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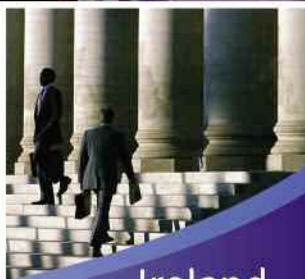
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## Employment Law



Ireland

## I - Introduction

Labour law does not exist in isolation. It is inextricably linked with other areas of law and practice including contract and the laws in relation to equality. This Guide aims to provide employers with a practical guide which outlines the major rights and obligations under the law.

Whilst care has been taken in the preparation of this Guide professional advice should be sought in every instance as the employment law in Ireland is in a constant state of change.

## II - Recruitment

### Job Description

The job description must accurately describe the position the employer requires to fill. It should define the objectives of the job, outline the responsibilities, reporting structure, equipment and technology used.

### Advertising

The term “advertisement” does not refer only to printed advertisement in newspapers. It covers notice boards, television, radio, magazines, word of mouth and so on. When advertising, the advertisement must not indicate either intentionally (or unintentionally) that the organisation is seeking to recruit a member of a particular sex, marital or family status, a particular age category, people of a particular race, people without disability and so on in relation to the other categories covered by the Employment Equality Acts 1998 & 2004 (See Chapter 7).

### Application Process

The employer is entitled to adopt whatever application process it deems necessary to fill the advertised position. However, the same process must be applied to all applicants. The employer cannot impose more onerous requirements on an individual or members of a particular class (See Chapter 7).

### Screening

An objective process must be adopted and applied to all applicants.

### Interviewing

This is the stage of the recruitment process where most claims alleging discrimination are likely to arise. That is, that discriminatory questions were asked at interview or a decision on who to appoint was based on discriminatory grounds.

To avoid this problem, people involved in interviewing in an organisation should: inform candidates that the organisation is an equal opportunities employer; take comprehensive notes for each interview, ask the same questions of all candidates; emphasis the demands of the job e.g. overtime requirement; be trained in equality awareness. Where possible there should be gender balance on all interview panels. Employers should implement an Equal Opportunities Policy.

### **Pre-employment Representations**

The recent case of *Carey v Independent Newspapers* (High Court 7 August, 2003) is noteworthy. The Plaintiff was a journalist with the Ireland on Sunday newspaper. She was approached by a Mr. Drury, editor on behalf of Independent Newspapers, to join Independent Newspapers. Because of her childcare responsibilities the Plaintiff stated that she would only take up employment if she could work from home for part of each morning. This was not committed to writing and the Plaintiff was employed with the Defendant on this basis. Subsequently, Mr. Drury left the Defendant and the Plaintiff was required by the new editor to attend in the office from 7am each day. She could not comply and was dismissed. The High Court held that the pre-contract representations formed part of the Plaintiff's contract of employment effectively having the status of a warranty. The Plaintiff was awarded €52,266 damages as the Court concluded that the Defendant had acted unlawfully.

### **Reference Checking**

Employers require the consent of the applicant to consult with any referees.

### **Pre-Employment Medicals**

The employer is entitled to require all or any successful applicants to undergo a pre-

employment medical if the applicant's health is a fundamental part of the job description. If, following a medical examination, it is discovered that a person has a disability, then the job offer cannot be withdrawn unless there is evidence that he/she could not do the job. The Equality Acts 1998 & 2004 states that the employer must do all that is reasonable to accommodate a person with a disability.

Best practice is that candidates complete their medicals prior to the job offer.

## Recent Case Law

The following demonstrates the importance of many of the above principles.

South Eastern Health Board and Brigid Burke (12 September 2003).

The issue was whether Mrs. Burke had been discriminated against on the grounds of gender whilst applying for a senior position with the Health Board.

Section 8 of the Employment Equality Act, 1998 states that, inter alia, any discrimination on the grounds of gender in relation to employment generally is unlawful. The European Community (Burden of Proof in Gender Discrimination Cases) Regulations 2001, state that where a complainant has made out a sufficient case of gender discrimination the burden of disproving discrimination shifts to the respondent.

The facts were that Mrs. Burke was one of two candidates interviewed for the post of Director of Nursing in St. Joseph's Hospital, Dungarvan. The other candidate was male. Mrs. Burke was unsuccessful in her application where she was awarded less than 50% of the total marks available.

Mrs. Burke sought to challenge the decision of the interview Board and brought proceedings before the Labour Court. She stated that the Board had

acted in contravention of Section 8. She pointed out that she had acted as director of nursing in the absence of the director at the time. She had been assistant director for two years. Statistical evidence was introduced to demonstrate “vertical occupational segregation” which showed that entry positions were dominated by females and that management positions were dominated by males.

The Court held that the respondent acted in contravention of Section 8. The statistical evidence shifted the burden of proof to the respondent to rebut the presumption of discrimination. The burden was not discharged. The Court stressed the need for employers to have openness and transparency in relation to interviews. On the facts the selection process fell short of “objectivity, fairness and good practice.” Consequently, the Court awarded Mrs. Burke compensation of €45,000.



## III - Contracts

### Sources of Law

The rules governing employment contracts emanate from a number of sources.

**Common Law:** These principles are terms that have been created by the Courts over time. These terms are implied into every contract. For example every employer must provide a safe place of work, a safe system of work, competent co-employees and proper equipment. Every employee must carry out his duties to the best of his ability and with utmost good faith/fidelity.

**Statute:** These principles are created by the legislature. Some examples include maternity/carers/parental/adoptive leave and the unfair dismissals legislation. Any attempt to exclude these principles in a contract is void.

**Constitution:** These principles contain economic rights. Every employee is entitled to freedom of association i.e. entitled to join trade union. However, an employer does not have to recognise any union.

**Collective Agreements:** These include the national pay agreements between the social partners.

**E.U. Law:** Many of the statutes governing employment law are as a direct result of EU regulations, directives, decisions and recommendations.

### Contract of Service and Contract for Service

The former refers to typical employment situations where an employee is hired by an employer to perform certain functions as required by the employer who may provide or teach the means to perform the required function. In this situation all the employment law legislation applies. The employer will be responsible for the lawful acts of negligence on the part of the employee under a doctrine called vicarious liability (See Chapter 7).

As for the latter these are generally independent contractors. The employer hires a contractor to perform a job. The means necessary to perform the task is entirely left to the contractor. The relationship between the employer and the contractor is governed by general contract law and not the more specialised employment law. Generally, the employer will not be responsible for the acts of negligence of the contractor.

## **Written Statement of terms and conditions**

Under the Terms of Employment Information Act 1994 & 2001, employers must provide new employees with a written statement of their terms and conditions of employment within two months of starting employment. Existing employees must also receive a similar statement within two months of request.

