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## INTRODUCTION TO EMPLOYMENT LAW

The purpose of this article is to provide an introduction to the obligations of employers and rights of employees under Irish employment law.

Self-employed persons or independent contractors are engaged by employers on contracts for services, whereas employees are employed on contracts of service. The distinction is very important as an employee is protected by a wide range of employment legislation, whereas the self-employed person or independent contractor does not have the same level of protection.

Therefore, employers need to be sure whether they are engaging persons as employees or not and understand what consequential obligations they have.

### Terms of Employment

Under s.3 of the Terms of Employment (Information) Acts, 1994 and 2001, the employer shall issue to the employee a statement in writing of the terms of their employment, within two months of the commencement of employment. The following are some of the information that is required:

- full names of the employer and the employee;
- the address of the employer;
- the job title or nature of the work;
- the date of commencement of the contract of employment;
- if the contract of employment is temporary, the expected duration thereof or, if the contract is for a fixed term, the date on which the contract expires;
- the place of work or, where there is no fixed or main place of work, a statement specifying that the employee is required or permitted to work at various places;
- the rate or method of calculation of the employee's remuneration;
- when remuneration is paid;
- any terms or conditions relating to hours of work including overtime;
- any terms or conditions relating to paid leave;
- any terms or conditions relating to incapacity for work due to sickness or injury and paid sick leave;
- any terms or conditions relating to pensions and pension schemes;
- the period of notice the employee is entitled to give or receive or the method of calculating such periods of notice;
- a reference to any collective agreement that directly affects the terms and conditions of the employment.

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## Wages and Payments

Currently the national minimum wage is €8.65 per hour (please always seek up-to-date advice in this regard).

It is important to note that there are exceptions to the rule that all employees receive the national minimum wage including:

- An employee who is under 18 is entitled to €6.06 per hour (this is 70% of the minimum wage);
- An employee who is in the first year of employment since the age of 18 is entitled to €6.92 per hour (80% of minimum wage);
- An employee who is in the second year of employment since the date of first employment over the age of 18 is entitled to €7.79 per hour (90% of the minimum wage);
- Some industries apply a higher minimum wage;
- An employee undergoing structured training such as an apprenticeship;
- An employee employed by close relatives.

Employees are entitled to a pay slip with every payment, showing the gross pay and every deduction. Employers can reduce the payment by those deductions required by law and those authorised in the contract of employment or the employee has agreed to in advance.

## Working Time

Employers should be aware that the Organisation of Working Time Act 1997 governs the area relating to annual leave, public holidays, working hours and breaks for employees.

48 hours is the max that an employee should work in any average week, calculated over a 4, 6 or 12 month period, depending on the industry. This is subject to exceptions.

Employers should also note that employees are entitled to breaks and rest periods but there is no statutory entitlement to payment for them.

Employees are entitled to a 15 minute break if they work 4.5 hours and a 30 minute break if they work 6 hours.

Furthermore, employees are entitled to a daily rest period of 11 continuous hours per 24 hours and a rest period of 24 continuous hours per week, following a daily rest period.

Full-time employees earn one week of paid annual leave for every three months worked. Part-time employees are entitled to annual leave calculated as a proportion of hours they have worked. Employees are entitled to nine public holidays during the year.

Employers need to be aware that in certain circumstances their employees shall be entitled to avail of statutory protective leave periods such as maternity leave and parental leave. The employer needs to be aware of the rules regarding each particular leave.

It is noted that there is no legal entitlement to compassionate leave or sick pay. Therefore, it is at the discretion of the employer when to pay employees for this time off.

It should always be remembered by employers in some industries employees are entitled to additional rights. It must be also be noted that this Act does not apply in all situations or to all employees as there are numerous exceptions. Persons under the age of 18 have extra protections.



## Employees

Employers need to be aware that there are different categories of employees and need to know how to treat each employee and the rights each employee has.

A part-time employee is one who works fewer hours than a comparable full-time employee. An employer who employs a person on a part-time basis cannot treat a part-time employee any less favourably than a comparable full-time employee in relation to any term or condition of employment, unless justified on objective grounds.

Fixed-term employees are employed under a contract that specifies a start date and end date or are employed for a specific project or until the occurrence of some event.

Employers must be aware that they cannot continuously employ the same person on fixed term contracts.

Employers cannot treat fixed-term employees any less favourably than a comparable full-time employee, unless justified on objective grounds.

Employers need to be very careful how they treat persons they employ under the age of 18, as they have extra protection in employment by the Protection of Young Persons (Employment) Act, 1996. This act aims to protect the health, development and education of the young person by setting out relevant limits to working hours. To employ young persons under the age of 16 in certain areas such as advertising, sports or cultural work, permission must be obtained by way of licence.

Foreign nationals working legally in Ireland are entitled to the same protections and rights as an Irish worker. An employment permit is required for non-EEA nationals to work in Ireland except in limited circumstances.

Night workers are workers who work 3 hours of their daily working day between midnight and 7 am.

## Termination

Employment contracts may be terminated in various ways such as dismissal, redundancy or insolvency. Employers need to be aware of the correct practice and procedures involved in terminating contracts in each particular way.

If employers do not follow the correct practice and procedures, the employment rights of the employee may allow them to take legal action against the employer and a substantial award may be made against the employer.

## NERA

The National Employment Rights Authority uses its Inspection Service to carry out routine inspections and to investigate complaints of breaches of employment rights. It is possible that employers can be prosecuted if breaches are found to have occurred.

## Records

Employers should be aware that they must keep certain records of employees and also of former employees for a certain period of time.

NERA Inspectors when carrying out inspections will need certain information that the employer should be keeping on record.

The type of records and how long the employer has to keep them for will depend on what industry the employers business is in.



## Transfer of Undertakings

EU Protection of Employees on Transfer of Undertakings Regulations 2003 governs the area when a new employer takes over a business or a part of a business. The new employer legally must take the employees on no less favourable terms and conditions as the employees had with the previous employer.

This article is intended to be general in nature and is not an exhaustive list of the employer's obligations. There are many more matters that an employer must consider such as tax issues, social welfare issues, and health and safety issues. In specific industries, the obligations on employers will be different than those above. Specific legal advice should be taken in each particular situation.

If you have any queries in relation to the above or would like advice on a related matter, please contact Alan O' Driscoll or any member of the firm.