



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:

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

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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.

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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

May 2005

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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.

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 Labour Inspectors of the Department of Enterprise, Trade and Employment - see Section 6 - The Labour Inspectorate.

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 and 2001 – See Terms of Employment - Section 1.

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.

Copies of the Regulations (incorporating Form OWT1) may be purchased from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2; Price €1.27. They are also downloadable from the Department's website at www.entemp.ie.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on Holidays and Public Holidays, 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 Department's website at www.entemp.ie.

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

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 Act also provides that

- (i) A part-time employee may be treated in a less favourable manner than a comparable 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 constitutes 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.

What is an objective ground for treatment in a less favourable manner?

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.

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, local authority or vocational educational committee.

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.

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

A dispute in relation to an entitlement under the Act may be referred to a Rights Commissioner. 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. A decision of the Rights Commissioner can be appealed to the Labour Court for a legally binding determination.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on the Protection of Employees (Part-Time Work) Act 2001, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

Fixed-Term Work (Protection of Employees (Fixed-Term Work) Act 2003)

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.

The Act also provides that -

- (iii) 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).
- (iv) 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.

What is an objective ground for treatment in a less favourable manner?

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.

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 Síochána, 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.

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 Determining a Fixed-Term Contract

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 and Failure to Offer a Contract of Indefinite Duration

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 Rights Commissioner 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.

Can an employer employ an employee on a series of fixed-term contracts indefinitely?

No.

Employees on fixed-term contracts, including those which commenced prior to the passing of the Act

Once a fixed-term contract employee completes or has completed 3 years continuous employment with his or her employer or associated employer (any or all of the 3 years service may have occurred prior to the passing of the Act) 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.

Employees on a fixed-term employment contract that commences after the passing of the Act

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.

Must an employer inform a fixed-term employee of permanent vacancies and training opportunities?

Yes - the 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

A dispute in relation to an entitlement under the Act may be referred to a Rights Commissioner for adjudication. The relevant complaint form is available from Employment Rights Information Unit or the Office of the Rights Commissioner, or is

downloadable from either www.entemp.ie or www.lrc.ie. A decision of the Rights Commissioner can be appealed to the Labour Court for a legally binding determination.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on the Protection of Employees (Fixed-Term Work) Act 2003, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

Children and Young Persons (Protection of Young Persons (Employment) Act 1996)

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 Enterprise, Trade and Employment.

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 Act further provides for the setting of limits to the working hours of young people (i.e. 16 and 17 year olds), provides 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 breach of the provisions of the Act may be taken by the Minister for Enterprise, Trade and Employment 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 breaches of the Act to a Rights Commissioner.

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 Enterprise, Trade and Employment or FÁS.

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.

Summary of Provisions in Relation to Employment of Young People.

Age	Max hours per day	Max hours per week	Permitted hours of work
16 and 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. Further information on the Regulations and the Code of Practice is available from Employment Rights Information Unit.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on the Protection of Young Persons (Employment) Act 1996. A summary of the Act in both poster and leaflet format is also available. Copies available on request, or downloadable from the Department's website at www.entemp.ie.

Carer's Leave (Carer's Leave Act 2001)

The Carer's Leave Act 2001, which came into operation on 2 July 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, health board or vocational education committee, and a member of the Garda Síochána 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 Social and Family Affairs. 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 Social and Family Affairs. 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 Social and Family Affairs, Balinalee Road, Longford.

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

Meaning of 'Full-time care and attention'

According to Department of Social and Family Affairs 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 (ii) and (iii) 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 65 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 65 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 needed 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 Social and Family Affairs;
- (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 Social and Family Affairs 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

A dispute in relation to an entitlement under the Act (with certain exceptions) may be referred to a Rights Commissioner for adjudication. The relevant complaint form is available from Employment Rights Information Unit or the Office of the Rights Commissioner, or from either www.entemp.ie or www.lrc.ie. A decision of a Rights Commissioner may be appealed to the Employment Appeals Tribunal.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on the Carer's Leave Act 2001, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

3. Pay

Wages (Payment of Wages Act 1991)

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.

The National Minimum Wage Act 2000 became law on 1st April 2000 and provides that an experienced adult employee must be paid an average hourly rate of pay of not less than €7.65 from 1st May 2005). Lesser rates apply in certain circumstances - full details are available on request.

Legal minimum rates of pay for particular categories of employees are also laid down through Joint Labour Committees (JLCs) and the Registered Employment Agreement (REAs) system. Further details on these are available in Section 6 of this Guide under heading - Industrial Relations and Relevant Bodies - Labour Court.

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 a Rights Commissioner, 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 Labour Inspectorate of the Department of Enterprise, Trade and Employment will seek to recover pay arrears in such instances and will initiate legal proceedings if necessary – see Section 6 - The Labour Inspectorate.

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. The Act applies to any person: -

- employed under a contract of employment
- employed through an employment agency or through a subcontractor

- 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).

In the case of agency workers, the party who is liable to pay the wages is the employer for the purposes of the Payment of Wages Act 1991.

The 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 regarding non provision of payslips/written statements of gross wages should be made to the Labour Inspectorate -see Section 6 - The Labour Inspectorate.

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 VHI/BUPA 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.

Complaints

Employees have the right under the Act to complain to a Rights Commissioner against an unlawful deduction (or payment) from wages or in the event of non-payment of wages. 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.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklets on the Payment of Wages Act 1991 and the National Minimum Wage Act 2000, copies of which are available on request, or downloadable from the Department's website at www.entemp.ie.

National Minimum Wage (National Minimum Wage Act 2000)

General

The National Minimum Wage Act 2000 became law on the 1st April 2000. The Act applies 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;

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

National Minimum Wage

From 1 February 2004 the national minimum hourly rate of pay is €7.00.

From 1 May 2005 the national minimum hourly rate of pay is €7.65.

The above rates were agreed by the social partners in the National Agreements - the Programme for Prosperity and Fairness and Sustaining Progress.

Minimum Hourly Rates of Pay

The Act provides that an experienced adult worker must be paid an average hourly rate of pay that is not less than the national minimum wage shown above 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 Act, 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 below illustrates the circumstances where an employer may pay a lower rate than the national minimum wage rate shown above.

How to determine an employee's 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 below.

Employee	Minimum Hourly Rate of Pay	
	from 1 February 2004	from 1 May 2005
	<i>Per working hour</i>	<i>Per working hour</i>
Experienced adult worker	€7.00	€7.65
Under age 18	€4.90	€5.36
* In the first year after the date of first employment over age 18, whether or not the employee changes employer during the year	€5.60	€6.12
* In the second year after the date of first employment over age 18, whether or not the employee changes employer during the year	€6.30	€6.89
In a course of training or study over age 18, undertaken in normal working hours		
1st $\frac{1}{3}$ period	€5.25	€5.74
2nd $\frac{1}{3}$ period	€5.60	€6.12
3rd $\frac{1}{3}$ period	€6.30	€6.89
NB Each $\frac{1}{3}$ period must be at least 1 month and no longer than 12 months.		
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. NB. Minimum period of temporary exemption is 3 months and maximum period is 12 months.	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 above statutory minimum hourly rates of pay are gross amounts i.e. before tax/PRSI is deducted.

The minimum rate of pay increases from time to time. Details of current minimum rates are always available from the Employment Rights Information Unit or on the Department's website www.entemp.ie.