This written statement should be signed and dated by both parties. The employer is also obliged to keep a copy of this for at least one year after the employee leaves the organisation.

The Act applies to employees under a contract of service or apprenticeship as well as agency workers. By virtue of the Protection of Employees (Part-Time Work) Act 2001 all employees with one month's continuous service are covered under the Terms of Employment Information Act 1994 & 2001 regardless of the number of hours per week such part-time employees actually work.

Where the terms change the employer must notify the employee as soon as possible but no later than one month of the change.

## **Finnegan v Davy Stockbrokers**

This is exemplified by the case of Eamonn Finnegan v Davy Stockbrokers (High Court 26 January 2007). Mr Finnegan enquired about bonus payments during interview and it was indicated that there was a performance based year end bonus scheme. Mr Finnegan earned a bonus, but

the payment of part of the bonus was deferred and Mr Finnegan was told that if he took up employment with a competitor he would not receive the balance. Mr Finnegan joined a competing firm and was denied the balance of his bonus. The judge held that in order to enforce a term or condition of employment it must be fairly and reasonably brought to the employee's attention on commencement of employment. This is particularly so in circumstances where the term or condition deviates somewhat from the accepted norms in the relevant industry or profession. He also held that it is unlawful for an employer to unilaterally alter an employee's terms and conditions of employment. In circumstances where an employer wishes to introduce changes to an employee's contract, these must be agreed with the employee. It is apparent from the case also that a deferred bonus may, in certain circumstances be potentially regarded as a clause in restraint of trade and potentially unenforceable.

Disputes can be referred to a Rights Commissioner within six months of alleged breaches. Either party may appeal to the Employment Appeals Tribunal against a Rights Commissioner's decision.

## **Employee Records**

The Organisation of Working Time Act, 1997 and The Organisation of Working Time (Records Prescribed Form and Exemption) Regulations 2001 specify that an employer must keep detailed records in respect of their employees' start and finishing times, leave granted and hours worked each day and week. Employers who do not have an electronic method of recording this information must complete a special form called an OWT1 on a daily and weekly basis. Details of employees' contracts must also be collected. Failure to comply with the Regulations is an offence punishable by a fine up to €1,900. Records can be inspected by a Labour Inspectorate. Employees can agree to complete the form themselves which

will then be stored by the employer and made available for inspection, if required.

The Regulations do not apply to those whose information is automatically stored electronically e.g. via clock-in facilities.

Employers as data controllers are subject to the Data Protection Acts, 1988–2003, which regulate the collection, storage and use of employees' personal information. The employer must ensure that sensitive personal information is collected and processed fairly and is held for no longer than is reasonably necessary. The employer must adopt appropriate security measures to prevent unauthorised access to the information by third parties. Employees can make a written request to the employer for a copy of the information held. A response should be given within 21 days of request and the employee should be supplied with such information within 40 days of request. A charge of up to €6.35 can be levied for each request made.

## Terms of Employment

Under the Terms of Employment (Information) Acts, 1994-2001, the statement of terms and conditions of employment must include the following details:

- full name of employer and employee;
- full address of the employer;
- place of work, or where there is no fixed place, a statement that the employee is required to work at various locations;
- nature of work;
- commencement date of employment;
- duration of the contract, either fixed or permanent;
- rate or method of calculation of remuneration;
- payment intervals;
- annual leave and other paid leave entitlements;

- hours of work (including overtime);
- rest breaks;
- sick leave and pension arrangements notice periods;
- reference to any collective agreements.

### Minimum Notice

The Minimum Notice and Terms of Employment Acts, 1973-2001, provide that every contract of employment will have minimum periods of notice. Since 20 December 2001, this applies to employee's regardless of the number of hours worked per week. A contract of employment can always provide for a greater period of notice. The minimum periods relate to the employee's duration of continuous service with the employer. See below:

Service	Notice
13 weeks to 2 years	1 week
2-5 years	2 weeks
5-10 years	4 weeks
10-15 years	6 weeks
over 15 years	8 weeks

Unless the employment contract has stipulated otherwise, the employer is entitled to one week's notice from the employee.

Any disputes can be referred to the Employment Appeals Tribunal within 6 months of the dispute.



## Restraint of Trade Clauses

These are contractual terms, which seek to restrict an employee's right to seek similar employment upon the termination of employment with an employer. They are matters of pure contract law and do not appear in any statutes. There are three types of terms:

**Geographical:** these seek to restrict the employee working within a certain distance of the employer.

**Functional:** These terms seek to restrict the type of work an employee can perform post termination.

**Temporal:** These terms seek to impose restrictions for a certain time post termination.

As with all contractual terms between parties of unequal bargaining power these terms must be reasonable and proportionate to protect the legitimate interests of the employer's business or know how. These terms are regarded with suspicion by the Courts and are difficult to enforce. They are seen as anti competitive and a restraint on trade.

As mentioned above in the recent Eamonn Finnegan case, it was indicated that a bonus type payment could potentially be regarded as a clause in restraint of trade.

## Young Persons

The Protection of Young Persons (Employment) Act, 1996 applies to all employees under the age of 18. It protects the health of young persons and tries to ensure that young people's education is not put at risk due to work commitments. The Act sets out age limits and specifies rest intervals and maximum working hours.

Young persons aged 14 to 17 may be employed for light work during school summer holidays. Young persons aged 16 or 17 may work on a part time basis during school term. Also permitted for young persons aged 14-17 is approved work

experience (as prescribed by Ministerial Order), which is not harmful to their health, safety or development.

As regards work experience, both 14 and 15 year olds can work up to 35 hours per week. A child under 15 is not permitted to work during school term. A child over 15 may work up to eight hours a week during school term. 14 and 15 year olds must be allowed a 21 day break from work during the summer.

Those under 16 are entitled to 30 minutes rest for each period of 4<sup>1</sup>/<sub>2</sub> hours worked and a period of at least 14 hours must separate each working day. Also, the young person must have at least two days off per week. As for those aged 16 and 17 the maximum working day is 8 hours and with a maximum total of 40 hours per week. 30 minutes rest period must be given for each period of 4<sup>1</sup>/<sub>2</sub> hours worked. A 12-hour period must separate each working day and again two days a week off is required. Employers cannot require those under 16 to work outside the hours of 8am and 8pm. Those aged 16 and 17 are allowed to work between 6am and 10pm only.

The Licensing Regulations of 2001 permit young people, employed on general duties in licensed premises, to work up to 11pm on a day provided the next day is not a school day. There is a Code of Practice Concerning the Employment of Young Persons in Licensed Premises. Employers must see a copy of the young person's birth certificate. If the young person is under 16, the written permission of the parent/guardian must be obtained and kept on file.

