WRC

An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission

Guide to Employment, Labour and Equality Law

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Guide to Employment, Labour and Equality Law

Workplace Relations Commission
Information and Customer Services
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Important Note
This Guide is not intended to be a complete or authoritative statement of the law.

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1 Introduction

This booklet provides information on employment rights and equality legislation applying in Ireland. It should be noted that this legislation applies to all workers working in Ireland including posted EU workers and all other non-national workers working in Ireland under a contract of employment (See page 60-61 for more detail regarding posted EU workers and other non-national workers).

2 Workplace Relations Offices and Services

Department of Business, Enterprise and Innovation

The Department's overall mission is to encourage the creation of high quality and sustainable full employment by championing enterprise across government, supporting a competitive enterprise base, promoting a low tax environment to incentivise work and enterprise and promoting fair and competitive markets.

The Department ensures through work at national and international levels that workplaces are safe, employment rights are appropriate and respected, harmonious industrial relations are promoted and any disputes or contraventions are handled efficiently and effectively; that skills needs are identified and met through alignment of education and training provision and, as required, through targeted and efficient economic migration.

The Department strives to make all markets work more efficiently through smart regulation which, among other matters, encourages high standards of compliance, and quality employment without unnecessary regulatory costs.

The Department's responsibilities in regard to industrial relations lie in the formulation of policy, support and oversight of the industrial relations institutions, the administration of industrial relations and trade union law and the monitoring of developments in industrial disputes. In addition the Department is involved in the promotion of employee participation in the workplace.

In addition, the Department of Business, Enterprise and Innovation is responsible for the promotion, administration and review of a variety of measures in the field of labour legislation and employment rights.

The Department also administers the Employment Permits system which facilitates enterprises to access talent from overseas that is in short supply in the State. The suite of supporting regulations ensures that the system remains attuned to the changing labour market and enterprise environment.

The Workplace Relations Commission

The Workplace Relations Commission (WRC) has responsibility for

- promoting the improvement of workplace relations, and maintenance of good workplace relations,
- promoting and encouraging compliance with relevant enactments,
- providing guidance in relation to compliance with codes of practice approved under Section 20 of the Workplace Relations Act 2015,
- conducting reviews of, and monitoring developments as respects, workplace relations,
- conducting or commissioning research into matters pertaining to workplace relations,
- providing advice, information and the findings of research conducted by the Commission to joint labour committees and joint industrial councils,
- advising and apprising the Minister in relation to the application of, and compliance with, relevant enactments, and
- providing information to members of the public in relation to employment enactments.

The Commission's core services include the inspection of employment rights compliance, the provision of information, the processing of employment agency and protection of young persons (employment) licences and the provision of mediation, conciliation, facilitation and advisory services.

The Commission has a board consisting of a chairperson and 8 ordinary members appointed by the Minister for Business, Enterprise and Innovation.

The Labour Court

The Labour Court, established under the Industrial Relations Act 1946, provides a comprehensive service for the resolution of disputes about industrial relations and has sole appellate jurisdiction in all disputes arising under employment rights enactments. The Court's functions can be divided between those relating to industrial relations matters and those relating to the determination of appeals in matters of employment rights. Additionally, the Court has a number of functions in relation to Joint Labour Committees and the making of Employment Regulation Orders as well as registering Joint Industrial Councils and Employment Agreements.

The Court consists of 13 full-time members – a Chairman, 4 Deputy Chairmen and 8 ordinary members representative of employers (4) and workers (4). The Chairman and Deputy Chairmen are appointed by the Minister for Business, Enterprise and Innovation; the 4 Employers' Members of the Court are nominated by IBEC (Irish Business and Employers Confederation) and the 4 Workers' Members of the Court are nominated by ICTU (Irish Congress of Trade Unions) and then appointed by the Minister. The Labour Court also has a legal adviser (the Registrar).

For the purposes of hearing cases, the Court operates in Divisions – a Division consists of a Chairman, an Employers' Member and a Workers' Member. Certain issues may require a meeting of the full Court.

The Industrial Relations Acts 1946 – 2015 assign various functions to the Court. These functions are mainly concerned with the investigation of trade disputes and the issuing of recommendations on how the dispute should be resolved. The Labour Court is not a court of law. Effectively, for most purposes, the Labour Court acts as a court of last resort i.e. the services of the Court are availed of when the other options for the resolution of industrial relations disputes have been explored and exhausted.

The Labour Court also acts as a court of appeal in relation to the decisions of Workplace Relations Commission Adjudication Officers and compliance notices issued by Commission inspectors. The Workplace Relations Act 2015 provides that the Court has sole appellate jurisdiction in all disputes arising under employment right enactments.

Employment Appeals Tribunal

The Employment Appeals Tribunal (EAT) is an independent body bound to act judicially, and was set up to provide a fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights.

The Tribunal deals with first instance employment rights complaints **which were presented before 1st October, 2015** (legacy complaints) under the following legislation

- Redundancy Payments Acts, 1967 to 2014
- Minimum Notice and Terms of Employment Acts, 1973 to 2005
- Unfair Dismissals Acts, 1977 to 2015

Appeals of Rights Commissioner recommendations made before 1st October, 2015 (legacy appeals) under Terms of Employment, Payment of Wages, Unfair Dismissal, Redundancy (Consultation and Information), Maternity Protection, Adoptive Leave, Carer's Leave, Parental Leave, Protection of Young Person's (Employment), Consumer Protection (penalisation), Competition (penalisation), Chemicals (penalisation) and Transfer of Undertakings legislation are dealt with by the Employment Appeals Tribunal.

Note that in accordance with the Workplace Relations Act 2015 all complaints and disputes under employment, equality and equal status legislation which were presented after 30th September, 2015 will be dealt with by the Workplace Relations Commission.

The EAT will remain in place to deal with legacy complaints and appeals on completion of which it will be dissolved. Updates in this regard are available on www.workplacerelations.ie.

Low Pay Commission

The remit of the Low Pay Commission (LPC) is to recommend levels for the minimum wage rates that will help as many low-paid workers as possible without any significant adverse impact on employment or the economy. The advice the LPC offers the Government to achieve this is based on the best available evidence.

The Commission comprises 8 members and an independent Chairperson. There are members who have an understanding of the interests of employers, particularly small to medium-sized employers and those operating in traditionally low pay sectors, and who possess a good knowledge and understanding of the particular issues faced by Irish businesses, particularly in relation to labour costs and competitiveness. There are members who have an understanding of the interests of employees, particularly the impact of living on the minimum wage and the sectors where low pay and minimum wage workers are concentrated. There are also academics with particular knowledge or expertise in relation to economics, labour market economics, statistics, and employment law, as well as proven competence in analysing and evaluating economic research and statistical analysis. The term of office of a member of the Commission is three years from the date of his or her appointment. A person may not be a member of the Commission for more than two consecutive terms of office but is otherwise eligible for re-appointment.

The National Minimum Wage (Low Pay Commission) Act 2015 requires the Commission in making a recommendation to the Minister on the National Minimum Wage (NMW) to have regard to a number of factors since the most recent making of a National Minimum Wage Order.

The remit, and the legislation, also require that the Commission give consideration to a range of issues in coming to a decision on a recommendation to the Minister for an appropriate rate for the minimum wage. Some of the issues are, essentially, matters of fact, while others necessitate an element of assessment and appraisal, and considered judgement.

The particular issues the Commission is obliged to have regard to in considering its recommendation are —

(a) changes in earnings during the relevant period,

(b) changes in currency exchange rates during the relevant period,

(c) changes in income distribution during the relevant period,

(d) whether during the relevant period—
  (i) unemployment has been increasing or decreasing,
  (ii) employment has been increasing or decreasing, and
  (iii) productivity has been increasing or decreasing,
  both generally and in the sectors most affected by the making of an order,

(e) international comparisons, particularly with Great Britain and Northern Ireland,

(f) the need for job creation, and

(g) the likely effect that any proposed order will have on —
  (i) levels of employment and unemployment,
  (ii) the cost of living, and
  (iii) national competitiveness.

Health and Safety Authority

The Health and Safety Authority is the national statutory body with responsibility for ensuring that all workers (employed and self-employed) and those affected by work activity are protected from work related injury and ill-health. This is done by enforcing occupational health and safety law, promoting accident prevention, and providing information and advice across all sectors, including retail, healthcare, manufacturing, fishing, entertainment, mining,

construction, agriculture and food services. The Authority was initially established under the Safety, Health and Welfare at Work Act (1989), since replaced by the Safety, Health and Welfare at Work Act 2005, and it operates under the aegis of the Department of Business, Enterprise and Innovation.

The Authority's primary functions include:

- Monitoring and enforcing compliance with occupational health and safety legislation.
- Providing information and expert advice to employers, employees and the self-employed.
- Promoting workplace safety, health, welfare, education and training.
- Publishing research on workplace hazards and risks.
- Acting as Lead National Competent Authority for a number of chemicals regulations including REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation and the Seveso III Directive.
- Acting as Market Surveillance Authority for ensuring the safety of certain products used in workplaces and consumer applications.
- Proposing new regulations and codes of practice to the Minister.

Mechanisms for Setting Terms and Conditions

JOINT LABOUR COMMITTEES

Joint Labour Committees (JLCs) are bodies established under the Industrial Relations Acts to provide machinery for fixing statutory minimum rates of pay and conditions of employment for particular employees in particular sectors. They may be set up by the Labour Court on the application of (i) the Minister for Business Enterprise and Innovation or (ii) a trade union or (iii) any organisation claiming to be representative of the workers or the employers involved. A JLC is made up of equal numbers of employer and worker representatives appointed by the Labour Court and a chairman and substitute chairman appointed by the Minister for Business Enterprise and Innovation. JLCs operate in areas where collective bargaining is not well established and wages tend to be low.

The function of a JLC is to draw up proposals for fixing minimum rates of pay and conditions of employment for the workers affected. When proposals submitted by a JLC are adopted by the Labour Court, the Minister for Business Enterprise and Innovation may give statutory effect to the proposals through the making of an Employment Regulation Order. Employers are then obliged to pay wage rates and provide conditions of employment not less favourable than those prescribed.

Any breaches of an Employment Regulation Order may be referred to the WRC for appropriate action.

An employer of workers to whom an Employment Regulation Order applies must keep records of wages, payments etc., and must retain these records for three years. The employer must also post up a prescribed notice in the place of employment setting out particulars of the statutory rates of pay and conditions of employment.

A list of JLCs is available at www.workplacerelations.ie .

REGISTERED EMPLOYMENT AGREEMENTS

An Employment Agreement is an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union or trade unions of workers and one or more than one employer or a trade union of employers, that is binding only on the parties to the Agreement in respect of the workers of that class, type or group.

Any party to an Employment Agreement may apply to the Labour Court to register the Agreement. The Labour Court shall register such agreements in the Register of Employment Agreements – they then become Registered Employment Agreements - if it is satisfied that they comply with rules set down in the Industrial Relations (Amendment) Act 2015. The effect of registration is to make the provisions of the Registered Agreement legally binding on the parties to the Agreement only. Any contraventions of a Registered Employment Agreement may be referred to the WRC for appropriate action.

SECTORAL EMPLOYMENT ORDERS

On foot of a request, from a trade union of workers, a trade union or an organisation of employers, or a trade union of workers jointly with a trade union or an organisation of employers, the Labour Court can carry out an examination of the remuneration, sick pay or pension scheme of workers in a particular economic sector. The Labour Court, having considered the applicable economic factors, may make a recommendation to the Minister, who shall, if he/she is satisfied that the Labour Court, in making its recommendation has complied with the provisions of the Industrial Relations (Amendment) Act 2015, accept the recommendation and by Ministerial Order confirm the terms of the recommendation. Such Order applies to every worker of the class, type or group in the economic sector to which it is expressed to apply, and his or her employer. The 2015 Act provides for exemptions in specific circumstances from the obligation to pay remuneration set down in Sectoral Employment Orders. Any contraventions of Sectoral Employment Orders may be referred to the WRC for appropriate action.

JOINT INDUSTRIAL COUNCILS

Joint Industrial Councils (JICs) are voluntary negotiating bodies for particular industries or parts of industries that are representative of employers and trade unions. A Council, provided that it fulfils certain conditions, may register with the Labour Court as a Joint Industrial Council under the Industrial Relations Acts. The rules of such Councils must provide for the referral of disputes to the Council for consideration before resort is had to industrial action. A registered JIC may request the Labour Court to appoint a chairperson and secretary to the Council.

Adjudication Services

Adjudication Officers of the Workplace Relations Commission (WRC) are statutorily independent in their decision making duties as they relate to adjudicating on complaints referred to them by the WRC Director General.

The Adjudication Officer's role is to hold a hearing where both parties are given an opportunity to be heard by the Adjudication Officer and to present any evidence relevant to the complaint. Hearings of the Workplace Relations Commission are held in private. However, complaints may, in certain instances, be disposed of by means of written procedure (i.e. without hearing). The Adjudication Officer will not attempt to mediate or conciliate the case. Parties may

be accompanied and represented at hearings by a trade union official, an official of a body that, in the opinion of the Adjudication Officer, represents the interests of employers, a practicing barrister or practicing solicitor or any other person, if the Adjudication Officer so permits.

The Adjudication Officer will then decide the matter and give a written decision in relation to the complaint. The decision, which will be communicated to both parties and published, will

(a) declare whether the complainant's complaint was or was not well founded,

(b) require the employer to comply with the relevant provision(s),

(c) require the employer to make such redress as is just and equitable in the circumstances.

A party to a complaint may appeal to the Labour Court from a decision of an Adjudication Officer.

The redress that may be granted by an Adjudication Officer in the case of the different areas of employment and equality legislation is set out an Appendix I.

Mediation Services (Employment Rights Issues)

In line with Section 39 of the Workplace Relations Act 2015, the Workplace Relations Commission (WRC) may be in a position to offer a mediation service in certain cases to facilitate the resolution of complaints/disputes where possible at an early stage and without recourse to adjudication. The ability of the WRC to offer mediation will depend on a number of factors including the availability of resources. Complaints/disputes may only be referred for mediation with the agreement of both parties to the complaint/dispute.

Mediation seeks to arrive at a solution through an agreement between the parties, rather than through an investigation or hearing or formal decision. The Mediation Officer empowers the parties to negotiate their own agreement on a clear and informed basis, should each party wish to do so. The process is voluntary and either party may terminate it at any stage.

Mediation can take the form of telephone conferences with the parties, face-to-face mediation conferences/meetings or such other means as the Mediation Officer considers appropriate.

All communications by a Mediation Officer with the parties and all records and notes held for the purposes of resolving any matter are confidential and cannot be disclosed in any subsequent hearing or investigation process or in proceedings before a court (other than proceedings in respect of a contravention of the terms of a resolution agreed during the mediation conference).

Where a complaint/dispute is resolved, whether by mediation or otherwise, the Mediation Officer will record in writing the terms of the resolution, the parties will be asked to sign that record and the record of resolution will be given to the Director General of the Workplace Relations Commission. A copy will also be given to each party.

The terms of a resolution are binding on the parties and if either party contravenes these terms, the contravention will be actionable in any court of competent jurisdiction.

The terms of a resolution may not be disclosed by a Mediation Officer or by either party in any proceedings before a court (other than proceedings in respect of the contravention of the terms of the resolution).

