Employment manual

ARAG

Employment manual

CONTENTS

Employment manual

CONTENTS

INTRODUCTION

1.1 INTRODUCTION

Dear Policyholder,

Thank you for taking out an ARAG Commercial Legal Protection policy, and welcome to our website. You now have the benefit of comprehensive legal protection covering many aspects of your business. Brief details of the broad range of covers afforded by our standard policy are outlined below, and this will highlight the many areas where we can help. Full details of all covers are available in your policy wording.

Employment Disputes and Compensation Awards
Changes to legislation impact on all aspects of company life, but none has been more affected in recent years than employment. The ARAG Commercial policy will protect your company if you face court or tribunal proceedings from a past, existing or even prospective employee.

Legal Defence
Your business is subject to any number of laws governing things like Health & Safety, and Data Protection, to name but a few. Legal Defence is a cover that offers you wide ranging protection against existing and future legislation. We will also defend your rights prior to the issue of proceedings when dealing with a criminal prosecution.

Bodily Injury
Most employers are well aware that accidents at work can happen, no matter how careful you are. We will pursue the legal rights of any director, officer or employee of your company following an event which causes their death or bodily injury.

Property Protection
A company's premises, whether owned or leased are essential to the smooth running of the business. Financial loss could result from someone else's negligence or a deliberate attempt to damage or trespass on your property. We give you access to the necessary expertise to protect your legal rights.

Tax Protection
Any kind of tax disputes can prove costly and being involved in a Full Audit or VAT and PAYE disputes can be enormously stressful. We will arrange for an accountant to represent you in the event of same and pay any related accountants' fees and legal costs subject to the terms and conditions of your policy.

Helplines
With your ARAG policy you also receive access to a range of support helplines, from legal advice to counselling, whether you make a claim or not.

- Commercial Legal Advice
- Health & Medical Information
- Counselling
- Business Assistance

These helplines are available to you as the policyholder, and in the case of the Counselling helpline and the Health & Medical Information helpline, these are also available to employees and their families. These numbers are available in the policy wording and may be given to employees individually or made known through a staff notice board or newsletter. A sample letter outlining these benefits to employees is available in the employment manual, please refer to Section 3.13. You can now access the employment manual here using the password given to you when you received your policy wording.

We trust that you will find the information contained within both useful and interesting.

Yours faithfully,

ARAG Group.

.

INTRODUCTION

1.1 INTRODUCTION (CONTINUED)

The Employment Manual has been written to provide you with an overview guide to employment procedures under Irish and European Law. It is designed to be used as a day-to-day reference tool, giving an overview of the main areas of human resource and personnel management.

Please remember that employment law is constantly changing, and this manual reflects an overview of the situation at the time of writing. The Employment Manual is updated regularly to reflect changes in the law but there may be times when certain parts of the manual are out of date, so it is important to seek legal advice on specific matters. Even where the manual is entirely up to date, it is meant to be used solely as an overview guide and it is not to be used as a substitute for specific advice on your particular issue. Our legal advice team is available to assist you in that regard, therefore the manual should be used for guidance purposes only.

NOTE: Throughout this manual, "he" also reads "she", unless otherwise stipulated.

If you have a Commercial Legal Expenses Insurance policy and have a specific employment question or problem, it is important that you seek appropriate legal advice from our legal advice helpline on 0818 670 747.

INTRODUCTION

1.2 EMPLOYMENT MANUAL DISCLAIMER

Conditions of use

Please read these conditions of use carefully. By accessing this web page, you agree to be bound by these conditions. If you do not agree please do not access this site. The Employment Manual is provided by ARAG Legal Protection Limited whose Registered Office is at ARAG Legal Protection Ltd, 1 Hatch Street, Dublin 2, D02 PY28. ARAG Legal Protection Limited is a company registered in the Republic of Ireland. ARAG Legal Protection Limited is authorised and regulated by the Financial Services Authority and is subject to the Irish Financial Regulator's conduct of business rules. This web page is of a legal nature and is based on the laws of the Republic of Ireland and where appropriate, the laws of the European Union.

This website is designed to provide a general information service to our customers and the internet community. However, the information provided by ARAG should not be relied upon by any individual, company, business or organisation without recourse to your legal advice helpline first. As employment law changes constantly through legislation and the decisions and judgments of Tribunals and Courts, the information on this web page cannot be regarded as accurate until such time as it has been confirmed by your legal advice helpline. Furthermore, it should also be noted that the general employment law information provided does not apply to certain styles of employment or occupation, companies or organisations. Advice should always be sought from our legal advice helpline before relying upon the information provided herein.

ARAG reserves the right to update its web page an Employment Manual at any time on a regular basis. You are therefore advised to constantly check the web page for updates and check with your legal advice helpline before relying on that information.

INTRODUCTION

1.3 WORKPLACE RELATIONS

On the 1st of October 2015 the Workplace Relations Commission (WRC)was established under the provisions of the **Workplace Relations Act, 2015**.

The WRC, deals with the vast majority of statutory employment complaints at first instance. Appeals from the WRC are dealt with by the Labour Court. A Labour Court appeal can be appealed to the High Court on a point of law only.

Almost all complaints made with regard to employment matters are now issued though the WRC website using the workplace relations e-complaint form , which can be submitted online at ***www.workplacerelations.ie.*** The same complaint form is used to commence all matters falling under the jurisdiction of the WRC. This form can be submitted though the website or, if preferred can be printed off and sent to the Workplace Relations Commission at the address below.

The e-complaint form cannot be used to:

1. lodge an appeal to the Labour Court, this must be done by lodging a labour court appeals form, and this form can be submitted online at ***www.workplacerelations.ie***
2. Seeking enforcement of a decision previously made
3. Making a referral to the Labour Court under sections 20(1) or 20(2) of the **Industrial Relations Act, 1969**.

What will happen to your Complaint?
If you submit the claim online you should receive an immediate acknowledgement, if not you should receive an acknowledgement by post. Following this you may be contacted by the Early Resolution Service (ERS) if the complainant has indicated their willingness engage with the service when lodging the complaint. Both parties must agree to the take part in the ERS process. The process is normally a one to one service whereby the ERS contact the parties and attempt to mediate a resolution to the matters at issue. If the ERS is unsuccessful the matter will progress to adjudication in the normal fashion.

If the matter is not dealt with by the ERS, an Adjudication officer will then be appointed and a hearing date set. The Adjudicator will hold a hearing into the complaint during which each party will have the opportunity to be heard in relation to the matter and to put forward any relevant evidence they may wish to adduce. Adjudication hearings are held in public. Following the hearing the Adjudicator will decide on the matter and issue a written decision. The decision will be communicated to both parties and will be also be published. The decision will set out whether or not the complaint was well founded, if it was well founded, it may require the employer to comply with the relevant provision as necessary and may require the employer to compensate the Employee as is just and equitable in the circumstances.

The decision may be appealed by either party to the Labour Court, and then onward to the High court on a point of law only.

INTRODUCTION

Other Services
The workplace relations commission also provides a workplace mediation service and a conciliation service, as well as an inspection service.

The contact details for the Workplace Relations Commission Information and customer service are:

Information and Customer Service
Workplace Relations Commission
O'Brien Road
Carlow R93 W7W2

Tel: 059 9178990
Lo-call: 0818 80 80 90*
(09.30 - 17.00, Monday to Friday)

Fax 059 9178909

DX: 271001 Carlow2

Website: ***www.workplacerelations.ie***

*note that the rates charged for use of 0818 (local) numbers may vary amongst different providers

PRE-EMPLOYMENT

2.1 RECRUITMENT

It is essential to recruit the right people from the outset, therefore saving considerable time and expense which could occur at a later date. The recruitment drive should aim to attract people who are qualified for the job and who will fit within the culture of the organisation.

Finding employees
There are various sources for finding new personnel and all have benefits and costs which can influence your decision.

(a) Internal Applications. These employees will have background knowledge of the company; however, this type of recruitment could result in openings elsewhere within the organisation.

(b) Agencies. This form of recruitment should offer a pool of appropriately qualified staff but will charge a percentage of the starting salary as a fee.

(c) Online adverts. This is one of the most popular methods of finding employees, with a variety of specialist websites dedicated to recruitment.

(d) Selection and Recruitment Consultants. This tends to be an expensive process and is more appropriate for senior level positions.

(e) External Contacts. These people could be those met through work; however, this method should be considered seriously as the enticement of staff could lead to a potentially dissatisfied client.

Advertising
(a) Select the appropriate website, agency or publication to your industry, particularly if the job is specialised. Local papers should be used if you are aware of a pool of potential employees in an area.

(b) Presentation is all important; the advert must be sufficiently pleasing in appearance in order to attract the right candidate. The advert should not seek to exclude or discriminate against any candidates, directly or indirectly on the basis of the nine protected grounds under the Employment Equality Act 1998 as amended, i.e. age, race, gender, disability, member of the travelling community, family status, marital status, religious belief or sexual orientation, unless a valid statutory exemption can be claimed. If you feel you may be entitled to claim an exemption from the above requirements, please contact our Legal Advisors first.

(c) The advert should try to describe the culture of the organisation as well as the qualities of the applicant sought.

A summary of the main points in an advert are as follows:

- **Headline:** Job title, place of work, industry, location and salary.
- **Culture:** Aims of the company, atmosphere, working environment, place of work.
- **Applicant Details:** Qualifications and experience required for the position.
- **Benefits:** Pension, training, bonuses, hours of work.
- **Contact:** Contact point and next steps to take (for example, phone for application form, telephone interview or write with CV).

It is very important that an employer does not restrict a person's access to employment on any discriminatory ground pursuant to The Equality Acts 1998 - 2015.

PRE-EMPLOYMENT

2.1 RECRUITMENT (CONTINUED)

Agencies

When dealing with an employment agency, you should be confident that they are aware of your requirements in terms of job description, personal qualities of the applicant and style of your company. An agency will filter applicants and present only those candidates who are qualified to carry out the job. Consequently, time is saved on screening through unsuitable application forms and interviewing candidates who are not ideally suited for the position. In general, agencies will charge a standard fee which is expressed as a percentage of the starting salary; rebates can be accounted for depending on the time period the candidate remains with your company.

PRE-EMPLOYMENT

2.2 DISCRIMINATION

Over recent years, the field of protection from discrimination has grown very quickly and has become very complex. We will give an overview of the nine categories of discrimination. It is not intended to be a comprehensive statement and you are strongly advised to speak to your legal advice helpline whenever you have a matter relating to a potential discrimination claim.

- **Gender**
  A man, a woman or a transgender person (specific protection is provided for pregnant employees or in relation to maternity leave).

  "Gender reassignment" is a process enabling individuals to match their bodies to their gender identity. Whilst it is not explicitly mentioned in current discrimination legislation, a recent ruling by the European Court of Justice means that it is likely to be considered within the gender ground.

- **Marital status**
  "Marital status" is defined as meaning single, married, separated, divorced or widowed.

- **Family status**
  "Family status" is defined as meaning having responsibility as a parent or as a person in loco parentis to someone under the age of 18, or as a parent or resident primary carer for someone of or over age 18 who has a disability.

- **Sexual orientation**
  The legislation defines sexual orientation as meaning a sexual orientation towards persons of the same sex (homosexual) or persons of the opposite sex (heterosexual) or towards persons of the same sex and of the opposite sex (bisexual). Employers are not obliged to recruit, retain in employment or promote an individual if the employer is aware, on the basis of a criminal conviction or other reliable information, that the individual engages, or has a propensity to engage, in unlawful sexual behaviour (especially as concerns minors or other vulnerable persons).

- **Religious belief**
  The legislation prohibits discrimination on the grounds that one person has a different religious belief from another, or that one person has a religious belief and the other does not. Religious belief is defined as including religious background or outlook.

  The legislation permits religious, educational and medical institutions to take actions that would otherwise be regarded as discriminatory on the grounds of religion, where such actions are reasonably necessary to maintain or protect the religious ethos of the institution.

PRE-EMPLOYMENT

2.2 DISCRIMINATION (CONTINUED)

- **Age**
  Legislation prohibits indirect discrimination, harassment and victimisation on the grounds of age. However, the legislation also provides numerous detailed exceptions to the prohibition, including:

  i differing compulsory retirement ages are permitted, as is offering a fixed term contract to a person who is over the compulsory retirement age for that employment;
  ii the protection only applies to those above the maximum age at which a person is statutorily obliged to attend school;
  iii persons no longer fully competent to undertake the duties of the position are excluded;
  iv maximum ages for recruitment are permitted where these relate to expected training requirements, or the need for a minimum effective period of employment before retirement. Employers may also set a minimum age, not exceeding 18 years, for recruitment to a post;
  v in respect of "occupational benefit schemes" employers are permitted to fix ages for admission and entitlement to benefits and to provide different rates of "severance payment" based on the period between the age of an employee on leaving employment and his or her compulsory retirement age, provided that it does not constitute discrimination on the gender ground;
  vi relating to licenses to pilot planes, drive trains and ships; and
  vii in respect of defence, prison and security forces.

- **Disability**
  The legislation gives a wide definition of disability and provides significant protection to those who are discriminated against because of their disability or because of their association with someone with a disability.

  For the purposes of the legislation, disability is defined as meaning:

  i the total or partial absence of bodily or mental functions, including the absence of a part of a person's body;
  ii the presence in the body of organisms causing, or likely to cause, chronic disease or illness; iii the malfunction, malformation or disfigurement of a part of person's body;
  iv a condition or malfunction that results in a person learning differently from a person without the condition or malfunction; or
  v a condition, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour;

and shall be taken to include a disability that exists at present, or that previously existed but no longer exists, or that may exist in the future or that is imputed to a person.

PRE-EMPLOYMENT

2.2 DISCRIMINATION (CONTINUED)

- **Race**
  Discrimination on the grounds of a particular race, skin colour, nationality or ethnic origin. The legislation prohibits discrimination on the grounds of race. "Race" is defined as including a person's colour, race, nationality or ethnic or national origins. The fact that a racial group may comprise two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of the legislation. Generally, a person will belong to several different racial groups; for example, a person may be "black", "Afro-Caribbean", "Irish", etc.

- **Direct discrimination**
  If you directly treat one person less favourably than you treat or would have treated another person on racial grounds.

- **Indirect discrimination**
  This involves imposing a requirement or condition (such as a condition for job eligibility) where the proportion of people from a particular racial group who can comply with the requirement or condition is considerably smaller than the proportion of people from another racial group or groups who can comply with it, and where this is to the detriment of the individual concerned.

- **Victimisation**
  Racial Discrimination by way of victimisation happens where an individual is victimised because he has brought proceedings against you at common law for personal injury or alternatively pursuant to equality legislation, or has opposed discrimination on the grounds of race. This is basically to stop individuals feeling intimidated by an employer if they make a complaint under the anti-discrimination provisions. In certain circumstances, you can show that discrimination on racial grounds is permissible if it is due to a genuine occupational requirement. You need to be advised in detail on this and you should contact your legal advice helpline.

- **Membership of the traveller community**
  People who are commonly referred to as Travellers and who are identified both by Travellers and others as people with a shared history, culture and traditions, identified historically as a nomadic way of life on the island of Ireland.

General
It is very important to be extra vigilant in several areas of employment. Make certain that all job adverts are "gender neutral" - do not use terms like "Workman" or "Manageress". Think hard before asking for evidence of nationality unless you ask all applicants for this information. You will be required to verify that a particular candidate in entitled to work in the Republic of Ireland, so that question can be asked of all candidates. Only asking applicants with foreign sounding names may risk a race discrimination claim. The use of pre-employment medical questionnaires is a double- edged sword. A decision not to interview or employ an applicant based on specific information revealed could amount to disability discrimination.

Please remember that the Workplace Relations Commission Adjudicator has the power to order disclosure of all documentation that they consider relevant to the case in hand. This includes all application forms and is not confined to such documentation relating to the person making the claim. Consequently, it would be worth keeping any and all such documentation for a minimum period of 12 months after the date of appointment or interview.

PRE-EMPLOYMENT

2.3 INTERVIEW RECORDS AND REFERENCES

Health
Have you suffered, or do you currently suffer, from any serious illness which may affect work? If so, please give details, in addition to details of any reasonable accommodation which we may offer to assist you in carry out the role should you be successful in your application

.....
.....

References

Name, Address and Telephone Number	Name, Address and Telephone Number
.....	.....
.....	.....
.....	.....
.....	.....
Occupation	Occupation
.....	.....

Please provide a referee from your current or previous employer and tick if you do not want us to contact them before an offer is made.

Declaration
I confirm that the information contained in this application is correct and that any false information may disqualify me from employment or render me liable for dismissal.

Signed: .....
Dated: .....

Whilst not included, you may think it appropriate to mention your hobbies, interests, etc.

NOTE: ***Do not seek a reference unless an offer is given.***

PRE-EMPLOYMENT

2.3 INTERVIEW RECORDS AND REFERENCES (CONTINUED)

INTERVIEW RECORD

For office use only

Interviewed by: .....

Date: .....

Comments: .....

.....

.....

.....

.....

.....

.....

.....

Decision: Reject ☐ Second Interview ☐ Offer ☐

References

Date sent: .....

Response: Very Good ☐ Good ☐ Poor ☐ No Reply ☐

Offer: .....

Date sent: .....

Conditional: Yes ☐ No ☐

Salary: .....

Benefits: .....

Hours: .....

O/T: .....

Response: .....

Start date: .....

Other information

Grade: .....

Job Title: .....

Ref No: .....

PRE-EMPLOYMENT

2.3 INTERVIEW RECORDS AND REFERENCES (CONTINUED)

Reference letters
References are an invaluable aid to recruitment and should be sought whenever an offer is made. A reference letter, although time consuming, can provide a number of advantages:

- It can confirm the honesty of the individual
- It reveals information not available from the application and interview
- It can provide an answer to the questions of suitability for the particular job

References can be sought by telephone and provide a fast response and valuable "off the record" information. Additionally, the method of writing is able to provide a record which can be referred to later and is also able to answer general and specific questions, thus avoiding ambiguity.

SAMPLE REFERENCE REQUEST

Confidential
The following employee has applied for the job as ..... within our company.

1 How many days absence excluding annual leave has he had in the last 2 years? .....

2	Was the applicant	- trustworthy and honest?	Yes ☐	No ☐	
		- numerate?	Yes ☐	No ☐	
		- punctual?	Yes ☐	No ☐	
3	How did the applicant react to pressure?		Well ☐	Not Well ☐	
4	Was the applicant able to work	- as part of a team?	Yes ☐	No ☐	
		- without supervision?	Yes ☐	No ☐	

Please provide us with any other information relevant to this application overleaf.

NOTE: *If you wish to offer a candidate a position prior to contacting a referee, ensure that you make it clear in writing that the offer is a conditional on the receipt of two satisfactory references. If the subsequent references are then unsatisfactory, you can withdraw the offer, due to failure to meet the reference check requirement. The candidate should not commence employment until the references are received.*

If you do not receive a reply in approximately 10 days, you should chase the reference in writing.

MEDICAL QUESTIONNAIRE
The value of medical questionnaires is currently debatable. If the questionnaire discloses a disability falling within Equality Legislation and you fail to interview the candidate, it could be argued that this amounts to unlawful discrimination.