The provisions of the National Minimum Wage Act, 2000 also apply to young persons. The current rate is €7.65 per hour, effective from 1 May 2005. However, those under 18 are only entitled to a maximum of 70% of the relevant wage from time to time.

Employers must give the young person a written summary of the terms of Protection of Young Persons (Employment) Act 1996 within one month of taking up employment. Employers must also display a summary of the Act which is available in poster form.

Failure to comply with the Act is an offence. A fine of up to €1,900 may be imposed. Also, continuing breaches may attract a fine of €317.43 per day.

## Fixed-Term Employees

This area has undergone change as a result of new legislation in operation since 14 July 2003. It limits the duration of fixed term contracts with the aim of transferring employees into permanent employment. In essence, these workers must not be treated less favourably than permanent employees when it comes to working conditions generally. Less favourable treatment may be applied if it is justified on objective grounds, including failing to offer a contract of indefinite duration. Employers must inform fixed term workers about vacancies for permanent positions. Such workers must be given a written statement setting out what will terminate the contract, for example, a specific date or purpose.

Successive fixed-term contracts entered into prior to 14 July 2003 where the employee has completed their third year of continuous employment can only have their fixed-term contract renewed one further occasion for a maximum of one year. The employer must then decide whether to terminate the employment, which may give rise to a claim for unfair dismissal, or to offer the employee full time employment. For employees on fixed-term contracts, (which commenced after 14 July 2003 where they have been employed by their employer on two or more continuous fixed-term contracts), the aggregate duration of these contracts, may not exceed four years.

A single fixed-term contract can be issued for any duration.

All fixed term workers are included, for example, civil servants, local authorities, health boards/authorities and vocational education committees. The legislation does not apply to trainees or apprentices, trainee gardaí, trainee nurses, agency workers and members of the Defence Forces.

Breaches of the legislation may result in re-instatement or re-engagement of the employee (probably on a permanent basis) or payment of compensation up to 104 weeks salary.

## IV - Payment of Wages

### Minimum Wage Act, 2000

The Act applies generally to any employee aged 18 years. If an employee is less than 18 years the he/she is entitled to 70% of the national minimum wage. The Act does not apply to certain categories of employee where the employer is within a certain relationship group, for example, spouse, parent, grandparent, sibling. The Act provides for minimum rates of pay. Currently the minimum wage is €8.65 per hour (from 1 January 2007). It is an offence to seek to exclude the Act in any contract of employment.

### Payment of Wages Act, 1991

The Act provides for a written statement of wages and deductions to be given to an employee at the time wages are paid. However, if an employee is paid by credit transfer then the written statement must be given to the employee as soon as possible after the transfer. In the case of a deduction that is related to the Act on omission of an employee, the employee must be given particulars in writing of the Act on omission and the amount of the deduction at one week before the deduction is made.

The statement must detail gross pay, statutory and contractual deductions and net pay. Any overtime, commission or bonus payment must also be detailed.

Any attempt by an employer to avoid the provisions of the Act is void.

Any dispute regarding the Act must be referred to a Rights Commissioner. In this event the employer will have to provide the employee with a written statement of pay.

## V - Annual Leave

This area is governed by Part III, Organisation of Working Time Act, 1997. An employee is entitled to four weeks paid holidays per year. Year is defined as one in which the employee works at least 1,365 hours. If the employee does not work 1,365 hours per annum then he/she is entitled to the greater of one third of a working week for each month in the leave year in which he works at least 117 hours or, if not, 8% of the hours he works in a leave year (maximum of four weeks per annum).

The employee is entitled to an unbroken period of two weeks if he works eight or more months in a leave year. However, this is subject to any agreement to the contrary.

If an employee is sick on any day of annual leave and can produce a doctor's certificate to that effect then that day is not to be regarded as a day of annual leave.

It is the employer who determines the times when annual leave can be taken. The employer must have reasonable regard for any family responsibilities, which the employee may have.

In general, annual leave must be granted within the leave year to which it relates but may be taken within six months of the following year.

The employee is entitled to be paid his normal weekly rate during annual leave and must be paid in advance.

### Public Holidays

The Act lists nine public holidays: New Year's Day, St. Patrick's Day, Easter Monday, the first Mondays in May, June and August, the last Monday in October, Christmas day and St. Stephen's Day.

(Christmas Eve and Good Friday are not public holidays).

The employer need not give a paid day off on a public holiday. The public holiday entitlement is:

- (i) a paid day off on that day or
- (ii) a paid day off within a month or
- (iii) an additional day of annual leave or
- (iv) an additional day's pay.

An employee can request, no later than 21 days before a public holiday, the employer to nominate which option will apply.

If the public holiday falls on a day on which the employee would normally be entitled to a paid day, the employer must give the employee either (ii), (iii) or (iv) above. For example, where a public holiday falls on a Monday and the employee is required to work Tuesday, Wednesday and Thursday only.

The public holiday entitlement applies to all full-time employees as well as all part-time employees who have worked at least 40 hours in the five weeks ending on the day before the public holiday. However, it does not generally apply to an employee absent from work immediately before the public holiday in any case referred to in the Third Schedule to the Act, for example, absence in excess of 52 consecutive weeks by reason of an occupational accident or absence by reason of a strike in the business or industry.



## Part-time employees

Part-Time employees must have worked at least 40 hours in the five week period ending on the day before the public holiday to qualify for public holiday benefit.

## Ceases of Employment

Employees whose employment ceases may be entitled to “holiday pay.” If an employee has not taken all of their annual leave they will be entitled to be paid for any outstanding leave.

If an employee ceases to be employed during a week before a public holiday they are entitled to be paid an additional day’s pay provided they have worked for the employer during the four weeks preceding that week.

## Working Hours

The 1997 Act provides a general maximum working week of 48 hours subject to the following rest intervals;

- A daily rest period of 11 consecutive hours daily rest per 24 hour period;
- A weekly rest period of 24 hours rest per week preceded by a daily rest period;
- Rest breaks of 15 minutes where more than 4-5 hours have been worked.
- Shop employees who work more than six hours and whose hours of work include 11:30am to 2:30pm must be allowed a break of one hour which must commence between the hours 11:30am to 2:30pm. These may be varied by collective agreement.

New regulations impose a maximum 48 hour average working week to mobile road transport workers. Working time, including overtime, must not exceed 60 hours in any week and no mobile worker must work for more than six hours without a break.

A night worker is an employee who works at least three hours between midnight and 7am, and the hours worked equate or exceed 50% of annual working time. An employee who works on a Sunday is entitled to be compensated by one of the following: an increase in overall pay by a reasonable amount, granting reasonable paid time off, payment of a reasonable allowance or a combination of these.