Where a complaint/dispute is not resolved, the Mediation Officer will notify the parties to the complaint or dispute and the Director General of the WRC in writing of that fact. The Director General will then refer the complaint or dispute concerned for adjudication by an Adjudication Officer.

Inspection and Enforcement Services

Inspectors of the Workplace Relations Commission are authorised to carry out inspections, examinations or investigations for the purposes of monitoring and enforcing compliance with employment legislation. The identity of the complainant will not be divulged to the employer unless the complainant has given his/her consent to do so.

Where an Inspector determines that a contravention of specified areas of employment law (including the non-payment of certain monies due to an employee under employment law) has taken place, and the employer concerned fails or refuses to rectify the non-compliance the Inspector may issue a Compliance Notice setting out the steps the employer must take to effect compliance. If the employer does not appeal and fails or refuses to rectify or set out in writing how he or she proposes to rectify the matters set out in the notice, the Workplace Relations Commission may initiate prosecution proceedings against the employer.

In respect of a specified range of acts of non-compliance on the part of employers, an Inspector will serve a fixed charge notice. If the person on whom the notice is served pays the charge the matter does not proceed to Court. However, if the person fails or refuses to pay the charge the matter can be progressed to the District Court where the defendant can defend their position in the normal way.

WRC inspectors are also appointed by the Minister for Business, Enterprise and Innovation as authorised officers for the purposes of the Employment Permit Acts 2003 to 2014.

Mediation (Internal Workplace Issues)

Mediation is a voluntary, confidential process that allows two or more disputing parties to resolve their conflict in a mutually agreeable way with the help of a neutral third party, a mediator.

The Workplace Mediation Service, which is provided by officers of the Workplace Relations Commission's (WRC) Conciliation and Advisory Services, provides a prompt, confidential and effective remedy to workplace conflicts, disputes and disagreements. Workplace mediation is particularly suited to disputes involving individuals or small groups of workers. Examples of such disputes would be:

- Interpersonal differences, conflicts, difficulties in working together
- Breakdown in a working relationship
- Issues arising from a grievance and disciplinary procedure (particularly before a matter becomes a disciplinary issue)
- Industrial Relations issues which have not been the subject of a referral to a WRC Adjudication Officer (trade dispute), the WRC's Conciliation Service or the Labour Court.

The Workplace Mediation Service is focused on assisting parties to deal effectively with issues that arise in the workplace. The provision of this service is subject to the availability of resources within the Workplace Relations Commission.

Conciliation Services

The purpose and mission of the Workplace Relations Commission's conciliation service is to provide an impartial, fast and effective conciliation service operating to a uniformly high standard in both the public and private sectors.

Conciliation is a voluntary process in which the parties to a dispute agree to avail of a neutral and impartial third party to assist them in resolving their industrial relations differences.

The Workplace Relations Commission provides a conciliation service by making available Industrial Relations Officers of the Commission to chair 'conciliation conferences'. These officers are sometimes referred to as 'IROs' or as 'Conciliation Officers'. Conciliation conferences are basically an extension of the process of direct negotiations, with an independent chairperson present to steer the discussions and explore possible avenues of settlement in a non-prejudicial fashion.

Participation in the conciliation process is voluntary, and so too are the outcomes. Solutions are reached only by consensus, whether by negotiation and agreements facilitated between the parties themselves, or by the parties agreeing to settlement terms proposed by the Conciliation Officer.

The Industrial Relations Officer treats as confidential all information received during the course of conciliation.

The conciliation process is informal and non-legalistic in its practice. The parties are free to represent themselves or be represented by trade unions or by employer organisations. The Commission does not believe that the nature of the process requires legal representation of either party at conciliation meetings.

All requests for assistance and inquires may be referred in writing and should be directed to the Director of Conciliation, Workplace Relations Commission, Workplace Mediation and Early Resolution Services and or by contacting the Workplace Relations Commission's Conciliation Services or by using the online Conciliation Referral Form on www.workplacerelations.ie.

Advisory Services

The Workplace Relations Commission's Advisory Service promotes good practice in the workplace by assisting and advising organisations in all aspects of industrial relations in the workplace. It engages with employers, employees and their representatives to help them to develop effective industrial relations practices, procedures and structures. Such assistance could include reviewing or developing effective workplace procedures in areas such as grievance, discipline, communications and consultation.

It facilitates joint management–staff forums to work through issues of mutual concern; for example workplace change or difficult industrial relations issues.

It provides good practice training workshops on a variety of aspects of the employment relationship including the operation of workplace procedures and, through a facilitative process, can assist organisations to implement them. In addition, the Advisory

Service commissions and publishes research on current industrial relations themes. The Advisory Service also facilitates a procedure to help management and employee representatives to resolve disputes in situations where negotiating arrangements are not in place and where collective bargaining fails to take place.

Members of the Advisory Service team are independent, impartial and experienced in industrial relations practice and theory. In discussion with the parties concerned, a designated member of the Advisory team will tailor assistance to fit the requirements of individual organisations or firms, whether large or small. This assistance is confidential to the parties and is provided free of charge.

Requests for the assistance of the Advisory Service may be made by contacting the Workplace Relations Commission.

Important Contacts

Body/Office	Role	Email	Telephone
Department of Business, Enterprise and Innovation	Overall policy and strategy in relation to employment rights	info@dbei.gov.ie	01-6312121
	Regulation of the Labour Market and employment permits	employmentpermits @dbei.gov.ie	Lo-call 1890 201616 or 01-4175333
Workplace Relations Commission	Information Provision	See contact us page on www.workplacerelations.ie	Lo-call 1890-808090 or 059 9188990
	Complaints/Dispute receipt and registration	See contact us page on www.workplacerelations.ie	1890-808090
	Adjudication Services	See contact us page on www.workplacerelations.ie	01-6313380
	Inspection & Enforcement Services	See contact us page on www.workplacerelations.ie	Lo-call 1890 220100 or 059 9178800
	Mediation Services	See contact us page on www.workplacerelations.ie	Lo-call 1890 220227 or 01-6136700
	Protection of Young Persons (Employment) and Employment Agency licensing.	See contact us page on www.workplacerelations.ie	059-9178800

Body/Office	Role	Email	Telephone
	Conciliation & Facilitation Services	See contact us page on www.workplacerelations.ie	Lo-call 1890 220227 or 01-6136700
	Workplace Mediation Service	See contact us page on www.workplacerelations.ie	Lo-call 1890 220227 or 01-6136700
	Advisory Services	advisory @workplacerelations.ie	01-6136700
Low Pay Commission	Advises the Government in relation to levels for national minimum pay	secretarylpc@djei.ie	01-6313055
Employment Appeals Tribunal	Adjudication on complaints referred to the EAT before 1st October, 2015	EAT@djei.ie	Lo-call 1890 220222 or 01-6313006
Labour Court	Appeals against adjudication decisions and compliance notices and the investigation of industrial relations disputes	info@labourcourt.ie	Lo-call 1890 220228 or 01-6136666
Irish Human Rights and Equality Commission	Protection and promotion of equality	publicinfo@ihrec.ie	Lo-call 1890 245545

Signature

3 Commencing Employment

Contract of Employment

Anyone who works for an employer for a regular wage or salary has automatically a contract of employment whether written or not. The Terms of Employment (Information) Acts 1994 to 2014 define a contract of employment as a contract of service or apprenticeship or any contract under which workers are supplied by employment agencies. Contracts may be expressed (oral or in writing) or implied, Many of the terms of a contract of employment may emerge from the common law, statutes or collective agreements made through trade unions or may be derived from the custom or practice in a particular industry.

The Terms of Employment (Information) Acts 1994 to 2014 provide that an employer must provide an employee with a written statement of certain particulars of the terms of employment. These Acts are outlined further in this Section.

The Protection of Employees (Fixed-Term Work) Act 2003 provides that where an employer proposes to renew a fixed-term contract, the fixed-term employee shall be informed in writing by the employer of the objective grounds justifying the renewal of the fixed-term contract and the failure to offer a contract of indefinite duration, at the latest by the date of the renewal. This Act is outlined further in Section 6 of the Guide.

Employers are required by section 14(1) of the Unfair Dismissals Acts 1977 to 2007 to give a notice in writing to each employee setting out the procedure which the employer will observe before, and for the purpose of, dismissing the employee. This must be given not later than 28 days after entering into a contract of employment. There is a separate section in this Guide on dismissals - see Section 10 - Termination of Employment.

The Payment of Wages Act 1991, gives every employee the right to a written statement every pay day with every deduction itemised. This entitlement is described at Section 9 of the Guide.

Employment Permits

Non-EEA nationals, except in the cases listed below, require an employment permit to work in Ireland. The EEA comprises the Member States of the European Union together with Iceland, Norway and Liechtenstein.

Non-EEA nationals working in Ireland and their employers may be committing an offence if the former do not have an employment permit and are required by the Employment Permits Acts 2003 to 2014 to do so. Employment permit holders can only work for the employer, or as the case may be the connected person or contractor, and in the occupation named on the permit. If the holder of an employment permit ceases, for any reason, to be employed by the employer,

or as the case may be the connected person or contractor, named on the permit during the period of validity of the permit, the original employment permit and the certified copy held by the employer, or as the case may by, the connected person or contractor, must be returned immediately to the Department of Business, Enterprise and Innovation.

The following non-EEA nationals do not require an employment permit:

- non-EEA workers legally employed in one Member State who are temporarily sent on a contract to another Member State-the employer does not need to apply for employment permits in respect of the non-nationals for the period of contract.
- a Non-EEA national who has been granted permission to remain in the State on one of the following grounds:
  - permission to remain as spouse or a dependant of an Irish/EEA national,
  - Permission to remain as the parent of an Irish citizen,
  - Temporary leave to remain in the State on humanitarian grounds, having been in the Asylum process,
  - Explicit permission from the Department of Justice and Equality to remain resident and employed in the State,
  - Permission to be in the State as a registered student who is permitted to work 20 hours during term time and 40 hours during holiday periods,
  - Permission to be in the State under the terms of the Diplomatic Relations and Immunities Act 1967, and are assigned to a Mission of a country with whom the Government has entered into a Working Dependents Agreement,
  - Swiss Nationals: In accordance with the terms of the European Communities and Swiss Confederation Act, 2001, which came into operation on 1 June, 2002, this enables the free movement of worker between Switzerland and Ireland, without the need for Employment Permits.

Inspectors in the Workplace Relations Commission are also appointed by the Minister for Business Enterprise and Innovation as authorised officers for the purposes of the Employment Permits Acts.

Terms of Employment (Terms of Employment (Information) Acts)

The Terms of Employment (Information) Acts 1994 to 2014 require employers to provide employees with a written statement of certain particulars of their employees' terms of employment. The Acts, in general, apply to any person

- working under a contract of employment or apprenticeship
- employed through an employment agency or
- in the service of the State (including members of the Garda Siochana and the Defence Forces, Civil Servants and employees of any local authority, health board, harbour authority, the Health Service Executive or education and training board).

The Acts do not apply to a person who has been in the continuous service of the employer for less than 1 month.

In the case of agency workers, the party who is liable to pay the wages (employment

agency or client company) is the employer for the purposes of the Acts and is responsible for providing the written statement.

The employer must provide the written statement of particulars within 2 months of the date of commencement of employment. In the case of employees whose employment commenced before 16th May 1994, (the commencement date of the Act) the written statement must be provided by the employer within two months of being requested to do so by the employee.

The written statement, which is not, of itself, a contract must include particulars of the terms of employment relating to the name and address of the employer, the place of work, job title/nature of the work, date of commencement of employment, the expected duration of contract (if temporary contract) or the date on which the contract will expire (if fixed term contract), rate or method of calculation of pay, pay intervals, hours of work (including overtime), statutory rest period and rest break entitlements, paid leave, incapacity for work due to sickness or injury, pensions and pension schemes, notice entitlements, registered employment agreements, employment regulation orders and collective agreements.

The statement must also indicate the pay reference period for the purpose of the National Minimum Wage Act 2000. Furthermore, the statement of terms must inform the employee that he/she is entitled to ask for a statement of his/her average hourly rate of pay for any pay reference period falling with in the previous 12 months as provided for in section 23 of the National Minimum Wage Act 2000.

As an alternative to providing some of the details in the statement, an employer may use the statement to refer the employee to certain other documents containing the particulars, provided that the document is reasonably accessible to the employee.

An employer is also required to notify an employee of any changes to the particulars contained in the written statement within 1 month after the change takes effect. Where an employee is required to work outside the State for a period of not less than 1 month, the employer is obliged to add certain particulars to the written statement and to provide the statement prior to the employee's departure.

Regulations made under the Acts require employers to give their employees who are under 18 years of age a copy of the official summary of the Protection of Young Persons (Employment) Act 1996 within one month of taking up a job.

Complaints

The Acts provide a right of complaint to the Workplace Relations Commission (WRC) where an employee believes that his/her employer has failed to provide a written statement in accordance with the terms of the Acts or failed to notify the employee of changes to the particulars contained in the statement. The relevant complaint form is available on www.workplacerelations.ie or by contacting the Commission's Information and Customer Services on 1890 80 80 90. There is a right of appeal by either party to the Labour Court from a decision of a WRC Adjudication Officer.

Additional Information

See Explanatory Booklets on the Terms of Employment (Information) Acts 1994 and 2001, Protection of Employees (Fixed-Term Work) Act 2003, Unfair Dismissals Acts 1977 to 2007 and Payment of Wages Act 1991, copies of which are available on request, or downloadable from www.workplacerelations.ie.

Information on Employment Permit requirements is available from the Department of Business, Enterprise and Innovation,
Telephone: (01) 417 5333
LoCall: 1890 201 616
Email: employmentpermits@dbei.gov.ie
website: www.dbei.gov.ie

4 Working Hours

Organisation of Working Time Act 1997

The Organisation of Working Time Act 1997 sets out statutory rights for employees in respect of rest, maximum working time and holidays. These rights apply either by law as set out in the Act, in Regulations made under the Act or through legally binding collective agreements. These agreements may vary the times at which rest is taken or vary the averaging period over which weekly working time is calculated.

The 1997 Act does not apply to Members of the Defence Forces or of the Garda Siochana. Part II of that Act (which deals with rest periods, and weekly working hours) does not apply to hospital doctor in training[1], persons engaged in sea-fishing or other work at sea, persons employed in the civil protection services (e.g. prisons, fire services, Irish Coast Guard)[2] those who control their own working hours or persons employed by a close relative in a private dwelling house or farm in or on which both reside.

Certain sectors which were originally excluded from the scope of the Organisation of Working Time Act 1997 have now been covered by working time rules by way of several sets of Regulations made under the European Communities Act. These Regulations either brought a particular sector within the scope of the 1997 Act or provided for stand-alone rules for a particular sector within a set of Regulations. These sectors include transport workers (other than those performing mobile road transport activities and those in civil aviation which are covered by separate working time Regulations made under EU Directives related specifically to those sectors), doctors in training, sea-fishing workers and offshore workers.

Maximum Weekly Working Time

The maximum average working week is 48 hours. Averaging may be balanced out over a 4, 6 or 12 month period depending on the circumstances.