Working Hours

The working hours of an employee for the purposes of the Act 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 Act 2000, which may be obtained from the Employment Rights Information Unit.

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 Act 2000 which is available from the Employment Rights Information Unit. An employer, even if an employee changes his/her job, cannot pay an employee the trainee 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.

Complaints

An employee may refer a complaint in relation to entitlements under the National Minimum Wage Act 2000 to a Rights Commissioner of the Labour Relations Commission or may instead make a complaint to the Labour Inspectorate at the Department of Enterprise, Trade and Employment. It is open to the employee to choose whichever course of action he/she wishes to pursue but an employee may not refer a dispute to a Rights Commissioner and also make a complaint to the Labour Inspectorate in relation to the same alleged under-payment of the

employee's statutory minimum hourly rate of pay entitlement. The relevant complaint forms are available from Employment Rights Information Unit, the Office of the Rights Commissioner or the Office of the Labour Inspectorate, or are downloadable from www.entemp.ie.

An employee cannot refer a dispute to a Rights Commissioner 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.

An employee must refer the dispute to a Rights Commissioner within a period of 6 months from the date the employee obtained the written statement or, in the case where an employer fails to supply the written statement, within 6 months from the latest date the employer was obliged to supply the statement. This time limit may be extended to 12 months, at the discretion of the Rights Commissioner.

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.

Additional Information

See Department of Enterprise, Trade and Employment Detailed Guide to the National Minimum Wage Act 2000, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

Overtime

In general there is no employment rights legislation covering 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 have pay and conditions of employment regulated through the Joint Labour Committee system/Employment Regulation Orders (EROs) or through Registered Employment Agreements (REAs), that are legally binding on employers in the sectors to which they apply. A small number of individual firms also have binding REAs. Some of the EROs/REAs regulate overtime pay. Employment Regulation Orders or Registered Employment Agreements regulate overtime payment in the following sectors: Aerated Waters & Wholesale Bottling - Agriculture – Catering (Outside Dublin City and Dun Laoghaire) - Catering (Dublin City and Dun Laoghaire) – Construction – Retail Footwear & Drapery (Dublin only) – Electrical Contract – Wholesale Fruit and Veg (Dublin only) – Hairdressing (Dublin City and County, Bray, and Cork City only) – Handkerchief and Household Piece Goods – Hotels (Outside Dublin City, Dun Laoghaire and Cork City) – Law Clerks – Printing (Dublin Only) – Provender Milling – Retail Grocery – Security – Shirtmaking- Tailoring – Women's Clothing and Millinery. Further information on EROs and REAs is set out in this Guide - See Section 6 - Labour Court.

The Terms of Employment (Information) Act 1994 provides 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.

Complaints

An employee who is not paid in accordance with his/her terms of employment may refer a complaint to a Rights Commissioner under the Payment of Wages Act 1991. The relevant complaint form is available from Employment Rights Information Unit or the Office of the Rights Commissioner, or is downloadable from either www.entemp.ie or www.lrc.ie.

Additional Information

Further information in relation to the above may be obtained from Employment Rights Information Unit.

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 and 2001 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.

An employee who does not receive sick pay as per his/her terms of employment may refer a complaint to a Rights Commissioner under the Payment of Wages Act 1991. The relevant complaint form is available on request from Employment Rights Information Unit or on the Department's website.

Employment sectors covered by the following Employment Regulation Orders/ Registered Employment Agreements contain binding arrangements covering sick pay: Agriculture - Brush and Broom - Catering (Dublin City and Dun Laoghaire) - Contract Cleaning - Construction - Electrical Contractors - Retail Footwear and Drapery (Dublin only) - Hairdressing (Dublin and Bray only) - Law Clerks - Provender Milling - Retail Grocery. Further information on ERO and REAs is set out in this guide in the section headed 'Labour Court'.

Complaints

An employee who is not paid in accordance with his/her terms of employment may refer a complaint to a Rights Commissioner under the Payment of Wages Act 1991. The relevant complaint form is available from Employment Rights Information Unit or the Office of the Rights Commissioner, or is downloadable from either www.entemp.ie or www.lrc.ie.

Additional Information

Further information in relation to the above may be obtained from Employment Rights Information Unit.

4. Termination of Employment

Minimum Notice (Minimum Notice and Terms of Employment Acts 1973 to 2001)

The Minimum Notice and Terms of Employment Acts 1973 to 2001 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.

Prior to December 20, 2001 the Acts 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.

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 this Act 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 2001, 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.

Complaints

Disputes about such matters as the right to notice, length of notice and calculation of continuous service under the Acts may be referred to the Employment Appeals Tribunal. The relevant complaint form is available from Employment Rights Information Unit or is downloadable from www.entemp.ie.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Leaflet on the Minimum Notice and Terms of Employment Acts 1973 to 2001, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

Redundancy Payments Scheme (Redundancy Payments Acts 1967-2003)

The Redundancy Payments Acts 1967-2003 impose a statutory obligation on employers to pay compensation to employees dismissed for reasons of redundancy. This arises where an employee's job ceases to exist and he or she is not replaced for such reasons as the financial position of the firm, because there is not enough work, the firm closes down altogether, or because of reorganisation.

The Redundancy Payments Acts 1967 - 2003 basically provide as follows:

- (i) An employee with 104 weeks' continuous service, aged between 16 and 66, 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) The statutory redundancy lump-sum entitlement is calculated as follows:
 - 2 weeks pay for every year of service under the Redundancy Payments Act 2003*, subject to the statutory ceiling, of €600.00 per week. The new ceiling came into effect on 1st January 2005. (The

ceiling which applied prior to the 1st January 2005 was €507.90 per week).

- 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.

*Note: These rates apply to employees who are declared redundant on or after 25th May 2003. The date on which an employee is declared redundant is the date on which he receives formal notification that his job will cease: the date (Date of Notice) is at the beginning of Form RP50 (Part A).

Redundancy Calculator

To make a redundancy calculation under the new Scheme double click on the Redundancy Calculator icon on the "Home Page" of the Department's Website at www.entemp.ie. Depending on the Date of Notice which is input, the Redundancy Calculator will calculate the correct statutory entitlement, using the pre 25th May, 2003 or post 25th May, 2003 rates as appropriate. There is a further change in calculation methods in respect of redundancies notified/declared from 10th April, 2005. In respect of these redundancies, non-reckonable service is only deducted for redundancy calculation purposes in respect of service **in the last 3 years of employment only**.

(IMPORTANT NOTICE re REDUNDANCY CALCULATOR)

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

The Redundancy Payments Acts, 1967 to 2003 further provide that:-

- (iii) The lump-sum must be paid by the employer direct to the employee.
- (iv) Employers are entitled to a rebate of 60% (of the statutory lump sum only) from the Social Insurance Fund provided they have given the employee 2 weeks notice.

In cases covered by the Acts, the requisite 2 weeks written notice of redundancy should be given to each employee on the prescribed form, RP50 (Part A of form). This form is available from the Department of Enterprise, Trade and Employment or is downloadable from www.entemp.ie. There is no need to send this notice to the

Department of Enterprise, Trade and Employment at the same time of issuing it to the employee. However, when the employer is applying for the 60% rebate, the employer must submit the fully completed Form RP50 to the Department.