## Enforcement

If the employer does not comply with the Act the employee can make a written complaint to a Rights Commissioner. Generally, the complaint must be made within six months of the alleged breach. The Rights Commissioner can award compensation up to 104 weeks of the employee's remuneration. An appeal lies to the Labour Court by notice by either party within six weeks of the communication of the decision of the Rights Commissioner. If the employer does not carry out the decision of the Commissioner and does not appeal the employee can make a complaint to the Labour Court within six weeks, which will adjudicate on the matter. If the employer fails to implement the determination of the Labour Court then the employee can apply to the Circuit Court within six weeks for an order compelling compliance. Failure to comply with the Circuit Court's decision is contempt of court and the Court can impose whatever penalty it sees fit.

## Records

Employers are obliged to keep detailed records regarding employees' leave for a period of three years. These records can be inspected by a Labour Inspectorate from the Department of Enterprise, Trade and Employment.

## VI - Other Types of Leave

### Health and Safety Leave

An employer is obliged to carry out separate risk assessments in relation to pregnant employees. If there are particular risks to an employee's pregnancy, these should be either removed or the employee moved away from them. If neither of these options is possible, the employee should be given health and safety leave from work, which may continue up the beginning of maternity leave. If a doctor certifies that night work would be unsuitable for a pregnant employee, the employee must be given alternative work or health and safety leave.

Following an employee's return to work after maternity leave, if there is any risk to be employee because she has recently given birth or is breastfeeding, it should be removed. If this is not possible, the employee should be moved to alternative work. If this is not possible for the employee to be assigned to alternative work, she should be given health and safety leave.

During health and safety leave, employers must pay employees their normal wages for the first three weeks, after which Health and Safety Benefit may be paid - see below. Time spent on health and safety leave is treated as though the employee has been in employment, and this time can be used to accumulate annual leave entitlement. The employee is entitled to leave for any public holidays that occur during health and safety leave.

### Health and Safety Benefit lasts until:

- The day on which the employee became entitled for Maternity Benefit, if pregnant;
- 14 weeks following the date of birth, in the case of an employee who has recently given birth and does night work;
- 26 weeks from the date of birth, in the case of a breastfeeding employee.

## Maternity Leave

The situation is governed by the Maternity Protection Acts, 1994-2004. It applies to all pregnant employees who have given birth in the previous 14 weeks and all employees who are breast feeding up to 26 weeks after birth, provided the employee has notified the employer in writing of her condition. There is no minimum length of service required.

Prior to 1 March 2006 leave is for a period of 18 consecutive weeks. Women who begin their maternity leave on or after 1 March 2006 are now enlisted to 22 weeks maternity leave with an optional 12 weeks additional unpaid maternity leave. Women who commence maternity leave on or after 1 March 2007 will be enlisted to 26 weeks maternity leave with an additional 16 weeks unpaid maternity leave. There is no obligation on the employer to pay during the leave however the employee will receive a social welfare payment provided certain conditions are satisfied. The employee must commence her maternity leave no later than two weeks before the baby is due to be born. Under existing Health & Safety legislation the employee must take a minimum of four weeks maternity leave after giving birth.

The employee is obliged to notify the employer at least four weeks before the leave commences and must furnish a medical certificate confirming pregnancy.

Since the 30 January 1995 employees are entitled to paid time off from work during normal working hours for pre-natal and post-natal medical attention. The employee must give prior written notice of such appointments at least two weeks prior to any appointments. The employer can require production of an appointment card or similar document.

[The Maternity Protection \(Amendment\) Act, 2004](#) came into force on 18 October 2004 which extends maternity leave as indicated above.

Expectant mothers can attend one set of ante-natal classes per pregnancy without loss of pay.

Expectant fathers have a once off right to attend ante-natal classes immediately prior to birth without loss of pay.

An employer must provide paid time off in order for the mother to express milk either within the workplace or outside of the workplace if it is not feasible for her to do so within the business premises. This entitlement is for mother's breastfeeding children under 26 weeks only.

An employee's absence from work for the purposes of additional maternity leave will count for all employment rights (except remuneration and superannuation benefits), for example seniority and annual leave entitlements. It is unlawful for an employer to discriminate against an employee who avails of additional maternity leave.

There is a general right to return to the same job. This also applies if there has been a transfer of the business during the leave. If this is not possible the employer is obliged to find suitable alternative work for the particular employee. Alternative forms of employment must not be substantially less favourable than those of the previous job. If the employee is not permitted to return to work she is deemed to have been dismissed unfairly unless there were substantial grounds justifying the dismissal.

The employee must notify the employer in writing four weeks before the date on which she expects to return to work.

Where unfortunately the mother dies within 14 weeks of the birth the father is entitled to special leave expiring generally at the end of the 14 week following confinement. Notice must be given to the employer who may require written proof of events.

Any dispute may be referred to a Rights Commissioner within six months of the employer being notified of the initial circumstances of the dispute. The Rights Commissioner may award up to 20 weeks remuneration. Any recommendation can be appealed to the Employment Appeals Tribunal within four weeks.

### **Adoptive Leave**

The Adoptive Leave Act, 1995 provided (prior to 1 March 2006) for a period of 16 weeks unpaid leave during which an employee will receive a social welfare payment. An optional additional eight weeks unpaid leave may be taken at the end of the 14 weeks leave.

Where adoptive leave commenced on or after 1 March 2006 the employee is entitled to 20 weeks adoptive leave plus an additional optional 12 weeks unpaid leave after adoptive leave ends.

Where adoptive leave commences on or after 1 March 2007 the employee is entitled to 24 weeks adoptive leave, plus an additional 16 weeks unpaid adoptive leave.

Leave commences the day the child is placed for adoption. The employee must give four weeks notice in writing of intended leave.

Any dispute may be referred to a rights commissioner within six months as above.

### **Carer's Leave**

The Carer's Leave Act, 2001 allows employees to leave their employment temporarily for a period of up to a maximum of 104 weeks (minimum of 13 weeks) to provide full-time care for a person who requires full-time care and attention. The person need not be a family member and could include a friend. Carer's leave is unpaid but the employee can work up to ten hours per week (15 hours per week from June 2006), earning a maximum of €290 per week while still eligible for Carers Benefit. Whilst on leave, the employee's job must

be kept open by the employer. The person to be cared for must be assessed by their General Practitioner who provides a report to the Department of Social and Family Affairs. The person must require continuous supervision and frequent assistance throughout the day.

To qualify for carer's leave the employee must have at least 12 months continuous service with the employer. Generally, the employee must make a formal application for carer's leave at least six weeks before the proposed leave commences. Only one person can be on leave for one dependent person at any one time. Employers cannot dismiss those on carer's leave.

The employer may refuse, on reasonable grounds, to allow leave for less than 13 weeks. The grounds for the refusal must be set out in writing and kept on the employee's file. If leave is agreed between the employer and employee the agreement must be set out in writing.