[1] See the European Communities (Workers on board Sea-going Fishing Vessels(Organisation of Working Time) Regulations 2003 (SI No. 709 of 2003)

[2] See the Organisation of Working Time (Exemption of Civil Protection Services) Regulations 1998 (SI No. 52 of 1998)

The 48 hour net maximum working week can be averaged according to the following rules:

Category of Worker	Reference Period for averaging
Employees who are night workers	2 months
Employees generally	4 months
Employees where work is subject to seasonality, a foreseeable surge in activity or where employees are directly involved in ensuring continuity of service or production	6 months
Employees who enter into a collective agreement with their employers which is approved by the Labour Court	Up to 12 months
Young people under 18	Hours of work are fixed by the Protection of Young Persons (Employment) Act 1996.

Rest

Every employee has a general entitlement to the following rest periods:

Rest Type	Entitlement
Daily	11 consecutive hours daily rest per 24 hour period.
Weekly	One period of 24 hours rest per week preceded by a daily rest period (11 consecutive hours).
Rest Breaks	15 minutes where more than 4 and half hours have been worked; 30 minutes where more than 6 hours have been worked which may include the first break.

Shop employees who work more than 6 hours and whose hours of work include the hours 11 .30am - 2.30pm must be allowed a break of one hour which must commence between the hours 11 .30am - 2.30pm.

These rest periods and rest intervals may be varied if there is a collective agreement in place approved by the Labour Court or if a regulation has been made for a particular sector. If there are variations in rest periods

and rest intervals under agreements or in the permitted sectors, equivalent compensatory rest must be available to the employee.

Night Workers

Night time is the period between midnight and 7 am the following day.

Night workers are employees who normally work at least 3 hours of their daily working time during night time and the annual number of hours worked at night equals or exceeds 50% of annual working time.

Maximum night working time

For nightworkers generally, the maximum nighttime working hours are 8 hours per night averaged over 2 months or a longer period specified in a collective agreement that must be approved by the Labour Court. For nightworkers whose work involves special hazards or heavy physical or mental strain, there is an absolute limit of 8 hours in a 24 hour period during which they may perform night work.

Definitions, exemptions and other features of the Working Time Act

Working time is net working time i.e. exclusive of breaks, on call or stand-by time. Working time is defined in the Act as time when the employee is at his or her place of work or at the disposal of the employer and carrying out the duties or activities of his/her employment.

Exceptional or Unforeseeable Circumstances - The Act permits exemption from the rest provisions if there are exceptional, unusual and unforeseeable circumstances. Equivalent compensatory rest must be taken within a reasonable period of time.

Shift and Split Shift Working - The Act provides for automatic exemption from the daily and weekly rest period provisions for shift workers when they change shift and for workers on split shifts. Equivalent compensatory rest must be taken within a reasonable period of time.

Exemption by Regulation - Certain categories may be exempted from the rest provisions by regulation. Categories of employees in the sectors set out in the Organisation of Working Time (General Exemptions) Regulations, 1998 (S.I. No. 21 of 1998) may, subject to receiving equivalent compensatory rest, be exempted from the rest provisions of the Act. S.I. No. 52 of 1998 (Exemption of Civil Protection Services) provides exemptions from the rest and maximum working week provisions of the Act without a requirement for equivalent compensatory rest.

Exemption by Collective Agreement - Any sector or business may be exempted from the statutory rest times by a collective agreement approved of by the Labour Court, subject to equivalent compensatory rest being made available to the employee. Collective agreements to vary the rest times may be drawn up between management and a trade union or other representative staff body in any business, organisation or enterprise.

These exemptions are subject to equivalent compensatory rest being made available to the employee. This means that, although employers may operate a flexible system

of working, employees must not lose out on rest. In these circumstances rest may be postponed temporarily and taken within a reasonable period of time

Holidays

Holiday pay is earned against time worked. All employees, full-time, part-time, temporary or casual earn holiday entitlements from the time work is commenced. Note that, for the purposes of determining holiday entitlements, a day on which an employee was on a certified absence due to illness is deemed to be a working day[3].

The Organisation of Working Time Act 1997 provides that most employees are entitled to 4 weeks annual holidays for each leave year with pro-rata entitlements for periods of employment of less than a year. In the case of employees working a normal 5 day week this would work out at 1.66 days per month worked or 20 days.

Depending on time worked, employees' holiday entitlements should be calculated by one of the following methods:

(i) 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment).

(ii) 1/3 of a working week per calendar month that the employee works at least 117 hours.

(iii) 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks).

The time at which annual leave may be taken is determined by the employer having regard to work requirements, and subject to the employer taking into account the need for the employee to reconcile work and family responsibilities, and the opportunities for rest and recreation available to the employee.

The Organisation of Working Time Act provides that the employees concerned or their trade unions are consulted at least 1 month in advance of the dates selected by the employer for annual leave. The employee's annual leave must be taken within the leave year to which it relates or, with the employee's consent, within 6 months of the next leave year. Where the employee is, due to certified absence due to illness, unable to take all or part of the leave during that period of 6 months, that leave may be taken within 15 months of the end of that leave year[4].

The pay for the annual leave must be given in advance of the commencement of the employee's annual leave, and is calculated at the normal weekly rate.

Where an employee ceases to be employed and annual leave remains to be taken, the employee should receive compensation for the loss of any untaken leave calculated at the normal weekly pay rate or at a rate proportionate to the normal weekly pay rate that he/she would have received had he/she been granted that leave.

[3] See Section 19(1)(A) of the Organisation of Working Time Act, 1997 (as inserted by Section 86(1)(a) of the Workplace Relations Act 2015)

[4] See Section 20(1)(c) of the 1997 Act (as inserted by Section 86(1)(b) of the Workplace Relations Act 2015

Public Holidays

The Organisation of Working Time Act 1997 provides for the following nine public holidays:

Public Holidays
1st January (New Year's Day) St. Patrick's Day; Easter Monday; the first Monday in May; the first Monday in June; the first Monday in August; the last Monday in October; Christmas Day; St. Stephen's Day.

In respect of each public holiday, an employee is entitled to:

(i) a paid day off on the holiday, or

(ii) a paid day off within a month, or

(iii) an extra day's annual leave, or

(iv) an extra days pay

as the employer may decide.

If the public holiday falls on a day on which the employee normally works, then the employee is entitled to either a paid day off, an additional day's pay, a paid day off within a month of the day, or an additional day of paid annual leave for the public holiday.

If the public holiday falls on a day on which the employee does not normally work, then the employee is entitled to 1/5th of his/her normal weekly wage for the day, which rate of pay is paid if the employee receives options (i) (ii) or (iv), above, as may be decided by the employer.

If the employee is asked to work on the public holiday, then he/she is entitled to either an additional day's pay for the day, or a paid day off within a month of the day, or an additional day of paid annual leave.

There is no service requirement in respect of public holidays for whole-time employees. Other categories of employees (part-time) qualify for public holiday entitlement provided they have worked at least 40 hours during the 5 weeks ending on the day before a public holiday.

(Note that this Act refers to public holidays not bank holidays. Not every official bank holiday is a public holiday though in practice most of them coincide.)

Sunday Premium

If not already included in the rate of pay, employees are generally entitled to paid time-off in lieu or a premium payment for Sunday working. An employee is entitled to the premium payment for Sunday working payable to a comparable employee in a collective agreement in force in a similar industry or sector. This means that the Sunday Premium, if not already paid, will be equivalent to the closest applicable collective agreement which applies to the same or similar work under similar circumstances and which provides for a Sunday premium. The premium can be in the form of:

- An allowance
- Increased rate of pay
- Paid time off
- Combination of the above

Zero Hours

Employees will be entitled to be paid for 25% of the time which they are required to be available or 15 hours whichever is the lesser, e.g. if an employee's contract of employment operates to require the employee to be available for 48 hours in a week, he/she will be entitled to a minimum payment of 12 hours even if not required to work that week.

The Zero Hours provision does not apply to lay-offs, short-time, emergency or exceptional circumstances, employee illness or employee on-call.

Records

Records required to be kept by the employer are prescribed by S.I. No. 473 of 2001, Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations, 2001. These records must be retained for 3 years and must be available for inspection by Inspectors of the Workplace Relations Commission.

The regulations provide that employers are required to keep:

(i) a record of the number of hours worked by employees (excluding meals and rest breaks) on a daily and weekly basis;

(ii) a record of leave granted to employees in each week by way of annual leave or in respect of a public holiday and payment made in respect of that leave;

(iii) a weekly record of the notification of the starting and finishing time of employees.

In relation to (i) above, the Regulations incorporate statutory Form OWT1 on which employers who do not have electronic means of recording must record the number of hours worked by employees on a daily and weekly basis.

The Regulations also require that an employer keep a copy of the statement provided to each employee under the provisions of the Terms of Employment (Information) Acts 1994 to 2014 – See Terms of Employment -Section 3.

The Regulations provide for exemptions, subject to certain conditions, in relation to the keeping by employers of records of rest breaks and rest periods under the Organisation of Working Time Act 1997.

Complaints

The Acts provide a right of complaint to the Workplace Relations Commission (WRC) where an employee believes that a contravention of the Organisation of Working Time Act, 1997 has occurred. The relevant complaint form is available on www.workplacerelations.ie or by contacting the Commission's Information and Customer Services on 1890 80 80 90. There is a right of appeal by either party to the Labour Court from a decision of a WRC Adjudication Officer.

Where a WRC inspector is satisfied that certain contraventions under the Organisation of Working Time Act 1997 have occurred, he/she may, in accordance with Section 28 of the Workplace Relations Act 2015, issue a Compliance Notice on the employer setting out the compliance actions to be taken by a specified date. An employer may, not later than 42 days of the service of the notice, appeal that notice to the Labour Court. Failure to comply with a Compliance Notice is an offence. Compliance Notices may be issued in respect of the following contraventions of the 1997 Act:

Section of 1997 Act	Contravention
Section 6(2)	Failure of employer to grant compensatory rest periods.
Section 11	Failure of employer to grant a daily rest period
Section 12	Failure of employer to grant rest breaks
Section 13	Failure of employer to grant a weekly rest period
Section 14(1)	Failure of employer to compensate employee for Sunday work
Section 15(1)	Employer permitting employee to work more than maximum working week
Section 16(2)	Employer permitting a night worker to work more than the permissible hours for a 24 hour period
Section 17	Failure of employer to notify employee of working hours
Section 18	Failure of employer to make a payment under Section 18(2) to an employee with zero-based working hours.
Section 19(1)	Failure of employer to grant annual leave entitlements
Section 19(1)(A)	Failure of employer to reckon a certified absence due to illness for the purpose of annual leave entitlement
Section 21	Failure of employer to grant annual public holiday entitlements
Section 22	Failure of employer to comply with public holiday supplementary provisions
Section 23(1)	Failure of employer to grant compensation on cessation of employment for the loss of annual leave
Section 23(2)	Failure of employer to grant compensation on cessation of employment for the loss of public holidays

Additional Information

See, Explanatory Leaflet on Sunday Premium and Zero Hours, Explanatory Leaflet on Organisation of Working Time Act 1997 or Code of Practice on Compensatory Rest, copies of which are available on request, or downloadable from www.workplacerelations.ie.

5 Part-Time Employees

General

The Protection of Employees (Part-Time Work) Act 2001 provides that

(i) A part-time employee (as defined below) cannot be treated in a less favourable manner than a comparable full-time employee in relation to conditions of employment.

(ii) All employee protection legislation applies to part-time employees in the same manner as it already applies to full-time employees. Any qualifying conditions (with the exception of any hours thresholds) applying to full-time employees in any of that legislation, also apply to part-time employees.

THE 2001 ACT ALSO PROVIDES THAT

(i) A part-time employee may be treated in a less favourable manner than acomparable full-time employee where such treatment can be justified on objective grounds (see definition below).

(ii) A part-time employee may be treated less favourably than a comparable full-time employee in relation to any pension scheme or arrangement when his/her normal hours of work constitute less than 20 per cent of the normal hours of work of the comparable full-time employee. This provision does not prevent an employer and a part-time employee from entering into an agreement whereby that employee may receive the same pension benefits as a comparable full-time employee.

Who is Covered By The Act?

In general the Act applies to any part-time employee

(i) working under a contract of employment or apprenticeship

(ii) employed through an employment agency, or

(iii) holding office under, or in the service of, the State including members of the Garda Siochana and the Defence Forces, civil servants and employees of any health board, harbour authority, the Health Service Executive, local authority or education and training board.

In the case of agency workers, the party who is liable to pay the wages (employment

agency or client company) will, normally, be deemed to be the employer for the purposes of the Act and be responsible for ensuring that a part-time employee is not treated in a less favourable manner than a comparable full-time employee.

Objective grounds

A ground would be considered as an objective ground for treatment in a less favourable manner, if it is based on considerations other than the status of the employee as a part-time worker and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose.

Part-Time Employee

A part-time employee means an employee whose normal hours of work is less than the normal hours of work of a comparable employee in relation to him/her.

Full-Time Employee

A full-time employee means an employee who is not a part-time employee.

Comparable Employee

A comparable employee is a full-time employee (of the same or opposite sex) to whom a part-time employee (defined in the Act as a "relevant part-time employee") compares himself/herself where the following conditions are met:

(a) where the comparable employee and the part-time employee are employed by the same or associated employer and one of the conditions referred to in (i), (ii) or (iii) below is met,

(b) where (a) above does not apply (including a case where the part-time employee is the sole employee of the employer), the full-time employee is specified in a collective agreement to be a comparable employee in relation to the part-time employee, or

(c) where neither (a) or (b) above applies, the full-time employee is employed in the same industry or sector of employment as the part-time employee and one of the conditions referred to in (i), (ii) or (iii) below is met.

The following are the conditions (i), (ii) and (iii) referred to above –

(i) where both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,

(ii) where the work performed by one of the employees concerned is of the same or a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and

(iii) the work performed by the part-time employee is equal or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Agency Worker

Agency worker means an individual who agrees with another person, who is carrying on the business of an employment agency, to do or perform personally any work or service for a third person (whether or not the third person is party to the contract). A part-time agency worker can only compare himself/herself to a comparable employee who is also an agency worker and a part-time employee, who is not an agency worker, cannot compare himself to an agency worker.

Complaints

The 2001 Act provides a right of complaint to the Workplace Relations Commission (WRC) where an employee believes that a contravention of the Protection of Employees (Part-Time Work) Act 2001 has occurred. The relevant complaint form is available on www.workplacerelations.ie or by contacting the Commission's Information and Customer Services on 1890 80 80 90. There is a right of appeal by either party to the Labour Court from a decision of a WRC Adjudication Officer.

Additional Information

See the Explanatory Booklet on the Protection of Employees (Part-Time Work) Act 2001, a copy of which is available on request, or downloadable from www.workplacerelations.ie.

6 Fixed-Term Workers

General

The Protection of Employees (Fixed-Term Work) Act 2003 provides that

(i) A fixed-term employee (as defined below) cannot be treated in a less favourable manner than a comparable permanent employee in relation to conditions of employment.

(ii) All employee protection legislation, other than unfair dismissal in certain circumstances, applies to a fixed-term employee in the same manner as it already applies to a permanent employee. Any qualifying conditions applying to permanent employees in any of that legislation, also apply to a fixed-term employee,

(iii) In the case of a fixed-term employee recruited after the enactment of the Act, where he or she is employed by his or her employer or associated employer on two or more continuous fixed-term contracts, the aggregate duration of such contracts shall not exceed four years, after which, if the contract is renewed again, it is deemed to be a contract of indefinite duration, unless the employer has objective grounds for renewing the contract again on a fixed-term basis. In the case of a fixed-term employee recruited before the passing of the Act, the Act provided that where such an employee completed his or her third year of continuous employment with his or her employer or associated employer, then his or her fixed-term contract could only be renewed by that employer on a fixed-term basis on one further occasion and for a term of no longer than one year, after which, if the contract was renewed again, it was deemed to be a contract of indefinite duration, unless the employer had objective grounds for renewing the contract again on a fixed-term basis.