PRE-EMPLOYMENT

2.4 PARTICULARS OF EMPLOYMENT

Employers are required to provide a statement of core terms to new employees within 5 days of the new employee commencing their employment statement must contain the following provisions:

1. The full names of the employer and employee
2. The address of the employer
3. The expected duration of the contract (where the contract is temporary or fixed term)
4. The rate or method of calculating pay and the pay reference period for the purposes of the National Minimum Wage Act 2000 (for example, a week, a fortnight or a month) – see 'Pay reference period' below
5. What the employer reasonably expects the normal length of your working day and week to be, in a normal working day and in a normal working week
6. Policy regarding how tips and gratuities and mandatory charges are treated
7. The place of work, or, where there is no fixed or main place of work, a statement specifying that the Employee is employed at various places or is free to determine his or her place of work or to work at various places;
8. The title, grade, nature or category of work for which the Employee is employed or a brief description of the work;
9. The date of commencement of contract of employment;
10. Any terms and conditions relating to hours of work (including overtime)
11. Where a probationary period applies, its duration and conditions

The above statement must be provided to the employee within the first 5 days of employment. The statement under **The Terms of Employment (Information) Act, 1994** must also be provided within one month of the Employee commencing employment. **The EU (Transparent and Predictable Working Conditions) Regulations 2022** creates a criminal offence of failing to provide a statement of terms within one month of commencement. Similarly, it is an offence to deliberately or recklessly include false or misleading information in the statement.

Under **The Terms of Employment (Information) Acts, 1994** as amended, employers are legally obliged to provide employees with a further statement setting out certain information relating to their employment. This is sometimes referred to as the written statement of the terms and conditions. Employees are entitled to these within one months of commencement of their employment. It is of course permissible to provide one statement containing all the relevant information with 5 days of the commencement of employment.

Please note that the particulars appearing below are not intended to replace a full set of employment documents. ARAG are able to provide a bespoke contract drafting service. Please contact our legal advice helpline for further information and a quote.

Please note that the particulars appearing below are not intended to replace a full set of employment documents which an employer is required to provide.

From: [name of the employer]

To: [name of the employee]

General:
This clause should include reference to:

The following particulars are given to you in accordance with **The Terms of Employment (Information) Acts, 1994 - 2014**. Start date of employment and whether any previous employment with another employer counts as part of continuing employment. Acceptance of employment implies that the employee accepts all the terms and conditions set out in these Particulars of Employment. Any probationary periods which are applicable during the initial employment.

PRE-EMPLOYMENT

2.4 PARTICULARS OF EMPLOYMENT (CONTINUED)

Place of work:
Either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer.

Collective agreements:
Any collective agreements affecting the employment, including national agreements.

Job title/duties:
The title of the job which the employee is employed to do or a brief description of the work for which he is employed.

Remuneration:
Scale, rate, method of calculating remuneration and pay intervals. Must conform to the Minimum Wage Regulations.

Hours of work:
Terms and conditions of the hours of work, e.g. day, work Monday to Friday, shift work and rosters, weekend work and overtime. An employer must adhere to **The Organisation of Working Time Act, 1997**.

Absence from work:
Include procedures for reporting absence, e.g. to who and when, also sickness, incapacity details and any entitlements.

Holidays:
Holiday entitlements including bank holidays, how holidays are accrued, holiday periods e.g. January 1st – December 31st. Procedures for taking holidays and calculation upon termination of employment, the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated.

Pensions and health insurance:
Information on whether a pension scheme is included in the employment. Specify the type of pension operated by the company and state location of where the rules can be obtained. If a pension scheme is not operated by the company, then access must be facilitated to a PRSA which may be deducted at salary source for tax benefit purposes. Also include any health insurance that the company may operate.

Termination of employment:
Reference should be made to the statutory minimum notice periods required from both parties, unless more favourable terms are applicable.

Normal retirement date:
This should stipulate the date at which the employee should retire, e.g. at the end of the month in which the employee attains the age of 66. It should be noted that in accordance with the **Equality (Miscellaneous) Provisions Act, 2015**, compulsory retirement ages must be objectively and reasonably justified by a legitimate aim, and the means of achieving that aim must be appropriate and necessary. Employers should refer to Statutory Instrument 600/2017 Industrial Relations Act 1990 (Code of Practice on Longer Working) (Declaration) Order 2017 in formulation of their policies around retirement.

Grievance and disciplinary procedures:
This must specify any grievance and disciplinary rules applicable to the employee. Reference must be made to where the rules are kept and how they are obtained if they are not included in this statement.

PRE-EMPLOYMENT

2.4 PARTICULARS OF EMPLOYMENT (CONTINUED)

Working abroad:
Details must be given if the employee is working abroad for more than one month. Including the currency in which remuneration is to be paid while working outside the Republic of Ireland.

Temporary work:
Where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end.

Pay Reference Period:
Details of the pay reference period under the **National Minimum Wage Act, 2000** must be included in the employment contract.

Probation Clauses
Prior to the introduction of the **EU (Transparent and Predictable Working Conditions) Regulations 2022** probationary periods were not subject to statute, and were the sole remit of employment contracts. However, since the 16th December 2022 the regulations now provide that where an employee is subject to a probationary period at the commencement of employment, that period shall not exceed six months, except in exceptional circumstances. In those exceptional circumstance, the probationary period shall not be longer than 12 months. The regulations do not specify what constitutes a 'exceptional circumstance. If an employee was employed subject to a probationary clause which was longer than 6 months, this clause ceased to have effect on the 1st February 2023 or at the expiry of the clause which ever was sooner.

Parallel Employment:
As Per the terms of the **EU (Transparent and Predictable Working Conditions) Regulations 2022**, Employers may not prohibit Employees from taking up work with another Employer, where such work falls outside of the work schedule established with the initial Employer.

An employer may however impose a such a restriction, where it is proportionate and based on objective grounds. Such restrictions are referred to as 'incompatibility restrictions. Such restrictions must be set out in the employment contract. A number of criteria apply to the inclusion of such a restriction which are set out in the regulations, Advice should be sought on including such a restriction.

An Employee must not be subjected to adverse treatment by an Employer where they decide to take such a course of action. An Employer may however restrict an Employee from taking up other employment if they have objective grounds for doing so.

Transitioning Employment:
The regulations now provide that an Employee who has completed their probation and has worked in continuous service for the Employer for a period of at least six months, may request from their Employer a form of employment with more predictable and secure working conditions. A reasoned reply to any such request must be furnished to the Employee by the Employer. This reply must be issued in writing within one month of the request's submission.

Mandatory Training:
In situations where an Employer is mandated by law or otherwise to afford training to Employees in relation to carrying out the work for which they are employed, such training must be provided free of charge to the Employee. Furthermore, any training undertaken by the Employee will count as time worked. Where possible, such training should take place during working hours.

Collective Agreements:
Where a collective agreement already provides for any matters covered by the new Regulations, the provisions of said Regulations will not apply to those Employees to whom any such agreement is relevant and applicable.

PRE-EMPLOYMENT

2.4 PARTICULARS OF EMPLOYMENT (CONTINUED)

Statement Regarding S23 of the National Minimum Wage Act, 2000:
This statement must inform the employee that they can seek a written statement of their average hourly rate of pay for any pay reference period falling within a 12-month period immediately preceding the request.

Rest Periods and Breaks:
The statement must set out particulars of the times and duration of rest periods and breaks referred to in sections 11, 12 and 13 of the **Organisation of Working Time Act, 1997**. Any terms and conditions attached to those rest periods and breaks must also be included.

Training
The training, if any, to be provided by the Employer;

Temporary Contracts
Where there exists a temporary contract of employment, the identity of the user undertakings.

Further Information on Unpredictable Work
If the work pattern of the Employee is entirely or mostly unpredictable, the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours, the reference hours and days within which the Employee may be required to work and the minimum notice period the Employee is entitled to before the start of a work assignment; - see

Social Security Institutions
The identity of the social security institutions receiving the social insurance contributions attached to the contract of employment and any protection relating to social security provided by the Employer.

Working Outside the State
In cases where Employees are required to work outside the State, the statement must also contain:
The country or countries in which the work outside the State is to be performed and its duration.

WORKING FROM HOME
Working from home was brought into sharp focus during the Covid-19 pandemic. Under the **Work life Balance and Miscellaneous Provisions Act, 2023** there is now a statutory mechanism under which an employee can apply to their employer to be permitted to work remotely. This is discussed in more details at 4.7 below. Employers need to be cautious when dealing with requests to work remotely. It is advised that you contact the legal advice helpline when dealing with a request to work from home, particularly where consideration is being given to refuse the request.

PRE-EMPLOYMENT

2.5 PRE-EMPLOYMENT CHECKS FOR NON-NATIONALS

Under **The Employment Permits Acts, 2003 – 2014**, ("EPAS") it is a criminal offence to employ a person who is not entitled to work in Ireland.

The penalties for employing such a person range from between a fine of €3,000 or imprisonment for a term not exceeding 12 months or both (on summary conviction), through to a fine not exceeding €250,000 or imprisonment for a term not exceeding 10 years or both (on conviction on indictment).

These Acts regulate the employment of non-EEA nationals. Specifically, the acts state that most non-EEA national shall not be employed unless they have a valid employment permit. Before hiring a non-national employee, it would be prudent for an employer to make the following checks and obtain the following documentation:

(a) European Union (EU) passport

(b) Birth Certificate

(c) Document or residence permit indicating employee is an EU national

(d) Passport or document endorsed (issued by Immigration Department) to say person can stay indefinitely in Ireland/EU

(e) PPS Number

(f) Valid work permit

In general, non-EEA nationals must have a permit to work in Ireland. The EEA (European Economic Area) consists of EU member states together with Norway, Iceland and Liechtenstein. EEA and Swiss nationals do not need an employment permit. There are four main categories of employment permit which are as follows:

- Critical skills Employment Permits, formally known as Green Card Permits are available for almost occupations with an annual salary above €64,000. It is also possible to obtain this type of permit for occupations with an annual remuneration of at least €30,000 which are on the Critical Skills List.
- General Employment Permit, formally known as Work Permits are available for occupations with an annual salary above €34,000 which are not eligible for a Critical Skills Employment Permit. They are also available for a very limited list of occupations with salaries below €34,000. The work permit application must meet a labour market test (see below) showing that the position could not be filled from within the EEA.
- Spousal/dependant work permits allow the spouses and dependants of employment permit holders to apply for a work permit without the need for a labour market test. Since the 6th of March 2019 a Dependent partner/spouse Employment Permit is no longer needed.
- Reactivation Employment Permit – this type of employment permit allows foreign nationals who entered the state on a valid employment permit, but due to poor treatment from their employer, or through some other cause which was not attributable to them, have fallen out of the system to commence employment again. In order to reactivate an employment permit, a temporary stamp 1 immigration permission must be sought through the Irish Naturalisation and Immigration Service (INIS).
- for senior management, key personnel and trainees who have been working for 12 months in an overseas branch of a multi-national company is being introduced.

PRE-EMPLOYMENT

2.5 PRE-EMPLOYMENT CHECKS FOR NON-NATIONALS (CONTINUED)

There are 5 other types of employment permit these are as follows:

- Exchange Agreement Employment Permits – this type of permit applies to those employed in the State under prescribed agreements
- Internship Employment Permits- These apply to full time students who are non-EEA Nationals, who attend a third level institute outside the jurisdiction who have been offered a work experience placement in the State.
- Sport & Cultural employment permits – these are available for the development, operation and capacity of sporting or cultural events or activities
- Intra-Company Transfer Employment Permits – these are available for senior management, key personnel and trainees who have been working for 6 months, or 1 month for trainees in an overseas branch of a multi-national company to transfer to an Irish branch. Those transferring must be on a salary of at least €46,000 per annum, or €34,000 for trainees.
- Contract For Service Employment Permits – These employment Permits allow foreign companies to provide services to an Irish business. They allow non-EEA workers to work an Irish contract in this jurisdiction, while being engaged on a contract of employment from the Non EEA states where they normally work. A labour market needs test is usually required.

Employment Permit Rules

- Either the employer or employee can apply for the employment permit, based on an offer of employment.
- It will be granted to the employee and will include a statement of the employee's rights and entitlements.
- It will be granted for two years initially, and this can be extended for a further three years (this can then be extended further and in certain circumstances may be renewed indefinitely).
- The employer is prohibited from deducting recruitment expenses from the employee's pay or retaining the employee's personal documents. Applicants for Employment Permits are now encouraged to make their application online. A detailed guide on how to do so is available at ***https://epos.djei.ie/EPOSOnlinePortal/UserGuide.pdf***

Job offer
The employee must be directly employed and paid by the employer, work permit applications from recruitment agencies and other intermediaries are not acceptable under the scheme.

Labour market needs test
A new application for a work permit may need to be accompanied by documentary evidence that a labour market needs test has been carried out. The test requires that the vacancy must have been advertised with the EURES employment network and in local and national newspapers for three days. This is to ensure that, in the first instance an EEA or Swiss national Applicants for spousal/dependent work permits are exempt from the labour market needs test.

If an employer applies for a work permit in respect of a former employee who has left the state, this will be considered a new application.

PRE-EMPLOYMENT

2.5 PRE-EMPLOYMENT CHECKS FOR NON-NATIONALS (CONTINUED)

Work permit not necessary
A foreign national does not need a work permit if they are in one of the following categories:

- EEA/Swiss citizen and their spouse (whether he/she is an EEA/Swiss citizen or not) and their dependent children.
- Persons who have been granted refugee status – whether through the normal process or as a programme refugee.
- Postgraduate students where the work is an integral part of the course of study being undertaken.
- Persons who have been given permission to stay in the country because they are the spouse of an Irish citizen or the parent of an Irish citizen.
- Persons who have been refused refugee status but have been granted leave to remain on humanitarian grounds.
- Students present in the country with a Valid stamp 2 visa are permitted to work part-time (20 hours per week during term time), and full time out of term time.
- Persons on a valid stamp 2 visa having graduated and having been placed on the graduate scheme may work full time while their visa remains valid.
- Persons on a valid stamp 4 Visa.

Work permit necessary
If a person does not fall within one of the categories mentioned above and they are a non-EEA national who wishes to work in Ireland.

The following categories of people will need a work permit, but it will be granted without the need to establish that there are no suitable Irish/EEA/Swiss national available, if they are:

- An entertainer who is coming to Ireland to perform at an event – this includes performers and their back up crews and film crews.
- A professional sportsperson and the granting of the permit would comply with the terms of an agreement made between the Department and the relevant sporting organisation.
- A participant in an exchange programme recognised by the Minister for Department of Enterprise, Trade and Innovation.
- Entitled to take up employment in Ireland under the terms of any international bilateral agreement ratified by Ireland.

PRE-EMPLOYMENT

2.6 INDUCTION PROCEDURES

It is important to plan an induction programme for new staff in consultation with staff representatives and trade unions if there are any. The aim is to achieve a positive attitude with the new recruit.

First contact
Initially it is a good idea to provide the new employee with an information pack. On the first day the employer should be prepared to greet the new recruit and the employer should have a written checklist of the important items that need to be covered in the induction programme. The employee should then be provided with a copy of the checklist which he can sign and retain.

Employers need to consider:

- Health and safety matters need to be taken into consideration especially if the employees will be working around chemicals and machinery. It is for the employer to provide all the necessary training required.
- People can only take in only so much information and it should be spread out to make it palatable.
- It should be carried out by a person who will be working with the new recruit.
- Should be informal and involve a tour of the building, meeting other members of staff and showing the new recruit fire exits etc. The new recruit should also be introduced to colleagues.
- Employers should pay particular attention to any sensitivities and particular cultural or religious customs, so misunderstandings do not occur.
- A company handbook can also assist in this process providing the employee with more information and a structure to the induction.
- Provide the employee with a copy of the policies of the company.
- Induction should be tailored to the individual new recruit.
- The induction should be specifically tailored to the job to be done.

School leavers and young people
School leavers and young people starting work may need to be made more aware of workplace dangers.

Employees with disabilities
It may be necessary to carry out alterations to the work surroundings regarding access and equipment and also take into consideration their dealings with colleagues.

People returning to work or a change of work
Employees returning to work after a break often feel vulnerable and apprehensive and therefore may need reassurance. It is important to offer them training and extra help to get settled within their new position.

Monitoring
It is important that the induction process is monitored and reviewed. It is important that the policy is kept up to date with new practices and legislation. The outcome of the induction would be to provide the new recruit with information about the company and the role they will play within that organisation.

EMPLOYMENT

3.1 THE ORGANISATION OF WORKING TIME ACT, 1997

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 Siochana, 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. The calculation may be 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 periods
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.

EMPLOYMENT

3.1 THE ORGANISATION OF WORKING TIME ACT, 1997 (CONTINUED)

Notification of Working Hours
Section 17 of the act governs the notice required of an employee's working hours. Following the introduction of the **S.I. No. 686/2022 – European Union (Transparent and Predictable Working Conditions) Regulations 2022**, in addition to the minimum notice period currently specified in the Act, a work assignment now must take place within the reference hours and days notified to the Employee as part of their written terms.

Where the notice of a work assignment provided to an Employee is not within the minimum notice period of 24 hours or the work assignment is to take place outside the reference hours and days, the Employee has the possibility to refuse the work assignment without adverse consequences

Night workers
Night time is the period between midnight and 7am 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.

In relation to Pregnant Employees "night work" means work in the period between the hours of 11pm on any day and 6am on the next following day where:

(a) the employee works at least three hours in the said period as a normal course, or
(b) at least 25% of the employee's monthly working time is performed in the said period.

Maximum night working time
For night workers 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 night workers whose work involves special hazards or heavy physical or psychological 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 calculated on the basis of 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.

EMPLOYMENT

3.1 THE ORGANISATION OF WORKING TIME ACT, 1997 (CONTINUED)

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 1.66 days per month worked or 20 days.

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 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 method which allows the employee the longest amount of annual up to the statutory minimum is the method which must be used to calculate the leave. 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, 1997 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.
.

EMPLOYMENT

3.1 THE ORGANISATION OF WORKING TIME ACT, 1997 (CONTINUED)

Sick Leave and an Employee's Entitlement to Annual Leave
Employees who are on certified sick leave accrue annual leave entitlement while on certified sick leave in accordance with section 86(1) of the **Workplace Relations Act, 2105**, which serves to amend the **Organisation of Working Time Act, 1997**. The annual leave entitlement accrued while on certified sick leave must be taken within 15 months from the end of the leave year in which it was accrued. Should an employee cease employment with the employer they will be entitled to receive payment for any leave accrued while on certified sick leave in accordance with the act. This only applies to annual leave accrued while on certified sick leave. Furthermore, it should be noted that accrual of annual leave while on certified sick leave only applies to the employees' statutory leave entitlement. It does not apply to any additional contractual leave entitlement which the employer may provide. The annual leave year pursuant to the **Organisation of Working Time Act, 1997** runs from the 1st April of one year to the 31st March of the following year.

Public holidays
The Act also provides the following ten public holidays:

i 1st January (New Year's Day);
ii St Bridget's day – First Monday in February, or, if St Bridget's day falls on a Friday, that Friday
iii St. Patrick's Day;
iv Easter Monday;
v First Monday in May;
vi First Monday in June;
vii The first Monday in August;
viii Last Monday in October;
ix Christmas Day;
x 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 day's 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 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.)

