

## Employment (Miscellaneous Provisions) Act 2018

Minister for Employment Affairs and Social Protection, Regina Doherty, recently confirmed that new legislation has been introduced making a small number of very significant changes to employment rights legislation in Ireland. The new legislation came into force on 4<sup>th</sup> March 2019.

### Why Introduce Changes?

The introduction of changes to the law was primarily to improve the security and predictability of working hours for employees working variable hours and those on insecure employment contracts. Industries that would traditionally rely on flexibility in employment contracts such as retail, tourism, hospitality and other service industries will in particular be required to note the changes in legislation.

### What Legislation Is Being Amended by The New ACT?

The key pieces of legislation affected by the introduction of the new act include: -

- 📌 Terms of Employment (Information) Act 1994
- 📌 Organisation of Working Time Act 1997
- 📌 Workplace Relations Act 2015

There have also been amendments to two other pieces of legislation within the act. Though they are not the primary focus, they are significant to some employers and are listed below: -

- 📌 Unfair Dismissals Act 1997
- 📌 National Minimum Wage Act 2000

### Changes to Terms of Employment (Information) Act 1994

The act now requires an employer to provide a statement of terms of employment to all new employees, in writing, within 5 days of them commencing employment. This Statement must include the following information: -

- 📌 The full names of the employer and the employee.
- 📌 The address of the employer.
- 📌 The expected duration of the contract, in the case of a temporary contract, or the end date if the contract is a fixed-term contract.
- 📌 The rate or method of calculation of the employee's pay.
- 📌 The number of hours the employer reasonably expects the employee to work per normal working day and per normal working week.

The other terms of employment required to be given to the employee under the Terms of Employment (Information) Act 1994 will continue to be required within the existing two-month period.

### Changes to Organisation of Working Time Act 1997

Section 18 of the Organisation of Working Time Act 1997 (OWTA) is amended to prohibit zero-hour contracts except in the following circumstances:

- 📌 Where the work is of a casual nature.
- 📌 Where the work is done in emergency circumstances; or
- 📌 Short-term relief work to cover routine absences for the employer, e.g. maternity cover.

### Changes to Organisation of Working Time Act 1997 (cont....)

Section 18 of the Organisation of Working Time Act 1997 (OWTA) also creates a new entitlement to “Banded Hours” contracts. This applies to employees whose contract of employment does not reflect the reality of the hours they habitually work. Such employees will be entitled to request to be placed in a band of hours that better reflects the hours they have worked over a 12-month reference period.

The appropriate bands of weekly working hours are laid down in law as set out in the below table.

Band A:	3 to 6 hours
Band B:	6 to 11 hours
Band C:	11 to 16 hours
Band D:	16 to 21 hours
Band E:	21 to 26 hours
Band F:	26 to 31 hours
Band G:	31 to 36 hours
Band H:	over 36 hours

### Changes to Workplace Relations Act 2015

Section 19 of the 2018 Act amends the definition of “relevant offence” in section 36(5) of the Workplace Relations Act 2015 to include an offence under the new section 6B in the Terms of Employment (Information) Act 1994. This permits an inspector of the WRC to issue a fixed payment notice, as an alternative to initiating prosecution proceedings, where the inspector believes that an offence has been committed, e.g. failure by an employer to provide an employee with a written statement of terms of employment within the specified time period or by deliberately or recklessly providing false or misleading information in the statement.

### Changes to the Unfair Dismissals Act 1997

Until the introduction of the new Act Adjudication Officers of the Workplace Relations Commission (WRC) did not have the power to compel a witness to attend a hearing to give evidence in cases taken under the Unfair Dismissals Act 1977. This new amendment will remedy this and provide that evidence given by a witness at an Unfair Dismissal hearing at the WRC or Labour Court will be privileged. It also provides that any witness who is compelled to attend a hearing or provide relevant information and fails to do so will be liable to prosecution.

### Changes to the National Minimum Wage Act 2000

The new Act provides for changes to the national minimum wages rates for young people and trainees.

- ✚ It is simplifying the rates based on age and experience to simple, age-based rates.
- ✚ It is abolishing the use of trainee rates.

### Hourly Rates of Pay (National Minimum Wage Acts, 2000 & 2015)

Category of employee	Hourly Rate 01/01/2019	Category of Employee (from 4 March 2019)	Hourly Rate (Age-related from 4 March 2019)
Experienced Adult Worker	€9.80	Experienced Adult Worker	€9.80
Under 18 years	€6.86	Under 18	€6.86
In the first year after the date of first employment over 18 years	€7.84	Aged 18	€7.84
In the second year after the date of first employment over 18 years	€8.82	Aged 19	€8.82



From March 2019, a person who commences employment for the first time at age 20 or over must receive the full NMW rate of €9.80.

Training Rates*		From 4 March 2019 the Training rates will be abolished (rates applicable will be age based, as above, or full rate of €9.80.
First one third period	€7.35	
Second one third period	€7.84	
Third one third period	€8.82	

 \*For training or study undertaken in normal working hours over 18 years.

## What Else Should I Be Aware Of?

There is also a provision to protect employees who submit queries or complaints in relation to this Act so as to protect them from being threatened or penalised. Employers must not engage in the following: -

-  Suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal.
-  Demotion or loss of opportunity for promotion.
-  Transfer of duties, change of location of place of work, reduction in wages or change in working hours.
-  Imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty).
-  Coercion or intimidation

## What are the penalties for non-compliance?

The new Act will make certain breaches a criminal offence.

-  In particular, if an employer fails to comply with the new obligations to provide the required information within one month, they could be liable to criminal prosecution. Fines upon

conviction could be up to €5,000 or imprisonment for up to 12 months or both plus the costs of the WRC. It should also be noted that Directors, Managers, Secretaries or other officers of the company could also be held individually liable.

-  In instances where banding has not been applied appropriately, the matter could be referred to the WRC for adjudication and could be applied retrospectively.
-  Awards to employees under the new act may be from 4 weeks salary up to 2 years' salary in cases of an unfair dismissal.
-  There is a time limit of 6 months from the date of contravention for complaints to be lodged with the WRC.
-  Summary (criminal) proceedings for an offence under the Miscellaneous Provisions Act 2018 may be instituted within 12 months from the date of the offence.

To access a complete copy of The Miscellaneous Provisions Act 2018 click on the link below:

<http://www.irishstatutebook.ie/eli/2018/act/38/enacted/en/pdf>

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