employment Regulation Orders) include contract cleaning, hairdressing, retail trades and hotels (see p55 for further details).

P45: This form is issued to an employee when he or she leaves employment. It states gross salary, tax, PRSI and other deductions paid from the start of the tax year to the last day in the job.

P60: This is issued to all employees at the end of each tax year. It states gross pay for the tax year, tax paid, PRSI and other deductions for that tax year.

PAYE: PAYE stands for Pay As You Earn. PAYE is the system whereby tax is deducted at source from an employee's gross wages by their employer and forwarded to the Revenue Commissioners.

PPS Number: PPS Number stands for Personal Public Service Number. Your PPS Number is your unique reference number for all transactions with government departments and other public bodies such as Revenue, the Health Services Executive (HSE) and social welfare. If you do not have a PPS Number or cannot find it, contact your local social welfare office. The PPS Number used to be known as the RSI Number.

PRSA: PRSA stands for Personal Retirement Savings Accounts. PRSAs are a flexible pension arrangement designed for people who do not have a pension scheme in their work, or who move jobs frequently, or who are not in work at all. Employers must provide access to a standard PRSA if there is no pension scheme in the job but do not have to contribute to it.

PRSI: PRSI stands for Pay Related Social Insurance. PRSI is the system whereby social insurance and health contributions are deducted from an employee's gross wage at source. The contributions are collected by the Revenue Commissioners and paid into the Social Insurance fund administered by the Department of Social and Family Affairs and the Department of Health and Children to fund health services. The employer pays a proportion of PRSI and the employee is generally responsible for another percentage depending on their earnings and the type of work they do.

Victimisation: This term is used to describe unfair treatment of a worker by an employer because of some action the worker has taken. Some employment legislation excludes less favourable treatment or dismissal of an employee who seeks to avail of or avails of the rights given by the legislation. For example, the National Minimum Wage Act 2000 prohibits an employer from victimising an employee who seeks to avail of the legislation. Some legislation refers to this conduct as "penalising" an employee.

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