EMPLOYMENT

3.1 THE ORGANISATION OF WORKING TIME ACT, 1997 (CONTINUED)

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 Contracts and the Employment (Miscellaneous Provisions) Act, 2018.

Zero Hours Contracts
The Act prohibits zero-hour contracts in certain circumstances, and applies to an employee whose contract of employment operates to require the employee to make himself or herself available to work for an employer in a week:-

1. A certain number of hours
2. As and when the employer requires him or her to do so, or
3. Both a certain number of hours and otherwise as and when the employer requires him or her to do so.

True casual nature circumstances are not included in the prohibition as are work undertaken in emergency circumstances and short-term relief work to cover routine absences for that employer.

25% payment
If an employer has required the employee as established in the contract to be available for a certain number of hours of work, that employee is entitled to 25% or 15 hours, whichever is less of those contracted hours or to at least 25% or 15 hours whichever is less, of the hours for which work of the type which the employee is required to make himself available to do has been done for the employer.

If the employee is not provided with such work, he or she is entitled to be paid in respect of 25% of the hours for which such work has been done or 25% of the contracted hours or 15 hours (whichever is the lesser).

The rate of pay to be applied in respect of those hours is 3 times the national minimum wage or 3 times the minimum hourly rate specified in any employment regulation order in force.

EMPLOYMENT

3.1 THE ORGANISATION OF WORKING TIME ACT, 1997 (CONTINUED)

Banded Hours
The Act provides for the provision of banded hours at the request of the employee, whose hours of work are not reflected in their contract of employment to request to be placed in a band of weekly working hours which corresponds to the average number of hours worked per week by that employee in the 12 months preceding the request. The following bands will apply:-

1. Band A 3-6 hours
2. Band B 6-11 hours
3. Band C 11-16 hours
4. Band D 16-21 hours
5. Band E 21-26 hours
6. Band F 26-31 hours
7. Band G 31-36 hours
8. Band H 36 hours and over

The employer, upon receipt of the request must provide the employee with average weekly working hours which fall within the appropriate band within 4 weeks. Therefore, an employee who has average hours of 7 hours in the preceding 12 months, must be provided with between 6-11 hours of work a week on average during the following reference period.

The obligation applies unless:-
a. There is no evidence to support the employees claim that they work the relevant number of hours each week. There have been significant adverse changes to the business
c. Due to exceptional circumstances or an emergency it would not be practicable for the employer to comply
d. The average hours worked were affected by a temporary situation that no longer exists

If the employer refuses to comply with the request, the matter can be referred to the WRC for an order directing the appropriate band (no compensation order can be made under this provision). An employee can lodge a complaint to the WRC in relation to an alleged breach of this provision, however no compensation can be awarded for a breach of this particular element of the act.

The standard anti-penalisation provisions are outlined in the Act.

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 Innovation. 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 the 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. Breaks should also be recorded by employers. 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 2014**. 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**.

EMPLOYMENT

3.1 THE ORGANISATION OF WORKING TIME ACT, 1997 (CONTINUED)

Code of Practice on the Right to Disconnect
The Workplace Relations Commission has published a code of practice on the right to disconnect for employers and employees. The code of practice is available here
https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers- and-employees-on-the-right-to-disconnect.pdf.

It appears that the Government has decided to address the issue of the right to disconnect though the code of practice. It is unclear at present whether or not the amendments to the **Organisation of Working Time Act, 1997** relating to the right to disconnect set out below will be enacted in addition to the code of practice. The code of practice document is 16 pages in length and provides guidance to both employer and employees regarding employees right to disengage outside of normal working hours. The code of practice applies to all types of employment, regardless of where the employee carries out their work, be that in the office, at home, remotely, or otherwise.

The code of practice sets out three main elements:

1. The right of employees not to be routinely required carry out work outside normal working hours – this includes responding to emails, taking phone calls etc;
2. A right not to be penalised for refusing to work outside normal working hours;
3. A requirement to respect other employees right to disconnect, by, for example, not routinely requiring an employee to attend to work maters outside of normal working hours.

The code is to be read on conjunction with the statutory provisions already in place with regard to working hours. The code provides guidance on best practice associated with the right to disconnect, the manner in which employers should manage the issue, and how employees can raise concerns regarding the matter.
It is not mandatory to follow the code of practice, and a breach of the code does not, in and of itself, create a cause of action against an employer, however a failure to follow the code will be admissible as evidence before the WRC or a court as the case may be, a breach of the code, or indeed compliance with the code, may be relied upon in dealing with relevant matters before the particular forum. It is therefore advisable to adhere to the provision of the code, as they do reflect best practice on the matter.

The Code of Practice contains a sample 'Right to Disconnect' policy. Employers should update their current policies on the right to disconnect given the new code of conduct.

Proposed Changes to the Organisation of Working Time Act, 1997
There are a number of changes proposed to the **Organisation of Working Time Act, 1997**. Under the **Organisation of Working Time (Amendment) (Right to Disconnect) Bill, 2020** it is proposed to amend s.15 of the principle act, with the addition of provision related to the right to disconnect from work related emails, phone calls, text messages and any other form of communication.

The amendments will have the effect of creating a specific statutory right to disconnect, establishing policies and hours where employees can disconnect. The provision of a report regarding the followingwill also be created:

- minimise out of hours contact
- establishing an overnight payment/allowance
- establishing a standby allowance
- provisions relating to preventing employees from exceeding the maximum average working week of 48 hours

EMPLOYMENT

3.2 RECOGNITION OF TRADE UNIONS

The Irish Constitution in Article 40.6.1(iii) guarantees "the right of citizens to form associations and unions". A corollary of this constitutional right is the right of any citizen not to join associations or unions if they so wish as enunciated and held in ***Educational Company -v- Fitzpatrick 1961 IR 323***.

The legal situation with regard to trade union recognition is that an employer does not have to recognise or bargain with a union. This was put in the following terms in ***Abbott and Whelan -v- ITGWU and the Southern Health Board 1982*** by Mr. Justice McWilliams where he held that: "the suggestion that there is a constitutional right to be represented by a union in the conduct of negotiations with employers... in my opinion could not be sustained. There is no duty placed on an employer to negotiate with any particular citizen or body of citizens."

Mr. Justice Hamilton in ***Dublin Colleges ASA -v- City of Dublin VEC 1982*** 1982 where a number of teachers had formed a new union of their own and sought formal recognition said the plaintiffs naturally had a constitutional right of association: "but [there is] no corresponding obligation on any body or person, such as the defendants herein, to recognise that association for the purpose of negotiating the terms and conditions of employment of its members, or for any purpose."

However, the Courts have held that disputes over recognition are valid trade disputes. In an attempt to meet trade union concerns over the ability of employers to avoid union recognition the government enacted **The Industrial Relations (Amendment) Act, 2001**. This Act was based on an agreed report from the social partners and relevant state agencies concerned with industrial relations issues. The Act gives the Labour Court the power to issue a legally binding ruling on pay and conditions of employment in circumstances in which an employer refuses to recognise a trade union. However, the Labour Court cannot rule that an employer must recognise a trade union.

The future of trade unions
Ireland has traditionally maintained a voluntary system of industrial relations. This means that while employees have a constitutional right to form trade unions, employers are not obliged to recognise such trade unions as having the right to represent their members in dealings with the employer.

This has remained the defining feature of Irish industrial relations practice and in many companies, there is no practice of collective bargaining or of trade union recognition. Although there have been a number of high-profile disputes in relation to trade union recognition, the law remains that there is no obligation on an employer to recognise a trade union for collective bargaining purposes.

As mentioned earlier, the role of the conciliation and dispute resolution services of the Labour Relations Commission and the Labour Court was strengthened under **The Industrial Relations (Amendment) Act, 2001** and whilst aware of the need to have an effective dispute resolution procedure the legislature in introducing that Act stopped short of imposing compulsory union recognition.

EMPLOYMENT

3.2 RECOGNITION OF TRADE UNIONS (CONTINUED)

National Information and Consultation Directive (2002/14/EC) and Employees (Provision of Information and Consultation) Act, 2005
In 2002 the European Union adopted the National Information and Consultation Directive (2002/14/ EC). This directive imposed an obligation on Member States to establish a framework for employers to inform and consult with employees.

The Irish implementing legislation in the form of **The Employees (Provision of Information and Consultation) Act, 2006** has provided that the Act will be introduced on a phased basis as follows:

(a) from 4th September 2006 to undertakings with at least 150 employees,

(b) from 23 March 2007 to undertakings with at least 100 employees, and

(c) from 23 March 2008 to undertakings with at least 50 employees.

The Directive adds to the existing law as to consultation in the context of collective redundancies and transfers of undertakings. The Irish implementing legislation follows that format and supplements it where any other consultation of employees is conferred by Irish legislation.

The Directive sets out the situations in which an employer is required to consult its employees about business decisions including:

i recent and probable developments within the business in relation to its activities and economic situation;
ii the situation, structure and probable development of employment within the business and any anticipatory measure envisaged, in particular where there is a threat to employment;
iii decisions likely to lead to substantial changes in work organisation or in contractual relations [collective redundancies and transfer of undertakings], including those covered by the Community provisions referred to in the introduction of new Irish regulations in relation to business transfers, employers will increasingly be obliged to consult with (and where none already exist arrange for the election of) employee representatives before implementing significant organisational changes.

The Employees (Provision of Information and Consultation) Act, 2006 provides that at Section 6(1) "employees' representative" means an employee elected or appointed for the purposes of the Act." Subsection (2) imposes an obligation on employers to arrange for the election or appointment of one or more than one employees' representative under this section.

However the Act goes on to provide at subsection (3) that where it is the practice of the employer to conduct collective bargaining negotiations with a trade union or excepted body, employees who are members of a trade union or excepted body that represents 10 per cent or more of the employees in the undertaking shall be entitled to elect or appoint from amongst their members one or more than one employees' representative for the purposes of the Act.

Subsection (4) provides that where the number of employees' representatives (if any) elected or appointed under subsection (3) shall be determined on a pro rata basis by reference to the number of other employees' representatives (if any) elected or appointed under this section.

Finally, subsection (5) provides for the referral of a dispute under this section by the employer, trade union, excepted body or one or more than one employee to the Labour Court for determination.

EMPLOYMENT

3.3 JOINT LABOUR COMMITTEES (JLCs) AND EMPLOYMENT REGULATION ORDERS (EROs)

JLCs regulate certain conditions of employment and set minimum rates of pay in relation to certain sectors. The means of achieving this aim is through an Employment Regulation Order or ERO.A JLC is established through an order from the Labour Court pursuant to **The Industrial Relations Act, 1946 as amended**. A JLC is established through an order from the Labour Court pursuant to **The Industrial Relations Act, 1946** as amended. A JLC is an independent body made up of an employer and employee representatives in equal numbers as appointed by the Labour Court. When proposals submitted by a JLC are confirmed by the Labour Court in the form of an **Employment Regulation Order (ERO)**, they become the statutory minimum pay and conditions of employment for the workers in that particular industry or sector. Employers are then obliged by law not to provide wage rates or conditions of employment less favourable than those prescribed in the Order.

In circumstances where an ERO states a minimum rate of pay then an employer is obliged to pay, at a minimum, such a rate even if such rate is in excess of the National Minimum Wage. In essence, whichever wage rate is higher must be paid by the employer. An employer of workers to whom an ERO applies must keep records of wages, payments etc., and must retain these records for at least three years. The employer must also post up the relevant Order in a conspicuous place on the premises. EROs are enforced by the Workplace Relations Commission. Inspectors have a statutory power to enter premises, inspect wage sheets and other records, interview employers and workers concerned, recover arrears and, if necessary, take legal proceedings against an employer who is in breach of an ERO.

JLC's before July 2011
Following A High Court decision issued on the 7TH July 2011, ERO's in place prior to that date ceased to have legal effect, as the proviso for establishing KLC's and consequently ERO's was held to be unconstitutional. If followed therefore that the ERO's in being under the old regime ceased to have effect form that date.

However, employees who already had the terms and conditions including pay rates incorporated into their contract of employment continued to enjoy those benefits. The employer was not entitled to unilaterally alter those terms on the basis of the judgment.

The Industrial Relations (Amendment) Act, 2012
Following this decision, **The Industrial Relations (Amendment) Act, 2012** was introduced on the 1st August 2012 to resolve the issues which were identified by the High Court decision referred to above. Essentially the act reformed the JLC's wage setting mechanisms. Under the Act the Labour Court can adopt an ERO which has been drawn up by a JLC. The Act also allows for the following:

- Provision for employers to seek exemption for ERO rates due to financial difficulties
- The power set basic adult rates of pay, as well as two additional higher rates
- The removal of the JLC's function regarding the setting of Sunday premium rates
- A requirement to take account of factors such as rates of employment, competitiveness and unemployment

EMPLOYMENT

3.4 EMPLOYMENT EQUALITY ACTS 1998 TO 2015

The Employment Equality Acts 1998 - 2015 deal with discrimination in the areas employment and areas related to employment. The Acts prohibit discrimination, direct or indirect on nine grounds as set out below. Types of discrimination include discrimination with regard to recruitment, promotion, pay, working conditions, training or experience, harassment, and dismissal on the basis of any of the following grounds:

- Gender
- Civil status
- Family status
- Sexual orientation
- Religion
- Age
- Disability
- Race
- Membership of the Traveller community

Discrimination for the purposes of the Employment Equality Acts, involves treating one person or group less favourably than another. An employee is said to be discriminated against if they are treated less favourably than another is, has been or would be treated in a comparable situation on any of the above 9 grounds.

There are two types of discrimination, direct and indirect. To establish direct discrimination, a direct comparison must be made between the person being discriminated against and a person not being discriminated against, referred to as the comparator. For example, if discrimination on the basis of disability is alleged, the comparison must be between a person who has a disability and another who has not, or between persons with different disabilities.

Indirect discrimination is a more complex concept. Indirect discrimination is said to occur when conduct, policies, procedures, practices or requirements, which may not appear to discriminate against one group more than another, actually have a discriminatory impact on a particular group or class of person.

Employers should pay particular attention to the areas of Disability and Pregnancy which have specific requirements to which the employer must adhere. Regarding disability employers are obliged to make reasonable accommodation for members of staff with disabilities. This includes providing access to employment, provision of facilities, access to promotion and training.

Employees who are pregnant are entitled to special protection. Pregnancy-related discrimination is considered to be discrimination on the ground of gender. Discriminating against pregnant employees in relation to recruitment, promotion and general conditions of employment on the basis of their pregnancy will all fall foul of the Employment Equality Acts. Women who are pregnant or have recently given birth are also protected under maternity protection and unfair dismissal legislation.

Harassment and Sexual Harassment based on any of the 9 grounds set out above will also fall within the remit of this legislation. Employers should consult **SI 208 of 2012 Employment Equality Act 1998 (Code of Practice) (Harassment) Orders 2012** in dealing with issue of harassment.

If an employee makes a complaint under the employment equality legislation you are prohibited from penalising the employee, by means of unfair treatment, changes in working practices, or terms and conditions to the detriment of the employee. If an employer does engage in such behaviour, they may find that the employee makes a further complaint alleging victimisation.

Complaints under the Employment Equality Acts are brought through the Workplace Relations Commission.

EMPLOYMENT

3.5 NATIONAL MINIMUM WAGE

The National Minimum Wage Act, 2000 as amended provides that the minimum wage rate for an experienced adult employee from 1st January 2023 is €11.30 per hour.

An experienced adult worker for the purposes of **The National Minimum Wage Act, 2000**, as amended provides that the minimum wage rate for an adult employee aged 20 and over from 1st January 2024 is €12.70 per hour.

The national minimum wage will be reviewed at regular intervals and does not stop an employer from offering a higher wage. Under Section 20 of **The National Minimum Wage Act, 2000** the basic method of calculation is to divide the gross pay by the total number of hours worked.

Hourly Pay
The employer selects the period, known as the "pay reference period" from which the average hourly pay will be calculated. The employer must include details of the "pay reference period" in the statement of employment conditions to be given to an employee under **The Terms of Employment (Information) Act, 1994.**

An employee may request a written statement from an employer regarding their average rate of pay for any pay reference period within the last 12 months. The employer has 4 weeks to supply the statement.

Exceptions to those entitled to receive the national minimum wage
There are some exceptions. The legislation applies a lessor rate to a person under 18. It does not apply to a person employed by a close relative who is a sole trader, or those in statutory apprenticeships.

The Minimum Wage Act provides the following sub-minimum rates:

- An employee who is under 18 is entitled to €8.89 per hour – 70% of the national minimum wage.
- An employee who is aged 18 is entitled to €10.16 per hour – 80% of the national minimum wage.
- An employee who is aged 19 is entitled to €11.43 per hour – 90% of the national minimum wage.

If you receive board and/or lodgings as part of your remuneration, the maximum amount which may be counted as part of the minimum wage requirement is as follows:

- Board - €1.14 per hour worked
- Accommodation - €4.28 per day, or €30.00 per week

The Minimum Wage Act previously provided sub-minimum rates which applied to employees who were over 18 and undergoing a course of structured training or directed study that was authorised or approved by the employer. These were referred to as training rates, however since the 4th of March 2019 these rates have been abolished.

The trainee rates which were applicable up to the 4th of March 2019 were as follows:

- First one-third of training course €7.35 per hour (75% of national minimum wage rate).
- Second one-third of training course €7.84 per hour (80% of national minimum wage rate).
- Final one third of the training course €8.82 per hour (90% of national minimum wage rate).

EMPLOYMENT

3.6 THE PAYMENT OF WAGES ACT, 1991

Rates of pay are usually 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 duty to pay wages is a fundamental aspect of an employer's obligations. If the employer fails to do so an employee may make a complaint to the Workplace Relations Commission (WRC), pursuant to **The Payment of Wages Act, 1991** or alternatively sue for breach of contract or by way of debt collection via the courts in certain circumstances.

The Payment of Wages Act, 1991 provides that employees have the right to a speedy and 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 Siochana and the Defence Forces, civil servants and employees of any local authority, health board, harbour authority or vocational education committee).

Employers may not lawfully 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 a health insurance payment or trade union subscriptions.

Special restrictions are placed on employers in relation to deductions from wages that:

i arise from any act or omission of the employee i.e. till shortfalls, 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.

It should be noted that under the **Safety Health and Welfare at Work Act, 2005**, an employer is required to provide protective clothing and equipment to employees, at no cost to the employee where such equipment is required.

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.

3.6 THE PAYMENT OF WAGES ACT, 1991 (CONTINUED)

Employees have the right make a complaint to the Workplace Relations Commissions (WRC) against an unlawful deduction (or payment) from wages or in the event of non-payment of wages. A decision of the WRC adjudicator under **The Payment of Wages Act, 1991** is legally binding on the parties. Additional information may be downloaded from ***www.workplacerelations.ie***

The **Payment of Wages (amendment)(tips and gratuities) Act 2022** came into effect on the 1st December 2022. It introduces new rules regarding tips and gratuities. The act makes it illegal for employers to use tips, service charges and gratuities to make up the basis wages of employees.