When dismissal actually takes place, the employee must be given a Redundancy Certificate (Part B of Form RP50). During the period of notice, the employee should be given reasonable paid time off to look for other work or to make arrangements for training for future employment. The employer's claim for rebate of 60% of the lump-sum should be made to the Department of Enterprise, Trade and Employment on the fully completed Form RP50. Rebates are paid out of the Social Insurance Fund. Statutory redundancy forms (including Form RP50) are available from the Department of Enterprise, Trade and Employment or are downloadable from www.entemp.ie.

When an employee is entitled to a statutory redundancy payment and has taken all reasonable steps (excluding legal proceedings) to obtain the payment, but the employer refuses or fails to pay, he or she may apply to the Department of Enterprise, Trade and Employment for payment.

FURTHER IMPORTANT NOTICE

- (1) From 30th May, 2005, redundancy employer rebate applications and redundancy lump sum applications (where the employer does not pay the employee their correct statutory entitlement) can be submitted electronically at the Department's website at: www.entemp.ie. **It is strongly recommended that employers/employees/ liquidators etc avail** of this facility as an electronic application is capable of being processed faster and more accurately than a hardcopy only version, even taking into account the fact that for verification purposes hardcopy RP50's are still required to be submitted to the Department (solely for the purpose of verifying the signature, the data already having been inputted into the Department's Redundancy IT System).
- (2) The new Redundancy Form RP50 incorporates the data contained in the old Form RP1 (Notice of Redundancy – now Part A of Form RP50, the old Form RP2 (Redundancy Certificate – now included in Part B of Form RP50), the old Form RP3 (Redundancy Rebate application – also included in Part B of Form RP50) and finally the old Form RP14 (Employee application for a redundancy lump sum where the employer

fails to pay it – now also incorporated in Part B of the comprehensive new Redundancy Form RP50.

- (3) Regarding redundancies notified on or after 10th April, 2005, 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.

Complaints

Disputes regarding entitlements under the Acts may be referred to the Employment Appeals Tribunal (EAT). The relevant complaint form is available from Employment Rights Information Unit or is downloadable from www.entemp.ie.

Additional Information

It is recommended that people involved in redundancy situations should consult the Department of Enterprise, Trade and Employment's comprehensive, up-to-date and user-friendly “Guide to the Redundancy Payments Scheme”, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

Protection of Employment Act 1977 (Collective Redundancies)

The Protection of Employment Act 1977 (as amended) provides 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 Enterprise, Trade and Employment 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.

Complaints

The regulations referred to above also provide for a right of complaint to a Rights Commissioner where employers allegedly contravene their obligations to consult with, and give information to, employees in a collective redundancy situation. The relevant complaint form is available from Employment Rights Information Unit or the Office of the Rights Commissioner, or is downloadable from either www.entemp.ie or www.lrc.ie. There is a right of appeal to the Employment Appeals Tribunal.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on the Protection of Employment Act 1977, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

Insolvency Payments Scheme (Protection of Employees (Employers' Insolvency) Acts 1984 - 2004)

Purpose of the Insolvency Payments Scheme

The purpose of the Insolvency Payments Scheme is to protect certain outstanding pay-related entitlements of employees in the event of their employer becoming insolvent as defined in the legislation.

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 Act. Payments on foot of orders under equality, maternity/adoptive/parental leave, unfair dismissals/industrial relations legislation may also be paid. There is a wage limit of €600 per week on all pay-related entitlements payable under the Scheme. The current limit applies to all insolvencies that occurred on or after 1 January 2005.

The 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 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

Employees' claims for entitlements under the Scheme are made through the employer's representative (usually the liquidator or receiver). Statutory forms provided for the purpose are available from the Department's Website at www.entemp.ie.

Complaints

Disputes regarding decisions on applications for arrears of pay, sick pay, holiday pay and in relation to pension scheme contributions may be referred to the Employment Appeals Tribunal for decision. The relevant appeal form is available

from Employment Rights Information Unit or may be downloaded from the Department's website www.entemp.ie.

Additional Information

For more detailed information, a Guide to the Insolvency Payments Scheme is available on request, or may be downloaded from the Department's website, at www.entemp.ie.

Dismissal (Unfair Dismissals Acts 1977 to 2001)

The Unfair Dismissals Acts 1977 to 2001 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.

Since the 1st October 1993, a Rights Commissioner/the Employment Appeals Tribunal 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.

Since 1st October 1993, 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 apply to employees who (with certain exceptions, see below) have had at least a year's continuous service with the same employer.

Prior to December 20, 2001 the Acts 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.

The Acts do not cover employees on fixed term or fixed purpose contracts who are let go 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. Since 1st October 1993, if a series of 2 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, FAS 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 employee's employer at the commencement of the employment informs the employee in writing 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.

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.

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 race or colour or sexual orientation of the employee,
- (v) the unfair selection of the employee for redundancy,
- (vi) the employee's pregnancy, attendance at anti-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 Act 1994 to any form of protective leave or natal care absence within the meaning of Part iv of that Act, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by section 8 of the Maternity Protection (amendment) Act 2004), or to time off from work or a reduction of working hours for breast feeding in accordance with section 15b (inserted by section 9 of the Maternity Protection (amendment) Act 2004), of the first mentioned Act.
- (viii) the exercise or proposed exercise by an employee of the right to adoptive leave or additional adoptive leave under the Adoptive Leave Act 1995,
- (ix) the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under the Parental Leave Act 1998,
- (x) the age of the employee,
- (xi) the employee's membership of the travelling community,
- (xii) the employee's rights or proposed exercise of rights under the National Minimum Wage Act 2000,
- (xiii) the exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act 2001.

Employees claiming dismissal due to (i), (vi), (vii), (viii), (ix), (xii) or (xiii) may bring an unfair dismissal claim even though they do not have a year's continuous service with their employer. 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.

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) financial compensation with a maximum of 2 years' 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.

An employee found to have been unfairly dismissed but who has suffered no financial loss may be awarded up to 4 weeks' pay.

Employees considering that they have been unfairly dismissed from their job and wishing to make a claim for redress under the Acts, must, within 6 months of the date of dismissal, give formal notice of their claim in writing either to: -

- (i) A Rights Commissioner, or
- (ii) Employment Appeals Tribunal. In order to bring a claim directly to the Employment Appeals Tribunal (EAT), either the employer or the employee must indicate on the EAT complaint form that they object to the claim being referred to the Rights Commissioner.

Since 1st October 1993-

- (i) the time limit for the hearing of a claim for redress for unfair dismissal may be extended to 12 months in cases where exceptional circumstances have prevented the lodgement of the claim within the normal time limit of 6 months;
- (ii) an employee is entitled to bring a claim directly to the Tribunal without having to notify the Rights Commissioner Service in the first place; and

- (iii) the responsibility for sending a copy of the employee's claim to the employer passed from the employee to the Rights Commissioner or to the Tribunal, as the case may be.

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 a Rights Commissioner under the Industrial Relations Act 1969 (see also entry for Rights Commissioner Service in Section 6 under heading - Industrial Relations and Relevant Bodies – The Rights Commissioner Service).

Complaints

Employees may seek redress under the Unfair Dismissals Acts, 1977 to 2001 by referring a complaint to either a Rights Commissioner or the Employment Appeals Tribunal. The relevant complaint forms are available from Employment Rights Information Unit or the Office of the Rights Commissioner or are downloadable from www.entemp.ie.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on the Unfair Dismissals Acts 1977 to 2001, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

5. Other Relevant Provisions

Transfer of Undertakings – Protection of Employees (European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003)

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.