The Act also provides that

(i) A fixed-term employee may be treated in a less favourable manner than a comparable permanent employee where such treatment can be justified on objective grounds (see definition below).

(ii) A fixed-term employee may be treated less favourably than a comparable permanent employee in relation to any pension scheme or arrangement when his/her normal hours of work constitute less than 20 per cent of the normal hours of work of the comparable permanent employee. This provision does not prevent an employer and a fixed-term employee from entering into an agreement whereby that employee may receive the same pension benefits as a comparable permanent employee.

Who is Covered by the Act?

In general the Act applies to any fixed-term employee

(i) working under a contract of employment or apprenticeship

(ii) holding office under, or in the service of, the State including members of the Garda Siochana, civil servants and employees of any health board, harbour authority, local authority or vocational educational committee.

The Act does not apply to agency workers placed by an employment agency at the disposition of a user enterprise; apprentices; a member of the Defence Forces; a trainee garda or a trainee nurse. However, the Act applies to agency workers employed directly by an employment agency.

Objective grounds

A ground would be considered as an objective ground for treatment in a less favourable manner, if it is based on considerations other than the status of the employee as a fixed-term employee and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose.

Where, as regards any term of his or her contract, a fixed-term employee is treated by his or her employer in a less favourable manner than a comparable permanent employee, the treatment in question shall (for the purposes of section 6(2) of the Act) be regarded as justified on objective grounds, if the terms of the fixed-term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.

Fixed-Term Employee

The term fixed-term employee means a person who has entered into a contract of employment with an employer where the end of the contract is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event.

The term "fixed-term employee" does not include employees in initial vocational training or in apprenticeship schemes nor employees with a contract of employment concluded within the framework of a publicly-supported training, integration or vocational retraining programme.

Permanent Employee

A permanent employee means an employee who is not a fixed-term employee.

Comparable Permanent Employee

An employee is a comparable permanent employee in relation to a fixed-term employee if

(a) the permanent employee and the fixed-term employee are employed by the same or associated employer and one of the conditions referred to in (i), (ii) or (iii) below is met,

(b) where (a) above does not apply (including a case where the fixed-term employee is the sole employee of the employer) the permanent employee is specified in a collective agreement, being an agreement that for the time being has effect in relation to the relevant fixed-

term employee, to be a comparable employee in relation to the fixed-term employee, or

(c) where neither (a) nor (b) above apply, the employee is employed in the same industry or sector of employment as the fixed-term employee and one of the conditions referred to in (i), (ii) or (iii) below is met.

The following are the conditions (i), (ii) and (iii) referred to above –

(i) both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,

(ii) the work performed by one of the employees concerned is of the same or a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and

(iii) the work performed by the relevant fixed-term employee is equal or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

The comparable permanent employee can be either of the opposite sex to the fixed-term employee concerned or of the same sex as him or her.

Objective Conditions

The Act provides that a fixed-term employee shall be informed in writing by his or her employer as soon as practicable of the objective condition determining the contract, i.e. whether it is

(i) arriving at a specific date,

(ii) completing a specific task, or

(iii) the occurrence of a specific event.

Objective Grounds Justifying a Renewal

The Act provides that where an employer proposes to renew a fixed-term contract the employee shall be informed in writing, not later than the date of renewal, of the objective grounds justifying the renewal of the fixed-term contract and the failure to offer a contract of indefinite duration.

It further provides that the written statements referred to in this paragraph and in the paragraph immediately above are admissible as evidence in any proceedings under the Act. It is also provided for in the Act that a Workplace Relations Commission Adjudication Officer or the Labour Court may draw any inference he, she or it considers just and equitable if it appears to him, her or it that (a) an employer omitted to provide a written statement, or (b) a written statement is evasive or equivocal.

Indefinite Fixed-Term Contracts

An employer cannot employ an employee on a series of fixed-term contracts indefinitely.

Employees on fixed-term contracts

Once a fixed-term contract employee completes or has completed 3 years continuous employment with his or her employer or associated employer, the employer may renew the contract for a fixed term on one further occasion only and that renewal may be for a period of no longer than 1 year.

Where such an employee is employed by his or her employer or associated employer on 2 or more continuous fixed-term contracts, the aggregate duration of those contracts may not exceed 4 years.

Where a term of an employment contract purports to limit the term of the employment contract of either category of employee mentioned above, in contravention of the above rules, that term shall be void and of no effect and the contract concerned shall be deemed to be one of indefinite duration – i.e. a permanent contract.

The above-mentioned rules do not apply where there are objective grounds justifying the renewal of a contract of employment for a fixed term only.

The First Schedule to the Minimum Notice and Terms of Employment Act 1973 -relating to continuous employment - determines whether employment on fixed-term contracts is continuous or not.

Vacancies and training opportunities

The 2003 Act provides that in order for a fixed-term employee to have the same opportunity as other employees to secure a permanent position, an employer shall inform him or her in relation to relevant vacancies which occur in the undertaking. This information may be provided by means of a general announcement at a suitable place in the employee's place of employment. However, as regards access by a fixed-term employee to appropriate training opportunities, the Act provides that such access shall be provided by an employer as far as practicable.

Information about fixed-term working

The Act provides that employers shall, as far as practicable consider informing employees' representatives about fixed-term work in the undertaking.

Complaints

The 2003 Act provides a right of complaint to the Workplace Relations Commission (WRC) where an employee believes that a contravention of the Protection of Employees (Fixed-Time Work) Act 2003 has occurred. The relevant complaint form is available on www.workplacerelations.ie or by contacting the Commission's Information and Customer Services on 1890 80 80 90. There is a right of appeal by either party to the Labour Court from a decision of a WRC Adjudication Officer.

Additional Information

See the Explanatory Booklet on the Protection of Employees (Fixed-Term Work) Act 2003, a copy of which is available on request, or downloadable from www.workplacerelations.ie.

7 Employment of Children and Young Persons

General

While the employment of children under 16 is generally prohibited by the Protection of Young Persons (Employment) Act 1996, a child over 14 years may be permitted to do light work during school holidays provided it is not harmful to health, development or schooling or may be employed as part of an approved work experience or education programme. A child over 15 may also do such work for up to 8 hours a week during school term. Any child under 16 may be employed in film, theatre, sports or advertising activities under licence from the Minister for Jobs, Enterprise and Innovation[5].

An employer wishing to employ anyone under 18 must first require the production of their birth certificate. Before employing a child under 16 the employer must also get written permission from the parents or guardian.

The 1996 Act further provides for the setting of limits to the working hours of young people (i.e. 16 and 17 year olds) and for rest intervals and prohibits night work.

As regards working hours, young people (16 and 17 year olds) may not work for more than 8 hours in any day or 40 hours in any week.

Employers who employ young people under 18 years of age must display a summary of the Act (available in poster form), and also give a summary of the Act to the employee within 1 month of the commencement of employment.

Proceedings for contraventions of the provisions of the 1996 Act may be taken by the Workplace Relations Commission or by the employee's trade union (with certain exceptions) within 12 months of the alleged breach. Young people and parents/guardians (of a child) may also refer certain contraventions of the Act to the Workplace Relations Commission for adjudication.

[5] Applications for such licences are received and processed by the Workplace Relations Commission

Children over age 14

Summary of Provisions in Relation to Employment of Children over age 14

Age	Max hours per week/day during school term	Max hours per week/day outside school term	Permitted hours of work	Maximum work experience per week/day **
14	Nil	35/7	8am - 8pm	40 hours/8 hours
15	8	35/7	8am - 8pm	40 hours/8 hours

***The reference to "work experience" in the table above is to training or work experience programmes approved by the Minister of Jobs, Enterprise and Innovation or an tSeirbhis Oideachais Leanunaigh agus Scileanna (SOLAS)..*

Children over the age of 14 may only be employed in light work, that is, non-industrial work where there is no risk to the health and safety of the child, and which is not harmful to their attendance at school. 14 and 15 year olds must be allowed a 21 day break from work in the Summer. They must also be given a 30 minutes break if working more than 4 hours. If working during the summer holidays, 14 and 15 year olds must get 2 days off in every week which shall, as far as is practicable, be consecutive.

Young People

Summary of Provisions in Relation to Employment of Young People.

Age	Max hours per week/day during school term	Max hours per week	Permitted hours of work
16 & 17	8	40	6am-10pm

Sixteen and seventeen year olds must receive a 30 minutes break if working for more than a 4.5 hour period. They must receive 2 days off in every 7, which shall, as far as is practicable, be consecutive.

Regulations have been made which permit young persons (i.e. 16 and 17 year olds) employed on general duties or as apprentices, in licensed premises to work beyond 10pm in certain circumstances and subject to specific requirements. There is also a Code of Practice Concerning the Employment of Young Persons in Licensed Premises.

Additional Information

The Explanatory Booklet on the Protection of Young Persons (Employment) Act 1996, a summary of the Act in both poster and leaflet format and the Code of Practice are available on request, or downloadable from www.workplacerelations.ie.

8 Carer's Leave

General

The Carer's Leave Act 2001 provides an employee with an entitlement to avail of unpaid leave from his/her employment to enable him/her to personally provide full-time care and attention for a person who is in need of such care. The period of leave to which an employee is entitled is subject to a maximum of 104 weeks in respect of any one care-recipient (hereafter referred to as a "relevant person"). The minimum statutory entitlement is 13 weeks.

Who is covered by the Act?

In general, the Act applies to any person

(i) working under a contract of employment or apprenticeship,

(ii) employed through an employment agency, or

(iii) holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act 1956), an officer or servant of a local authority for the purposes of the Local Government Act 1941, or of a harbour authority, the Health Service Executive, an education and training board and a member of the Garda Siochana or of the Defence Forces.

In the case of agency workers, the party who is liable to pay the wages (employment agency or client-company) is the employer for the purposes of this Act.

Entitlement to Carer's Leave

An employee who wishes to avail of Carer's Leave must fulfill the following conditions:

(i) **Service requirement:** an employee must have completed at least 12 months' continuous service with the employer from whose employment the leave is taken before the commencement of the leave. There is no hours threshold in the Act.

(ii) **Provision of Full-Time Care and Attention:** the employee must intend to take Carer's Leave for the purpose of personally providing full-time care and attention to a person (a "relevant person") who is in need of such and must actually do so for the duration of the leave.

The requirement to provide full-time care and attention will be assessed on an individual basis by the Department of Employment Affairs and Social Protection. It is not intended nor is it desirable, that an employee on Carer's Leave would be expected to provide care on a 24-hour basis.

(iii) '**Relevant Person -Need for Full-Time Care and Attention:** the relevant person (i.e. the person receiving full-time care and attention) must be deemed to be in need of full-time care and attention by a deciding officer (or appeals officer) of the Department of Employment Affairs and Social Protection. This decision is based on information provided by the relevant person's general medical practitioner and assessed by that Department's medical advisor.

Application forms (Form CARB1) are available from Carer's Benefit Section of that Department (Telephone: 043 -40087). The completed form should be returned to Carer's Benefit Section, Department of Employment Affairs and Social Protection, Balinalee Road, Longford.

The one medical assessment will suffice for both Carer's Leave and Carer's Benefit (the Department of Employment Affairs and Social Protection State payment).

Meaning of 'Full-time care and attention'

According to Department of Employment Affairs and Social Protection Regulations, this means that a person being cared for must be so disabled as to require:

(a) continuous supervision and frequent assistance throughout the day in connection with his/her normal personal needs, e.g. help to walk and get about, eat or drink, wash, bathe, dress etc. or

(b) continuous supervision in order to avoid danger to him/herself.

The entitlement criteria outlined at (a) and (b) above are also required to qualify for the parallel State payment of Carer's Benefit. The two schemes, Carer's Leave and Carer's Benefit, are administered in tandem in respect of these criteria. Further information in relation to the Carer's Benefit Scheme may be obtained from Carer's Benefit Section (contact details above). See also the booklet on the Carer's Benefit Scheme.

Other Carer's Leave eligibility criteria are set out in the Carer's Leave Explanatory Booklet.

Manner in which Carer's Leave may be taken

The Act provides that the leave shall be taken in either one continuous period of 104 weeks or one or more periods, the total duration of which amounts to not more than 104 weeks.

The minimum statutory entitlement that may be taken in one period at the discretion of the employee is 13 weeks. An employer and employee, however, may agree to terms more favourable to the employee.

Intervals between periods of Carer's Leave

Where Carer's Leave is not taken by an employee in one continuous period of 104 weeks there must be a gap of at least 6 weeks between periods of Carer's Leave taken in respect of the same relevant person. An employee proposing to avail of Carer's Leave for another relevant person cannot generally do so until a period of 6 months has elapsed from the date of termination of the leave in respect of the previous relevant person. This provision does not apply where two relevant persons reside together.

Protection of Employment Rights

During absence on Carer's Leave, an employee shall be regarded as still working in the employment for all purposes relating to his or her employment and none of his or her rights or obligations relating to the employment shall be affected by taking the leave with the following exceptions:

(i) there is no right to remuneration or superannuation benefits and any obligation to pay superannuation contributions in, or in respect of, the employment.

(ii) the right to annual leave is restricted to the period comprising the first 13 weeks only of the Carer's Leave entitlement in respect of any one relevant person.

(iii) the right to public holidays is likewise restricted to the period comprising the first 13 weeks only of the Carer's Leave entitlement in respect of any one relevant person.

Absence from employment while on Carer's Leave shall not be treated as part of any other leave to which the employee is entitled (e.g. sick leave, annual leave, adoptive leave, maternity leave, parental leave or force majeure leave.)

Protection against Penalisation including Dismissal

The Carer's Leave Act 2001 prohibits an employer from penalising an employee on the grounds that he/she has exercised or proposes to exercise his/her right to Carer's Leave.

Penalisation of an employee includes (a) dismissal of the employee (b) unfair treatment of the employee, including selection for redundancy, and (c) an unfavourable change in the conditions of employment of the employee.

The general 1 year service requirement under the Unfair Dismissals Acts is not applicable where an employee is dismissed for exercising his/her rights under the Carer's Leave Act.

Notification of Intention to take Carer's Leave

An employee must give written notice to his/her employer of the intention to take Carer's Leave, not later than 6 weeks before the employee proposes to commence the leave. The statement of notice must contain the following details:

(i) the date on which the employee intends to commence the leave;

(ii) the duration of the leave;

(iii) the manner in which the employee proposes to take the leave;

(iv) a statement that an application for a decision (in the first instance or on appeal) that the person to be cared for is a relevant person for the purposes of Carer's Leave Act 2001 has been made to the Department of Employment Affairs and Social Protection;

(v) the employee's signature and date.

A sample of the Notice of Intention to take Carer's Leave is set out at Appendix A to the Carer's Leave Booklet.

Exceptional or Emergency Circumstances

In exceptional or emergency circumstances, where it is not reasonably practicable for an employee to give notice in accordance with the Act, such notice must be given as soon as it is reasonably practicable for the employee to do so.