The act applies to employees engaged in industries where tipping is common, such as hospitality, tourism, taxi services and hairdressing. Establishments such as pubs, restaurants, hotels, hairdressers and other similar premises are affected by provision of the act.

Since 1 December 2022, relevant employers must clearly display their policy on how cash and card tips, gratuities and or service charges are distributed.

The notice must clearly state:

- Whether or not tips or gratuities are distributed among staff
- The way they are distributed and the amounts distributed
- Whether or not service charges are distributed and if so, how they are distributed and the amounts distributed

An employer is now prohibited for describing a mandatory service charge on a customers bill unless that service charge is distributed to staff in the same was as a case or card tip is distributed.

Under the Act the electronic tips received by the employer have to be distributed in a fair and transparent way.

Electronic tips include tips paid by:

- Debit or credit card
- Smart card
- Cashless or contactless tipping apps or platforms
- Push notification' apps

Employers can consider certain factors when deciding how to distribute tips, including:

- Seniority or experience
- The value of sales or revenue generated
- The number of hours worked
- Whether the employee is on a full-time or part-time contract
- The employees role in service delivery

An employer must their employees a statement of the tips and gratuities distributed, including the total amount of electronic tips received during a particular period and how much was paid to the particular employee. The statement must be provided within 10 days of the tips and gratuities being distributed.

If cash tips are managed by the employees themselves the foregoing does not apply to those cash tips, however the tips and gratuities notice must set out how cash tips are distributed.

WRC inspectors can impose on the spot fines ranging from €500 to €1500 for breaches of the Act.

3.7 THE PROTECTION OF EMPLOYEES (PART-TIME WORK) ACT, 2001

A part-time employee means an employee whose normal hours of work are less than the normal hours of work of a comparable employee in relation to him/her.

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.

Objective Grounds
The Act provides that 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.

Objective grounds 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. If the treatment of the part-time employee is based on the part-time status of the employee, then it is not an objective ground for less favourable treatment. However, what may be considered as not an objective ground in relation to a part-time employee may be considered an objective ground in relation to a casual part-time employee.

Pensions
The right not to be treated in a less favourable manner than a comparable full-time employee shall not apply, in relation to any pension scheme or arrangement, to a part-time employee who normally works less than 20 per cent of the normal hours of the comparable full-time employee. However, 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.

EMPLOYMENT

3.8 AGENCY WORKERS AND THE AGENCY DIRECTIVE ON TEMPORARY WORKERS

An agency worker is a person who has an agreement with an agency to work for another person. While agency workers do not have all the same employment rights as regular workers, they have the right to equal treatment in basic working and employment conditions
– see 'EU Directive on Temporary Agency Work' below.

Agency workers also have certain rights under the following employment legislation:

- **The Protection of Employees (Temporary Agency Work) Act, 2012**
- **Unfair Dismissals Acts 1977 to 2007**
- **Redundancy Payments Acts 1967 to 2007**
- **Minimum Notice and Terms of Employment Acts 1973 to 2005**
- **Organisation of Working Time Act 1997**
- **Payment of Wages Act 1991**
- **Maternity Protection Acts 1994 and 2004**
- **Employment Equality Acts 1998-2015**

It is important for the agency worker to know who is responsible for ensuring compliance with employment protection legislation – the agency or the firm for which he or she is working.

Who is considered the employer of the agency worker?
This depends on which rights the agency worker is seeking to enforce. Under the unfair dismissals legislation, the employer is the person for whom the employee actually works rather than the agency. Compliance with health and safety requirements is also the responsibility of the person or organisation for whom the agency worker is actually working. For the purposes of the **Protection of Employees (Temporary Agency Work) Act 2012** the employment agency is the employer of an Agency worker and is responsible for claims arising in respect of equal treatment of basic working and employment conditions.

For the purposes of all other employment legislation, such as redundancy payments, the party liable to pay the wages of the employee (the employment agency or client company) will, normally, be considered to be the employer of the agency worker.

The Social Welfare (Miscellaneous Provisions) Act 2003 clarifies the social insurance position of agency workers. It provides that agency workers are insurably employed and the person who pays the wages is the employer for PRSI purposes.

Part-time agency workers
Under the **Protection of Employees (Part-Time Work) Act 2001**, a part-time agency worker can only compare himself or herself to a comparable full-time employee who is also an agency worker.

Legislation that does not apply to agency workers
The Protection of Employees (Fixed-Term Work) Act 2003 applies to most employees on fixed-term contracts. However, it does not apply to agency workers.

EMPLOYMENT

3.8 AGENCY WORKERS AND THE AGENCY DIRECTIVE ON TEMPORARY WORKERS (CONTINUED)

EU Directive on Temporary Agency Work and the Protection of Employees (Temporary Agency Work) Act 2012

The EU Directive on Temporary Agency Work 2008/104/EC came into effect on 5 December 2011. It provides that all temporary agency workers must have equal treatment with regular workers from their first day at work in respect of:

- The duration of working time, rest periods, night work, annual leave and public holidays
- Pay
- Work done by pregnant women and nursing mothers, children and young people
- Action taken to combat discrimination on the grounds of sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.

Temporary agency workers must also have equal access to facilities such as childcare and must be informed of permanent employment opportunities.

The Protection of Employees (Temporary Agency Work) Act 2012

The Protection of Employees (Temporary Agency Work) Act 2012 transposes this Directive into Irish legislation and was enacted on 16th May 2012. It provides for the equal treatment for temporary agency workers as described above and defines pay for the purposes of legislation including basic pay, overtime premium and Sunday premium. All provision of the Act with the exception of 'pay', section 13 and section 22 which deal with offences came into effect on the date of enactment, the 16th of May 2012. The provisions regarding 'pay' were made retrospective. Employees on assignment on the 5th of December 2011 were entitled to equal treatment in relation to pay from that date. Agency workers who commenced assignment after the 5th of December 2011 are entitled to equal treatment with regard to pay form the date, they commence their assignment. Section 13 and section 22 were enacted on the 17th of May 2012. In relation to all other entitlements the Act is effective from the date of enactment on the 16th of May 2012.

Employment agencies

Currently, employment agencies in Ireland are regulated by **The Employment Agency Act 1971**. **The Employment Agency Regulation Bill 2009** was intended to replace the 1971 Act and strengthen the regulation of employment agencies. It proposed that employment agencies established in Ireland must have a license granted by the Minister for Jobs, Enterprise and Innovation to operate in Ireland. Employment agencies based outside Ireland would also be required to have such a license unless they were already licensed in another EEA country.

The Bill's proposals included:

- A code of practice to set out standards and practices for employment agencies to follow
- Prosecution of employment agencies from outside Ireland who fail to appear in court for offences under employment rights legislation
- Protection of whistle blowers

EMPLOYMENT

3.9 THE PROTECTION OF EMPLOYEES (FIXED TERM WORKERS) ACT, 2003

The main objective of the 2003 Act is to ensure that fixed-term employees are not unfairly discriminated against vis-à-vis their "permanent" colleagues. In essence, the Act requires that fixed-term employees are not to be treated in any "less favourable manner" than "comparable permanent" employees in respect of their benefits and other conditions of employment. However, less favourable treatment may be "justified on objective grounds" where the apparent discrimination is intended to help the employer achieve a "legitimate objective" and is "appropriate and necessary" for that purpose.

A number of other points are worth noting:

- Any attempt to contract out of the application of the 2003 Act will be void.
- Fixed-term employees must be informed of permanent vacancies that arise.
- Employers must "facilitate access" by fixed-term employees to "appropriate training opportunities to enhance" their "skills, career development and occupational mobility".
- Fixed-term employees are to have the same pension-related rights as comparable permanent employees as long as they work at least 20% of the hours of the permanent comparators.
- Breaches of the legislation can lead to awards of compensation of up to the equivalent of two years' salary. In addition, employees who have been dismissed may seek reinstatement or re-engagement (almost certainly on a contract of indefinite duration).

Fixed-term workers do not have to have completed any particular period of service with their employers before being covered by the Act. Neither do they have to work any specified minimum number of hours on a weekly basis. However, the Act does not apply to:

- members of the Defence Forces;
- trainee Gardai;
- nurses in training;
- people employed under apprenticeship schemes or on initial vocational training; or
- individuals who are engaged through employment agencies. (Agency workers are dealt with under **The Protection of Employees (Temporary Agency Work) Act, 2012**).

Prohibition of Discrimination
Employees who wish to pursue claims must be able to point to a comparator who is employed by the same employer, an associated employer, an employer referred to in a collective bargaining agreement or, in extreme cases, by another employer in the same industry or sector of employment. The claimant must also either be performing work which is the same or similar to that of the comparator or be performing work which is at least of equal or greater value to that of the comparator.

Regulation of the Use of Fixed-Term Contracts
The Act has sought to eliminate the practice of keeping employees on fixed-term contracts on a rolling basis over many years. That practice was not uncommon in Ireland - particularly in the education sector. While it has now been reduced, it does not necessarily result all the employees who were previously engaged in rolling fixed term contracts being offered contracts of indefinite duration.

Hiring of new Fixed Term Workers
Employees who are hired on the basis of fixed-term contracts must be informed in writing of the "objective condition" by virtue of which the contract will come to an end. In other words, they must be told either the date or precise event which will cause their contract to be terminated. The employee must be given this information "as soon as practicable" after they are hired. It would seem that as long as an objective condition is defined there is no additional obligation upon the employer to justify it. In other words, the employer is free to determine the period for which it wishes a fixed-term contract to endure without having to objectively justify that period.

EMPLOYMENT

3.9 THE PROTECTION OF EMPLOYEES (FIXED TERM WORKERS) ACT, 2003 (CONTINUED)

Renewing Fixed-Term Contracts
The 2003 Act incorporates a number of significant provisions in relation to the situation where an employee has reached the end of a fixed-term contract and the employer wishes to renew it.

Firstly, the Act requires that the employer inform the employee in writing of the objective grounds justifying the renewal of the fixed term "and the failure to offer a contract of indefinite duration". So, for example, a manufacturing company which normally has a stable flow of business and a correspondingly stable employee headcount might take on a number of fixed-term employees to help it deal with an exceptional order. Where the filling of that order is originally expected to take a specified period and the employees are offered a fixed-term contract for that period, the employer would clearly have objective grounds to justify renewing the fixed- term contracts for some additional time if the order takes longer than anticipated to fill.

The second point to note in relation to renewing fixed-term contracts is that where a fixed-term employee completes a third year of continuous employment after 14th July 2003, the employer may only renew the engagement on a fixed-term basis on one more occasion and for no longer than one year. The employer must then decide whether to terminate the employment – which, depending on the circumstances could give rise to a claim under **The Unfair Dismissals Acts, 1977 – 2015**, – or offer the employee a permanent position.

EMPLOYMENT

3.10 THE PROTECTION OF YOUNG PERSONS (EMPLOYMENT) ACT, 1996

This Act consolidates the law on young workers and gives effect to international rules on protecting young workers. The legislation is designed to protect the health of young workers and to ensure that work during the school year does not put a young person's education at risk. The law sets minimum age limits for employment, rest breaks and maximum working hours. It prohibits the employment of under 18's working night shifts. Employers must keep specified records for their workers who are under the age of 18 years.

Those covered by the Act
The Act applies generally to young employees under 18 years of age. Pursuant to the Act (as amended by **Section 31 of the Education Welfare Act, 2000**):

- A "child" means a person who has not reached the age of 16 years.
- A "young person" means a person who has reached 16 years but has not reached the age of 18 years.

The Minimum Age for Employment
Employers may not employ those aged under 16 in a regular full-time job. Employers may take on 14- and 15-year olds on light work:

- during the school holidays
- part-time during the school term (over 15 years only) or
- as part of approved work experience or educational programme where the work is not harmful to their safety, health, or development.

Maximum Weekly Working Hours For Under 16's
During the school term a 14-year-old may not work at all. A 15-year-old may work a maximum of 8 hours in a week. By way of work experience, both 14- and 15-year olds may work a maximum of 40 hours per week. During the summer holidays, under 16's must have at least 21 days free from work.

Time off and rest breaks for under 16's
- Half hour rest break after 4 hours work
- Daily rest break 14 consecutive hours off
- Weekly rest break 2 days off, as far as practicable to be consecutive

Working hours, time off and rest breaks for 16- and 17-year olds
- Maximum working day 8 hours
- Maximum working week 40 hours
- Half hour rest break after 41/2 hours work
- Daily rest break 12 consecutive hours off
- Weekly rest break 2 days off, as far as practicable to be consecutive

EMPLOYMENT

3.10 THE PROTECTION OF YOUNG PERSONS (EMPLOYMENT) ACT, 1996 (CONTINUED)

Limits on night and early morning work
Under 16's may not be required to work before 8am in the morning or after 8pm at night. In general, 16- and 17-year olds may not be employed before 6am in the morning or after 10pm at night. During school holidays, and on weekend nights where the young person has no school the next day, 16- and 17-year olds may work up to 11pm at night (however, please note that night work beyond 10pm requires Ministerial approval by regulation). The ban on early morning work then moves forward to 7am.

Additional regulations on night work for young persons
Regulations have been made which permit young persons to work beyond 10pm in certain circumstances as follows:

- **The Protection of Young Persons Act, 1996 (Employment in Licensed Premises) Regulations, 2001 - (S.I. 350 of 2001)**.
  These Regulations concern the employment of young persons (16 or 17 year olds) employed at any time in licensed premises (as defined) be it summer, other holidays or part-time work on general duties in a licensed premises, which premises is used in whole or in part to sell food or intoxicating liquor or both for consumption on those premises. Young persons are precluded from supplying intoxicating liquor from behind the counter in a licensed premise or supplying it for consumption off those premises.

  These Regulations provide that the young person may be required to work up until 11pm in such premises on a day, which is not immediately preceding a school day, during a school term where the young person is attending school. The regulations also require the young person not to re-commence work before 7am on the following day.

- **The Protection of Young Persons Act, 1996 (Bar Apprentices) Regulations, 2001 - (S.I. 351 of 2001)**.
  These Regulations provide that a young person (a 16 or 17 year old), employed as an apprentice in a full time capacity in a licensed premises (as defined), may be required to work until midnight on any one day and not before 8am on the following day provided that the young person is supervised by an adult.

Employment on work experience or training programmes
Persons aged 15 may be employed as part of an approved training programme, and an employer may employ a 14 or 15-year-old who is a full-time second level student as part of a work experience or educational programme. These placements are for a maximum 8 hours a day or 40 hours a week.

EMPLOYMENT

3.10 THE PROTECTION OF YOUNG PERSONS (EMPLOYMENT) ACT, 1996 (CONTINUED)

Exceptions

- **Work At Sea**
  Compensatory rest breaks in a day or a week can be given in place of the specified rest breaks for young workers employed in fishing or shipping, provided it is reasonable to vary the prescribed arrangements and the employees' trade union or representative has been consulted.

- **Defence Forces**
  The rules on hours of work, night work and minimum periods of rest do not apply to young people who are members of the Defence Forces when on active service; engaged in operational duties at sea or in aid of the civil power or in training associated with such activities.

- **Close relatives**
  Regulations modify the detail of the Act in relation to employment of close relatives in a family business or farm provided the conditions of employment meet the terms of the E.U. Directive and the health and safety of the young people concerned is not put at risk.

Duties of employers

- **Evidence of age and written permission of parents**
  Before employing a young person or child, an employer must see a copy of the birth certificate or other evidence of age and, before employing under 16's, an employer must get the written permission of a parent (or guardian).

- **Records to be kept by Employer**
  An employer must keep records of all persons employed aged under 18 years for a minimum of three years and such records should be available at the place of employment.

  Such records should contain the following information:

  - full name,
  - date of birth,
  - starting and finishing times for work,
  - wage rate and total wages paid to each employee.

EMPLOYMENT

3.10 THE PROTECTION OF YOUNG PERSONS (EMPLOYMENT) ACT, 1996 (CONTINUED)

Summary of Act to be provided to under 18 workers
Regulations made under **The Terms of Employment (Information) Act, 1994** require employers to give to their workers aged less than 18 years a copy of the official summary of **The Protection of Young Persons (Employment) Act** together with the other details of their terms of employment within one month of taking up a job.

Displaying Act summary in the workplace
Every employer who employs persons under 18 years must display the official summary (abstract) of the Act at the workplace which may be obtained from **The Information Unit of the Department of Enterprise, Trade and Innovation. The abstract, S.I. No. 3/1997**, is available online at ***www.irishstatutebook.ie***.

Offences and penalties
The Minister can take a summary prosecution for any offence under this Act.

Fines
A person guilty of an offence under the Act is liable on summary conviction to a fine of up to €1,904.61. Continuing breaches of the legislation can attract a fine of up to €317.43 per day.

EMPLOYMENT

3.11 THE PROTECTED DISCLOSURES ACTS 2014 TO 2022

A worker who discloses relevant information which came to their attention in a work-related context to their employer or various other parties which they reasonably believe to show wrongdoing is entitled to protection from penalisation under the act.

Wrongdoing is interpreted widely and is set out as follows under the act:

(a) that an offence has been, is being or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged,
(f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
(g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
(h) that a breach has occurred, is occurring or is likely to occur, or
(i) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

In general, the following are not considered to be wrongdoing under the act:

(a) Workplace grievances which are exclusively personal
(b) Disputes with your employer about your contract
(c) Information that is disclosed in a legally privileged setting
(d) If it is your job to detect, investigate or prosecute any wrongdoing and if the wrongdoing reported relates to a person other than the employer. For example, a member of An Garda Síochána who reports wrongdoing by a person outside of An Garda Síochána will not be covered by this Act.

The above lists are not exhaustive.

The definition of worker pursuant to the Act is very wide, the following are considered to be workers under the act:

(a) Employees or former employees
(b) Trainees
(c) People working under a contract for services
(d) Independent contractors
(e) Agency workers
(f) People on work experience
(g) Unpaid trainees
(h) Board members
(i) Shareholders
(j) Volunteers
(k) Job applicants

EMPLOYMENT

3.11 THE PROTECTED DISCLOSURES ACTS 2014 TO 2022 (CONTINUED)

One of the most common forms of disclosure is a disclosure made by an employee to their employer. In such cases to attract protection under the act, the employer must have a reasonable belief that the information disclosed tends to show that a wrongdoing is being committed. The reasonable belief is an objective standard. Disclosures can be made orally or in writing. Employers should bear in mind that disclosures can be made to external people, and to prescribed person within the meaning of the SI 367/2020 **Protected Disclosures Act 2014** (Disclosure to Prescribed Person) Order 2020.

Disclosures can also be made to the Office of the Protected Disclosures Commissioner.

The Protected Disclosures (Amendment) Act 2022 introduces new procedures for how a report must be handled. Employers in the private sector and charity employers with 250 or more employees must have reporting procedures in compliance with the act.

All Employers in the areas of financial services, products and markets and prevention of money laundering and terrorist financing, transport safety, and protection of the environment must have reporting procedures in compliance with the act.

Public bodies are required to have are required to have reporting procedures in complaint with act.

To comply with the requirements an employer must appoint an internal person or department to deal with such matters, or in the alternative an external third party must be appointed.

