



Guide to Labour Law

Department of Enterprise, Trade and Employment 2005
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Important Note

This Guide is not intended to be a complete or authoritative statement of the law

Important Addresses and Telephone Numbers

Details of the addresses and telephone numbers of the offices of the Department of Enterprise, Trade and Employment with responsibility for statutory employment rights and work permits matters are as follows:

Employment Rights Information Unit: Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2.

Tel No: (01) 631 3131. Fax No: (01) 631 3329.

Lo-Call Telephone service for outside (01) area: 1890 201 615.

Website: www.entemp.ie e-mail: erinfo@entemp.ie

Labour Inspectorate Section: Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2.

Tel No: (01) 631 3322. Fax No: 631 3279.

Lo-Call Telephone service for outside (01) area: 1890 220 222 (ask operator to be put through to Labour Inspectorate Section)

Work Permits Section: Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2.

Tel No: (01) 631 3333/631 3308 Fax No: (01) 631 3268.

Lo-call Telephone service for outside (01) area: 1890 201 616.

Website: www.entemp.ie e-mail: workpermits@entemp.ie

Employment Appeals Tribunal,
Davitt House, 65A Adelaide Road, Dublin 2.

Tel No: (01) 631 2121. Fax No: 631 3266.

Lo-Call Telephone service for outside (01) area: 1890 220 222 (ask operator to be put through to Employment Appeals Tribunal)

Rights Commissioner Service,
Labour Relations Commission,
Tom Johnson House, Haddington Rd, Dublin 4.

Tel No: (01) 613 6700. Fax No: (01) 613 6701.

Lo-call Telephone service for outside (01) area: 1890 220 227.

Website: www.lrc.ie e-mail: info@lrc.ie

Labour Court,
Tom Johnson House, Haddington Rd, Dublin 4.

Tel No: (01) 613 6666. Fax No: (01) 613 6667.

Lo-call Telephone service for outside (01) area: 1890 220 228.

Website: www.labourcourt.ie e-mail: info@labourcourt.ie

Foreword



I am pleased to introduce this 2005 Guide to Labour Law.

This Guide provides a summary of the range of labour legislation as administered by my Department in a straightforward manner. In so far as it is possible with any legislation the provisions outlined in the Guide are set out in a straightforward and non-technical manner. More detailed explanatory booklets/leaflets on individual pieces of legislation which are available from the Employment Rights Information Unit of the Department and on the Department's Website. Staff in the Information Unit are available to provide general information and answer queries from the public.

I recommend the Guide to everyone who is interested in labour law and in particular to employers and employees.

The Guide is available on the Department's Website.

A handwritten signature in black ink that reads "Tony Kileen". The signature is written in a cursive, flowing style.

Tony Kileen T.D.,
Minister for Labour Affairs

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Contents	Page
1. Commencing Employment	
- Introduction	5
- Contract of Employment	6
- Terms of Employment	7-8
2. Work Hours (Including Holidays/ Bank Holidays)	
- Organisation of Working Time	9-16
- Part-Time Work	16-19
- Fixed-Term Work	19-24
- Children and Young Persons	24-26
- Carer's Leave	26-31
3. Pay	
- Wages	32-34
- National Minimum Wage	34-38
- Overtime/Sick Pay/Sick Leave	39-40
4. Termination of Employment	
- Minimum Notice	42-43
- Redundancy	43-45
- Collective Redundancies	45-46
- Insolvency	46-47
- Dismissal	48-52
5. Other Relevant Provisions	
- Safeguarding of Rights on Transfer of Undertakings	53-55
- Rights of Posted Workers and non-national workers in Ireland	55-57
- Worker Participation	57-58
- Employment Agencies	58
- Safety Health and Welfare at Work	59-61
6. General Information	
- The Labour Inspectorate	62-63
- Industrial Relations and Relevant Bodies	63-75
- Other Bodies and Employment Rights Protections	75-76
- Code of Practice for Employment/Self-Employment Status of Individuals	77
- Employment Rights Enforcement Chart	78-83

Introduction

This booklet provides information on employment rights 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 55 for more detail regarding posted EU workers and other non-national workers).