## Parental leave

This is governed by the Parental Leave Act, 1998 as amended by the Parental Leave (Amendment) Act 2006. This constitutes unpaid leave from work taken by parents (and persons in loco parents) to look after and care for their children. Men and women can take a continuous block of 14 weeks unpaid leave. The Act applies to children born/adopted on or after 3 June 1996. Generally, the leave must be taken before the child reaches the age of eight years (formerly five years) and up to 16 years in the case of a child with a disability. However, if an adopted child is aged between three and eight years at the time of adoption, the leave must be taken within two years of the adoption order.

To come within the terms of the Act, an employee must have at least 12 months continuous service. If the employee has between three and 12 months service and the child is approaching the relevant

age threshold, the employee will be entitled to one week's leave for every month of continuous employment.

The period of leave applies to each child but an employee cannot take more than 14 continuous weeks in a 12-month period (which can be taken in separate blocks of a minimum of six continuous weeks). Any public holidays will be added to the end of the leave period.

The period of leave serves to suspend any period of an employee's probationary period.

### **A Long Term Illness**

See Chapter nine below.

### **Protection of employee rights during leave of absence**

Any notice of termination of employment from either the employer or employee served during leave or after the end of leave is void. An employee cannot resign during a period of leave. Any period of probation, apprenticeship or training stands suspended during absence and completed upon return.



## VII - Equality

### General Considerations

The Employment Equality Act, 1998 & 2004 provides that an employer cannot discriminate against employees on the grounds of gender, family status, marital status, sexual orientation, age, disability, race, religion or membership of the travelling community in relation to access to work and the general performance of duties at work. Breach of the Act is an offence.

### Harassment in the Workplace

Harassment is any unwanted conduct related to any of the grounds and the conduct has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Harassment by a fellow employee, employer/management, client, customer or other business contact is illegal. Harassment occurring in the course of business is covered e.g. place of work, during training courses or even at work social events.

An employer should take reasonably practical steps to prevent harassment generally or steps to prevent harassment against a particular employee with relevant characteristics. The employer should have a code of conduct, which set out unacceptable behaviour and details a grievance procedure.

Disputes can be referred to the Equality Authority within six months of the last act of harassment.

### Sexual Harassment

Sexual harassment comprises of any form of verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating

a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Sexual harassment by a fellow employee, employer/management, client, customer or other business contact is illegal. Sexual harassment occurring in the course of business is covered e.g. place of work, during training courses or even at work social events.

Same sex sexual harassment is also illegal under the Equality Act 2004.

An employer should take reasonably practical steps to prevent sexual harassment generally or steps to prevent sexual harassment against a particular employee. The employer should have a code of conduct which sets out unacceptable behaviour and details a grievance procedure.

The Equality Authority has produced a (PDF) Code of Practice on Sexual Harassment and Harassment at Work, which can be downloaded from [www.equality.ie](http://www.equality.ie)

Disputes can be referred to the Equality Authority within six months of the last act of sexual harassment.

### **Bullying in the workplace**

Bullying comprises psychological or physical harassment in the workplace. An employee may be subjected to social exclusion or have his reputation tarnished because of rumours or gossip. A position of power can be abused by an employer/management by, for example, setting impossible tasks or targets.

An employer should take reasonably practical steps to prevent bullying generally or steps to

prevent bullying against a particular employee. The employer should have a code of conduct, which sets out unacceptable behaviour and details a grievance procedure.

An Employer should have established procedures for dealing with complaints of bullying in the workplace and deal with such complaints immediately. Ignoring complaints of bullying could have an employer open to a possible claim for damages by an employee. It is advisable for an employer to have an established grievance procedure to deal with complaints of bullying.

If the bullying becomes unbearable for an employee and they are forced to terminate their employment, they may have a case for constructive dismissal and bring an action before the Equality Authority.

If bullying/harassment/stress at work is so great that it causes injury, physical or otherwise, then the employee may lodge a claim for damages for personal injury with the Personal Injuries Assessment Board and the matter may ultimately proceed before the Courts.

The Equality Authority has produced a (PDF) Code of Practice detailing procedures for addressing bullying in the workplace, which can be downloaded from [info@equality.ie](mailto:info@equality.ie).

## **Discrimination by Employers**

**(i) Advertising:** When recruiting, an employer cannot specify certain entry requirements which contravene the Act. The employer effectively must be an equal opportunities employer (See also Chapter 2).

**(ii) Employment Agencies:** Where agencies provide workers to employers on a temporary basis it is important to note that these workers have the same rights as direct employees in relation to maternity protection and adoptive leave, unfair dismissals, payment of wages, discrimination and holiday entitlements.

**(iii) Gender Equality:** The recent case of a Beauty Salon and an employee, Ms. O’Sullivan demonstrates the principles involved.

The issue was whether Ms. O’Sullivan was discriminated against by reason of her pregnancy. Section 8 of the Act states that, inter alia, any discrimination on the grounds of gender in relation to employment generally is unlawful. The European Community (Burden of Proof in Gender Discrimination Cases) Regulations 2001 state that where a complainant has made out a sufficient case of gender discrimination the burden of disproving discrimination shifts to the respondent.

Ms. O’Sullivan commenced employment as a professional hair stylist with the Salon on 13 July, 2002. In December 2002 she informed her employer that she was pregnant. Complications arose which necessitated medical attention and consequent absence from work. On the 20<sup>th</sup> February 2003 the employee was given one weeks notice of dismissal on the grounds of unpunctuality and unreliability. The matter then came before the Labour Court.



The employee acknowledged that she had been late for work on a few occasions but that she was rarely more than a few minutes. On each occasion she had telephoned her employer. She stated that she had a previous pregnancy which ended in a miscarriage in July, 2002. Accordingly, she needed to be monitored closely. In December, 2002 she was invited to a meeting in a local coffee shop with a Ms O'Neill who was the receptionist. Ms. O'Sullivan did not know that Ms. O'Neill was also the supervisor. A discussion followed about her timekeeping which she thought to be friendly advice from a colleague rather than a formal warning. Following this meeting she informed her employer about her pregnancy. Ms. O'Sullivan was hospitalised on three occasions during December, 2002. She stated she had no prior warnings of dismissal and she never thought that her position was in jeopardy.

The employer argued that Ms. O'Sullivan was persistently late and that on one occasion she missed a bride's hair appointment which had had serious consequences for the Salon's reputation. During the meeting in the coffee shop she was given a formal warning by the supervisor. She was made aware her position was in jeopardy.

The Court held in favour of Ms. O'Sullivan. The employer had no written records regarding unpunctuality or of any warnings given. The incident with the bride was not mentioned in the meeting. Ms. O'Sullivan had raised a sufficient case for the Burden of Proof Regulations to operate. The employer could not justify its actions. Ms. O'Sullivan was paid a salary of €7,117 per annum. The Court stated that any compensation must be proportionate to the wrong suffered. Ms. O'Sullivan was awarded the sum of €10,000.