Employers must establish and operate internal reporting channels that makes sure the employees identity stays confidential.

Responding to an employee's disclosure
An Employer must adhere to the following timelines for acknowledging, responding to, and addressing an employee disclosure. The disclosure must:

- Be acknowledge within 7 days
- Follow up on the report with the employee
- Provide feedback to the employee, within 3 month detailing actions taken or what actions are planned

Information on the procedures applicable to the making of reports must be provided by employers.

Protection from penalisation
Employees must not be penalised for making a protected disclosure.

An employee is considered to be penalised if there is any act or omission that is detrimental to them. Such actions include but are not limited to:

- dismissal,
- unfair treatment
- threats of reprisal
- loss or promotion
- disciplinary action
- and other action to the detriment to employee

A disclosure is presumed to be a protected disclosure unless the contrary is proved by the employer. However, no such presumption exists with regarding alleged penalisation arising out of the making of a protected disclosure.

EMPLOYMENT

3.11 THE PROTECTED DISCLOSURES ACTS 2014 TO 2022 (CONTINUED)

If an employee is dismissed or penalised for having made a protected disclosure they may bring a case to the WRC. If successful, they can be awarded compensation equivalent to up to five years remuneration. Furthermore, an employee can apply to the circuit court for orders compelling their employer to refrain from penalising them pending the outcome of the WRC proceedings, as part of this, the court may order the employer to pay the employees' wages pending the outcome of the proceedings.

Making a disclosure which employee knows to be false or misleading is a criminal offence, and can attract a fine of up to €5,000 on conviction.

EMPLOYMENT

3.12 GRIEVANCE PROCEDURES

In any organisation workers may have problems or concerns about their work, working environment or working relationships that they wish to raise and have addressed. A grievance procedure provides a mechanism for these to be dealt with fairly and speedily, before they develop into major problems and potentially collective disputes. Employers are statutorily required in the written statement of terms and conditions of employment to specify, by description or otherwise, a person to whom the employee can apply if they have a grievance and they are also required by statute to allow a worker to be accompanied at certain grievance hearings. There are statutory guidelines available with regard to grievance and disciplinary procedures available online and at a minimum these should be followed.

Formulating procedures
It is in everyone's best interest to ensure that employees' grievances are dealt with quickly and fairly and at the lowest level possible within the organisation at which the matter can be resolved.

Guidance with regard to what a grievance procedure should contain and the safe guards which apply are set out in **Statutory Instrument 146 of 2000 – Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000**.

Management is responsible for taking the initiative in developing grievance procedures which, if they are to be fully effective,need to be acceptable to both those they cover and those who have to operate them. It is important therefore that senior management aims to secure the involvement of workers and their representatives, including trade unions where they are recognised and all levels of management, when formulating or revising grievance procedures.

In circumstances where a grievance may apply to more than one person and where a trade union is recognised it may be appropriate for the problem to be resolved through collective agreements between the trade union(s) and the employer.

Essential features of grievance procedures
Grievance procedures enable individuals to raise issues with management about their work, or about their employers', clients' or their fellow workers' actions that affect them. It is impossible to provide a comprehensive list of all the issues that might give rise to a grievance but some of the more common include terms and conditions of employment; health & safety; bullying and harassment; new working practices and equal opportunities. Procedures should be simple, set down in writing and rapid in operation. They should also provide for grievance proceedings and records to be kept confidential. Bullying and Harassment will have its own policy and procedure as discussed below.

It is good practice for individuals to be accompanied at grievance hearings. In order for grievance procedures to be effective it is important that all workers are made aware of such procedures and understand them and if necessary that supervisors, managers and worker representatives are trained in their use. Wherever possible every worker should be either given a copy of the procedures or provided with access to them. Special allowance should be made for individuals whose first language is not English or who have a visual impairment or some other disability.

3.12 GRIEVANCE PROCEDURES (CONTINUED)

The procedure in operation
Most routine complaints and grievances are best resolved informally in discussion with the worker's immediate line manager. Dealing with grievances in this way can often lead to speedy resolution of problems and can help maintain the authority of the immediate line manager who may well be able to resolve the matter directly. Both manager and worker may find it helpful to keep a note of such an informal meeting.

Where the grievance cannot be resolved informally it should be dealt with under the formal grievance procedure. The number of stages contained in the procedure will depend on the size of the organisation, its management structure and the resources it has available. In larger organisations the procedure might contain all the following stages, but for the smaller business the first and final stages might be sufficient:

- **First Stage**
  Workers should put their grievance, preferably in writing, to their immediate line manager. Where the grievance is against the line manager the matter should be raised with a more senior manager. If the grievance is contested the manager should invite the worker to attend a hearing in order to discuss the grievance and should inform the worker of his or her statutory right to be accompanied depending on the nature of the grievance. The manager should respond in writing to the grievance within a specified time. If it is not possible to respond within the specified time period, the worker should be given an explanation for the delay and told when a response can be expected.

- **Second Stage**
  If the matter is not resolved at Stage 1 the worker should be permitted to raise the matter in writing with a more senior manager. The choice of this person will depend on the organisation but could be a departmental, divisional or works' manager. The manager should arrange to hear the grievance within a specified period and should inform the worker of the right to be accompanied. Following the hearing the manager should, where possible, respond to the grievance in writing within a specified period. If it is not possible to respond within the specified time period, the worker should be given an explanation for the delay and told when a response can be expected.

- **Final Stage**
  Where the matter cannot be resolved at Stage 2 the worker should be able to raise their grievance in writing with a higher level of manager than for Stage 2.The choice of this person will depend on the organisation but could include directors or in certain cases the Chief Executive or Managing Director. Workers should be permitted to present their case at a hearing and should be informed of their right to be accompanied. The manager dealing with the grievance should give a decision on the grievance within a specified period and clearly indicate that this is the final stage of the grievance procedure. If it is not possible to respond within the specified time period, the worker should be given an explanation and told when a response can be expected.

EMPLOYMENT

3.12 GRIEVANCE PROCEDURES (CONTINUED)

In most organisations it should be possible to have at least a two-stage grievance procedure. However, where there is only one stage, for instance in very small firms where there is only a single owner/manager, it is especially important that the person dealing with the grievance acts impartially. In certain circumstances it may, with mutual agreement, be helpful to seek external advice and assistance during the grievance procedure. For instance, where relationships have broken down an external facilitator might be able to help resolve the problem. Where the grievance is against the Chief Executive or Managing Director or Owner an external stage using some form of alternative dispute resolution, such as referral to the Workplace Relations Commission's free mediation service, might be helpful.

Special considerations
Some organisations may wish to have specific procedures for handling grievances about unfair treatment, for example, discrimination or bullying and harassment, as these subjects are often particularly sensitive. Sometimes a worker may raise a grievance about the behaviour of a manager during the course of a disciplinary case. Where this happens and depending on the circumstances, it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered. Consideration might also be given to bringing in another manager to deal with the disciplinary case.

Records
Records should be kept detailing the nature of the grievance raised, the employer's response, any action taken and the reasons for it. These records should be kept confidential and retained in accordance with the GDPR and Data Protection legislation.

Bullying
The terms 'bullying' and 'harassment' are often used together or interchangeably, however they are in fact different concepts. Harassment in an employment context relates to one of the 9 grounds of discrimination and is dealt with under the provision of the **Employment Equality Acts**. While bullying and harassment are different concepts, it is permissible to use the same process for each.

There is a new code of practice on bullying entitled **S.I 674/2020 Industrial Relations Act, 1990 (Code of Practice for Employers and Employees on the Prevention of Bullying at Work) Order 2020**. This took effect on the 23rd of December 2020, replacing the previous code of practice.

This statutory instrument provided definitions of both harassment and bullying. It also provides guidance regarding the management of workplace bullying and preventative measures which should be taken. If further outlines the formal procedures which should apply surrounding bullying, as well as detailing the roles of the Health and Safety Authority and the Workplace Relations Commission. While the code is not legally binding, any contravention of the code can be used as evidence if an employer is prosecuted for an offence under the **Safety Health and Welfare at Work Act, 2005**. In addition, failure to follow the code of practice is admissible in proceedings before the Workplace Relations Commission and the Labour Court.

In keeping with case law in the area the code of practice confirms that bullying does not include the following:

- Performance management
- Feedback, guidance, advice
- Differences of opinion
- Reasonable corrective action
- Workplace conflict and disagreements

Employers should have in place, anti-bullying policies and procedures for dealing with allegations of bullying if such procedures are not already in place. The code of practice provides guidance on the creation of such procedures at appendix one of the code of practice. Employers should review their procedures in the context of the new code of practice.

EMPLOYMENT

3.12 GRIEVANCE PROCEDURES (CONTINUED)

The code of practice now provides for an informal process, a second informal process followed by a formal process.

Should an employee be unhappy with the outcome of a bullying investigation, they can refer the matter to the WRC pursuant of **s.13 of the Industrial Relations Act, 1969.** The WRC will review the process utilized by the employer but will not rehear the complaint, however it may recommend that certain actions are taken by the employer, including recommendations relating to the process invoked and potentially a recommendation that the employer rehear the complaint. Of course, the WRC can also uphold the process conducted by the employer and recommend that the outcome is well founded and should stand.

The Code of Practice also outlines the role the Health and Safety Authority has in relation to bullying in the workplace. A complaint can be made to the Workplace Contact Unit. The WCU will then contact the employer regarding the matter. The WCU can provide advice through a request for information. If a complainant is made it can assess how a bullying complaint is being dealt with and make recommendations in that regard. It can also take enforcement action, and can refer matters to the Director of Public Prosecutions with certain recommendations where employees have not been adequately protected by their employer from the effects of bullying and harassment,

Set out below is a summary of steps to take to investigate a bullying or harassment allegation. This is not to be used as a substitute for a comprehensive bullying procedure which all employers should have in place.

1. Attempt to have the issue dealt with by informal means. If this cannot be done, then arrange for a formal investigation.
2. The terms of reference of the investigator are set out and made available to both parties.
3. Establish what actions if any have occurred within the company.
4. Agree a time frame.
5. Interviews to be held in a formal setting with a note taker (to protect the investigator).
6. Meet the witnesses.
7. Analyse the findings.
8. Produce the report.
9. Allow both the complainant and the alleged perpetrator to comment on the findings before any action is taken or any decision made by management.
10. Inform both parties of the findings of the investigation.
11. Take appropriate measures.

EMPLOYMENT

3.13 PENSIONS

There is **no legal obligation** on employers to provide occupational pension schemes for employees. However, more and more employers are putting schemes in place and there is positive government encouragement to do so.

Personal Retirement Savings Accounts ("PRSAs") were introduced by **The Pensions (Amendment) Act, 2002**. A PRSA is an investment vehicle used for long term retirement provision by employees, self-employed, homemakers, carers, unemployed and any other category of person. **From 15th September 2003, employers must offer access to at least one standard PRSA** to any employee who is not eligible to join an occupational pension scheme within 6 months of joining employment and must offer a PRSA for AVC purposes if there is no facility for AVCs within the scheme.

A PRSA is a contract between an individual and an authorised PRSA provider in the form of an investment account and the PRSA benefits will be determined by the contributions paid by and on behalf of the contributor and the investment return on those contributions.

There are two types of PRSA – namely a Standard PRSA and a non-Standard PRSA – the main difference being that the maximum charges under a Standard PRSA cannot exceed 5% of contributions paid and 1% per annum of the PRSA assets.

The Pensions Board and the Revenue Commissioners are jointly responsible for the product approval process. The Pensions Board supervises the activities of providers in relation to their approved products and monitors compliance with the legislation regarding PRSAs. As part of the Boards regulatory role a register of PRSA providers and their products is available, click on the link to PRSA Providers & Product Register below.

EMPLOYMENT

3.14 PERFORMANCE APPRAISAL RECORD

NAME: ..... **DEPARTMENT:** .....

JOB TITLE: .....

GRADE: ..... **DATE OF APPOINTMENT:** .....

PERIOD OF REVIEW **FROM:** ..... **TO:** .....

Please refer to any notes made during the review period.

	Highly effective	Effective	Developing	Unsatisfactory
Personal attributes				
Plans work	☐	☐	☐	☐
Thinks before acting	☐	☐	☐	☐
Takes a logical approach to problem solving	☐	☐	☐	☐
Looks for a practical solution	☐	☐	☐	☐
Looks at both long and short term effects of decisions and actions	☐	☐	☐	☐
Thinks of impact and decisions on other departments/customers	☐	☐	☐	☐
Strives to work for the benefit of the company	☐	☐	☐	☐
Reviews work	☐	☐	☐	☐
Takes responsibility for both good and bad work	☐	☐	☐	☐
Pays attention to detail	☐	☐	☐	☐
Knows personal limits and when to ask for help	☐	☐	☐	☐
Is adaptable to new ideas	☐	☐	☐	☐
Is energetic and enthusiastic	☐	☐	☐	☐
Is committed to the success of the company	☐	☐	☐	☐
Strives to achieve results	☐	☐	☐	☐
Puts the customer first	☐	☐	☐	☐
Knowledge/Proficiency				
Understands the company and its products	☐	☐	☐	☐
Developed product knowledge	☐	☐	☐	☐
Competently handles telephone	☐	☐	☐	☐
Operates own jobs/computers/machines	☐	☐	☐	☐
Operates computers/machines of other peoples' jobs	☐	☐	☐	☐
Completes work within laid down timescale	☐	☐	☐	☐

3.14 PERFORMANCE APPRAISAL RECORD (CONTINUED)

Please refer to any notes made during the review period.

	Highly effective	Effective	Developing	Unsatisfactory
Interpersonal				
Communicates articulately and succinctly	☐	☐	☐	☐
Is a team player	☐	☐	☐	☐
Has a network of contacts who can help within the company	☐	☐	☐	☐
Has a network of contacts who can help outside the company	☐	☐	☐	☐
Changes behaviour to fit the situation	☐	☐	☐	☐
Negotiates	☐	☐	☐	☐
Puts forward objective ideas	☐	☐	☐	☐
Listens to other ideas	☐	☐	☐	☐
Encourages others to contribute ideas	☐	☐	☐	☐
Is confident and loyal	☐	☐	☐	☐
Lobbies objectively	☐	☐	☐	☐
Decision making				
Researches for information on which to base decisions	☐	☐	☐	☐
Can think on own feet	☐	☐	☐	☐
Is prepared to put forward ideas	☐	☐	☐	☐
Innovates	☐	☐	☐	☐
Knows when to delegate downwards	☐	☐	☐	☐
Knows when to delegate upwards	☐	☐	☐	☐

EMPLOYMENT

3.14 PERFORMANCE APPRAISAL RECORD (CONTINUED)

Please refer to any notes made during the review period.

	Highly effective	Effective	Developing	Unsatisfactory
Management				
Plans and prepares for self	☐	☐	☐	☐
Plans and prepares for department	☐	☐	☐	☐
Works to maintain morale	☐	☐	☐	☐
Motivates staff	☐	☐	☐	☐
Maintains discipline	☐	☐	☐	☐
Coaches and identifies training needs	☐	☐	☐	☐
Encourages participation	☐	☐	☐	☐
Nurtures subordinate progress	☐	☐	☐	☐
Listens and encourages staff to discuss issues	☐	☐	☐	☐
Encourages staff to think for themselves	☐	☐	☐	☐
Praises good ideas	☐	☐	☐	☐
Appreciates budget restraint	☐	☐	☐	☐
Seeks the best deal on behalf of the company	☐	☐	☐	☐
Channels work of self and staff to the success of the company	☐	☐	☐	☐

Any additional comments/matters arising from appraisal interview

.....

.....

.....

.....

Overall performance ☐ ☐ ☐ ☐

Interview carried out:.....(date)

Signed:.....(job holder)

Signed:..... (appraiser)

EMPLOYMENT

3.15 EMPLOYER LETTER ADVISING STAFF OF HELPLINE SERVICES

The following is a sample letter to advise staff of helpline benefits provided by ARAG:

HELPLINE SERVICES NOW AVAILABLE TO STAFF

(Name) (Company Name)

(Address) (Company Address)

(Date)

Dear employee

We have arranged for all staff to have access to a number of telephone helpline services which we hope you and your family will find useful. The helplines are supplied by ARAG Legal Protection Limited. ARAG is an established provider of helpline services. These helplines operate 24 hours a day, 365 days a year and are completely confidential.

Health & Medical Information Service
This new helpline service can provide you with information on health and fitness as well as non-diagnostic advice on medical matters. Qualified nurses can talk through any health problems with you and provide information on all types of surgical and medical procedures.

Although the helpline is available 24 hours a day, advisers are only immediately available between the hours of 9am and 7pm including Bank Holidays and weekends. During the hours of 7pm and 9am the assistance service team take messages and the Health and Fitness Adviser makes contact the next day or at the convenience of the client.

Health Services
If you need to find a local GP, dentist, optician, pharmacist or hospital the Helpline can advise you who or what is available in your area.

Travel Advice
The Helpline can advise you on what precautions you should be taking with regards to vaccinations and Malaria

Medical Information
This non-diagnostic service can provide support and compliment the advice that you have already been given by your doctor.

Lifestyle Help and Support
General advice will be given with back-up information on where to obtain specialist help and support.

To contact this service please phone 0818 254 164. All calls are recorded by the helpline provider in order to check and improve service standards.

EMPLOYMENT

3.15 EMPLOYER LETTER ADVISING STAFF OF HELPLINE SERVICES (CONTINUED)

Counselling Service
This service is available to you, and any member of your immediate family who permanently lives with you. Modern living creates a multitude of strains and stresses on individuals and families alike. Counselling is a process of learning to understand yourself and others by looking objectively at your benefits and attitudes. All the counsellors are members of The British Association for Counselling and Psychotherapy and are covered by their code of Ethics and Practice.

Callers' concerns include:

• Stress • Anxiety • Depression • Health • Relationships • Bereavement

Counsellors will talk you through your problems and help you find ways of overcoming them.

Remember, you choose when you call, for how long and what you talk about.

To contact this service please phone 1800 670 407. These calls are not recorded.

Additional Information
The Helpline Services are provided by ARAG Legal Protection Limited is authorised and regulated by the Financial Services Authority and is subject to the Irish Financial Regulator's conduct of business rules. The regulatory system which applies in Ireland is different to that which applies in the UK. There is no limit to the amount of times you can use these Helplines

Yours sincerely .....

FAMILY PROVISIONS

4.1 MATERNITY AND PATERNITY RIGHTS

Employees who satisfy the requirements set out in the **Paternity Leave and Benefits Act, 2016** enjoy the benefits set out below at page 74, while female employees who can satisfy the relevant qualifying conditions enjoy the following statutory rights pursuant to **The Maternity Protection Act, 1994** and **The Maternity Protection (Amendment) Act, 2004**:

(a) Paid time off to receive ante-natal care.

(b) A minimum of 26 weeks maternity leave with an option to take an additional 16 weeks unpaid leave.

(c) Protection from dismissal by reason of pregnancy or childbirth.

(d) Maternity benefit pursuant to adequate PRSI contributions.

(e) Right to return to work after maternity leave.

(f) Offer of alternative work before being suspended on maternity grounds.

(g) Remuneration on suspension on maternity grounds.