Confirmation of Carer's Leave

Once an employee has given notice of his or her intention to take Carer's Leave, the employee must give the employer a copy of the decision from the deciding officer (or appeals officer) of the Department of Employment Affairs and Social Protection that the person in respect of whom the employee proposes to avail of Carer's Leave is a relevant person i.e. medically certified as requiring full-time care and attention.

The employee and the employer must then prepare a confirmation document. This document must be prepared and signed no later than 2 weeks before the leave is due to begin and must include -the date on which the leave period will commence; the duration of the period of leave; signatures of employer and employee.

A sample confirmation document is set out at Appendix B to the Carer's Leave Explanatory Booklet.

Complaints

The 2001 Act provides a right of complaint to the Workplace Relations Commission (WRC) where an employee believes that a contravention of the Carer's Leave Act 2001 has occurred. The relevant complaint form is available on www.workplacerelations.ie or by contacting the Commission's Information and Customer Services on 1890 80 80 90. There is a right of appeal by either party to the Labour Court from a decision of a WRC Adjudication Officer.

Where a WRC inspector is satisfied that an employer has failed to grant annual leave entitlements to an employee on carer's leave, contrary to Section 13(2) of the Carer's Leave Act 2001, he/she may, in accordance with Section 28 of the Workplace Relations Act 2015, issue a Compliance Notice on the employer setting out the compliance actions to be taken by a specified date. An employer may, not later than 42 days of the service of the notice, appeal that notice to the Labour Court. Failure to comply with a Compliance Notice is an offence.

Additional Information

See the Explanatory Booklet on the Carer's Leave Act 2001, a copy of which is available on request, or downloadable from www.workplacerelations.ie.

9 Pay/Wages

General

Pay rates are normally determined by the contract of employment. Rates of pay where specified in collective agreements between trade unions and employers may also be incorporated expressly or by implication in the individual employee's contract of employment.

Minimum Rates of Pay

The National Minimum Wage Acts 2000 and 2015 provide that employees should be paid for their working hours at an hourly rate of pay that, on average, is not less than the prescribed minimum hourly rate of pay. The national minimum hourly rate of pay is prescribed from time to time by order made by the Minister for Business, Enterprise and Innovation under Section 10(D) of the 2000 Act. Details of the existing rate are available on www.workplacerelations.ie or by contacting the Workplace Relations Commission's Information and Customer Services at 1890 80 80 90.

Legal minimum rates of pay for particular categories of employees may also be laid down in Employment Regulation Orders (EROs), Registered Employment Agreements (REAs) and Sectoral Employment Orders (SEOs). Further details on these are available in Section 2 of this Guide under the heading- Mechanisms for Setting Terms and Conditions.

The duty to pay wages is a fundamental aspect of an employer's obligations. If the employer fails to do so an employee may present a complaint to the Workplace Relations Commission under the Payment of Wages Act 1991 or alternatively sue for wages due in the ordinary courts. If an Employment Regulation Order or a Registered Employment Agreement governs an employee's pay, employers will be guilty of an offence under the Industrial Relations Acts if they fail to pay wages or if they pay less than the statutory prescribed rate. The Workplace Relations Commission will, through its Inspection and Enforcement Services, seek to recover unpaid wages in such instances and will initiate legal proceedings if necessary – see Section 2.

Who is covered?

The National Minimum Wage Acts 2000 and 2015 apply to all employees, including full-time, part-time, temporary and casual employees except the following categories of employees who are excluded from its provisions:

(i) close relatives of the employer such as a spouse, father, mother, son, daughter, brother and sister; or

(ii) apprentices within the meaning of or under the Industrial Training Act 1967 or the Labour Services Act 1987 including an apprentice printer, bricklayer, mechanic, plumber, carpenter/joiner and electrician, or

(iii) any non-commercial work undertaken by prisoners.

Minimum Hourly Rates of Pay

The National Minimum Wage Acts 2000 and 2015 provide that an experienced adult worker must be paid an average hourly rate of pay that is not less than the national minimum wage in a pay reference period. A pay reference period may be a week, a fortnight or no longer than a month. For the purposes of the Acts, an experienced adult worker is an employee who is not:

(i) under age 18, or

(ii) in the first two years after the date of first employment over age 18, or

(iii) a trainee undergoing a course that satisfies the conditions which are set out in S.I. No. 99 of 2000.

The table over illustrates the circumstances where an employer may pay a lower rate than the national minimum wage rate shown above.

Determining the average hourly rate of pay

The gross reckonable pay earned by an employee in a pay reference period is divided by the employee's working hours in that pay reference period. The average hourly rate of pay obtained must be not less than the minimum hourly rate of pay entitlement of the employee, as detailed in the Table over. The statutory minimum hourly rates of pay are gross amounts i.e. before tax/PRSI is deducted.

Working Hours

The working hours of an employee for the purposes of the Acts include any overtime hours worked in the pay reference period, any time spent on standby in the workplace, and any training time during normal working hours. Working hours for the purposes of the Act do not include the time that an employee is absent from work on annual leave, sick leave, protective leave, adoptive leave, parental leave, while laid-off, on strike or time for which an employee is paid in lieu of notice.

Reckonable and Non-Reckonable Pay

Reckonable pay means those payments or benefits in kind that are allowable in calculating the average hourly rate of pay of an employee, in order to determine if the employee has been paid his/her minimum hourly rate of pay entitlement under the Act. Information on reckonable and non-reckonable pay components is contained in the Detailed Guide to the National Minimum Wage Acts, which may be downloaded from www.workplacerelations.ie or obtained from the Workplace Relations Commission (T: 1890 80 80 90).

Training / Study Criteria

The criteria that a course of training or study must satisfy for the purposes of the Act, in order for an employer to pay an employee the trainee rates, are set out in the Detailed Guide to the National Minimum Wage Acts. An employer, even if an employee changes his/her job, cannot pay an employee the trainee

Employee	% of National Minimum Rate of Pay
Experienced adult worker	100%
Employee under age 18	70%
Employee in the second year after the date of first employment over age 18, whether or not the employee changes employer during the year	90%
Employee in the first year after the date of first employment over age 18, whether or not the employee changes employer during the year* Employee in a course of training or study over age 18, undertaken in normal working hours 1st 1/3rd period 2nd 1/3rd period 3rd 1/3rd period Note: Each 1/3rd period must be at least 1 month and no longer than 12 months.	80% 75% 80% 90%
Experienced adult worker named by the Labour Court in granting a temporary exemption to an employer from paying the national minimum hourly rate of pay. Note: Minimum period of temporary exemption is 3 months and maximum period is 12 months	The Labour Court will decide the lower hourly rate of pay that the employee must be paid for the period of the temporary exemption.

** Employment experience prior to age 18 is not taken into account for these rates.*

The statutory minimum hourly rates of pay are gross amounts i.e. before tax/PRSI is deducted.

rates a second time unless the employee undergoes a course of training or study that is different in purpose or content from the previous training or study undertaken by the employee.

Records

An employer must keep all records that are necessary to show whether this Act is being complied with in relation to an

employee, for at least 3 years from the date any record is made. The records must be kept by the employer at the premises or place where the employee works, or if the employee works at 2 or more premises or places, the premises or place from which the activities of the employee are principally directed or controlled.

Overtime

In general employment rights legislation does not provide for overtime. While the Organisation of Working Act 1997 regulates rest breaks and maximum weekly working hours it does not cover overtime payment. Employees do not have a statutory entitlement to overtime pay.

Policy in relation to overtime pay may be decided by the employer and agreed as part of the employee's terms and conditions of employment or through collective agreements negotiated between employers and employee representatives.

A number of employment sectors may have pay and conditions of employment that are regulated by means of Employment Regulation Orders (EROs) or Registered Employment Agreements (REAs), that are legally binding on employers in the sectors to which they apply. A small number of individual firms may also have binding REAs. Some of the EROs/REAs may regulate overtime pay.

The Terms of Employment (Information) Act 1994 to 2014 provide that an employer is obliged to provide an employee with a written statement of terms of employment within 2 months of the commencement of employment. The written statement of terms must include information on any terms or conditions relating to hours of work including overtime, as well as information on the rate of pay of the employee or how the pay is calculated.

Methods of Payment

The Payment of Wages Act 1991 provides that every employee has the right to a readily negotiable mode of wage payment. The modes of payment prescribed in the Act include cheque, credit transfer, cash, postal/money order and bank draft.

Statement of Wages

The 1991 Act obliges employers to give to each employee with every wage packet a written statement of gross wages (payslip) itemising each deduction. It is an offence not to do so. If wages are paid by credit transfer, the statement of wages should be given to the employee soon after the credit transfer has taken place. Complaints to the Workplace Relations Commission regarding the non provision of payslips/written statements of gross wages will be investigated by an inspector.

Deductions

Employers may not make deductions from wages or receive payment from their workers unless:

- required by law, such as PAYE or PRSI;
- provided for in the contract of employment, for example, certain occupational pension contributions; or to make good such shortcomings as bad workmanship, breakages or till shortages; or for the provisions of goods and services necessary for the job such as the provision or cleaning of uniforms;
- made with the written consent of the employee, for example a private health insurance payment or trade union subscriptions.

Special restrictions are placed on employers in relation to deductions (or the receipt of payments) from wages that:-

(i) arise from any act or omission of the employee, or

(ii) are in respect of the supply to the employee by the employer of goods or services that are necessary to the employment.

A deduction from wages of the kind described at (i) or (ii) above must be authorised by virtue of a term in the employee's contract of employment.

The employee must be given at some time prior to the act or omission, or the provision of the goods or services, written details of the terms in the contract of employment governing the deduction (or payment to the employer) from wages.

When a written contract exists, a copy of the term of the contract that provides for the deduction (or payment) must be given to the employee. In any other case, the employee must be given written notice of the existence and effect of the term.

The amount of the deduction described at (i) or (ii) above must be fair and reasonable having regard to all the circumstances including the amount of the wages of the employee.

In addition to the above, in the case of a deduction that is related to the act or omission of an employee, the employee must be given particulars in writing of the act or omission and the amount of the deduction (or payment) at least one week before the deduction (or payment) is made.

Sick Pay and Sick Leave

In general the matter of sick pay and sick leave is not covered under employment rights legislation. Policy on sick pay and sick leave in individual companies may be decided by the employer and agreed as part of the employee's terms and conditions of employment or may be set out through collective agreements negotiated between employers and employee representatives.

The Terms of Employment Acts 1994 to 2014 provide that an employer is obliged to provide an employee with a written statement of terms of employment within 2 months of the commencement of employment. The written statement of terms of employment must include information on the terms or conditions relating to incapacity for work due to sickness or injury.

The Payment of Wages Act 1991 provides that an employee who does not receive sick pay as per his/her terms of employment may refer a complaint to the Workplace Relations Commission for adjudication. The relevant complaint form is available on www.workplacerelations.ie.

Complaints

Employees have the right to complain to the Workplace Relations Commission in relation to entitlements under the National Minimum Wage Acts 2000 and 2015, an unlawful deduction (or payment) from wages or in the event of non-payment of wages. The relevant complaint form is available on www.workplacerelations.ie or by contacting the Commission's Information and Customer Services on 1890 80 80 90. There is a right

of appeal by either party to the Labour Court from a decision of a WRC Adjudication Officer.

An employee cannot refer a dispute to the Workplace Relations Commission for adjudication by an Adjudication Officer in relation to entitlements under the National Minimum Wage Acts 2000 and 2015 unless the employee has written to the employer requesting a written statement of his/her average hourly rate of pay from the employer, in relation to a specific pay reference period or periods that are the subject of the dispute, and has either obtained that statement, or waited for the 4 weeks to elapse during which the employer is permitted to respond to the employee's request.

Where a WRC inspector is satisfied that an illegal deduction from wages has occurred, contrary to Section 5 of the Payment of Wages Act 1991, he/she may, in accordance with Section 28 of the Workplace Relations Act 2015, issue a Compliance Notice on the employer setting out the compliance actions to be taken by a specified date. An employer may, not later than 42 days of the service of the notice, appeal that notice to the Labour Court. Failure to comply with a Compliance Notice is an offence.

Section 23 of the National Minimum Wage Act 2000 provides for the offence of failure to comply with a request for a written statement of the employee's average hourly rate of pay. Where a WRC inspector has reasonable grounds for believing that such an offence has occurred, he/she may serve a Fixed Payment Notice on that employer in accordance with Section 36 of the Workplace Relations Act 2015. If the employer pays the charge specified on the Notice the matter does not proceed to Court. However, if the person fails or refuses to pay the charge the matter can be progressed to the District Court where the defendant can defend their position in the normal way.

An employee may also request an inspector of the Workplace Relations Commission to investigate an allegation that an employer has failed to pay the hourly rates of pay prescribed under the National Minimum Wage Acts 2000 and 2015. The complaint form available on www.workplacerelations.ie may also be used to present such a request. However, an employee may not refer a dispute for adjudication by an Adjudication Officer and also request an inspector to investigate the same alleged under-payment of the employee's statutory minimum hourly rate of pay entitlement.

Section 4 of the Payment of Wages Act 1991 provides that an employer must give employees a written statement of gross wages (payslip) itemising each deduction. Where a WRC inspector has reasonable grounds for believing that the offence of failing to provide such a statement has occurred, he/she may serve a Fixed Payment Notice on that employer in accordance with Section 36 of the Workplace Relations Act 2015. If the employer pays the charge specified on the Notice the matter does not proceed to Court. However, if the person fails or refuses to pay the charge the matter can be progressed to the District Court where the defendant can defend their position in the normal way.

Additional Information

See the Explanatory Booklets on the Payment of Wages Act 1991 and the National Minimum Wage Acts, copies of which are available on request, or downloadable from www.workplacerelations.ie.

10 Termination of Employment

Minimum Notice

The Minimum Notice and Terms of Employment Acts 1973 to 2005 provide that employees in continuous service with the same employer for at least 13 weeks are entitled to a minimum period of notice before the employer may dismiss them.

All part-time employees, regardless of the number of hours worked, are also covered by the Acts.

The period of notice to which an employee is entitled varies according to length of service as follows:

Length of Service Minimum	Notice
Thirteen weeks to less than two years	One week
Two years to less than five years	Two weeks
Five years to less than ten years	Four weeks
Ten years to less than fifteen years	Six weeks
More than fifteen years	Eight weeks

The Acts also provide that employers are entitled to at least one week's notice of termination from employees who have been employed by them for thirteen weeks or more.

Notice entitlements under the contract of employment may exceed the minimum periods stipulated in the Acts but any provision in a contract of employment for shorter periods of notice than the statutory minimum periods has no effect. The Acts do not, however, preclude an employer or employee from waiving their right to notice or accepting payment in lieu of notice.

The Acts do not affect the right of an employer or employee to terminate a contract of employment without notice due to the misconduct of the other party.

The First Schedule to The Minimum Notice and Terms of Employment Acts 1973 to 2005 applies for the purpose of ascertaining the period of service of an employee and whether that service has been continuous, for the purposes of a number of the Acts dealing with employment rights.

Redundancy

The Redundancy Payments Acts 1967-2014 impose a statutory obligation on employers to pay compensation to employees dismissed for reasons of redundancy or laid off or kept on short-time for a minimum period[6]. Redundancy arises where the employer has ceased to carry out business, an employee's job ceases to exist, work of a particular nature has ceased, a permanent reduction in the numbers employed has or is due to occur, reorganisation, etc..