Complaints

An employee (or his/her trade union) may take a complaint to a Rights Commissioner that an employer has contravened his obligations to the employee under the Regulations. This must be done within 6 months of the contravention alleged (or within a further 6 months where the Rights Commissioner is satisfied that exceptional circumstances prevented the complaint being presented within the first 6 months). The relevant complaint form is available from Employment Rights Information Unit or the Office of the Rights Commissioner, or is downloadable from either www.entemp.ie or www.lrc.ie. Appeals lie from a decision of the Rights Commissioner to the Employment Appeals Tribunal (a 6 week time limit applies). Decisions of a Rights Commissioner and determinations, unless appealed, of the Tribunal are enforceable (by employee, trade union or Minister) in the Circuit Court.

Additional Information

See Department of Enterprise, Trade and Employment Explanatory Booklet on the European Communities (Protection of Employees on Transfer of Undertakings) Regulations, a copy of which is available on request, or downloadable from the Department's website at www.entemp.ie.

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 Act 1998 and National Minimum Wage Act 2000.

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:-

- Registered Employment Agreement (Construction Industry Wages and Conditions of Employment) 1967; and Registered Employment Agreement (Construction Industry Pensions Assurance and Sick Pay) 1969.

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.

Additional Information

Additional information/queries available from the Employment Rights Information Unit.

Worker Participation (Worker Participation (State Enterprises) Acts 1977 to 2001)

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.

Prior to December 20, 2001 the Acts 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 Employees (Part-Time Work) Act 2001 has removed the exclusion relating to the number of hours worked.

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 arrangements can 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.

State Enterprises with Worker Directors

Aer Lingus Group P.L.C., Aer Rianta, An Post, Bord na Mona, CIE, ESB, National Rehabilitation Board, and NET. (The Labour Services Act 1987, provides for the appointment of worker directors to the Board of FAS).

Additional Information

See Department of Enterprise, Trade and Employment Guide to the Worker Participation (State Enterprises) Acts 1977 to 2001, (Guide Title - Worker Participation (State Enterprises) Acts 1977 to 1988), a copy of which is available on request, or downloadable from Department's website at www.entemp.ie.

Employment Agencies (Employment Agency Act 1971)

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 Enterprise, Trade and Employment.

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.

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

Under the Protection of Employees (Fixed-Term Work) Act 2003 the levels of fines provided for in section 10(1) of the Employment Agency Act 1971, for offences under the Act, including the offence of an employment agency operating without a licence, were increased from £50 and £10 to €2,000 and €1,000 respectively.

Safety, Health and Welfare at Work (Safety, Health and Welfare at Work Act 1989)

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

Other Occupational Safety and Health Legislation

The coming into effect of the Safety, Health and Welfare at Work (General Application) Regulations, 1993 (S.I. 44 of 1993), represented a significant enhancement of the provisions of the 1989 Act.

These Regulations address legal requirements concerning the safe use of electricity in the workplace, the provision of first-aid facilities and the procedures governing the notification to the Health and Safety Authority of accidents and dangerous occurrences. 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 sector specific regulations e.g. asbestos, carcinogens, chemical agents, construction, explosive atmospheres, mines and quarries, noise and pregnant employees. The 1989 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.

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 10 Hogan Place, Dublin 2.

There are three relevant Codes of Practice in this area namely the;

Code of Practice on the Prevention of Workplace Bullying - made under the Safety, Health and Welfare at Work Act 1989 and administered by the Health and Safety Authority.

Code of Practice detailing Procedures for Addressing Bullying in the Workplace - made under the Industrial Relations Act 1990 and administered by the Labour Relations Commission.

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 Equality Authority.

Health and Safety Authority

The Health and Safety Authority is the national body in Ireland charged with responsibility for securing health and safety at work. It is a state-sponsored body, established under the Safety, Health and Welfare at Work Act (1989), and it operates under the aegis of the Department of Enterprise, Trade and Employment.

The Authority's primary functions are to:

- Monitor and enforce compliance with occupational health and safety legislation.
- Provide information and expert advice to employers, employees and the self-employed.
- Promote workplace safety, health, welfare, education and training.
- Publish research on workplace hazards and risks.
- Propose new regulations and codes of practice to the Minister.

Health and Safety Authority Headquarters and Regional Offices

Headquarters

Health and Safety Authority,
10 Hogan Place,
Dublin 2.

Telephone: (01) 614 7000 Fax: (01) 614 7020
Website address <http://www.hsa.ie>

Regional Offices

Athlone: Government Buildings,
Pearse Street,
Athlone,
Co. Westmeath.
Telephone: (0902) 92608 Fax: (0902) 92914

Cork:Irish Life Buildings,
3rd Floor,
1A South Mall,
Cork.
Telephone: (021) 4251212 Fax: (021) 4251217

Galway:Odeon House,
Eyre Square,
Galway.
Telephone: (091) 563985 Fax: (091) 564091

Limerick:Ground Floor,
Park House,
1 - 2 Barrington Street,
Limerick.
Telephone: (061) 419900 Fax: (061) 419559

Sligo: Government Offices,
Cranmore Road,
Sligo.
Telephone: (071) 43942 Fax: (071) 44078

Waterford: Government Buildings,
The Glen,
Waterford.
Telephone: (051) 875892 Fax: (051) 870610

6. General Information

The Labour Inspectorate

The Labour Inspectorate is a Unit within the Employment Rights and Industrial Relations Division of the Department of Enterprise, Trade and Employment. Though not an adjudication body as is the Rights Commissioner Service, the Labour Court and the Employment Appeals Tribunal, the Labour Inspectorate has an enforcement role under certain employment rights legislation. Inspectors have power to enter premises, inspect wage sheets and other records, interview both employers and employees, recover pay arrears and, if necessary, take civil/criminal proceedings. Enforcement is achieved either by way of voluntary compliance or through legal proceedings in the courts.

Remit of the Labour Inspectorate

The Labour Inspectorate has a role in enforcing aspects of the following Acts;

- (i) Organisation of Working Time Act 1997 (Records only)
- (ii) The National Minimum Wage Act 2000
- (iii) Industrial Relations Acts 1946 - 2001 (EROs/REAs – see Labour Court)
- (iv) Protection of Young Persons (Employment) Act 1996
- (v) Payment of Wages Act 1991(Statements/Payslips only)

It also has a role in record inspection/information gathering for other parties within the Department of Enterprise, Trade and Employment and the Department of Justice, Equality and Law Reform in relation to -

- (i) Employment Agency Act 1971
- (ii) Protection of Employment Act 1977
- (iii) Protection of Employees (Employers' Insolvency) Acts 1984 to 2003
- (iv) Carer's Leave Act 2001
- (v) Parental Leave Act 1998 (Department of Justice, Equality and Law Reform)

Enforcement is generally carried out on the basis of complaint investigation, a mix of planned/targeted sectoral and random inspections, undertaken by Inspectors operating on a team basis working throughout the country. It is undertaken in 3 distinct steps in that

- (i) where an inspection occurs leading to detection of breaches the employer is required to rectify matters
- (ii) letter issues seeking confirmation and evidence to the satisfaction of the Inspectorate that full compliance is in place
- (iii) failure to respond (or inadequate response) triggers a second inspection together with notice that any breaches (new or continuing) found will be automatically passed to the Unit's Legal Services for prosecution without any further reference to the particular employer.