The rules on pregnancy and maternity are very complex and any query should be raised with the employer who will endeavour to provide further information. See below for the benefits available to qualifying employees under **The Paternity Leave and Benefit Act, 2016.**

Compulsory maternity leave
An employee must not be allowed to work for a period of 2 weeks commencing with the day on which childbirth is expected the employer will commit an offence and be liable on summary conviction to a fine should the employee be permitted to work past this date.

Exercising rights
The female employee may not exercise her statutory and contractual rights separately.

Employers' obligation to inform women of rights
There is an implied contractual duty for you to inform employees of their benefits and how to take advantage of them.

Dismissal

(a) The dismissal of a female employee is automatically unfair, regardless of her length of service or hours of work, if:
- **i** It is on maternity related grounds and takes place during her pregnancy or statutory maternity leave; OR
- **ii** During the four weeks following the end of the maternity leave period, she has since then been incapable of work due to a medically certified illness.
- **iii** It occurs after the end of her statutory maternity leave period and is on grounds connected with that leave.
- **iv** On grounds of Health & Safety considerations which could give rise to maternity suspension.
- **v** On grounds of redundancy and you have not offered any suitable alternative vacancy which is available.
- **vi** Unfairly selected for redundancy for one of the above reasons.

(b) The protection applies automatically from the start of the employee's pregnancy. There is an automatic right to receive written reasons for dismissal while pregnant or during the statutory maternity leave period.

FAMILY PROVISIONS

4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

Ante-natal care
The Employer is not required by statute to pay your salary during maternity leave or additional maternity leave. You may qualify for Maternity Benefit which is a Department of Social and Family Affairs payment provided you have sufficient PRSI contributions. You should contact the Department of Social and Family Affairs directly in relation to this matter.

Public holidays and annual leave
You are entitled to the benefit of any public holidays that occur during your maternity leave (including additional maternity leave). Time spent on maternity leave (including additional maternity leave) is treated as though you have been in employment, and this time can be used to accumulate annual leave and public holiday entitlement.

Stillbirths and miscarriages
If you have a stillbirth or miscarriage any time after the 24th week of pregnancy, you are entitled to full maternity leave. At the present time this means a basic period of 26 weeks and 16 weeks of additional maternity leave. If you have satisfied the PRSI requirements, Maternity Benefit is payable for the 26 weeks of the basic maternity leave.

Father's entitlement to maternity leave
Fathers are only entitled to maternity leave if the mother dies within 24 weeks of the birth. In these circumstances, the father may be entitled to a period of leave, the extent of which depends on the actual date of the mother's death. Where a father qualifies for leave under these circumstances, he also has an optional right to the additional maternity leave. From 1st September 2016, fathers and other qualifying persons enjoy certain rights under the **Paternity Leave and Benefit Act, 2016**. These benefits are set out below.

Postponing maternity leave
Section 7 of **The Maternity Protection (Amendment) Act, 2004** provides for postponement of maternity leave in strict circumstances, that is, if your baby is hospitalised. This right to postpone leave applies whether you are on maternity leave, or on additional unpaid maternity leave. However, please note that the Employer has the right to refuse your application to postpone your maternity leave.

Returning to work
You are entitled to return to work to the same job with the same contract of employment. However, if it is not reasonably practicable for the Employer to allow you to return to your job, then you will be provided with suitable alternative work. This new position will not be on terms substantially less favourable than those of your previous job.

If you are breastfeeding, you may be entitled to some time off or a reduction in hours without loss of pay for up to 26 weeks after the birth.

If you decide not to return to work after your period of maternity leave, you are obliged required to give your employer notice in the usual manner.

FAMILY PROVISIONS

4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

Time off for medical visits
Once your pregnancy is confirmed you may take reasonable time off for medical visits connected with the pregnancy. There is no maximum or minimum amount of time off specified for these visits. Rather, you are entitled to as much time off as is necessary to attend each visit. You are required to provide the Employer with medical evidence confirming the pregnancy, giving 2 weeks' notice of your medical visits. You should show your appointment card when requested by the Employer at any time after your first appointment. You may also take time off for medical visits after the birth for up to 14 weeks following the birth including any time taken on maternity leave after the birth. You are entitled to be paid while keeping these medical appointments both before and after the birth.

Ante-natal classes
You are entitled to take paid time off work to attend one set of ante-natal classes over all pregnancies (but not the last three of the series of classes as these would normally occur after maternity leave has started). Similarly, expectant fathers are entitled to a once-off right to paid time off work to attend the two ante-natal classes immediately prior to the birth.

Rules
You must give the Employer at least 4 weeks' written notice of your intention to take maternity leave and you must also provide the Employer with a medical certificate confirming the pregnancy. If you intend to take the additional 16 weeks' maternity leave you must provide the Employer with at least 4 weeks' written notice. Both these notices can be given to the Employer at the same time.

If you are certified by your doctor as needing to start maternity leave for medical reasons, your maternity leave will start on the earlier date as specified on the medical certificate. In this case you are considered to have complied with the notice requirements.

You must give your employer at least 4 weeks' written notice of your intention to return to work.

It is important to comply with these notice requirements, as failure to do so may cause loss of rights.

You must notify your employer as soon as possible if you wish to postpone your maternity leave, however the Employer may refuse to allow you to do so.

FAMILY PROVISIONS

4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

Health & Safety Provisions

i You, as employers, are under a general duty to take reasonable care for the health and safety of employees.
ii You may need to take specific measures to address the hazards posed to new mothers and pregnant employees.
iii If your work force includes women of childbearing age, you are under an obligation to carry out risk assessments in relation to the risk group.
iv You must take preventative or protective measures regarding any identified risks.
- If the risk is not avoided by this then you must alter the woman's working conditions or hours of work.
- If this is not reasonable or would not avoid the risk, then you must offer the woman any suitable available work.

v A woman must be moved off night work if necessary, for health and safety reasons.
vi An employee suspended from work by virtue of certain specified Health and Safety provisions due to pregnancy, birth or breast feeding is entitled to:
- Be offered suitable alternative work, where available before suspension.
- While suspended, to be paid normal remuneration except in respect of any period during which you have offered her suitable work which was unreasonably refused.

vii It is automatically unfair to dismiss a woman because of a requirement to suspend her on health and safety grounds.
viii It is not unlawful for you to discriminate against a woman in the risk group on the ground of her sex if it is necessary in order to comply with its health and safety obligations in relation to the specific risks she faces.

FAMILY PROVISIONS

4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

Risk Management
The Safety, Health and Welfare at Work Act, 1989 and **The Safety, Health and Welfare at Work (Pregnant Employees) Regulations, 2000 (S.I. 218/2000)** require employers to carry out risk assessments in respect of their employees. The Pregnant Workers Directive requires specific risk assessment for pregnant employees.

In Ireland, because of the board framework of the health and safety legislation, such risk assessment was required in any event, although not specifically provided for in respect of pregnant workers as a separate group of workers. The 1994 Regulations require employers to carry out a specific risk assessment for pregnant women even if there are no pregnant employees in the firm. As soon as an employer is on notice of an employee's pregnancy or the fact that she has just given birth to a child or is breastfeeding, the employer, must reassess the risk in the workplace for that employee without delay. Until the risks are at an acceptable level pregnant workers and new mothers must not be exposed to these risks. The employer must move the employee to alternative work if a risk assessment shows unacceptable risks or if the employee cannot be required to perform night work.

If this is not technically or objectively feasible or if the other work is not suitable or a move cannot reasonably be required on duly substantial grounds, the employee must be granted health and safety leave and receive payment for the first three weeks of that leave. The entitlement to leave on health and safety grounds is provided for in the 1994 Act, s 18. The employee is entitled to receive for any period after the first twenty-one days, the employee will be entitled to social welfare benefits.

The health and safety leave can end when the risk no longer exists, as provided for in the 1994 Act, s 20. Employers are not entitled to dismiss employees if they are unable to work during pregnancy, just after giving birth or while breastfeeding, if that inability to work arises for health and safety reasons.

Paternity Rights
Under the **Paternity Leave and Benefit Act, 2016** an employee who is a 'relevant parent' of a child is entitled to two weeks leave to assist following the birth or adoption of their child.

This period of leave is available to the father of the child, as well as the spouse, civil partner, or co-habitant of the mother of the child, if the child is a donor received child, the spouse, civil partner or cohabitant of the mother are entitled to the benefit under the act. If the child is adopted, the spouse, civil partner or cohabitant of the mother adopting the child may benefit under the act. In the case of a same sex couple adopting a child, the parent nominated to be the 'relevant parent' is entitled to the benefit under the act.

An employee who meets the criteria is entitled to a payment from the Department of Social Protection if they have the required PRSI contributions. Similarly, to maternity leave, the employer is not obliged to pay the employee during this period of leave but is not precluded from doing so. That said, a similar policy should be adopted to both maternity leave and paternity leave to avoid a potential claim under The Employment Equality Acts.

The employee must notify the employer in writing as soon as reasonably practicable but in any event at least 4 weeks in advance of their intention to take the leave. The notification should include a statement from a registered medical practitioner confirming the pregnancy and detailing the expected week of confinement. The employee should also inform the employer of the duration of the leave they intend to take. If the date of confinement is earlier than expected 7 days' notice is sufficient. In the case of adoption, the employer should be informed as soon as possible, and a copy of the certificate of placement must be provided to the employer no later than four weeks prior to the date of placement.

FAMILY PROVISIONS

4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

Paternity Rights (continued)
The leave must not be taken prior to the date of confinement (or placement) and must be taken not later than 26 weeks following that date.

The date of the commencement of the leave can be delayed if the confinement date is later than expected, or if the placement date is postponed. It is also permissible to postpone the leave if the relevant parent is ill, or in the event of the hospitalisation of the child.

The employer should keep a record of paternity leave taken, including the dates and times of the leave taken and the period of employment concerned. These records must be retained for a period of 8 years. It is an offence to fail to maintain such records.

There is a high level of protection afforded to employees who avail of this form of leave. Employees must not be dismissed or suspended during this period of leave, nor should the employee be penalised or threatened with penalisation for exercising their rights under this act.

An employee on paternity leave should have their employment rights maintained as if there were not absent. They continue to accrue annual leave and any other benefit, other than remuneration (unless they are so entitled by custom and practice or contractual obligation of the employer), during their absence. The employee must be allowed to return to their position following the period of leave. If they are not so permitted, they will be deemed to have been unfairly dismissed, unless a there is a genuine redundancy situation in being.

FAMILY PROVISIONS

4.2 PARENTAL LEAVE

The Parental Leave Acts, 1998 to 2019 provides that employees with one year's service are entitled to take parental leave of up to 26 weeks in respect of each child not later than the day on which the child concerned attains the age of 12 years. If you adopt a child between the ages of 10 – 12 you can take parental leave for up to two years after the adoption order takes effect. In respect of a child who has a disability or long-term illness leave may be taken not later than the day on which the child attains the age of 16 years.

A period of parental leave shall not commence before a time when the employee concerned has completed one year's continuous employment with the employer from whose employment the leave is taken. However, where an employee will not have completed one year's continuous employment with his or her employer on the latest day for commencing a period of parental leave, but has completed three months of such employment on the latest day for commencing a period of parental leave, the employee shall be entitled to parental leave for a period of one week for each month of continuous employment that he or she has completed with the employer at the time of commencement of the leave.

The relevant parent in relation to a child means a person who is the natural parent, the adoptive parent or the adopting parent in respect of the child or acting in loco parentis to the child.

Parent leave can be taken in a block of 26 weeks or in two separate periods each consisting of not less than 6 weeks, or if the employer agrees, in periods of days hours etc. There must be a gap of 10 weeks between the two periods of parental leave per child.

An employee must give written notice to their employer of their intention to take parental leave. Employees should inform their employer in writing at least 6 weeks before the leave is due to start. The notice should state the starting date and how long the leave will last. After this not less than 4 weeks before the leave is due to start, an employee will need to sign a document and the employer must confirm the details of the leave. An employer may request the employee to furnish him or her such evidence as to the date of birth of the child, the employee being a relevant parent and if relevant the disability or illness of the child.

Employers must keep records of all parental leave taken by their employees. These records must include the period of employment of each employee and the dates and times of the leave taken. Employers must keep these records for 8 years. If an employer fails to keep records, they may be liable to a fine of up to €2,000.

Apart from a refusal on the grounds of non-entitlement, an employer may also postpone the leave for up to 6 months. This must be done before the confirmation document is signed.

Grounds for such a postponement include:

- lack of cover
- the fact that other employees are already on parental leave.

Normally only one postponement is allowed. An employee is entitled to return to their job following parental leave unless it is not reasonably practicable for the employer to allow the employee to return to their old job. If this is the case an employee must be offered a suitable alternative on terms not substantially less favourable compared with the previous job.

FAMILY PROVISIONS

4.2 PARENTAL LEAVE (CONTINUED)

When an employee is returning to work after taking parental leave, the employee is entitled to ask for a change in their work pattern or working hours for a set period. The employer must consider the request being mindful of the Labour Relations Commission Code of Practice on Access to Part-Time Working, however the employer is not obliged to grant the request.

PARENTAL LEAVE (AMENDMENT) ACT, 2019

Under the **Parental Leave (Amendment) Act, 2019**, a number of changes were introduced in relation to parental leave. These changes were introduced on a phased basis between September 2019 and September 2020. Under the act the following changes have taken place:

- From 1st September 2019 parental leave for eligible children increased from 18 weeks to 22 weeks.
- From 1st September 2020 parental leave for eligible children increased from 22 weeks to 26 weeks
- An increase from 8 years of age to 12 years of age with regard to children in respect of whom a parent can seek parental leave took effect.
- A paid parental leave scheme in which parents are each entitled to take seven weeks paid leave during their child's first two years took effect in November 2019.

4.2A PARENTS LEAVE

Parents leave, which was initially applied to both parents of a child born after the 1st of November 2019 or where a child is adopted, where that child was placed with their adoptive parents after the 1st of November 2019 entitles both parents to seven weeks leave. This leave must be taken within the first two years of the childs' life, or within two years of the placement of the child in the case of adoption. During this period of leave, employees may qualify for Parents Benefit.

The period of leave and the payment which an employee may be entitled to does not change in the case of multiple births or adoptions which take place at the same time.

An employer does not have to pay an employee while on parents leave, however they may top up the parents benefit payment should they wish to do so.

From August 2024 the current period of seven weeks leave will increase to nine weeks. The parent's benefit will increase from 7 weeks to 9 weeks.

FAMILY PROVISIONS

4.3 ADOPTIVE LEAVE

The Adoptive Leave Act, 1995 (as amended by **The Adoptive Leave Act, 2005**)
An employed adopting mother or sole male adopter is entitled to 24 weeks adoptive leave, attracting a social welfare payment if eligible and 16 weeks unpaid adoptive leave. In general, the leave commences on the day of placement, but, in the case of foreign adoption, some or all of the leave may be taken immediately before the day of placement.

Where an adoptive mother dies, the adopting father is entitled to a period of leave equivalent to the outstanding balance of the adopting mother's leave. Employees must give at least four weeks written notice of:

- taking adoptive leave
- taking additional adoptive leave
- returning to work

An employer is also entitled to be notified of the date of placement and given a certificate of placement as soon as is practicable.

The act is due to be amended to extend the benefits to male same sex couples. Social welfare benefit, if the employee is eligible, is available during adoptive leave.

FAMILY PROVISIONS

4.4 CARER'S LEAVE

The Carer's Leave Act, 2001 allows employees in Ireland to leave their employment temporarily to provide full-time care for someone in need of full-time care and attention. The minimum period of statutory period of leave is 13 weeks and the maximum period is 104 weeks. However, your employer may allow a shorter period. The person who will be cared for does not need to be a family member or spouse, they could be a friend, colleague, etc.

Carer's leave from employment is unpaid but the Carer's Leave Act ensures that those who propose to avail of carer's leave will have their jobs kept open for them for the duration of the leave. There is a payment available for the period of leave from the Department of Employment Affairs and Social Protection if certain eligibility criteria are met. (Eligibility for Carer's Benefit will not be a prerequisite for carer's leave entitlement but employees who meet the Department of Employment Affairs and Social Protection criteria will also be able to apply for Carer's Benefit). The person you are proposing to care for, must be deemed to need full-time care and attention by a deciding officer of the Department of Employment Affairs and Social Protection. (The decision by the Department is reached based on information provided by the family doctor (GP) of the person whom you will be caring for). The person you propose to care for must be so disabled as to require:

- continuous supervision and frequent assistance throughout the day in connection with their normal personal needs. (For example, help to walk and get about, eat or drink, wash, bathe, dress, etc.). Or,
- continuous supervision in order to avoid danger to themselves. The main provisions of the Carer's Leave Act are:
- There is a minimum service requirement, that is, an employee is required to have 12 months' continuous service with his/her employer in order to be eligible to apply for carer's leave.
- Not more than one employee may be on carer's leave, in respect of any one relevant person, at any one time.
- An employee may not be on carer's leave in respect of two or more relevant persons at any one time. (An exception is where the two relevant persons live together). This exception can only be exercised once.
- Employees may not be dismissed because they exercise their right to carer's leave.
- In general, carer's leave may be taken as a block or in discontinuous periods, subject to a minimum number of 13 weeks and a maximum of 104 weeks.
- 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.

FAMILY PROVISIONS

4.4 CARER'S LEAVE (CONTINUED)

A person can apply for carer's leave for one continuous period of 104 weeks for each relevant person or, for several periods, the combined duration of which does not exceed a total of 104 weeks from the date when you commenced carer's leave.

Generally, you can only be on carer's leave for one person at a time. However, if there are 2 people living together both of which are in need of full-time care within the meaning of the act, it is possible to get carer's leave for both individuals simultaneously. In such a situation the employee is entitled to a maximum of 208 weeks leave.

An employer may refuse (on reasonable grounds) to permit you take a period of carer's leave which is less than 13 weeks duration. Where such a refusal takes place, it must be specified in writing to the employee setting out the grounds for refusing this leave.

Where carer's leave is not taken by an employee in one continuous period of 104 weeks, there must be a gap of at least six weeks between periods of carer's leave taken in respect of the same relevant person.

If the carer's leave has terminated, you cannot commence another period of carer's leave to care for a different person until a six-month period has elapsed since the termination of the previous period of carer's leave.

No less than two weeks before the commencement of carers leave, the employer and employee must prepare and sign a document specifying or confirming the arrangement. The document must include some important information, for example, the date when the employee wishes to commence carer's leave, the duration of the carer's leave, and the form in which the leave will be taken.

The employer than retains this document that has been signed by them and the employer must give a copy of the document to the employee.

FAMILY PROVISIONS

4.5 FORCE MAJEURE LEAVE

Force Majeure is governed by **The Parental Leave Act, 1998** and **The Parental Leave (Amendment) Act, 2006** and relates to the occurrence of a critical event and it entitles an employee to a number of paid days leave, in order to deal with a family emergency arising from an unforeseen injury to or illness of an immediate family member, which requires the employee's immediate presence at their side.