The Redundancy Payments Acts 1967 - 2014 provide as follows:

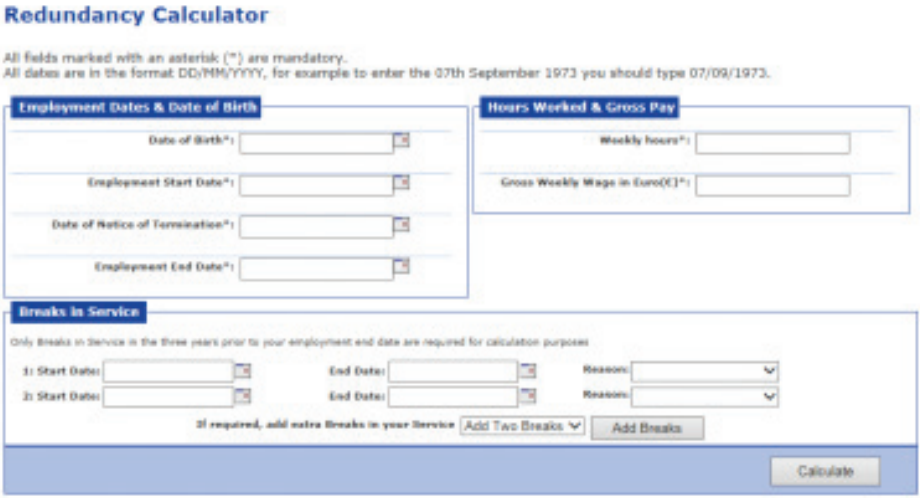
(i) That an employee with 104 weeks' continuous service, aged from 16, and whose employment is terminated because of redundancy is entitled to a redundancy lump-sum payment. Part-Time workers are included in this by virtue of the Protection of Employment (Part-Time Work) Act 2001 and the Redundancy Payments Act 2003.

(ii) That the statutory redundancy lump-sum entitlement is calculated as follows:

- 2 weeks pay for every year of service, subject to the statutory ceiling.
- When that figure has been calculated, a bonus week's gross pay, subject to the prevailing statutory ceiling, is added on to get the final statutory redundancy lump sum figure.

Redundancy Calculator

To calculate your redundancy entitlements, please visit www.welfare.ie and access the Redundancy Calculator.



[6] The minimum period is 4 or more consecutive weeks or for a period of 6 or more weeks which are not consecutive but which fall within a period of 13 consecutive weeks.

It is strongly recommended that employers/employees/liquidators, etc. use this redundancy calculation facility for accuracy and speed of calculation.

Note that any non-reckonable service only arises in the last 3 years of employment. All other service up to this final 3 year period is, therefore, fully reckonable for redundancy calculation purposes. Also, "excess" days (periods less than a full year) are credited as a proportion of a year.

The Redundancy Payments Acts, 1967 to 2014 further provide that the lump-sum must be paid by the employer direct to the employee. An employer may decide to make a payment in excess of the statutory requirement to employees – this is entirely a matter for the employer. The Department of Employment Affairs and Social Protection's role relates exclusively to the payment of the statutory entitlement.

It should be noted that statutory redundancy employer rebates do not apply where the date of dismissal due to redundancy is on or after 1st January 2013. Where the date of dismissal occurred in 2012 the employer rebate is 15%. If the date of dismissal was in 2011 or earlier the employer rebate is 60%.

Employers must give at least 2 weeks' written notice of redundancies. On the date of the termination of employment the employer should pay the redundancy lump sum due.

Information for employers on making a redundancy claim using the **online facility (Form RP50)** is available on www.welfare.ie.

If an employer has not paid a redundancy lump sum, the employee should apply to his/her employer using form RP 77 (pdf), also available on www.welfare.ie. If the employer still does not pay the lump sum, the employee can apply to the Department of Employment Affairs and Social Protection for direct payment from the Social Insurance Fund as follows:

- If the employer is unable to pay the redundancy lump sum, the employer should complete and sign the RP50. They should also submit a letter from an accountant or solicitor stating that they are unable to pay and accepting liability for 100% of the lump sum (85% for a dismissal in 2012) owing to the Social Insurance Fund. Documentary evidence such as audited accounts should also be included.
- If the employer refuses to pay the redundancy lump sum or if there is a dispute about redundancy the employee may present a complaint to the Workplace Relations Commission (WRC). This must be done in the normal course within one year of the date of termination of employment. Then the employee may apply for the lump sum by sending a completed form RP50 to the Redundancy Payments Section of the Department of Employment Affairs and Social Protection together with a favourable decision from a WRC Adjudication Officer.

Collective Redundancies

The Protection of Employment Acts 1977 to 2014 provide that, where employers are planning collective redundancies, they are obliged to supply the employees' representatives with specific information regarding the proposed redundancies and to consult with those representatives at least

30 days before the first dismissal takes place to see if the redundancies can be avoided or lessened or their effects mitigated.

These consultations must also cover the basis on which it will be decided which particular employees will be made redundant. Employers must also give written notice of their intentions to the Minister for Employment Affairs and Social Protection at least 30 days in advance of the first dismissal. There are penalties for failure to comply with these provisions.

A collective redundancy means the dismissal for redundancy reasons over any period of 30 consecutive days of:

(i) at least 5 persons in an establishment normally employing more than 20 and less than 50 employees,

(ii) at least 10 persons in an establishment normally employing at least 50 but less than 100 employees,

(iii) at least 10% of the number of employees in an establishment normally employing at least 100 but less than 300 employees,

(iv) at least 30 persons in an establishment normally employing 300 or more employees.

There are regulations in place since 21st December, 2000 - European Communities (Protection of Employment) Regulations, 2000 (S.I. No. 488 of 2000) – which amend the Protection of Employment Act 1977 to provide representation of, and consultation with, employees in the absence of a trade union, staff association etc.

Insolvency

PURPOSE OF THE INSOLVENCY PAYMENTS SCHEME

The purpose of the Insolvency Payments Scheme, which is provided for in the Protection of Employees (Employers' Insolvency) Acts 1984 to 2012, is to protect certain outstanding pay-related entitlements of employees in the event of their employer becoming insolvent as defined in the legislation. Insolvency includes such circumstances as liquidation, receivership and bankruptcy.

ENTITLEMENTS COVERED BY THE SCHEME

The main employee entitlements payable under the Scheme are arrears of wages, sick pay, holiday pay and pay in lieu of notice due under the Minimum Notice and Terms of Employment Acts. Payments on foot of adjudication decisions or mediation resolutions[7] under equality, maternity leave, adoptive leave, parental leave, unfair dismissals and industrial relations legislation may also be paid. A wage limit of €600 per week applies to all pay-related entitlements payable under the Scheme.

The Insolvency Payments Scheme also pays employees' outstanding contributions to occupational pension schemes which have been deducted from wages of the employees but not paid into the pension scheme. Unpaid employer pension contributions may also be paid from the Fund subject to certain limits.

There are statutory limits on the amounts of payments and the periods to which they

[7] Resolutions reached in accordance with Section 39 of the Workplace Relations Act 2015

apply. Payments are made from the Social Insurance Fund.

EMPLOYEES COVERED BY THE SCHEME

The scheme covers employees who are over 16 years of age and are in employment which is insurable for all benefits under the Social Welfare Acts at the date of termination of employment; this includes employees over 66 years of age who are in employment, which but for their age, would be insurable for all benefits under the Social Welfare Acts.

MAKING A CLAIM

Claims are made through the person legally appointed to wind up the business (normally the Liquidator or Receiver), who will certify the claims from the records available, and submit them to the Insolvency Payments Section of the Department of Employment Affairs and Social Protection to be processed. When the claims have been processed, payments are made to the Liquidator, Receiver, etc., who will pay the employees concerned, having made any statutory tax or other deductions

Dismissal

The Unfair Dismissals Acts 1977 to 2015 provide protection for employees from being unfairly dismissed from their jobs by laying down criteria by which dismissals are judged to be unfair and by providing an adjudication system and redress for an employee whose dismissal has been found to be unjustified. The Acts apply to employees who (with certain exceptions, see below) have had at least a year's continuous service with the same employer.

A Workplace Relations Commission Adjudication Officer may consider whether the employment of a person on a series of 2 or more contracts of employment, between which there was no more than 26 weeks of a break, was for the purpose of avoidance of liability by the employer under the Acts. Where it is so found, the length of the various contracts may be added together to assess the length of service of an employee for eligibility under the Acts.

Persons engaged through employment agencies are covered by the scope of the legislation. For the purposes of the Unfair Dismissals Acts, the party (end user) hiring the individual from the employment agency is deemed to be the employer.

The Acts do not cover employees on fixed term or fixed purpose contracts whose employment terminates when the contract expires or the purpose ceases, provided the contract, signed by both parties, specifies that the Unfair Dismissals Acts do not apply to the expiry only of the contract. If a series of two or more of these contracts, between which there was no more than a 3 month break, is considered to have existed for the purpose of avoidance by the employer of liability under the Acts, they will be added together in calculating continuous service of an employee for eligibility under the Acts. Apart from this, any provision in an agreement, whether a contract of employment or not, to exclude or limit the application of the Acts is void.

The Acts also do not cover, for example, designated apprenticeships where the employee is let go in the month following

completion of the apprenticeship (unless the dismissal results wholly or mainly from (i), (vi), (vii), (viii), (ix) or (xiii) below).

The Acts do not apply in a dismissal where the employer informs the employee in writing at the commencement of the employment that the employment will terminate upon the return to work with that employer of another employee who is absent from work while on protective leave or natal care absence, within the meaning of Part IV of the Maternity Protection Act 1994, or is absent from work attending ante-natal classes in accordance with section 15A (inserted by section 8 of the Maternity Protection (Amendment) Act 2004), or for breastfeeding in accordance with section 15B (inserted by section 9 of the Maternity Protection (Amendment) Act 2004), of the first-mentioned Act, and the dismissal of the first-mentioned employee duly occurs for the purpose of facilitating the return to work of that other employee.

GROUNDS FOR DISMISSAL

The Acts provide that every dismissal of an employee will be presumed to have been unfair unless the employer can show substantial grounds justifying the dismissal. In order to justify a dismissal, an employer must show that it resulted wholly or mainly from one or more of the following causes:

(i) the capability, competence or qualifications of the employee,

(ii) the employee's conduct,

(iii) the redundancy of the employee,

(iv) the fact that continuation of the employment would contravene another statutory requirement,

or that there were other substantial grounds for dismissal.

UNFAIR DISMISSAL

An employer who has dismissed an employee must, if asked, furnish in writing within 14 days the reason for the dismissal. Dismissals are unfair under the Acts where it is shown that they have resulted wholly or mainly from one or more of the following:

(i) the employee's trade union membership or activities, either outside working hours or at those times during working hours when permitted by the employer,

(ii) the religious or political opinions of the employee,

(iii) the employee having made a protected disclosure,

(iv) civil or criminal proceedings against the employer in which the employee is, or is likely to be, involved (as party, complainant or witness),

(v) the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under the Parental Leave Act 1998 or carer's leave under and in accordance with the Carer's Leave Act 2001,

(vi) the race or colour or sexual orientation of the employee,

(vii) the age of the employee,

(viii) the employee's membership of the travelling community,

(ix) the employee's pregnancy, attendance at ante-natal classes giving birth or breastfeeding or any matters connected therewith,

(vii) the exercise or proposed exercise by the employee of the right under the Maternity Protection Acts 1994 and 2004 to any form of protective leave or natal care absence or to time

off from work to attend ante-natal classes or to time off from work or a reduction of working hours for breast feeding in accordance

(viii) the exercise or proposed exercise by an employee of the right to adoptive leave, additional adoptive leave or time off to attend certain pre-adoption classes or meetings under the Adoptive Leave Acts 1995 and 2005,

(ix) the unfair selection of the employee for redundancy,

(x) the employee's exercising of rights or proposed exercise of rights under the National Minimum Wage Acts 2000 and 2015 or under the safety, Health and Welfare at Work Act 2005.

EXCEPTIONS TO SERVICE REQUIREMENT

There are a number of exceptions to the requirement for employees claiming dismissal to have a year's continuous service with their employer. These include dismissal due to

a) trade union membership or activity, either outside working hours or at those times during working hours when permitted by the employer,

b) pregnancy or matters connected therewith,

c) exercising the right to adoptive leave,

d) exercising the right to parental or force majeure leave,

e) exercising rights under the National Minimum Wage Acts, 2000 and 2015,

f) exercising the right to carer's leave, and

g) having made a protected disclosure.

It can also be construed as dismissal if a person's conditions of work are made so difficult that he or she feels obliged to leave. This is called constructive dismissal.

REDRESS

The redress for unfair dismissal is:

(i) re-instatement in the old job, or

(ii) re-engagement in the old job or in a suitable alternative job on conditions which the adjudicating bodies consider reasonable, or

(iii) where financial loss has occurred, financial compensation (not exceeding 104 weeks pay or, in the case of protected disclosure dismissals, 260 weeks pay -the precise amount of compensation can depend on such matters as where the responsibility for the dismissal lay, the measures taken to reduce financial loss or the extent to which negotiated dismissal procedures (if these existed) or the Code of Practice on Grievance and Disciplinary Procedures were followed), or

(iv) where no financial loss has occurred, financial compensation of up to 4 weeks pay.

Complaints

The Minimum Notice and Terms of Employment Acts 1973 to 2005 provide a right of complaint to the Workplace Relations Commission (WRC) where an employee believes that a contravention of the Acts has occurred.

The Redundancy Payments Acts 1967-2014 provide a right of complaint to the Workplace Relations Commission (WRC) where an employee believes that he/she has not received his/her entitlements under those Acts.

Section 11A of the Protection of Employment Act 1977 provides for a right of complaint to the WRC where employers allegedly contravene their obligations to consult with, and give information to, employees in a collective redundancy situation.

Section 9 of the Protection of Employment Act 1977 provides that an employer must initiate consultations with employees' representatives where he/she proposed to create collective redundancies. Where a WRC inspector has reasonable grounds for believing that the offence of failing to so consult has occurred, he/she may serve a Fixed Payment Notice on that employer in accordance with Section 36 of the Workplace Relations Act 2015. If the employer pays the charge specified on the Notice the matter does not proceed to Court. However, if the person fails or refuses to pay the charge the matter can be progressed to the District Court where the defendant can defend their position in the normal way.

The Protection of Employees (Employers' Insolvency) Acts 1984 to 2012 provide that disputes regarding decisions of the Department of Employment Affairs and Social Protection on applications for payment in respect of arrears of pay, sick pay, holiday pay and in relation to pension scheme contributions may be referred to the WRC for adjudication.

The Unfair Dismissals Acts provide for a right of complaint to the WRC where employees consider that they have been unfairly dismissed. Employees who consider they have been unfairly dismissed but who do not qualify under the Unfair Dismissals Acts for certain reasons (e.g. have less than a year's continuous service) may, in most cases, refer the matter to the Workplace Relations Commission for adjudication under the Industrial Relations Act 1969. Referrals may also be made to the Commission in the case of dismissals connected with any of the nine discriminatory grounds prescribed by the Employment Equality Acts, 1998-2015.

The relevant complaint form is available on www.workplacerelations.ie or by contacting the Commission's Information and Customer Services on 1890 80 80 90. There is a right of appeal by either party to the Labour Court from a decision of a WRC Adjudication Officer.