## Vicarious Liability

An employer will be held liable to third parties for the acts of negligence/default of their employee. The doctrine is based on the concept of control. Normally an employer will not be liable for the acts of an independent contractor who is simply told what to do and not how to do it.

The act must be one within the normal scope of the employee's employment. Generally an employer will not be responsible for an employee's default where it was not foreseeable in the context of the employment. The "detour and frolic" cases illustrate the point: where, for example, an employee borrows an employer's vehicle after work for personal use and causes an accident then, generally, the employer will not be held liable.



## VIII - Grievances

Employers are not legally required to have a grievance procedure in place. However, it is good practice for employers to implement a grievance procedure, which provides employees with a formal process of dealing with personal grievances they wish to raise with management. There is a code of practice set out in Code of Practice Grievance and Disciplinary Procedures (S.I. No. 146 of 2000).

The grievance procedure should state who the employee may discuss their grievance with throughout the different stages. Alternatively an employer may operate an “open door policy” whereby employees are free to discuss difficulties with any member of management. Employees’ difficulties and grievances should be tracked and recorded by employers and held on the employees’ files.



## IX - Termination of Employment

### Unfair Dismissal

This area is governed by the Unfair Dismissals Acts, 1977-2001. An unfair dismissal is any dismissal of an employee, which is not justified on one or more of the following grounds: competence, capability, qualifications, redundancy, conduct or other substantial reasons. Furthermore, the employer must adopt fair procedures, for example, use objective criteria and employ reasonable warning procedures. It is helpful if the employer has a rule book which sets out the disciplinary procedure. An employee can be summarily dismissed for gross misconduct which would include acts of violence in the workplace, reporting to work under the influence of alcohol, refusal to obey reasonable instructions, clocking offences, theft and abuse of sick leave.

Amongst the categories excluded from the legislation are members of the Defence Forces, Gardaí, certain relatives of the employer, local authority officers, those employed by FÁS under an apprenticeship and officers of the health board and members of vocational education committees. Also excluded are once off fixed-term or purpose contracts, signed by both parties and expressly excluded by the legislation and which does not have any notice or probationary periods. A series of fixed-term contracts will come within the legislation.

The Act applies to employees with one year's continuous service, aged 16 years or over, from the first day of employment. If they are dismissed for pregnancy, exercising maternity rights or trade union membership/activity, who are employed through employment agencies – the party hiring the agency worker is deemed to be the employer.

Employees may claim unfair dismissal within six months of the relevant dismissal or twelve months in exceptional circumstances.

Disputes are heard initially by a Right's Commissioner or the Employment Appeals Tribunal. A further appeal can be made to the Circuit Court within six weeks from the date on which the determination is communicated to the parties.



### Automatic Unfair Dismissals

A dismissal is deemed to be unfair for the reasons listed below unless the employer can prove otherwise (this list is not exhaustive):

- trade union membership or activity;
- pregnancy;
- exercising statutory maternity rights;
- employee's membership of the travelling community;
- age of the employee;
- race, colour or sexual orientation;
- religious or political opinions;
- civil or criminal proceedings being taken against the employee;
- unfair selection for redundancy.

## Grounds for Fair Dismissal

The employer must have no choice but to dismiss having a justifiable grounds and having followed fair procedures.

**Capability:** The employee must be no longer capable of doing their job for example through prolonged absence or sickness or disability because of an accident. The employee may not be to blame but blameworthiness is not the test. Was the employer reasonable in thinking that they could no longer rely on the employee's continued attendance at work? In all cases medical evidence should be furnished. Difficulties arise where the absence is short term or sporadic.

**Competence:** This is the most difficult to justify. The employer must formulate an objective standard, which sets out averages for the business and the industry. However, there may be unique factors relevant for the particular employee such as market forces or the lack of support from the employer.

**Conduct:** This is known as the "last straw" provision. Where the employee's cumulative and repeated acts of unacceptable conduct over a reasonable period continues the employer will be justified in dismissing.

**Gross Misconduct:** No elaborate system of warnings is required. The employee can be dismissed immediately. Examples of gross misconduct include: abuse of sick leave, repeated refusal to obey a reasonable instruction, theft, clocking offences, reporting to work under the influence of alcohol, acting in deliberate conflict with the employer's interests, acts of violence in the workplace. It is useful for the employer to have a rule book.

**Redundancy:** Since the 25 May 2003 new minimum rates of statutory redundancy apply. An employee is entitled to two weeks pay for each year of service and a further weeks pay.

In calculating a week's pay, an upper limit of €600 (since 1 January 2005) per week is placed on weekly earnings for statutory purposes. Of course the employer and employee/trade union can collectively agree a higher amount. Statutory redundancy payments are tax-free but any amount above the maximum may be subject to income tax.

### **A redundancy situation will arise where:**

- a)** the employer ceases to carry on the business where the employer works;
- b)** the employer decides to carry on the business with fewer or no staff;
- c)** the need for employees in a particular category no longer exists;
- d)** the work requires greater expertise which an employee does not have; or
- e)** the work can be done by another employee who is more qualified.

To be eligible for redundancy payment the employee must satisfy the following conditions: are aged between 16 and 66 years; are employed under a contract of service or apprenticeship; have been in insurable employment in any of the four years before redundancy and have at least 104 weeks service. Service is not broken by any period of carer's, maternity, adoptive, or parental leave.

If an employee is unfairly selected for redundancy then this may amount to discrimination under the Employment Equality Acts, 1998 & 2004. Unfair grounds would include membership of the traveller community, sexual orientation, disability, race, age, religion, family or marital status and gender.

If an employee is being made redundant he or she is entitled under section 7 of the Redundancy Payments Act, 1979 to reasonable paid time off to look for alternative employment.

For all dismissals (save misconduct) fair procedures must be followed. The Code of Practice on Disciplinary Procedures Order 1996 sets out a procedure which employers should generally follow to ensure that natural justice and fairness exists:

- Oral warning
- Written warning
- Suspension without pay
- Transfer to another part of the business
- Demotion
- Other disciplinary action
- Dismissal

The John Griffen v Allied Irish Banks plc case demonstrates fair procedures:

- the dismissal occurred 18 months after the problem began;
- the employee was consulted about his shortcomings and encouraged to improve;
- he was reviewed at three monthly intervals;
- he received several verbal warnings culminating in a written warning;
- before dismissal he was given ample opportunity to state his case and be represented by his trade union;
- he was allowed to appeal the dismissal to a higher authority.