However, when breaches are discovered under the Protection of Young Persons (Employment) Act 1996 these are referred for prosecution after a first inspection.

Industrial Relations and Relevant Bodies

Industrial Relations Generally

The system of industrial relations in Ireland is essentially voluntary in nature. This means that there has been agreement on all sides that the terms and conditions of employment of workers should be determined by the process of collective bargaining between an employer or employers' association and one or more trade unions, without the intervention of the State. Under this process standard matters like wages or hours of work are determined and, in addition, some collective agreements lay down procedural rules that govern the conduct of industrial relations. Thus, collective bargaining and not the law is the primary source of regulation in the employment relationship in Ireland. Over the years, however, legislation has been enacted in certain areas (such as holidays, working hours, minimum notice, redundancy, dismissals and employment equality) laying down certain minimum standards that may be improved upon by collective bargaining but cannot be taken away or diminished.

The State's role in industrial relations in Ireland has been largely confined to facilitating the collective bargaining process through establishing by legislation a number of institutions to assist in the resolution of disputes between employers and workers. These institutions are: the Labour Relations Commission, the Rights Commissioner Service and the Labour Court. There are also some statutory provisions designed to back up the voluntary process, the most important being those concerning Joint Labour Committees, Registered Employment Agreements and Joint Industrial Councils.

Department of Enterprise, Trade and Employment

The Department's responsibilities in regard to industrial relations involves it in the formulation of policy, the review 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 the general area of worker protection, the Department of Enterprise, Trade and Employment is responsible for the promotion, administration and review of a variety of measures in the field of labour legislation.

The Labour Relations Commission

The Labour Relations Commission (LRC), which is comprised of equal numbers of employer and trade union representatives and independent representatives, all appointed by the Minister for Enterprise, Trade and Employment, was set up in 1991 under the Industrial Relations Act 1990. The Commission has general responsibility for the promotion of good industrial relations through the provision of a comprehensive range of services designed to help prevent and resolve disputes.

The Commission provides;

- (i) an industrial relations Conciliation Service
- (ii) an industrial relations Advisory Development and Research Service (ADRS)
- (iii) a Rights Commissioner Service

The Conciliation Service assists employers and workers and their trade unions in resolving disputes where direct negotiations under collective bargaining have failed.

Industrial disputes must first be referred to the Commission except in situations where there is provision for referring disputes directly to the Labour Court or where the Commission waives its function of conciliation in a dispute. When an industrial dispute is referred to the Commission and the parties involved are agreeable to taking part in conciliation, the Commission assigns an Industrial Relations Officer to assist in resolving the dispute.

The Advisory Development and Research Service works with employers and employees to build and maintain good relationships in the workplace. It enables

them to develop and implement the means to effectively solve their own problems. To avail of ADRS services, parties do not have to be in dispute.

The Commission undertakes other activities of a developmental nature, including;

- (i) the review and monitoring of developments in the area of industrial relations
- (ii) the preparation in consultation with the social partners of codes of practice relevant to industrial relations
- (iii) industrial relations research and publications

The LRC also has responsibility for operation of the Rights Commissioner Service that is an independent service of the Commission. The role of the Rights Commissioner Service is to investigate and recommend/decide on grievances referred by individuals or small groups of workers under relevant industrial relations/employment rights legislation.

The Rights Commissioner Service

The Rights Commissioners operate as a service of the Labour Relations Commission. While Rights Commissioners are appointed by the Minister for Enterprise, Trade and Employment, they are independent in their investigative functions. They are empowered by the Industrial Relations Act 1969 to investigate industrial disputes, other than disputes related to rates of pay, hours or times of work or annual holidays of a body of workers. Accordingly, they deal mainly with disputes involving individual workers. Their investigations are voluntary and are conducted in private. Having carried out an investigation, a Rights Commissioner issues a recommendation - which is not binding on the parties involved - giving his/her opinion on the merits of the dispute. A party to a dispute under the Industrial Relations Acts may, however, appeal against a Rights Commissioner's recommendation to the Labour Court. The decision of the Court on such appeals is binding on the parties to the dispute, though not legally enforceable.

In addition to their functions under the Industrial Relations Acts, Rights Commissioners investigate cases under the: -

Unfair Dismissals Acts 1977 to 2001

Payment of Wages Act 1991

Terms of Employment (Information) Act 1994 and 2001,

Maternity Protection Acts 1994 and 2004
Adoptive Leave Act 1995
Protection of Young Persons (Employment) Act 1996
Protection of Persons Reporting Child Abuse Act 1998
National Minimum Wage Act 2000
Protection of Employees (Part –Time Work) Act 2001
Protection of Employees (Fixed –Term Work) Act 2003
Organisation of Working Time Act 1997
Parental Leave Act 1998
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003
European Communities Protection of Employment Regulations 2000
Carer's Leave Act 2001.

Rights Commissioner investigations under the above legislation, with the exception of the Payment of Wages Act, are carried out in private and the Rights Commissioners issue recommendations or decisions (depending on the legislation) which may be appealed by either side to the Employment Appeals Tribunal (or the Labour Court in the case of the Organisation of Working Time Act 1997, the National Minimum Wage Act 2000, Protection of Employees (Part-Time Work) Act 2001 and Protection of Employees (Fixed - Term Work) Act 2003). The Tribunal/Court then makes a determination, which is legally binding and enforceable. Investigations under the Payment of Wages Act are conducted in public (unless a party requests otherwise) and Rights Commissioners issue legally binding decisions, which may also be appealed to the Employment Appeals Tribunal. The Rights Commissioner Service is a service of the Labour Relations Commission.

Additional Information and Complaint Forms

See Department of Enterprise, Trade and Employment Guide to the Industrial Relations Act 1990, and booklet on the Labour Relations Commission or contact the Labour Relations Commission, Tom Johnson House, Haddington Rd, Dublin 4 - Telephone: (01) 613 6700 - Lo-call number for outside (01) area: 1890 220 227, Website: www.lrc.ie e-mail: info@lrc.ie. Complaint forms are available directly from the LRC or from the Employment Rights Information Unit of the Department of Enterprise, Trade and Employment and are downloadable from both the LRC's and Department's websites (www.entemp.ie).

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, equality, organisation of working time, national minimum wage, part-time work and fixed-term work matters. The Labour Court also: - establishes Joint Labour Committees, makes Employment Regulation Orders on foot of proposals received from these Committees; registers Joint Industrial Councils; and registers Employment Agreements. In addition, the 2003 national agreement “Sustaining Progress” gives a compliance role to the Labour Court in relation to disputes about pay.

The Court consists of 9 full-time members – a Chairman, 2 Deputy Chairmen and 6 ordinary members representative of employers (3) and workers (3). The Chairman and Deputy Chairmen are appointed by the Minister for Enterprise, Trade and Employment; the 3 Employers’ Members of the Court are nominated by IBEC (Irish Business and Employers Confederation) and the 3 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 (the Chairman or one of the two Deputy Chairmen of the Court), an Employers’ Member and a Workers’ Member. Certain issues may require a meeting of the full Court.

The constitution and operation of the Labour Court are governed by the Industrial Relations Act 1946 (as amended in 1969, 1976, 1990 and 2001). Its statutory functions are described in those Acts and also in the following enactments – the Anti-Discrimination (Pay) Act 1974, the Employment Equality Act 1977, the Pensions Act 1990, the Organisation of Working Time Act 1997, the Employment Equality Act 1998, the National Minimum Wage Act 2000, the Protection of Employees (Part-time Work) Act 2001, the Protection of Employees (Fixed-term Work) Act 2003.