1. 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. Section 23 of the Industrial Relations Act 1990, states that a contract of employment, for the purposes of the Industrial Relations Acts 1946 to 1990, may be expressed or implied, oral or in writing. 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 and 2001 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 2 of the Guide.

Employers are required by section 14(1) of the Unfair Dismissals Acts 1977 to 2001 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 the Guide on dismissals – see Section 4 – Dismissals.

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 3 of the Guide – see Section 3 – Wages.

Additional Information

See Department of Enterprise, Trade and Employment 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 2001 and Payment of Wages Act 1991, copies of which are available on request, or downloadable from Department's website at www.entemp.ie.

Terms of Employment (Terms of Employment (Information) Acts 1994 and 2001)

The Terms of Employment (Information) Acts 1994 and 2001, which have effect from 16th May 1994, 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 Síochána and the Defence Forces, civil servants and employees of any local authority, health board, harbour authority or vocational education committee).

The Acts do not apply to a person who has been in the continuous service of the employer for less than 1 month. Prior to December 20, 2001 the Act did not apply to a person who was normally required to work for the employer for less than 8 hours a week. However, from that date the Protection of Employment (Part-Time Work) Act 2001 removed the exclusion relating to the number of hours worked.

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 and collective agreements. The statement must also indicate the pay reference period for the purposes 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 within 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 under 18 a copy of the official summary of the Protection of Young Persons (Employment) Act 1996 within one month of taking up a job.

The Act also repealed sections 9 and 10 of the Minimum Notice and Terms of Employment Act 1973 relating to terms of employment as those sections are overtaken by the provisions of this Act.

Complaints

The Acts provide a right of complaint to a Rights Commissioner 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 from Employment Rights Information Unit or from the Office of the Rights Commissioner, or is downloadable from either www.entemp.ie or www.lrc.ie. There is a right of appeal by either party to the Employment Appeals Tribunal from a recommendation of a Rights Commissioner.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on the Terms of Employment (Information) Acts 1994 and 2001, a copy of which is available on request, or downloadable from Department's website at www.entemp.ie.

2. Work Hours (Including Holidays/Bank Holidays)

Organisation of Working Time (Organisation of Working Time Act 1997)

General

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.

Members of the Defence Forces, the Garda Síochána, junior hospital doctors, transport employees, workers at sea, 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, are not covered by the rest and maximum working time rules.

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.

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

For employees generally - 4 months

For 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

For employees who enter into a collective agreement with their employers which is approved by the Labour Court – up to 12 months.

In the case of 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: -

Daily Rest Period - 11 consecutive hours daily rest per 24 hour period.

Weekly Rest Period - 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 - 48 hours per week 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 - an absolute limit of 8 hours in a 24 hour period during which they 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. Certain regulations (i.e. S.I. No. 20 of 1998 Exemption of Transport Activities, and S.I. No. 52 of 1998 Exemption of Civil Protection Services) provide 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. 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 $1\frac{2}{3}$ days per month worked or 20 days.

From 1st April, 1999, 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) $\frac{1}{3}$ 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. 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.

Public Holidays

The Act also provides the following nine public holidays: -

- (i) 1 January (New Year's Day);
- (ii) St. Patrick's Day;

- (iii) Easter Monday;
- (iv) the first Monday in May;
- (v) the first Monday in June;
- (vi) the first Monday in August;
- (vii) the last Monday in October;
- (viii) Christmas Day;
- (ix) 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 $\frac{1}{5}$ 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.

Complaints

Complaints about any breaches of the Organisation of Working Time Act may be referred to a Rights Commissioner. The relevant complaint form is available on request from Employment Rights Information Unit, or the Office of the Rights Commissioner and is downloadable from either www.entemp.ie or www.lrc.ie.