## **Constructive Dismissal**

This is where an employee terminates employment, either with or without notice, because of the conduct of the employer. The employer must be guilty of such conduct, which goes to the root of the contract of employment or does something, which shows that the employer does not intend to be bound by the essential terms of the contract. The question is whether the

employer has acted so unreasonably that the employee cannot be expected to put up with it any longer. The employee should act without delay as delay may be seen as an affirmation of the offending conduct. The burden of proof is higher than in the case of unfair dismissal and may fail before the Tribunal.

## Remedies

Where a dismissal is found to be unfair the employee may be:

- reinstated to the exact same job with full arrears of salary;
- re-engagement - given a similar job with the same terms and conditions;
- compensation for loss – up to a maximum of 4 weeks pay. Financial loss means actual loss and prospective loss of income or loss or diminution of employment rights or pension rights.

## References

It is not merely enough to give a reference that is accurate, it must also be fair and reasonable when read as a whole.

## X - Miscellaneous Matters

### Transfer of Undertakings

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, aim to safeguard an employee's rights in the event of a change of ownership of the employer's business or part of it. The term "undertaking" is widely defined and can include charities and non-profit making organisations.

A transfer takes place when there is a change in the person(s) responsible for running the undertaking as a going concern. The economic identity of the undertaking must be retained, for example a hairdressing business must remain as such following the transfer and not set up an employment agency instead. A transfer does not take place as a result of a share transfer or compulsory liquidation of a company.

Any collective agreement in existence prior to the transfer will bind the new owner as do any existing contracts or terms of employment. The transfer does not break the employee's service. However, the Regulations do not apply to employee pensions where employees are protected under the Pensions Act, 1990 to 2003 as amended.

The new owner can dismiss employees if justified on economic, technical or organisational grounds. Any such dismissal may be challengeable under the unfair dismissal legislation provided the employee has, amongst other things, at least 12 months service with the employer. Also, if an employee resigns because the new owner imposes less favourable employment terms, for example, reduced wages, this may result in an action for "constructive dismissal."

The employer is obliged to give full written particulars of any proposed transfer of the undertaking. The notice must be given to the employees' trade union at least 30 days in advance of the transfer. If the employee is not a member of

any trade union then direct written notice must be given to the employee. In addition, notices should be posted in public areas well in advance of any transfer. Departmental inspectors can visit a business and examine the extent and quality of the notice given.

## **Personal Injuries Assessment Board**

The Personal Injuries Assessment Board Act, 2003 was signed into law on 28 December 2003. The Board was set up with a view to reducing insurance costs generally. From the 1 June 2004 the Act applies to employer liability claims.

When the Act applies to employment situations a claimant will be unable to issue Court proceedings. He will be obliged to proceed before the Board via written submissions before the expiration of a certain deadline. The Board then assesses the case and, if warranted, will make an order requiring the employer to pay compensation. The awards are intended to be in line with those normally meted out by the Courts and will be based on a "book of quantum." The award may become legally binding if accepted by both parties. The employer's consent to the Board's assessment will not be regarded as an admission of liability in any further Court proceedings and either party can reject the award and proceed through the Courts. It is envisaged that there will be no solicitors' or barristers' costs. A claimant must pay an application fee of €50.00 and the employer must pay a fee of €850.00.

## **PRSA's**

These are personal retirement savings accounts which are effectively a flexible type of employee pension designed to encourage the participation by employees in retirement schemes where they are not already a member of the employer's occupational scheme or they are ineligible to join. From 15<sup>th</sup> September, 2003 employers are legally obliged to provide access for such employees to

an approved scheme which is one approved by the Irish Financial Services Regulatory Authority. The employer is not legally obliged to contribute to the scheme and if he does then the contributions will constitute a benefit in kind payment. If the employer's offer is accepted then an approved scheme must be selected. The employee can contribute up to 30% (depending on their age) of their normal reckonable yearly income into the scheme and will obtain tax relief on these contributions at whatever rate of tax he/she pays. The employer is obliged to make these deductions from the employee's salary and pay the contributions to the scheme within 28 days.

### The Smoking Ban

This makes it illegal for people to smoke tobacco products in a place or premises being

- i) a place of work
  - ii) an aircraft, train, ship or other vessel, a public service vehicle or other vehicle used for the carriage of members of the public for reward
  - iii) a licensed premises insofar as it is a place of work
  - iv) a registered club likewise as a place of work.
- The ban came into operation on 29<sup>th</sup> March, 2004. It does not apply to a private dwelling.



## Restraining Industrial Action

The Industrial Relations Act, 1990 provides that a strike in furtherance of a trade dispute is not actionable by an employer. Trade dispute basically covers any dispute between employees and employers which is connected with the employment or non-employment or the terms and conditions of/or affecting the employment of any person. The trade union will have "immunity from suit" provided it has complied with the statutory formalities of such matters as a fair secret ballot and giving adequate notice to the employer. The protection covers picketing at the employer's place of business and indeed picketing at another employer's place of business where the trade union can show that the second employer has "directly assisted their employer... for the purpose of frustrating the strike." This is referred to as "secondary picketing." The law states that any picket must be conducted in a peaceful and orderly manner.

Employers can seek injunctive relief preventing or discontinuing the picketing if the formalities above have not been complied with e.g. wildcat / lightning strikes or where a legitimate picket turns disorderly. Finally, if the union does not hold a licence under the Act then it will not benefit from the protection under it and any action can be prevented or discontinued via injunctive relief.

## Work Place Consultation

The Employees (Provision of Information and Consultation) Act 2006 introduces a right to be informed/consulted on certain areas, for example in relation to decisions likely to lead to substantial changes in work organisation or contractual relations such as the launch of new products or services, potential mergers or takeovers, reorganisations etc. From 4<sup>th</sup> September 2006, it applies to companies with at least 150 employees, from 23<sup>rd</sup> March 2007 to companies with at least

100 employees and from 23 March 2008 to companies with at least 50 employees. The rights under the act are triggered by either the employer or employees. If triggered by employees, at least 10% of the employees may do so by presenting a written request to the employer. Both employer and employees etc., are under a duty to respect the confidential nature of the information provided.

## Health & Safety

Safety, Health & Welfare at Work Acts, 1989 & 2005 requires employers to provide employees with a safe place of work, a safe system of work, proper equipment and competent co-workers. An employer may be found to be liable for the careless action of one employee, which causes injury to another employee. This is known as 'vicarious liability'.

The Act places duties on employers to conduct their undertakings in such a way that they ensure, as far as is reasonably practicable, that employees are not exposed to risks to their safety or health. Employers should note that this duty of care also extends to safeguarding an employee's mental well-being, which means that in practice stress and bullying in the workplace should be specifically identified as hazards and actively controlled within the workplace.

Employers must provide necessary information, instruction, training and supervision for safe and healthy working.