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 Rights Commissioners, Equality Officers, and the Director of Equality Investigations.

Disputes about Industrial Relations, Equality, Organisation of Working Time, National Minimum Wage, Part-Time Work, Fixed Term Work

In industrial relations disputes involving groups of workers, the parties will generally have referred their dispute to the Labour Relations Commission, failed to reach agreement in that forum, and then referred the dispute to the Labour Court for adjudication. The Labour Court issues a “Labour Court Recommendation” in such cases. Industrial disputes involving a single worker, or a small group of workers are usually referred to the Rights Commissioner Service. Either party to such a dispute may appeal the recommendation of the Rights Commissioner to the Labour Court and the Court will issue an “Appeal Decision”. Neither a Labour Court Recommendation nor an Appeal Decision in such cases is legally enforceable; this is in keeping with the principle of free collective bargaining that underlay the establishment of the Labour Court in the first place. However, as the parties are expected to come to the process in good faith, it is expected that they will give serious consideration to the Court’s Recommendation or Appeal Decision.

In certain circumstances, an industrial relations dispute may be referred directly to the Court (i.e. without having first availed of the Labour Relations Commission or the Rights Commissioner Service). In such cases, the party or parties referring the dispute must agree in advance to accept the Recommendation of the Court.

In equality disputes, the Court fulfils “court of first instance” and appellate roles. In dismissal cases, where the worker believes him or herself to have been dismissed, or constructively dismissed on grounds constituting discrimination or victimisation (as defined in the legislation), he or she may come directly to the Labour Court to seek redress. The Court’s decision in such a case is called a Determination and is legally enforceable. In other cases involving discrimination or victimisation (as defined) but not involving dismissal, the complaint will first have been investigated by an Equality Officer or the Director of Equality Investigations and a decision will have issued to the parties. Either party may appeal that decision to the Labour Court. The Court’s decision on any such appeal is called a Determination and is legally enforceable.

In disputes under the Organisation of Working Time Act 1997, the National Minimum Wage Act 2000, the Protection of Employees (Part-time Work) Act 2001 and the Protection of Employees (Fixed Term Work) Act 2003 the Court has an appellate role. Such disputes are first referred to Rights Commissioners, with a right of appeal to the Labour Court. Either or both parties may appeal against the decision of the Rights Commissioner to the Labour Court, or where the employer

has not implemented the decision, the worker party may appeal to the Court for its implementation. Labour Court decisions on such appeals are called Determinations and are legally enforceable.

Additional Information

The Labour Court publishes a comprehensive guide to its services (Guide to the Labour Court). This is available on the website or directly from the Court (contact details below).

The Labour Court website (www.labourcourt.ie) contains comprehensive information on its services, functions and activities; its publications (including the Guide to the Labour Court and Annual Reports of the Court); forms for making referrals to the Court; its database of Recommendations, Appeal Decisions, Determinations etc; details of Joint Labour Committees, Employment Regulation Orders and Registered Employment Agreements. Information on the Labour Court is also available from the Information Officer, Labour Court, Tom Johnson House, Haddington Road, Dublin 4 (phone (01) 613 6643). Enquiries may be made using the “Contact Us” function of the website, by e-mail (info@labourcourt.ie), or by phone ((01) 613 6643).

Joint Labour Committees

Joint Labour Committees (JLCs) are bodies established under the Industrial Relations Act 1946 to provide machinery for fixing statutory minimum rates of pay and conditions of employment. They may be set up by the Labour Court on the application of (i) the Minister for Enterprise, Trade and Employment 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 Enterprise, Trade and Employment. 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 involved. When proposals submitted by a JLC are confirmed by the Labour Court through the making of an Employment Regulation Order they become statutory minimum pay and conditions of employment for the workers concerned. Employers are then bound under penalty to pay wage rates and provide conditions of employment not less favourable than those prescribed.

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.

Employment Regulation Orders are enforced by the Labour Inspectors of the Department of Enterprise, Trade and Employment. These Inspectors have power to enter premises, inspect wage sheets and other records, interview the employers and workers concerned, recover arrears and, if necessary, take legal proceedings against an employer who is in breach of an ERO – see Labour Inspectorate – Section 6.

There are 19 Joint Labour Committees covering the following activities: -

Aerated Waters and Wholesale Bottling
Agricultural Workers
Brush and Broom
Catering (Dublin and Dun Laoghaire)
Catering (Other)
Contract Cleaning (Dublin)
Contract Cleaning (Other)
Hairdressing (Cork)
Hairdressing (Dublin, Dun Laoghaire, Bray)
Handkerchief and Household Piece Goods
Hotels (Dublin and Dun Laoghaire)
Hotels (Other, excluding Cork)
Law Clerks
Provender Milling
Retail, Grocery and Allied Trades
Security Industry
Shirtmaking
Tailoring
Womens Clothing and Millinery

Registered Employment Agreements

A Registered Employment Agreement (REA) is a collective agreement made either (i) between a trade union or unions and an individual employer or employers organisation or (ii) by a registered Joint Industrial Council, which relates to the pay or conditions of employment of any class, type or group of workers and which has

been registered with the Labour Court under the Industrial Relations Act 1946. The effect of registration is to make the provisions of an REA binding not only on the trade unions and employers involved in its negotiation but on others who were not parties to its negotiation but who are in the categories covered by the agreement. An REA can deal with any matter that comes under the general heading of pay or conditions of employment. An Agreement may provide for the variation of any of its provisions. Each REA must contain a disputes procedure that is binding.

The enforcement of the provisions of a Registered Employment Agreement may be effected in 2 ways under the Industrial Relations Acts. A trade union, an association of employers or an individual employer may complain to the Labour Court that a particular employer is not complying with an REA. If, after investigating a complaint, the Court is satisfied that the employer is in breach of an REA it may by order direct compliance with the agreement. Failure to comply with such an Order is an offence punishable by a fine.

The Industrial Relations Act 1990 introduced an additional enforcement procedure for REAs similar to that for Employment Regulation Orders. The Act requires an employer covered by an REA to keep records of wages paid and to retain them for three years to show that the Agreement is being complied with. The Labour Inspectors of the Department are empowered to inspect these records, recover arrears and, if necessary, institute civil proceedings on behalf of workers if they are not receiving the minimum pay and conditions of employment laid down in an REA.

In July 2003, there were over 40 Employment Agreements registered with the Labour Court but many of them had not been varied for several years. Consequently, the rates of pay and conditions of employment contained in the majority of these Agreements are out of date. In such cases the only advantage of retaining the Agreements on the Register is that each of them contains a dispute procedure that is enforceable.

There are 6 active industry-wide Registered Employment Agreements, covering the following activities: -

Construction Industry, Whole State (Wages and Conditions of Employment)

Construction Industry, Whole State (Pensions, Assurance and Sick Pay)

Electrical Contracting Industry

Drapery, Footwear and Allied Trades (Dublin only)

Printing Trade (City and County of Dublin)

Wholesale Fruit and Vegetable Trade (Dublin and Dun Laoghaire).