The person to whom the unforeseen injury to or illness of relates to:

(a) a person of whom the employee is the parent or adoptive parent,

(b) the spouse of the employee or a person with whom the employee is living as husband or wife,

(c) a person to whom the employee is in loco parentis,

(d) a brother or sister of the employee,

(e) a parent or grandparent of the employee, and

(f) a person who resides with the employee in a relationship of domestic dependency.

Under Force Majeure leave, the employee is entitled to paid leave for up to three days in any 12-month period or five days in any period of 36 consecutive months.

It is to be noted that a person who resides with an employee is taken to be in a relationship of domestic dependency with the employee if, in the event of injury or illness, one reasonably relies on the other to make arrangements for the provision of care and the sexual orientation of the persons concerned is immaterial.

Force Majeure leave specifically excludes bereavements - currently there is no statutory entitlement to paid time off resulting from a family bereavement. (However, many companies would have a policy granting some leave in this regard.)

There is no service requirement for an employee to take Force Majeure leave.

Leave for Medical Care
Under the Work Life Balance and Miscellaneous Provisions Act 2023 employees may now take up to 5 days unpaid leave per year to look after a child or relevant person who needs significant care or support for a serious medical reason. Leave must be taken in full day blocks, but you do not have to take all 5 days in one go.

A relevant person in relation to whom you can apply for leave is defined as

- Your child
- Spouse
- Cohabitant
- Parent or Grandparent
- Sibling
- Housemate – that being any person who lives with you outside of the above categories

FAMILY PROVISIONS

4.5 FORCE MAJEURE LEAVE (CONTINUED)

The employer is entitled to seek relevant evidence of the medical need to provide care. This can include:

- A medical certificate (this does not need to specify the illness, but must confirm that the person does or did need significant care for a serious medical reason)
- Other evidence reasonably required by the employer

An employee must apply for the leave in writing stating:

- the start date of the leave
- the length of the leave
- a statement setting out why the employee is entitled to the leave

In an emergency the employee does not have to give notice, but should where possible give as much notice as possible.

FAMILY PROVISIONS

4.6 DOMESTIC VIOLENCE LEAVE

Under the **Work Life Balance and Miscellaneous Provisions Act 2023** those who are the victims of, or at risk of domestic violence will be entitled to 5 days paid leave, subject to certain criteria.

Where an employee has experienced domestic violence, and or is supporting a relevant person under the act who has experienced domestic violence, and the employee has entered into, or works under, a contract of employment, that employee can seek domestic violence leave pursuant to the Act.

A relevant person is defined in the Act as:

(i) the spouse or civil partner of the employee;
(ii) the cohabitant of the employee;
(iii) a person with whom the employee is in an intimate relationship;
(iv) a child of the employee who has not attained full age; or
(v) a person who, in relation to the employee, is a dependent person.

Under the Act domestic violence is defined as violence or the threat of violence, including sexual violence and acts of coercive control that has been committed against an employee or a "relevant person" by any of the following:

(i) the spouse or civil partner of the employee or relevant person;
(ii) the cohabitant of the employee or relevant person;
(iii) someone who is, or was, in an intimate relationship with the employee or relevant person; or
(iv) a child of the employee or relevant person who is of full age and is not, in relation to the employee or relevant person, a dependent.

FAMILY PROVISIONS

4.7 RIGHT TO REQUEST REMOTE WORKING

Since the 7th March 2024 employees have the right to request remote working. Part 3 of the **Work life Balance and Miscellaneous Provisions Act 2023** set out the legal framework in relation to flexible and remote working.

The Workplace Relations Commission has produced a code of practice in relation to remote/flexible arrangements. The code of practice can be accessed through the following link:
https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-right-to-request-flexible-working-and-right-to-request-remote-working/request%20flexible%20working%20and%20right%20to%20request%20remote%20working.html

Remote work means an employee carries out some or all of their work from a location other than the empoyer premises, such as their home, or a remote hub. An employee can request a remote working arrangement upon commencement of employment, but the arrangement does not have to commence before the employee has 6 months service.

An employees application must in compliance with the following:

- It must be made at least 8 weeks prior to the proposed commencement of the arrangement
- It must be made in writing, including by way of online application
- Outline the details of the proposed arrangement such as the number of days/hours the employee seeks to work remotely
- Set out the reasons for the proposed arrangement
- Set out the proposed start date and end date
- Give details of the proposed location, such as the employees home, remote hub etc
- Give details regarding the suitability of the proposed location, such as details regarding its compliance with health and safety legislation

An employer must provide their decision on the application within 4 weeks. An employer can request further time, but reasons for seeking additional time must be provided, and the decision must be made within a maximum of 8 weeks.

Employers should consider the application carefully. An employer is not obliged to grant the application, but should not arbitrarily refuse such a request. An employer can consider the following in deciding whether or not to grant an application:

- The needs of the business – whether the work can in fact be carried out remotely.
- The employees needs and the reasons cited by them
- The code of practice produced by the WRC (see link above)
- Whether onsite work is necessary of some or all tasks.

The arrangement can be terminated by the employer if they believe on reasonable grounds that the employee is not adequately carrying out their duties while working remotely. In such circumstances, an employee is entitled to 7 day's notice of the proposed termination of the arrangement, and is permitted to make representations regarding the matter.

FAMILY PROVISIONS

4.7 RIGHT TO REQUEST REMOTE WORKING (CONTINUED)

The employer can also terminate the arrangement for the following reasons:

- A seasonal change in the workload
- lack of staff to carry out necessary work in the employers premises
- the nature of the work for which the employee is engaged.
- Any other relevant factor which effects the operation of the employers business

Where the arrangement is to be terminated, the employee should be provided with notice in writing setting out the reasons for the termination, and should be permitted to make representations regarding same. Those representations should be considered carefully before a final decision is made. An employee should be provided with a minimum of 7 days' notice of the termination of the arrangement.

TERMINATION OF EMPLOYMENT

5.1 DISCIPLINARY PROCEDURES AND PRACTICE

The aim of this guide is to help you with the effective use and operation of disciplinary rules and procedures. Due to the volume of detail, smaller organisations may wish to adopt a simpler procedure in order to incorporate all the points. To promote fairness and industrial relations in the way employees are treated, it is necessary to have disciplinary rules and procedures. All organisations will also operate more effectively if it has a set standard of conduct, procedures to make sure standards are met and a fair mechanism for dealing with any failures in meeting those standards.

An employer must ensure that employees are aware of the standard of conduct required of them and, pursuant to **The Unfair Dismissals Acts, 1977 - 2015** and **Statutory Instrument 146 of 2000** which is more fully described as **The Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000** there is a legal obligation on all employers to supply all employees, not later than 28 days after commencing employment, with written procedures which the employer will observe before dismissing an employee. Any changes to the procedure must be notified to the employee within 28 days of the change being made.

The use of disciplinary procedures is imperative where an employee's conduct, attendance or performance is of concern to an employer. Failure to use or comply with procedures may be considered by the WRC in awarding compensation. Procedures should normally include a set of graduated steps from verbal and written warnings to suspension on pay and eventually dismissal. There is no set rule about how many warnings there should be in any case. The test is: what would a reasonable employer do? Such an employer notifies his staff of any shortcomings and suggests improvements. Such an employer listens to any response the worker has to make. In other words, the rules of natural justice apply. Legal advice should be taken.

In cases of serious misconduct, it may be appropriate to move to a later stage of the procedure much more quickly. If requested, an employer must give the reason(s) for dismissal in writing within 14 days of the request.

See Workplace Relations Commission Code of Practice on Disciplinary Procedures and see WRC (*www.workplacerelations.ie*)

Formulating Policies

Both employees and management should be involved in formulating the rules and procedures, as it is important that they are seen as reasonable by both parties (employee(s) and employer). Though the rules should be as general as possible in order to cover all situations which may arise, they may vary according to particular circumstances, such as the size of the establishment, administration and other resources available to you. Any policy may be more comprehensive that the minimum statutory procedure but must not fall below this.

.

TERMINATION OF EMPLOYMENT

5.2 FORMAL DISCIPLINARY PROCEDURES

It is vitally important to remember that an employee's right to fair procedures and natural justice must be maintained. In addition, any protections which are afforded to employees though their contract, the company procedures or statute must also be preserved.

It is important for employers ensure that their policies and procedures are up to date, particularly given the increase in remote working in recent times. Provision may be added to polices to permit meetings to take place remotely if required. Should there be a difficulty regarding a particular procedure advice should be sought from the legal advice helpline.

From a practical standpoint, it may be necessary to provide IT technical assistance or equipment to employees in order to ensure they are in a position to engage in online meetings, interviews and hearings should such meetings be required.

The principles which apply to the running of the hearings as summarised below and are applicable whether the procedure is being conducted remotely or in person.

Formal procedures are necessary to ensure common and equitable disciplinary action for employees failing to meet standards of job performance on breach of work rules or other conditions of employment. The maintenance of work standards and general behaviour is the primary responsibility of the company. It is the aim of the disciplinary procedure to help individuals whose performance falls below the company's standards.

The following is a guide/sample of the the procedures which should apply, and an indication of the type of wording used in such procedures:

- **Stage 1: Verbal Warning**
  In the case of minor infringements, the supervisor directly concerned will warn the employee verbally of the specific aspect of work or conduct which is below standard, stating clearly that this is a warning and advising on the improvements that must be made. This warning will be recorded in the employee's file.

- **Stage 2: First Written Warning**
  In the event of continued failure to meet required standards, the employee will be issued with a written warning in the presence of his/her shop steward. He/she will also be warned that continued failure to improve may result in further disciplinary action up to and including dismissal, in accordance with the procedure.

- **Stage 3: Second Written Warning/Suspension**
  If the problem persists the manager will give the employee, in the presence of his/her representative, a second written warning. It will be made clear that further disciplinary action involving dismissal ,may be taken if conduct or performance is not satisfactory.

- **Stage 4: Dismissal**
  If the problem persists, the individual concerned will be given notice of dismissal. In circumstances of serious breaches of discipline not warranting immediate dismissal, the procedure outlined in Stage 3 above will be applied, i.e. written warning.

TERMINATION OF EMPLOYMENT

5.2 FORMAL DISCIPLINARY PROCEDURES (CONTINUED)

The Company hopes that it will not be necessary to dismiss you. There are, however, certain breaches of Company rules and of established custom and practice that will render you liable to dismissal:

You may be dismissed from the Company for:

- Incompetence.
- Misconduct (serious or persistent).
- Incapacity.
- Failure to carry out reasonable instructions.
- Redundancy.
- Some other substantial reason.

Certain serious breaches of company rules, custom and practice may result in an employee's summary dismissal without notice or pay in lieu of notice, but following the investigation and the application of the disciplinary procedure.

The following list while not exhaustive is an outline of such offences:

- Deliberate breach of safety regulations likely to cause damage to oneself or other employees.
- Theft of, or malicious damage to, Company property, customer property or another employee's property.
- Sleeping on duty.
- Interfering with or falsifying either one's own or another employee's attendance records or any other Company or client records.
- Assault on another employee, member of management or customer/client.
- Being in possession of controlled drugs or alcohol while on duty, whether such drugs or alcohol are for own use or for distribution or sale to others.
- Reporting for work under the influence of drugs or alcohol such that, in the opinion of the supervisor/manager, you are unfit for work.
- Provision of any information gained by you in the course of carrying out your duties to a third party.
- Engaging in remunerative employment while absent from work, irrespective of whether the absence is covered by a Medical Certificate or not.
- Conviction for a criminal offence.
- Absenting yourself from work during your working hours without prior permission.
- Refusal to carry out reasonable and lawful instructions. An employee must carry out the supervisor's/manager's lawful instructions even if he/she disagrees with the instruction (i.e. under protest). The matter can be taken up under the Grievance Procedure subsequently.
- Bullying and harassment, victimisation or discriminatory conduct.

TERMINATION OF EMPLOYMENT

5.3 DEALING WITH POOR PERFORMANCE

Individuals have a contractual responsibility to perform to a satisfactory level and should be given every help and encouragement to do so. Employers have a responsibility for setting realistic and measurable standards of performance and for explaining these standards carefully to employees. Where workers are found to be failing to perform to the required standard the matter should be investigated before any action is taken. Where the reason for the substandard performance is found to be a lack of the required skills the worker should, wherever practicable, be assisted through training or coaching and given reasonable time to reach the required standard. Where the substandard performance is due to negligence or lack of application on the part of the worker then some form of disciplinary action will normally be appropriate.

A worker should not normally be dismissed because of a failure to perform to the required standard unless warnings and an opportunity to improve (with reasonable targets and timescales) have been given. Employers may need to have special arrangements for dealing with poor performance of workers on short-term contracts or new workers during their probationary period.

TERMINATION OF EMPLOYMENT

5.4 GUIDANCE NOTES ON HOLDING A DISCIPLINARY HEARING

It is important that you act fairly, consistently and objectively by adhering to natural justice and fair procedures at all times, as this is how the Workplace Relations Commission will consider cases of alleged unfair dismissal. Furthermore, it is important that you contact us for advice before each stage of the disciplinary process. Disciplinary matters should be dealt with when the facts are still fresh in the witnesses' minds, although this should not prejudice a full investigation. When an allegation of misconduct is made, you must investigate the matter and consider whether it is suitable to suspend the employee (for as long as is reasonably necessary in all the circumstances of the particular case).

You should only suspend if there was a danger that the employee would tamper with evidence, or a witness, or interfere with the business if they remain at work or it is to do with a potential gross misconduct issue. Any suspension at this stage of the proceedings would be a suspension with pay, as to suspend without pay would be considered a sanction, which cannot be imposed until the conclusion of the procedure.

The investigation
A full investigation of all the allegations should be conducted, potential witnesses interviewed, and documentary evidence must be prepared. After this, you should then

- consider all evidence which should all be weighed objectively
- be aware of any history between the employee and the witness

Providing information to the employee
If there is sufficient evidence, employees should be given a reasonable length of time to prepare their case and copies of all the documentary evidence that you, as the employer, intends to rely on should be furnished to the employee in advance of the disciplinary hearing. This is important as the employee may complain to the Workplace Relations Commission if an unfair procedure is followed. The employee must be notified if, after all the investigations, there remains insufficient evidence to substantiate the allegations and accordingly no disciplinary action will be taken.

The right to representation at a disciplinary hearing or grievance hearing
An employee has a right to be accompanied to a disciplinary hearing by a friend, work colleague, union representative or other person as they see fit. In some instances an employee may seek to have legal representation and a right to cross examine witnesses during this process, whether this should be allowed will depend on the circumstances, advice should be sought from the legal advice line if such a request is made. The employer must permit the companion to address the hearing in order to do any or all of the following – put the worker's case, sum up the case, make representations on the worker's behalf to any view expressed at the hearing and to confer with the worker during the hearing. However, the companion is not allowed to:

- Answer questions on behalf of the worker.
- Use the position in a way which prevents the employer from running the hearing or prevents any other person at the hearing from making their contribution to it.

TERMINATION OF EMPLOYMENT

5.4 GUIDANCE NOTES ON HOLDING A DISCIPLINARY HEARING (CONTINUED)

Conduct of the Hearing
As an employer, you must adhere to the rules of natural justice. The employee has to be fully informed of the allegations and any evidence used against them and be given an opportunity to put a case forward, produce their own evidence and be allowed to question the witnesses. The employee's representative is also there to act on behalf of the employee and should be allowed to ask questions during the disciplinary hearing. This should be a real opportunity to find out what happened and should not be seen as an aggressive interrogation. There must be no bias during the investigation or hearing and an objective person must be present, whose duty is solely to take notes and who should not be involved with the hearing in any other way. The hearing should only deal with the matters for which it was convened. At the end of the hearing, the employer should usually adjourn and make an informed decision taking all the evidence into consideration.

The employee must be advised in writing of the outcome. You are strongly advised to contact your legal advice helpline before deciding. If you fail to do so and a claim is subsequently made by the employee before the Workplace Relations Commission your insurance cover may be limited to representation only. Once a decision is made the employee may be notified verbally of the decision, however, this should always be confirmed in writing. The letter should always include the nature of the misconduct, time required for the employee to improve, the improvement required and the duration of the penalty on the employee's record, as well as the consequences of further misconduct and appeal details.

The Appeal
The employee should always be notified of the right of appeal. Written notification should state to whom and the deadline by which an appeal must be lodged (five days is usual). The opportunity to appeal against a decision is essential to natural justice. Workers may choose to raise appeals on a number of grounds which could include the perceived unfairness of the judgement, the severity of the penalty, new evidence coming to light or procedural irregularities. These grounds need to be considered when deciding the extent of any new investigation or re-hearing in order to remedy previous defects in the disciplinary process.

Appeals should be dealt with as promptly as possible. A time limit should be set within which appeals should be lodged. This time limit may vary between organisations but five working days for lodging an appeal is usually appropriate. A time limit should also be set for hearing the appeal. Wherever possible the appeal should be heard by an appropriate individual, usually a senior manager, not previously involved in the procedure. In circumstances where it is not possible to find such an individual the matter should be referred externally to a suitably qualified individual or company.

Individuals should be informed of the arrangements for appeal hearings and of their statutory or other right to be accompanied at these hearings. Where new evidence arises during the appeal the worker, or their representative, should be given the opportunity to comment before any action is taken. It may be more appropriate to adjourn the appeal to investigate or consider such points. The worker should be informed of the results of the appeal and the reasons for the decision as soon as possible and this should be confirmed in writing. If the decision constitutes the final stage of the organisation's appeals procedure this should be made clear to the worker.

TERMINATION OF EMPLOYMENT

5.4 GUIDANCE NOTES ON HOLDING A DISCIPLINARY HEARING (CONTINUED)

Records
Records should be kept detailing the nature of any breach of disciplinary rules or unsatisfactory performance, the worker's defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be kept confidential and retained in accordance with the disciplinary procedure and Data Protection legislation, which requires the release of certain data to individuals on their request. Copies of any meeting records should be given to the individual concerned although in certain circumstances some information may be withheld, for example, to protect a witness.

Further action
Rules and procedures should be reviewed periodically in the light of any developments in employment legislation or good employment practice and if necessary, revised in order to ensure their continuing relevance and effectiveness. Any amendments and additional rules imposing new obligations should be introduced only after reasonable notice has been given to all workers and, where appropriate, their representatives have been consulted. Except in very exceptional circumstances, where legal advice should be sought, changes to individual contracts may only be made with agreement.

TERMINATION OF EMPLOYMENT

5.5 SICKNESS ABSENCES

(Please Note the Procedure for Dismissal applies to these cases)

High levels of employee sickness absenteeism can have a drastic effect on a business. It is very important to have a properly implemented sickness control procedure incorporating:

(a) A written procedure for sickness reports. This should encompass the following:
- When it is expected that the employee should report their absence and to whom.
- What steps employees are obliged to take to keep the company informed during the period of sickness absence.
- What medical certification the employee is required to produce, e.g. self-certificate for absences of up to three days followed by a doctor's certificate thereafter.
- Upon return to work, the required reporting procedure such as the completion of a record form.

(b) A written record of all absences (including holiday) in an easily identifiable format.

Only by having such procedures can you, as an employer, effectively review individual absenteeism. You should have particular regard for:

- Employees whose absenteeism level is above the average.
- Employees whose absenteeism relates to a particular health problem.
- Whether there is a pattern of absence such as at the beginning or end of a week. The two main problems encountered with sickness absenteeism are:
  i Long term ill health absenteeism.
  ii Persistent intermittent absenteeism for a variety of genuine health reasons.