Additional Information

See the Explanatory Leaflets on the Minimum Notice and Terms of Employment Acts, the Protection of Employment Act 1977, Guide to the Redundancy Payments Scheme, the Insolvency Payments Scheme and the Unfair Dismissal Acts, copies of which are available on request, or downloadable from www.workplacerelations.ie. Detailed Redundancy Payment and Insolvency Payment Scheme Procedures are available from the Department of Employment Affairs and Social Protection at www.welfare.ie.

11 Equality

Employment Equality

The Employment Equality Acts 1998 to 2011 cover employees in both the public and private sectors as well as applicants for employment and training.

The Acts outlaw discrimination in work-related areas such as pay, vocational training, access to employment, work experience and promotion. Cases involving harassment and victimisation at work are also covered by the Acts. The publication of discriminatory advertisements and discrimination by employment agencies, vocational training bodies and certain other bodies, e.g. trades unions and employer associations, is outlawed. Collective agreements may be referred to the Workplace Relations Commission for mediation or investigation.

The nine grounds on which discrimination is outlawed by the Employment Equality Acts are as follows:

- Gender
- Civil status
- Family status
- Sexual orientation
- Religious belief
- Age
- Disability
- Race colour, nationality, ethnic or national origins
- Membership of the Traveller community

Collective Agreements

In cases where an employer recognises a trade union or a group of unions, it is common to engage in collective bargaining to negotiate agreements. A collective agreement is one made by or on behalf of an employer and a representative trade union which governs pay and/or other conditions of employment.

Under section 9 of the Employment Equality Acts 1998-2011, any provision in a collective agreement or other order which discriminates on any of the nine grounds may be declared null and void. This includes an agreement which results in a discriminatory difference in pay.

The agreements and orders which may be challenged are: collective agreements, Employment Regulation Orders and Registered Employment Agreements.

Occupational Pensions

Occupational pensions are, broadly speaking, pensions established by an employer for employees (as distinct from ones provided by the State through the social security system).

In accordance with Part VII of the Pensions Act 1990 (as amended by the Social Welfare (Miscellaneous Provisions) Act 2004) it is

unlawful to discriminate directly or indirectly in relation to occupational pensions on any of the nine protected grounds as listed above.

Equal Status

The Equal Status Acts 2000-2012 prohibit discrimination in the provision of goods and services, the disposal of property and access to education, on any of the nine grounds set out below. The Acts outlaw discrimination in all services that are generally available to the public whether provided by the state or the private sector. These include facilities for refreshment, entertainment, banking, insurance, grants, credit facilities, transport and travel services. Discrimination in the disposal of premises, provision of accommodation, admission or access to educational courses or establishments is also prohibited subject to some exemptions.

The eleven grounds on which discrimination is outlawed by the Equal Status Acts are as follows:

- Gender
- Civil status
- Family status
- Sexual orientation
- Religious belief
- Age
- Disability
- Race colour, nationality, ethnic or national origins
- Membership of the Traveller community
- Victimisation
- Housing assistance

Complaints in respect of registered clubs and licensed premises may only be referred to the District Court.

Penalising a person for making a complaint of discrimination or for giving evidence in someone else's complaint or lawfully opposing unlawful discrimination is called victimisation and the Equal Status Act specifically protects a person against such victimisation.

Complaints

A person who claims to have been discriminated against or subjected to victimisation or not to be receiving equal pay or a benefit under an equality clause may seek redress by referring the case to the Director General of the Workplace Relations Commission under the Employment Equality Acts 1998 to 2011. A claim for redress relating to discrimination on the grounds of gender may be brought to the Circuit Court instead of to the Director General .

A person who is affected by a collective agreement or order can refer a complaint to the Workplace Relations Commission.

All claims of discrimination in relation to occupational pensions may be referred to the Director General of the Workplace Relations Commission who may refer the matter to the Pensions Board if s/he so wishes for technical advice on pension matters.

Persons who consider that prohibited conduct, as defined under the Equal Status Acts, has been directed against them may seek redress by referring the case to the Director General of the Workplace Relations Commission. Such referrals may also be made by the Irish Human Rights and Equality Commission.

12 Other Relevant Provisions

Transfer of Undertakings

THE REGULATIONS

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 aim to protect the contractual rights of employees in respect of their employment in the event of the transfer to another employer of the business or part of the business in which they are employed.

TRANSFER OF CONTRACTUAL RIGHTS/OBLIGATIONS

The Regulations provide that the rights and obligations of the original employer ("the transferor") arising from an employment contract existing at the date of a transfer shall, by reason of such transfer, be transferred to the new employer ("the transferee"). Furthermore, the transferee must continue to observe the terms and conditions agreed in any collective agreement on the same terms as were applicable to the transferor under that agreement until the date of termination or expiry of the agreement or the entry into force of another collective agreement.

PENSIONS EXCEPTION

However, the above rule does not apply in respect of employee's rights to old age, invalidity or survivor's benefits under supplementary company or inter-company pension schemes outside the Social Welfare Acts. In effect, such pension rights in place on the date of transfer do not transfer across to the new contract but are protected under the Pensions Acts 1990 to 2003 – where the relevant supplementary company pension scheme is an occupational pension scheme within the meaning of those Acts (i.e. an approved pension scheme). In relation to unapproved occupational pension schemes, the transferee (new employer) is required to "protect" the rights of employees in such cases.

DISMISSAL

An employee may not be dismissed by reason of the transfer of an undertaking. Dismissals for "economic technical or organisational reasons entailing changes in the workforce" are, however, not prohibited.

If an employee's contract of employment is terminated because a transfer involves a substantial change in working conditions to the detriment of the employee, the employer concerned is regarded as having been responsible for the termination.

EMPLOYER'S INSOLVENCY

The above obligations on the part of an employer, in a transfer situation, do not apply where the outgoing employer is subject to proceedings whereby he could be adjudicated bankrupt, or wound up (a

company) for reasons of insolvency, by order of the High Court.

EMPLOYEES' REPRESENTATIVES

The position of the employees' representatives is protected across a transfer.

INFORMATION AND CONSULTATION

Both the original and new employer are obliged to inform their respective employees' representatives of the date of the transfer, the reasons for the transfer and the legal, social and economic implications of the transfer. This must be done, where reasonably practicable, not later than 30 days before the transfer date, and in any event in good time before the transfer is carried out (or in the case of the transferee, in good time before the employees are directly affected by the transfer regarding conditions of employment). Details of any measures envisaged in relation to the employees must be discussed with the employees' representatives "with a view to reaching an agreement". Where there are no representatives, the employers must arrange for the employees to choose representatives for this purpose.

Rights of Posted Workers and of non-national workers in Ireland

EU DIRECTIVE

EU Directive 96/71/EC concerning the posting of workers in the framework of the provision of services requires each Member State to ensure that a worker posted to its territory from an undertaking in another Member State is guaranteed the terms and conditions of employment, in respect of certain matters, that employees are guaranteed under the law of that Member State.

The Directive also requires each Member State to ensure that workers posted to its territory are guaranteed the terms and conditions of employment in respect of those same matters that employees are guaranteed in that Member State under any universally applicable collective agreement concerning construction or related work.

A "posted worker" is defined for the purposes of the Directive as "a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works".

IRISH LAW

Workers posted to work in Ireland from other EU Member States have the protection of all Irish employment legislation in the same way as employees who have an Irish contract of employment. This is by virtue of the Protection of Employees (Part-Time Work) Act 2001, section 20, which states that all employment legislation which confers rights or entitlements on an employee applies to a posted worker in the same way that it applies to any other employee and that, a person, irrespective of nationality or place of residence, who works in the State under a contract of employment, has the same rights under Irish employment protection legislation as Irish employees.

As the Industrial Relations Act 1946 applies to posted workers, all collective agreements registered under section 27 of that Act apply to posted workers.

Specific instruments conferring rights covered by Directive

The enactments that regulate the rights that are required to be guaranteed to posted workers by Directive 96/71 /EC and that apply to a worker posted to Ireland include:

- Employment Agency Act 1971;
- Safety Health and Welfare at Work Act 1989;
- Maternity Protection Act 1994;
- Protection of Young Persons (Employment) Act 1996;
- Organisation of Working Time Act 1997;
- Employment Equality Acts 2011 and 2015
- National Minimum Wage Acts 2000 and 2015.

The collective agreements that regulate the rights that are required to be guaranteed to posted workers involved in construction or other related activity and that apply to such a worker posted to Ireland include any Registered Employment Agreements that may be in force in the Construction sector.

The following are the matters in respect of which a Member State is required (by Article 3.1 of the Directive) to ensure that a posted worker is guaranteed the terms and conditions of employment guaranteed to employees in that Member State (by law, collective agreement etc.):

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay, including overtime rates;
- conditions of hiring-out of workers, in particular by temporary employment undertakings;
- health, safety and hygiene at work;
- protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people; and
- equality of treatment between men and women and other provisions on non-discrimination.

The activities to which the universally applicable collective agreements, that the Directive requires a Member State to ensure are applied to workers posted to its territory, relate include excavation, earthmoving, actual building work, assembly and dismantling of prefabricated elements, fitting out or installation, alterations, renovation, repairs, dismantling, demolition, maintenance, upkeep, painting and cleaning work, improvements.

Domestic Workers

Domestic workers enjoy the same protection under Irish employment legislation as all other legally employed workers. Typical tasks carried out by domestic workers include Cleaning, Cooking, Laundry, Child-minding, Caring for Elderly or Sick Family Members, Gardening & Maintenance, Driving and any Other Duties relating to a household.

The question as to whether a person is an employee or not is generally established by reference to the provisions of existing employment legislation and established contract law. The use of designations such as Au Pair or other descriptions of arrangements between consenting parties do not in themselves mean an employment contract does not exist. A person performing a duty for

another person in exchange for a payment would strongly suggest the existence of a contractual relationship.

The Industrial Relations Act 1990 (Code of Practice for Protecting Persons Employed in Other People's Homes) (Declaration) Order 2007 introduced a code of practice setting out the current employment rights and protections for persons employed in other people's homes and to provide

- for the obligation to provide a written statement of terms and conditions of employment as required under the Terms of Employment (Information) Acts, detailing hours, rates, duties, breaks, leave entitlements, treatment of travel time etc;
- for the safeguarding of privacy;
- that the employer will not keep any personal document belonging to an employee;
- for the treatment of accommodation and making of any deductions;
- that all additional duties will be by prior agreement only and out-of-pocket expenses will be reimbursed promptly;
- that the employer will facilitate the employee in the free exercise of personal pursuits; and
- that the employer will not restrict the employee's right to trade union membership.

Worker Participation

The Worker Participation (State Enterprises) Acts 1977 to 2001, provide for employee participation at board and sub-board level in certain State enterprises.

Elections for worker directors, which are by secret ballot, are held every 4 years. Employees of at least 18 years of age, who have one year's continuous service with the enterprise, are eligible to vote at worker director elections.

Nominees for election must be employees between 18 and 65 years of age with at least 3 years' continuous service. Trade unions and other bodies that are recognised for collective bargaining negotiations may nominate candidates for election.

The 1988 Act provides for the introduction of sub-board participative arrangements in 35 State enterprises. Sub-board arrangement scan be set up following application by a trade union or unions or at the request of a majority of the employees of the enterprise. Provision is made for the drawing up of an agreement between the State enterprise and its employees concerning the specific arrangements to be introduced. The legislation is not prescriptive in relation to the nature of the arrangements introduced, but does provide that these must include the following essential features:

(i) a regular exchange of views and information between management and employees concerning matters which are specified in the agreement;

(ii) the giving in good time by management to employees of information about certain decisions which are liable to have a significant effect on employees interests;

(iii) dissemination to all employees of information and views arising from the participative arrangements.

Employment Agencies

The Employment Agency Act 1971 provides that any person carrying on the business of an employment agency must obtain a licence to do so from the Minister for Business, Enterprise and Innovation. An employment agency is defined as a person (including a temporary work agency) engaged in an economic activity who employs an individual under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the first-mentioned person.

Persons seeking employment through an employment agency should ensure that they deal only with licensed agencies. No fee may be charged by an agency to a job seeker solely for agreeing to seek employment for them. Applications for employment agency licences are received and processed, on behalf of the Minister for Business, Enterprise and Innovation, by the Workplace Relations Commission (see www.workplacerelations.ie).

Furthermore, an employment agency cannot charge a Non-EEA National employee for a Work Permit issued by the Department of Business, Enterprise and Innovation.

An agency worker is an individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than an employment agency.

The Protection of Employees (Temporary Agency Work) Act 2012 provides that an agency worker shall, for the duration of his/her assignment to a hirer, be entitled to the same basic working and employment conditions to which he or she would be entitled if he or she were employed by the hirer under a contract of employment to do work that is the same as, or similar to, the work that he or she is required to do during that assignment.

The 2012 Act also provides that assignments forming part of the same series of assignments shall, for the purposes of the determination of the basic working and employment conditions of an agency worker, be treated as a single assignment.

Safety, Health and Welfare at Work

The existing principal piece of primary legislation dealing with occupational health and safety is the Safety, Health and Welfare at Work Act 2005 which applies to all places of work, to all employers and employees and also to the self-employed. This Act places duties on employers and employees concerning the provision of a safe and healthy working environment. Certain obligations are also placed on those designing, importing, supplying or manufacturing articles or substances for use at work. The 2005 Act replaced the Safety, Health and Welfare at Work Act 1989 which provided for the establishment of the Health and Safety Authority and the assignation of powers and functions to that Authority.

OTHER OCCUPATIONAL SAFETY AND HEALTH LEGISLATION

Occupational safety and health legislation is further expanded by the Safety, Health and Welfare at Work (General Application Regulations (2007 to 2012), these

Regulations provide the statutory provisions in a self-contained, easily assessable and user friendly format.

These Regulations address legal requirements concerning workplaces and work equipment, the safe use of electricity in the workplace, procedures for safe work at height, control of physical agents at work (i.e. noise, vibration and artificial optical radiation), the protection of sensitive risk groups (i.e. children and young people, pregnant and breastfeeding employees and night and shift workers), the provision of safety signs and first aid at work, protection for persons working in explosive atmospheres and safe working of pressure systems.

The procedures governing the notification to the Health and Safety Authority of accidents and dangerous occurrences is set down in Part X and the Twelfth Schedule of the Safety, Health and Welfare at Work (General Application - Regulations 1993 (S.I. No. 44 of 1993). The Regulations impose general and specific obligations on employers with regard to the evaluation and reduction of the exposure of employees to occupational risk and hazards, the development of risk prevention policies, consultation, training and information of workers and health surveillance. Employees are also obliged by these Regulations to cooperate with employers in matters relating to the protection of their own safety and health at work.

There are also issue and sector specific regulations e.g. asbestos, carcinogens, chemical agents, construction, explosive atmospheres, mines and quarries. The 2005 Act continues to be augmented by a growing body of secondary legislation reflecting ongoing developments at EU level in the area of Occupational Safety and Health.

BULLYING IN THE WORKPLACE

The Health and Safety Authority is the central co-ordinating State Agency for matters relating to workplace bullying. In this regard, any individual who has a concern about workplace bullying should contact the Anti-Bullying Response Unit, which is based at the Health and Safety Authority's Head Office at Metropolitan Building, James Joyce Street, Dublin 2, D01 K0Y8.