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 fulfills certain conditions, may register with the Labour Court as a Joint Industrial Council under the Industrial Relations Act 1946. 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. There are 3 registered JICs and eleven unregistered Councils. The Court services unregistered as well as registered Councils if the parties request it. Industrial Relations Officers of the Labour Relations Commission act as chairpersons of the 3 registered Councils and 11 of the unregistered Councils. The 14 JICs are as follows:

Registered

Joint Industrial Council for the Construction Industry
Joint Industrial Council for the Dublin Wholesale Fruit and Vegetable Trade
Joint Board of Conciliation and Arbitration for the Footwear Industry

Unregistered

Bacon Curing
Bakery and Confectionery Trades
Banks
Electrical Contracting Industry
Flour Milling
Grocery Provision and Allied Trades
Hosiery and Knitted Garments Manufacture
Printing and Allied Trades in Dublin
State Industrial Employees
Woollen and Worsted Manufacture
Telecom Eireann

Additional Information

See Department of Enterprise, Trade and Employment Guide to the Industrial Relations Act 1990, and booklet on the Labour Relations Commission or contact the Labour Relations Commission, Labour Court or Rights Commissioner Service, copy available on request, or downloadable from the Department's website at www.entemp.ie.

Access to the Labour Relations Commission and the Labour Court

Access to the services of the Labour Relations Commission and the Labour Court is governed by the definition of worker in the Industrial Relations Act 1990. With the exception of employees in the public service covered by conciliation and arbitration machinery, the majority of employees have access to these services. The following categories are specifically excluded because they do not come within the definition of worker:

- (i) a person who is employed by or under the State (e.g. civil servants)
- (ii) a teacher in a secondary school
- (iii) a teacher in a national school
- (iv) an officer of a vocational education committee
- (v) an officer of a school attendance committee

The services of the Labour Relations Commission and the Labour Court are available free of charge.

Employment Appeals Tribunal

The Tribunal, originally established as the Redundancy Appeals Tribunal under the Redundancy Payments Act 1967 consists of a chairman and 22 vice-chairmen and a panel of 60 members, 30 nominated by the Irish Congress of Trade Unions and 30 by employers organisations. It acts in divisions presided over by the chairman or vice-chairman with one member from each side.

The Tribunal determines matters of dispute arising under the Redundancy Payments, Minimum Notice, Maternity Protection, Adoptive Leave, Parental Leave, Unfair Dismissals, Protection of Employees (Employers' Insolvency), Payment of Wages, Terms of Employment (Information), Protection of Young Persons (Employment), Carer's Leave, Organisation of Working Time Act (in certain circumstances), Protection for Persons Reporting Child Abuse Acts, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations and European Communities (Protection of Employment) Regulations. Employees who are dissatisfied with a decision of an employer or a deciding officer in regard to their entitlement under the Redundancy Payments Acts, or an employer dissatisfied

with a decision of the Minister in regard to a claim for rebate, may have the matter referred to the Tribunal for decision.

National Implementation Body

The National Implementation Body is charged with ensuring delivery of industrial relations stability and peace provisions of National Agreements. The body, representing Government, IBEC/CIF and ICTU, has intervened in a number of disputes seeking to encourage the parties concerned to use the industrial relations machinery of the State to resolve the matters at issue.

Employer-Labour Conference

The Employer-Labour Conference is a national forum for the discussion and review of developments and problems in industrial relations, pay determination and related matters. The employer side of the Conference comprises representatives of the employer organisations, the State as an employer and State-sponsored bodies. The labour side consists of the members of the Executive Council of the Irish Congress of Trade Unions and officials of Congress. The Steering Committee of the Conference is available to assist, with the agreement of the parties directly concerned, in the resolution of industrial disputes.

Irish Congress of Trade Unions

The Irish Congress of Trade Unions (ICTU) is the central authority for the trade union movement in Ireland. There are 57 unions affiliated to the Congress, some of which operate in Northern Ireland. Membership of the affiliated unions is in excess of 766,647 with membership in the Republic of Ireland representing $\frac{2}{3}$ of that total. The two big general unions, SIPTU and ATGWU represent almost 40% of total affiliated membership in the Republic.

Unaffiliated unions represent about 3% of total trade union membership in the Republic and about 8% in Northern Ireland. 33 of the unions affiliated to the ICTU have their headquarters in Great Britain or Northern Ireland. 15 of these operate in the Republic. The Constitution of the ICTU requires affiliated unions with headquarters in Britain to devolve certain functions upon their Irish membership.

The main function of the ICTU is to co-ordinate the work of trade unions operating in Ireland. It is represented on government advisory bodies and it nominates representatives of labour for appointment to a number of bodies including the Labour Relations Commission and the Labour Court. It co-ordinates union action

through industrial committees and groups and it assists unions in the resolution of industrial disputes. Since 1987, the ICTU has represented trade unions as a social partner, negotiating national agreements on social and economic issues, in addition to negotiating on pay and conditions of employment.

ICTU's Education and Training Service provides a comprehensive trade union education programme for shop-stewards, officials and members of affiliated trade unions.

Irish Business and Employers Confederation

The Irish Business and Employers Confederation (IBEC)

- (i) provides a wide range of services to over 7,300 member businesses and organisations from all sectors and of all sizes
- (ii) is the umbrella body for Ireland's leading sectoral groups and associations
- (iii) is the national voice of Irish business and employers

IBEC works to shape policies and influence decision-making in a way that develops and protects members' interests and contributes to the development and maintenance of an economy that promotes enterprise and productive employment. It represents members' interests to Government, state agencies, the trade unions, other national interest groups and the general public. Through its Brussels office, the Irish Business Bureau (IBB), IBEC works on behalf of business and employers at European level to ensure that European policy is compatible with its own objectives for the development of the Irish economy.

Economic affairs, employee relations, pay, employment, taxation, competition, the environment, trade, transport and sectoral matters are just some of the wide range of issues on which IBEC works and serves its members on a daily basis. It develops and reviews policy on such topics through consultation with its members, undertaking its own research, and seeking expert advice and opinion.

Other Bodies and Employment Rights Protections

The following is a list of other employment rights legislation not administered by the Department of Enterprise, Trade and Employment and not detailed in this Guide, together with the relevant contact details.

Acts

Maternity Protection Acts 1994 and 2004
Parental Leave Act 1998
Adoptive Leave Act 1995
Employment Equality Acts 1998 and 2004
Equal Status Act 2000

Contact Details

The Equality Authority
Clonmel Street
Dublin 2
Tel. (01) 4173333 or 1890 245 545 (lo-call)
Website: www.equality.ie

Equality Tribunal

3 Clonmel Street
Off Harcourt Street
Dublin 2
Tel. (01) 477 4100 or 1890 344424 (lo-call)
Website: www.equalitytribunal.ie

Acts

Pensions Act 1990
Pensions (Amendment) Act 2002

Contact Details

The Pensions Board
Verschoyle House
28/30 Lower Mount St
Dublin 2
Tel. (01) 6131900
Website: www.pensionsboard.ie

Pensions Ombudsman
Office of the Pensions Ombudsman
36 Upper Mount Street
Dublin 2
Tel: 01 647 1650
Website: www.pensionsombudsman.ie

Code of Practice for Determining Employment or Self-Employment Status of Individuals

The Employment Status Group (representatives of Department of Enterprise, Trade and Employment, Department of Social and Family Affairs, Department of Finance, Revenue Commissioners, Irish Congress of Trade Unions and Irish Business and Employers Confederation) set up under the Programme for Prosperity and Fairness agreed criteria to eliminate misconceptions and provide general clarity around what constitutes the status of ‘employee’ and ‘self employed’. The code lists ‘criteria and additional factors’ to provide guidance in determining whether an individual is an employee or is self-employed. When evaluating the ‘criteria and additional factors’ it is important that the job as a whole is looked at including working conditions and the reality of the relationship. The overriding consideration or test will always be whether the person performing the work does so “as a person in business on their own account”. Is the person a free agent with an economic independence of the person engaging the service?