The employer is not expected to foresee every risk that might possibly occur. However, an employer may be negligent by omission, for example, not taking adequate precautions.

Every employer is obliged to prepare a safety statement for the workplace. It should identify any hazards in the workplace, assess the risk from such hazards and identify the steps to be taken to

deal with such risks. It should contain the details of the persons who are responsible for safety issues.

Since 1 September 2005 employers are under a duty to take reasonable steps to prevent any improper conduct or behaviour likely to put employees at risk and to appoint a competent safety officer. Employees are under a duty not to be under the influence of drugs or alcohol in the work place and may be required to undergo a medical or other assessment.

An employer should provide protective clothing free of charge for use in the work place only, as well as training in how to use it. An employee is under a duty to take reasonable care for their safety and to use the protective equipment supplied.

The possibility of violence towards an employee in the work place needs to be addressed in the safety statement and proper steps should be taken to eliminate the risk e.g. isolated employees holding significant cash.



Other persons are owed a duty of care but the extent of it depends on the type of legal category they fall into. The three categories are visitors, recreational users and trespassers. For visitors the employer must take such care as is reasonable in all circumstances to ensure that a visitor does not suffer injury or damage by reason of any danger existing there. Visitors are persons present on the premises with the permission of the employer. They include deliverymen, guests, contract workers, couriers etc. Recreational users are owed a lower standard of care. The employer must not injure them deliberately or act with reckless disregard for their safety. A recreational user would include one present on property intending to view a national monument on it.

Finally, trespassers are owed the lowest duty of care. The duty is merely not to deliberately harm them. Trespassers are persons on the premises without permission of the owner, for example, burglars.

Employers should review the following issues:

- i) safety training for managers, supervisors, operatives;
- ii) the provision of a safety policy statement;
- iii) the state and layout of the office including evacuation facilities, fire protection/prevention, storage of chemicals and hazardous materials, hazard inspections, housekeeping;
- iv) the selection of personnel: competence, physical health, job-related pre-employment medicals, induction of new employees;
- v) arrangements for consultation and selection of safety representatives;
- vi) a consistent system of supervision and associated disciplinary procedure.

Failure to comply with the Act can result in severe penalties for employers up to a maximum of €3 million in fines or a maximum of two years

imprisonment. An inspector from the Health and Safety Authority may also issue on the spot fines up to €1,000 for breaches of the legislation. Furthermore, the Authority is empowered to compile and publish a list of persons on whom penalties were imposed.

### **Other Health and Safety Regulations**

The Safety, Health and Welfare at Work (Work at Height) Regulations 2006 became effective on 21 June 2006. Under the new regulations, the employer must ensure that work is properly planned and supervised and carried out in a manner that is safe. This requires proper selection of work equipment and the carrying out of an appropriate risk assessment as well as planning for any emergencies etc. The policy is in essence to avoid work at height when possible.

The Safety, Health and Welfare at Work (Control of Noise at Work) Regulations 2006 became effective on 13 July 2006. The policy is to eliminate or reduce the source of the noise. If this is not possible, then properly fitting individual hearing protection must be made available to employees. The acceptable level of daily noise has also been reduced from the level set out in earlier regulations.

## XI - Visas and Work Permits

### Employment of Foreign Workers

It is essential that all foreign employees are legally entitled to be employed within the state. As of February 2007, a new employment permit scheme was introduced to regulate the employment of foreign workers.

There are a number of categories of non-nationals who are automatically entitled to be employed within the State therefore do not require a work permit. These include citizens of any state within the European Economic Area and Swiss nationals, persons who have been granted refugee status or temporary leave to remain during the asylum process and certain postgraduate students.

The new permit scheme introduces five categories of employment permit. Each permit will allow the employee to work for a named employer in an occupation specified on the permit, which means that a permit holder will need to apply for a new permit on every occasion that he changes employment. The permit application may be made by either the employer or the employee and either party may discharge the relevant fee (currently varying between €500 and €1,500)

### Green Card Permit

The green card permit is probably the most preferable of the permit categories for a foreign worker. The permit is initially granted for a two-year period with an option of having it extended for a period of indefinite duration.

There are two categories available:

- Persons whose annual salary excluding bonuses is over €60,000
- Persons whose annual salary excluding bonuses is between €30,000 and €59,000 and who qualify under a special list of job categories set out by the Department of Enterprise, Trade and Employment\*

## Work Permit

The work permit is suitable for foreign workers who fall short of the criteria required for a green card permit. The work permit is initially awarded for a period of up to two years, may then be extended for a further three year period, after which an indefinite permit may be issued.

Normally work permits will only be issued for positions which attract a salary in excess of €30,000, however permits may be issued for a limited number of job categories which have lower salaries\*. There is also a listed number of job categories for which a work permit will not be granted including retail, clerical, administrative and sales positions\*.

Before a work permit is issued the applicant will need to meet the Labour Market Needs Test i.e. show that the position was advertised with FÁS and EURES employment network but that there was no suitable candidate from within the European Economic Area, Switzerland, Romania or Bulgaria.

## Intra Company Transfer Permits

The intra company transfer permit (ICT permit) is available to enable foreign workers employed by an overseas branch of a multinational organisation to transfer to its Irish branch on a temporary basis. The duration of an ICT permit is dependent on the needs of the company, with an initial permit being awarded for a maximum of two years and a second permit for a maximum period of three years.

The ICT permit is only available to senior management, key personnel and trainees earning a minimum of €40,000 per annum.

## Spousal/Dependant Work Permits

Where a person is granted one of the above employment permits, his/her spouse and any

dependent aged under 18 years will be entitled to apply for a spousal/dependent work permit. There is no cost for these permits and they will be of the same duration as the spouse or parent's work permit.

Spousal/dependant work permits are applicable for all occupations and positions and there is no requirement to pass the Market Labour Needs Test.

## **Graduate Scheme**

Under the new Employment Permit Scheme any non-EEA national, who has been awarded a degree from any Irish third level institute, may apply to the immigration services to remain in the State for up to six months following receipt of their final examination results. This extension is to enable the graduate to secure an offer of employment in order to apply for one of the above listed employment permits.

## **Entry Visas and Residency Stamps**

Employers should also note that many foreign nationals require an entry visa in order to enter this State, similarly many foreign nationals require residency stamps in order to remain in the State. A confusing aspect of employing foreign workers is that an entry visa may state that the holder has permission to work within the State without any possible consideration of his eligibility for an employment permit. In such circumstances an employer may be under the impression that the stamp/visa entitles the holder to work in the State. This is not the correct position. Such stamps/visas merely permit the holder to enter or remain in the State for the purpose of employment. An employment permit is necessary for the holder to be lawfully employed.

\* For further details of the categories referred to please see Department of Enterprise, Trade and Employment website, [www.entemp.ie](http://www.entemp.ie)