There are three relevant Codes of Practice in this area:

- The Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work- introduced in 2007 under the Safety, Health and Welfare at Work Act 2005 is aimed at preventing and dealing with bullying where is happens in Irish workplaces. It is code for both employers and employees and is administered by the Health and Safety Authority.
- The Code of Practice detailing Procedures for Addressing Bullying in the Workplace -made under the Industrial Relations Act 1990 and administered by the Workplace Relations Commission.
- The Code of Practice on Guidance on Prevention and Procedures for dealing with Sexual Harassment and Harassment at Work made under the Employment Equality Act 1998 and administered by the Irish Human Rights and Equality Authority.

Complaints

An employee (or his/her trade union) may take a complaint to the Workplace Relations Commission (WRC) that an employer has contravened his/her obligations to the employee under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

Complaints in relation to contraventions of the Protection of Employees (Temporary Agency Workers) Act 2012 may be presented for adjudication to the Workplace Relations Commission.

Where a WRC inspector is satisfied that a hirer has failed to treat an agency worker no less favourably than the hirer's employees in relation to access to collective facilities and amenities at a place of work, contrary to Section 14 of the Protection of Employees (Temporary Agency Workers) Act 2012, he/she may, in accordance with Section 28 of the Workplace Relations Act 2015, issue a Compliance Notice on the employer setting out the compliance actions to be taken by a specified date. An employer may, not later than 42 days of the service of the notice, appeal that notice to the Labour Court. Failure to comply with a Compliance Notice is an offence.

The relevant complaint form is available on www.workplacerelations.ie or by contacting the Commission's Information and Customer Services on 1890 80 80 90. There is a right of appeal by either party to the Labour Court from a decision of a WRC Adjudication Officer.

Additional Information

See the Explanatory Booklet on the European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 and the Guide to the Worker Participation (State Enterprises) Acts 1977 to 2001, copies of which are available on request, or downloadable from www.workplacerelations.ie.

Appendix I-
Adjudication Redress Provisions

Act	Section or Regulation	Contravention	Redress
Industrial Relations Act 1946 to 2015	42, 43, 44, 45 (1946 Act), Chapter 2 of 2015 Act, Chapter 3 of 2015 Act	Contravention of an Employment Regulation Order, a Sectoral Employment Order or a Registered Employment Agreement	May require the employer to comply with the relevant Employment Regulation Order or make an award of compensation not exceeding 2 years' remuneration
Minimum Notice and Terms of Employment Act 1973	4(2), 5, 6	Failure to give minimum notice; failure to grant the employee's rights during a period of notice; failure to give notice to employer.	Compensation for any loss sustained by reason of the contravention (Sections 4(2) and 5); such directions as are considered appropriate.
Protection of Employment Act 1977	9 and 10	Failure of employer to consult with employees representatives where collective redundancies are proposed; failure of employer to provide information to employees' representatives in relation to proposed redundancies	Requiring the employer to comply with Section 9 or 10 and/or pay compensation not exceeding 4 weeks' pay
Unfair Dismissals Acts	3, 4, 5, 6	Unfair dismissal	May include re-instatement of the employee in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal; re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances; if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation (not exceeding 104 weeks remuneration); if the employee incurred no such financial loss, payment to the employee by the employer of such compensation (if any, but not exceeding 4 weeks remuneration)

Act	Section or Regulation	Contravention	Redress
Protection of Employees (Employers' Insolvency) Acts 1984 to 2012	6, 7	Failure to pay entitlements under the Insolvency Scheme (e.g arrears of wages, sick pay, holiday pay and pay in lieu of notice, payments on foot of adjudication decisions or mediation resolutions)	Direction to pay the amount due to the employee.
Pensions Act 1990		Non-compliance of any rule of an occupational benefit scheme, other than an occupational pension scheme, with the principle of equal treatment; non-compliance of any term of a collective agreement, employment regulation order or contract of employment, insofar as it relates to occupational benefits ,with the principle of equal treatment; non-compliance with the principle of equal treatment in relation to the manner in which an employer affords his/her employees access to an occupational benefit scheme.	An order requiring that the principle of equal pension treatment be complied with; an order to take a specified course of action; an order for compensation for acts of victimization.
Payment of Wages Act 1991	5	Illegal deduction from wages	A direction to the employer to pay compensation of an amount not exceeding the net wages that would have been paid in the week preceding the deduction/payment or, if the deduction/payment is greater than the latter, twice that amount.

Act	Section or Regulation	Contravention	Redress
Terms of Employment (Information) Act 1994	3, 4, 5 and 6	Failure of employer to provide a written statement of terms of employment, to provide, prior to departure, a written statement of terms of employment when required to work outside the state, to notify the nature and date of a change to the terms of employment or to furnish a statement at the request of an employee, who has an existing contract of employment prior to the commencement of the Act	May include confirmation or alteration of the particulars contained in a statement, a requirement for the employer to alter or add to the statement and the payment of compensation not exceeding 4 week's remuneration.
Maternity Protection Act 1994	Parts II, III or IV	Entitlements in relation to maternity leave, return to work, etc.	May include directions in relation to the grant of leave and/or the award of compensation not exceeding 20 week's remuneration.
Adoptive Leave Act 1995	Parts II, III	Failure to grant the adoptive parent's entitlements	May include directions to the parties to resolve the matter and the award of compensation not exceeding 20 week's remuneration.
Protection of Young Persons (Employment) Act 1996	13 and 17	Failure to preserve the pay rates and conditions in place before the commencement of the 1996 Act (13): Penalisation of an employee for having in good faith opposed an unlawful act under the 1996 Act (17).	May include directions to take a specified course of action and the award of compensation.
Transnational Information and Consultation of Employees Act 1996	17	Penalisation of an employee because of his/her status as an employee representative; failure of employer to provide reasonable facilities to representatives	May include directions to take a specified course of action and the award of compensation.
Organisation of Working Time Act 1997	6(2), 11 to 23 and 26	Failure to grant rest periods, annual leave, public holiday entitlements, information relating to working time or zero hours practices and pay for leave and public holidays on cessation of employment; penalisation of employee; failure to grant compensatory rest or breaks.	May require the employer to comply with the relevant provision and make an award of compensation not exceeding 2 years' remuneration

Act	Section or Regulation	Contravention	Redress
Parental Leave Act 1998 and European Communities (Parental Leave) Regulations 2000	Parts 11, III of 2000 Act and Regulation 8 of the 2000 Regulations	Failure to grant the parent's entitlements under the 1998 Act	May specify the grant of parental leave, the award of compensation not exceeding 20 weeks' remuneration or both.
Protections for Persons Reporting Child Abuse Act 1998	4(1)	Penalising an employee for having reported child abuse.	May require the employer to comply with the relevant provision, take a specified course of action and make an award of compensation not exceeding 104 weeks' remuneration
Employment Equality Acts 1998 to 2011	Parts II, III and IV of 1998 Act (as amended)	Discrimination, victimisation, dismissal in circumstances amounting to discrimination or victimization; failure to pay equal remuneration; non-receipt of benefits under an equality clause.	Compensation, an order for equal remuneration, order for equal treatment, order to take a specified course of action, order for re-instatement or re-engagement with or without compensation
Equal Status Acts 2000 to 2004	Part II	Discrimination against, or sexual harassment or harassment of, or permitting the sexual harassment or harassment of, a person in contravention of the Equal Status Acts.	Compensation; order to take a specified course of action
National Minimum Wage Act 2000	14	Failure to pay the correct pay entitlement under the 2000 Act	May include a direction to the employer to pay arrears and the expenses of the employee in connection with the dispute; may require the employer to rectify the contravention and pay any amount in respect of which the employer is in contravention.

Act	Section or Regulation	Contravention	Redress
Carer's Leave Act 2001	Disputes other than those relating to matters under Sections 6(1)(a), (b) or (c), 6(5), 6(6) or 18.	Failure to grant entitlement to carer's leave,	May specify the grant of carer's leave, the award of compensation not exceeding 26 weeks' remuneration or both.
Prevention of Corruption (Amendment) Act 2001	8A(5)	Penalisation of an employee for reporting offences under Prevention of Corruption Acts 1889 to 2010.	May require the employer to take a specified course of action or make an award of compensation not exceeding 104 weeks' remuneration
Protection of Employees (Part-Time Work) Act 2001	9 and 15	Treating a part-time employee, in respect of his or her conditions of employment, in a less favourable manner than a comparable full-time employee; penalisation of employee	May require the employer to comply with the relevant provision and make an award of compensation not exceeding 2 years' remuneration
Competition Act 2002	50(3)	Penalisation of employee for reporting breaches of the 2002 Act	May require the employer to comply with Section 50(3), take a specified course of action and make an award of compensation not exceeding 104 weeks' remuneration
Protection of Employees (Fixed-Term Work) Act 2003	6, 8, 9, 10, 11, 13 or any provision of the Act	Treating a fixed-term employee, in respect of his or her conditions of employment, in a less favourable manner than a permanent employee; failure of employer to comply with provisions concerning successive fixed-term contracts; failure of employer to provide a written statement; failure to provide information on vacancies and training opportunities; penalisation of employee etc.	May require the employer to comply with the relevant provision, to reinstate or reengage the employee (including on a contract of indefinite duration) or make an award of compensation not exceeding 2 years' remuneration

Act	Section or Regulation	Contravention	Redress
Industrial Relations (Miscellaneous Provisions) Act 2004	8	Victimising an employee on account of the employee being or not being a member of a trade union or an excepted body or the employee engaging or not engaging in any activities on behalf of a trade union or an excepted body	May direct that the conduct which is the subject of the complaint should cease and make an award of compensation not exceeding 2 years' remuneration
Health Act 2004	55M(1)	Penalisation of an employee for making a protected disclosure under the Health Acts.	May require the employer to comply with the relevant provision, take a specified course of action or make an award of compensation
Safety, Health and Welfare at Work Act 2005	27	Penalisation of an employee for performing duties, etc under the Health and Safety Acts	May require the employer to take a specified course of action or make an award of compensation
Employment Permits Act 2006	26(3)	Penalisation of an employee for making a complaint or giving evidence in proceedings under the Employment Permits Act 2006.	May require the employer to take a specified course of action or make an award of compensation
Employees (Provision of Information and Consultation) Act 2006	13	Penalisation of an employee for performing his/her functions under the 2006 Act	May require the employer to take a specified course of action or make an award of compensation not exceeding 2 years' remuneration
Consumer Protection Act 2007	87(3)	Penalisation of an employee for reporting breaches of the 2007 Act.	May require the employer to comply with the relevant provision, take a specified course of action or make an award of compensation
Chemicals Act 2008	26(1)	Penalisation of an employee for reporting breaches of the 2008 Act.	May require the employer to comply with the provision, take a specified course of action or make an award of compensation not exceeding 104 weeks' remuneration

Act	Section or Regulation	Contravention	Redress
Charities Act 2009	62(1)	Penalisation of an employee for reporting breaches of the 2009 Act	May require the employer to comply with the provision, take a specified course of action or make an award of compensation not exceeding 104 weeks' remuneration
National Asset Management Agency Act 2009	223(3)	Penalisation of an employee for making a complaint or giving evidence in proceedings under the 2009 Act.	May require the employer to take a specified course of action or make an award of compensation
Inland Fisheries Act 2010	38(1)	Penalisation of an employee for making a complaint or giving evidence in proceedings under the 2010 Act.	May require Inland Fisheries Ireland to take a specified course of action or make an award of compensation not exceeding 2 years' remuneration
Criminal Justice Act 2011	20(1)	Penalisation of an employee for disclosing information relating to relevant offences	May require the employer to take a specified course of action or make an award of compensation not exceeding 2 years' remuneration
Property Services (Regulation) Act 2011	67(5)	Penalisation of an employee for reporting improper conduct under the 2011 Act	May require the employer to take a specified course of action or make an award of compensation not exceeding 104 weeks' remuneration
Protection of Employees (Temporary Agency Work) Act 2012	6, 11, 13(1), 14, 23, 24	Failure to give an agency worker his/her basic working and employment conditions; failure to advise of vacancies; the charging of a fee to an employee by an agency for arranging employment; failure to provide the same collective facilities and amenities to an agency worker; penalisation of the employee for invoking rights or making a complaint under the 2012 Act.	May require the employer or hirer, as the case may be, to take a specified course of action or make an award of compensation not exceeding 2 years' remuneration

Act	Section or Regulation	Contravention	Redress
Further Education and Training Act 2013	35(1)	Penalisation of an employee for making a complaint or giving evidence in proceedings under the 2013 Act.	May require the employer to take a specified course of action or make an award of compensation not exceeding 2 years' remuneration
Central Bank (Supervision and Enforcement) Act 2013	41(1)	Penalisation of an employee for making a protected disclosure under the 2013 Act.	May require the employer to take a specified course of action or make an award of compensation not exceeding 2 years' remuneration
Protected Disclosure Act 2014	12(1)	Penalisation of an employee for making a protected disclosure under the 2014 Act.	May require the employer to take a specified course of action and make an award of compensation not exceeding 260 weeks' remuneration
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	4 (excluding 4(4)(a)), 5, 6, 7, 8	Failure to protect the rights of employees arising from an employment contract in the event of a transfer of a business or part of a business, in which they are employed, which entails a change of employer.	May require the employer to comply with the Regulations, take a specified course of action or award compensation not exceeding 4 weeks' remuneration (Regulation 8 breach) or 2 years' remuneration (other breach).
European Communities (Organisation of Working Time) Activities of Doctors in Training) Regulations 2004	5, 6, 7, 8, 9, 10	Failure to grant rest periods, breaks, compensatory rest or breaks or to comply with maximum working hours provisions	May require the employer to comply with the relevant provision and/or an award of compensation not exceeding 2 years' remuneration.
European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006	7, 8, 9, 10, 11	Failure to comply with provisions relating to annual leave, health assessments, health and safety, working time and the adaptation of work.	May require the employer to comply with the Regulations, and award compensation not exceeding 2 years' remuneration.

Act	Section or Regulation	Contravention	Redress
European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006	19	The penalisation of employee representatives for undertaking their functions under the Regulations."	May require the taking of a specified course of action and make an award of compensation not exceeding 2 years' remuneration
European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007	9(4)	Subjecting an employee to any prejudice because the employee has, for the purposes of the 2007 Regulations, made a report of an incident of which the employee may have knowledge	May require the taking of a specified course of action and make an award of compensation not exceeding 2 years' remuneration
European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007	20(1)	The penalisation of employee representatives for undertaking their functions under the Regulations	May require the taking of a specified course of action or make an award of compensation not exceeding 2 years' remuneration
European Communities (Cross-Border Mergers) Regulations 2008	39(1)	Penalisation for performing functions under the 2008 Regulations	May require the taking of a specified course of action or make an award of compensation not exceeding 2 years' remuneration
European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-Border Services in the Railway Sector) Regulations 2009	Schedule 1	Penalisation for performing functions Failure to provide for daily rest periods, breaks, weekly rest periods and contravention of driving time periods. the 2008 Regulations	May require the employer to comply with the Regulations, and award compensation not exceeding 2 years' remuneration.
European Communities (Road Transport) (Organisation of Working Time of Persons performing Mobile Road Transport Activities) Regulations 2012	5, 8, 9, 10, 11, 12	Failure to comply with maximum working hours and night time work restrictions, rest and break period requirements and other employer obligations.	May require the employer to comply with the Regulations, and award compensation not exceeding 104 weeks' remuneration.

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