Additional Information

A copy of the Code is downloadable from the Department’s website www.entemp.ie – under ‘Report on the Employment Status Group’ or from the Employment Rights Information Unit, Department of Enterprise, Trade and Employment, Davitt House, Adelaide Road, Dublin 2 - Tel No: (01) 631 3131, Lo-Call for outside (01) area: 1890 201 615, e-mail: erinfo@entemp.ie.

Employment Rights Enforcement Chart

Process Chart - Rights Commissioner Service/ Employment Appeals Tribunal/ ODEI – Equality Tribunal/ Labour Court/ Employment Rights Labour Inspectorate

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
*Adoptive Leave Act 1995	Rights Commissioner	Employment Appeals Tribunal (EAT)	Party or Minister for Justice, Equality and Law Reform applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination
Carer's Leave Act 2001	Rights Commissioner Deciding Officer of Dept. of Social and Family Affairs on certain issues	Employment Appeals Tribunal (EAT) D/SFA Appeals Officer	Party or Minister applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination
*Employment Equality Acts 1998 and 2004	Office of the Director of Equality Investigations (ODEI - the equality tribunal) Circuit Court (gender cases - as alternative to ODEI / Labour Court)	Labour Court Circuit Court High Court	Complainant or, with the consent of the complainant, the Equality Authority (where the Authority considers that the settlement, decision or determination is unlikely to be implemented without its intervention) applies to Circuit Court for Order directing compliance with mediation settlement, ODEI decision (unless appealed) or Labour Court determination (unless appealed)
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	Rights Commissioner	Employment Appeals Tribunal (EAT)	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
Industrial Relations Acts 1946 - 2004			
Trade Disputes	Rights Commissioner	Labour Court	Voluntary Process
Trade Disputes	Conciliation Service LRC	Labour Court	Voluntary Process
Trade Disputes-Section 20 cases	Labour Court	None employee/trade union taking case undertakes in advance to accept Recommendation	Voluntary Process for employer
*** EROs and REAs	Employment Rights Labour Inspectorate	Voluntary Compliance Expected	Civil/Criminal proceedings
REAs	Labour Court	Voluntary Implementation of Labour Court Order Expected	Criminal proceedings by Minister
*Maternity Protection Acts 1994 and 2004	Rights Commissioner	Employment Appeals Tribunal (EAT)	Party or Minister for Justice, Equality and Law Reform applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination
Minimum Notice and Terms of Employment Acts 1973 - 2001	Employment Appeals Tribunal (EAT)	Voluntary compliance expected	Trade union or Minister institutes proceedings in District Court for compensation awarded by EAT/Employee sues employer in relevant Court for debt
National Minimum Wage Act 2000	Rights Commissioner	Labour Court Voluntary Compliance Expected	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Labour Court Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner)
	Employment Rights Labour Inspectorate		Civil/criminal proceedings by Minister

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
Organisation of Working Time Act 1997	Rights Commissioner EAT in certain circumstances	Labour Court Similar appeal procedure to EAT linked case	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Labour Court Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner) Enforced in same way as EAT linked case
*Parental Leave Act 1998	Rights Commissioner	Employment Appeals Tribunal (EAT)	Party or Minister for Justice, Equality and Law Reform applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination
Payment of Wages Act 1991	Rights Commissioner Employment Rights Labour Inspectorate (pay slips only)	Employment Appeals Tribunal (EAT) Voluntary compliance expected	Rights Commissioner Decision (unless appealed)/EAT Determination enforced by party in civil proceedings as if order of Circuit Court Criminal proceedings by Minister
Protection of Employees (Fixed-Term Work) Act 2003	Rights Commissioner	Labour Court	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Labour Court Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner)

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
Protection of Employees (Part – Time Work) Act 2001	Rights Commissioner	Labour Court	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Labour Court Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner)
Protection of Young Persons (Employment) Act 1996	Rights Commissioner (section 17 of Act) Employment Rights Labour Inspectorate	Employment Appeals Tribunal (EAT) Voluntary Compliance expected	Parent/Guardian of child or young person or Minister applies to District Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's recommendation or on appeal from Rights Commissioner) Criminal proceedings by Minister
**Protections for Persons Reporting Child Abuse Act 1998	Rights Commissioner (section 4 of Act only)	Employment Appeals Tribunal (EAT)	Employee/trade union or Minister for ETE applies to Circuit Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner)
Protection of Employment Act 1977	Redundancy Payments Section Dept. Enterprise, Trade and Employment (Dept. ET&E)	Voluntary Compliance expected	Criminal proceedings by Minister
European Communities (Protection of Employment) Regulations 2000	Rights Commissioner	Employment Appeals Tribunal (EAT)	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's decision or on appeal from RC)

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
Redundancy Payments Acts 1967 - 2003	Employee to Employment Appeals Tribunal (EAT) against employer for refusal to pay redundancy lump sum	None	Social Insurance Fund pays award in the event of an employer defaulting on EAT Decision
	Employer to Redundancy Payments Section Dept. Enterprise, Trade and Employment (Dept. ET&E) (Deciding Officer)	EAT on foot of Deciding Officer's refusal of employer's claim	Fund pays rebate to employer If EAT finds in favour
	Minister may refer doubtful claim to EAT	None	Fund pays rebate to employer if EAT finds in favour
Terms of Employment (Information) Act 1994 and 2001	Rights Commissioner	Employment Appeals Tribunal (EAT)	Employee/trade union or Minister applies to District Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's recommendation or on appeal from Rights Commissioner)
Unfair Dismissals Acts 1977 to 2001	Rights Commissioner	Employment Appeals Tribunal (EAT)	Employee or Minister applies to Circuit Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's recommendation or on appeal from RC) or with Circuit Court Order (on appeal from EAT)
	or Employment Appeals Tribunal (EAT)	Circuit Court	
Protection of Employees (Employers Insolvency) Acts 1984 - 2004	Minister may refer claim to Employment Appeals Tribunal	Employee may refer certain disputed decisions to the Employment Appeals Tribunal	Minister implements Employment Appeals Tribunal decision

*Legislation administered by the Minister for Justice, Equality and Law Reform

** Legislation administered by the Minister for Health and Children

*** ERO = Employment Regulation Order, REA = Registered Employment Agreement

Note

Minister = Minister for Enterprise, Trade and Employment

The above table is only a general guide to enforcement and the language used is generic to accommodate brief descriptions. For exact or more complete information please consult individual Regulations/Acts or other explanatory documentation.

Most of the Acts listed above may be referred on a point of law to the High Court. Depending on the Act, referral may be by either party, the Minister, the Labour Court or the Employment Appeals Tribunal. For exact details please consult individual Acts.

For further information on the details contained in the above table contact Employment Rights Information Unit at telephone 01 631 3131 or 1890 201 615 (lo-call if outside 01 area).