You will need to take steps to deal with both of these problems and may wish to dismiss an employee for either of these reasons. To do so, you will firstly have to establish that the reason for dismissal falls within one of the fair reasons to dismiss, namely capability or qualifications, conduct, redundancy, or contravention by the employee of a statutory duty or restriction, or some other substantial reason justifying dismissal. Secondly, as an employer, you must be able to show you have acted reasonably in all the circumstances of the case in treating the reason as sufficient for dismissal. Long term ill health absenteeism comes under the category of capability whilst persistent intermittent absenteeism may come under the "some other" substantial reason category or even under the conduct category. The procedures to be followed through in each case are different and will be outlined below. For specific advice please always call your legal advice helpline.

TERMINATION OF EMPLOYMENT

5.5 SICKNESS ABSENCES (CONTINUED)

Long-term ill health absenteeism
Firstly, you as an employer must try to establish an underlying medical condition causing the employee's absence. It is essential to seek medical opinion concerning the employee's condition. The first step is to write to the employee requesting a medical report from their medical attendant or alternatively requesting the employee to attend the Company Doctor for the purposes of obtaining such a report.

As the employer, you need to consider the contents/prognosis of the report and, in consultation with the employee, assess whether the business can sustain the continued absence without causing serious operational difficulties. Alternative employment within the business needs to be considered, if there is any available more suited to the employee. You, as the employer, need to show that you have acted reasonably by obtaining sufficient medical evidence (including consulting with the employee) on the nature and likely length of the employee's illness and return to work.

In light of such facts, question the needs of the business as to whether or not it is reasonable. It is advisable to discuss each individual case with your legal advice helpline.

Persistent intermittent absenteeism
It is now recognised that a poor attendance record may become a problem and that it can be necessary and reasonable to dismiss an employee following a fair warning procedure. You will need to investigate all the relevant facts and review the attendance record and the reasons for the absences. A counselling interview should be conducted in the first place to attempt to assess the reasons for the absence. In most cases the absences are due to genuine illness but with unrelated symptoms. If counselling does not remedy the problem, then a more formal warning procedure needs to be followed through. It is important that you let the employee concerned know that the level of absenteeism is unacceptable, the absence record must improve, the time scale of this improvement, to what extent improvement is expected and the consequences of failure to improve.

It may also be appropriate to write to the relevant employee advising of the Company's concern with their attendance and mentioning the dates of illness. This letter should state that the employee's absence causes operational difficulties and that the employer is concerned for the employee's health and safety as a result of the intermittent absences. A letter should be requested from such employee's medical attendant stating their fitness to carry out their duties as per their contract of employment.

It is also very important to consider the explanations of employees, hence the need for personal interviews prior to the issuing of any warnings. The number of warnings required would normally be three: oral warning, first written warning and final written warning, with each clearly expressing and allowing a reasonable time period for improvement between warnings. Again, it is important to seek specific advice from your legal advice helpline.

Whilst not being able to go into further detail, there are other aspects to consider such as an employee falsely claiming illness, mental health issues, pregnancy related illness and/or Disability concerns.

TERMINATION OF EMPLOYMENT

5.5 SICKNESS ABSENCES (CONTINUED)

- **Fraudulent claims**
  These are essentially matters of misconduct and appropriate disciplinary action should be taken. It must be borne in mind, however, that it may be difficult to establish sufficient evidence upon which to base a reasonable belief that an employee is not genuinely ill.

- **Mental health**
  In any mental health and stress related illness absence, it is essential that you fully investigate any conduct or incapacity before taking a decision to dismiss. As an employer, you will be expected to give even more support and be tolerant and sensitive in such a case. A full medical investigation will need to be conducted and adequate consultation must take place.

- **Pregnancy**
  It is an automatically unfair reason to dismiss a woman because she is pregnant or for any reason related to her pregnancy, which includes incapacity to work due to pregnancy related illness. Additionally, there are also complex regulations relating to medical suspension where there is pregnancy related incapability.

- **Disability discrimination**
  It is unlawful to treat an employee less favourably because of their disability in relation to any aspect of employment or dismissal and even in recruitment. You need to make reasonable accommodation to overcome any factor which puts a disabled employee or job applicant at a disadvantage.

- **Sick Leave and an Employee's Entitlement to Annual Leave**
  Employees are entitled to accrue annual leave during periods of certified sick leave. See 3.1 above.

- **Payment while on sick leave**
  Prior to the 1st January 2023 there was no statutory obligation on an employer to pay employees during periods of sickness absence. However, following the commencement of the **Sick Pay Act, 2022** there is now a requirement to pay employees for sick leave subject to the following conditions as set out in the act and associated statutory Instrument.

  The entitlement to paid sick leave is being phased in over 4 years:
  2023 - 3 days paid sick leave entitlement
  2024 - 5 days paid sick leave entitlement
  2025 – 7 days paid sick leave entitlement
  2026 – 10 days paid sick leave entitlement

  In order to be entitled to paid sick leave an employee must present a medical certificate from a medical practitioner confirming that the employee is unfit for work.

  The payment is based on the normal daily rate, with an employee receiving 70% of that rate, up to a maximum of €110 per day. The sick days do not have to be consecutive. The sick leave year runs from the 1st January to the 31st December. An employee must have at least 13 weeks service to avail of the scheme.

- **Sick Leave and Incapacity**
  There are a number of factors that must be taken into consideration when attempting to address the issue of incapacity and long-term sick leave within the workplace. Advice should be sought from the legal advice help line when such issues arise.

  Generally speaking, an employer should only terminate the employment of an employee where it can be shown through independent medical evidence that the employee is unfit to return to work and the position is unlikely to change in the medium to long term. The Employee should be consulted, told of the possible outcome of the decision-making process and be given an opportunity to contest the medical findings. Where an employee is receiving payment under a long-term illness pain or income continuous scheme it can be difficult to dismiss an employee.

TERMINATION OF EMPLOYMENT

5.6 LETTERS OF ENQUIRY

For file purposes only, after issue of an oral warning

NOTIFICATION OF CONCERN

Employee's Name: .....

Location/Department: .....

Date of oral warning: .....

Offence: .....

An oral warning was given to the above named employee in respect of his/her unacceptable absence record as set out in our Absence Control Procedure. Details of the absence record are attached.

I saw him/her on an informal basis on ..... (date) when I asked for any explanation of his/her absence record. We had a long session together when we discussed at length his/her absence record and the reasons for it. I told him/her that if he/she had any personal problems or difficulties he/she could tell me in confidence or go to see our Company nurse/doctor. I also referred him/her to Dr ..... on ..... (date) and received a report (attached) which did not indicate any medical problem.

I have now advised him/her that unless his/her attendance record makes an immediate, significant and substantial improvement during the next two shifts and is sustained for the next twelve months, he/she will be given a first written warning.

I will review .....'s (name) absence record on ..... (date) and after each shift, for a period of twelve months. If the attendance record improves and is sustained over the next twelve months, this oral warning will lapse.

I have advised him/her that he/she should come to see me if he/she has any problems with which the Company can help.

Signed: .....

Status: .....

TERMINATION OF EMPLOYMENT

5.6 LETTERS OF ENQUIRY (CONTINUED)

SECOND NOTIFICATION OF CONCERN

Employee's Name: .....

Location/Department: .....

Offence: .....

Further to the disciplinary hearing which took place on ..... (date) I confirm that you have been given a first written warning for failing to achieve/maintain a satisfactory attendance record. Over the past ..... (weeks/months) your absence record has been .... (state number of days/spells).

I have discussed your record with you on two previous occasions and have tried to find out why your record is unacceptable. You have not been able to produce any explanation which satisfies me and regretfully, I have had to issue you with a first written warning.

In accordance with the disciplinary procedure/absence control procedure, if there is a/the required improvement in your attendance which is maintained over the following twelve months, this warning will lapse. However, should your attendance not improve or be sustained over the next twelve months, or should you commit any further disciplinary offence, then you will be given a final written warning.

I trust that you will be able to attend work on a regular basis and achieve a 100% attendance record. If you have any problems which make it impossible for you to attend work, I would urge you to tell me immediately so that we can try to find a satisfactory solution. I have explained to you the difficulties we face when you fail to attend work and the effect that this has on the running of the Company. I trust that this warning will lead to the improvement required and that no further action will be necessary. I have also reminded you of the facility for confidential counselling should you need this.

Signed: .....

Status: .....

TERMINATION OF EMPLOYMENT

5.7 REDUNDANCY

Redundancy can occur where one of the following things happen:

- The employer ceases to carry on business or ceases to carry on business in the place where you have been employed. (For example, if the firm moves location, this can be a substantial change in your working conditions and may therefore be a reason for redundancy. However, if there is a change of ownership under the Transfer of Undertaking legislation where employees are re- employed with no change to their working conditions then it is not a redundancy situation.).
- The employer's requirements for employees in your category has ceased or diminished.
- The employer has decided to carry on the business with fewer or no staff. In deciding whether your employer is continuing the business with fewer or no staff, close members of your employer's family are not taken into account.
- The employer has decided to let your work be done in a different manner in future and you are not sufficiently qualified or trained to do the work in the different way.
- The employer has decided that your work will in future be done by another person who can do other work as well and you are not sufficiently qualified or trained to do that other work.
- An employee gives notice seeking redundancy following a period of lay-off or short time for 4 weeks or more, or for 6 weeks in the previous 13 weeks and the employer is unable to issue a counter notice confirming the provision of a period of 13 weeks continuous employment without lay-off or short time within four weeks of having received the employees notice seeking redundancy.

The Redundancy Payments Acts, 1967 - 2014 oblige employers to pay redundant employees what is known as "statutory redundancy entitlement".

The amount is related to the employee's length of service and standard weekly earnings. There is a maximum threshold payment of €600 per week for all statutory redundancy notifications since 1st of January 2005. There is nothing preventing an employer paying in excess of this amount, but there is no statutory obligation to do so.

A redundancy situation arises where an employee's job ceases to exist, and the employee is not replaced for such reasons as rationalisation/reorganisation, not enough work available, the financial state of the firm, or company closures.

Entitlement to redundancy

- An employee over the age of 16 with 104 weeks (two years) continuous service.
- An employee must be in employment that is insurable under The Social Welfare Acts. A full- time employee under the age of 66 must be in employment that is fully insurable for all benefits under The Social Welfare Acts; this does not apply to part time employees.

Inability to Pay

In a situation where a business is unable to pay, fails to pay refuses to pay an employee can apply directly for the payment from the Social Insurance Fund.

Payment will be made from the Social Insurance Fund; however, repayment will subsequently be sought of the amount concerned. Employers no longer receive a statutory redundancy rebate. Prior to the 1st of January 2013, employers were entitled to a partial rebate of the statutory redundancy payment.

TERMINATION OF EMPLOYMENT

5.7 REDUNDANCY (CONTINUED)

Collective Redundancies
In Ireland, collective redundancies arise where, during any period of 30 consecutive days, the employees being made redundant are:

- 5 employees where 21 - 49 are employed
- 10 employees where 50 - 99 are employed
- 10% of the employees where 100 - 299 are employed
- 30 employees where 300 or more are employed

Redundancy Panel
Under **The Protection of Employment (Collective Redundancies and Related Matters) Act, 2007** a Redundancy Panel was set up. The Panel deals with collective redundancies which may be referred to it to ensure that they are or were genuine redundancies as opposed to situations where workers are replaced by new workers doing the same job for lower wages. Such redundancies are known as exceptional collective redundancies. If it is decided that the redundancies were in reality a mechanism to replace one set of workers with another on a lower wage or lesser conditions the employees may be able to pursue an unfair dismissal claim.

Rules
In such a situation, your employer is obliged to enter into consultations with a view to agreement with your representatives. These consultations must take place at the earliest opportunity and at least 30 days before the first dismissal. The aim of the consultation is to consider whether there are any alternatives to the redundancies.

Your employer is also obliged to provide the following information in writing to your representatives:

- The reasons for the redundancy.
- The number and descriptions of the employees affected.
- The number and descriptions of employees normally employed.
- The period in which the redundancies will happen.
- The criteria for selection of employees for redundancy.
- The method of calculating any redundancy payment.

Your employer is also obliged to inform the Minister for Enterprise, Trade and Innovation in writing of the proposed redundancies at least 30 days before the occurrence of the first redundancy.

The Employees (Provision of Information and Consultation) Act, 2006 requires employers to consult with employees on substantial changes in the workplace, including proposals for collective redundancies. Currently the Act applies to all employers with 50 employees are more.

Failure to make redundancy lump sum?
Employers are obliged to make redundancy payments in accordance with the statutory requirements laid down under **The Redundancy Payments Acts**. In situations where the employer is unable to pay the employees their entitlements, the Department of Enterprise, Trade and Innovation pays the full amount direct to the employees from the Social Insurance Fund (S.I.F.). The employee sends in Form RP14 (for useful details on this procedure, see section on Redundancy Forms below). The Department usually treats these applications as a priority, and later seeks reimbursement from the employer via its Redundancy Recoveries Section).

TERMINATION OF EMPLOYMENT

5.7 REDUNDANCY (CONTINUED)

Calculation of redundancy payment

- Two weeks' pay for each year of employment continuous and reckonable between the ages of 16 and 66 years in addition, a bonus week. When the total number of days is ascertained, any remaining number of days if such a number comes to 182 (26 weeks) or more, is regarded as an extra year.
- Reckonable service is service EXCLUDING ordinary sick leave over and above 26 weeks, occupational injury over and above 52 weeks, maternity leave over 18 weeks and career breaks over 13 weeks in a 52-week period.
- Reckonable service also excludes absence from work because of lay-offs or strikes. However, short-time work is reckonable.

All calculations are subject to the ceiling referred to above, which stands at €600 per week. Taxation of lump sum payments.

There is no tax payable on a statutory redundancy lump sum pursuant to Section 37 of **The Finance Act, 1968**. The following are the relevant redundancy forms which may be printed or downloaded from the website of the Department of Employment Affairs and Social Protection:

- **RP50 - Notice of Redundancy.**
  Employees with two years' service must get at least two weeks' notice, gradually rising to eight weeks with at least 15 years' service. Copy of Form must be sent to the Department.
- **RP2 - Certificate of Redundancy.**
  Contains the figures used to calculate the redundancy lump sum e.g. number of years' service reckonable for redundancy purposes, weekly pay etc. and must be signed by both employer and employee (No alteration should be made to the form once it has been signed.)
- **RP6 - Employee proposes to leave before the expiry of the date of termination of Redundancy**
  - Employer's consent required.
- **RP14 – Employee's Application for Redundancy Payment from the Social Insurance Fund, where employer fails or is unable to pay redundancy payment.**
  This form must be accompanied by form RP50 and either a completed Redundancy Certificate (RP2) or a copy of a favourable decision from the WRC

Redundancy payments – inability to pay
In a situation where a business concern provides the Minister, with concrete evidence of its inability to pay its employees their statutory redundancy entitlements e.g. audited accounts/bank statements, the Minister will make the payment from the Social Insurance Fund and will subsequently seek repayment of the amount concerned.

Workplace Relations Commission (WRC)
Disputes concerning redundancy payments can be submitted to the Workplace Relations Commission which has the advantage of providing a speedy, fair, inexpensive and relatively informal means for individuals to seek remedies for alleged infringements of their statutory redundancy rights.

The Department of Employment Affairs and Social Protection published a very helpful guide to Redundancy - "**Guide to the Redundancy Payments Scheme**" which may be viewed on their website at ***www.welfare.ie***

TERMINATION OF EMPLOYMENT

5.8 THE EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT, 2006

The Act introduces for the first time in Ireland an obligation on employers to establish arrangements to inform and consult with employees in relation to certain organisational and structural changes. The Act applies to all employers with at least 50 employees.

The overall purpose of the Act is to establish systems in the workplace whereby employers will inform and consult with employees in advance of certain proposed changes in the workplace. Prior to this Act, the information and consultation rights of employees in Ireland were limited to specific situations e.g. collective redundancies and Transfer of Undertakings and those rights still apply.

The Act is extremely wide ranging and covers any "public or private undertaking carrying out an economic activity, whether or not operating for gain…" As such, it applies to all companies, partnerships, charitable organizations, trade unions and public bodies.

In short, the Act requires employers who meet the requisite threshold to provide employees with information on developments (recent and future) affecting the economic situation and activities of the business. It also requires employers to inform and consult employees on developments affecting employment in the workplace and, in particular, on decisions likely to lead to substantial changes in work organisation or in contractual relations. In this regard, the Act specifically refers to proposed or anticipated business acquisitions and collective redundancies. This could mean, on a very basic level, that employers find themselves discussing acquisitions, disposals, restructurings, re-organisations, mergers and even recruitment strategies with employees prior to the actual event or decision being made.

The Act does however provide that employers may refuse to communicate information or undertake consultation where such information and/or consultation would seriously harm the functioning of the employer's business or be prejudicial to the employer's business. However, this exception should be used only where absolutely necessary lest employers be seen to be holding back from employees.

In general, once the Act applies to an employer and the employer refuses to negotiate an agreement or where an information and consultation agreement cannot be reached within six months of commencing negotiations (which can be extended by agreement), the default Standard Rules set out in the Act will apply to that workplace. Alternatively, the parties may agree to adopt the Standard Rules in their workplace. The Standard Rules are not tailored to a particular workplace and, therefore, may be more difficult than a pre-existing agreement or a negotiated agreement to operate in practice.

The Standard Rules set out in Schedule 1 give some general guidelines of the Act containing provisions in relation to the size and structure of the information and consultation forum, the rules of procedure and then set out the matters on which employees should be informed and consulted. These include:

- information on the recent and probable development of the employer's activities and economic situation;
- information and consultation on the situation, structure and probable development of employment and any anticipatory measures envisaged, in particular where there is a threat to employment; and
- information and consultation on decisions likely to lead to substantial changes in work organization or in contractual relations.

TERMINATION OF EMPLOYMENT

5.8 THE EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT, 2006 (CONTINUED)

The Act provides that information and consultation can take place with employees directly or through an appointed or elected employee representative.

The Act contains provisions in relation to confidential information. It provides that an employee in receipt of information which is expressed, by the employer, to be confidential must not disclose such information to other employees or third parties. Interestingly, the Act does not contain any provisions for penalties or other sanctions to be imposed on employees or employee representative who breach the confidentiality provisions. In circumstances where such breaches occur, it would be up to an employer to use his normal disciplinary procedure to deal with any breaches of confidentiality.

Even where an employer comes within the scope of the Act by virtue of the number of employees threshold, the obligations under the Act will only apply where a written request is made by 10% of employees (but not less than 15 or more than 100 employees) to the employer or to the Labour Court to enter into negotiations to establish information and consultation arrangements. This requirement for employees to mobilize themselves has proved to be a distinct disincentive for employees in the UK.

If there is any dispute in relation to the interpretation or operation of either the negotiated agreement or the standard rules both parties are obliged in the first instance to avail of any internal dispute resolution procedures which exist. If no resolution can be reached, then the matter can be referred by either party to the Workplace Relations Commission who can then refer the matter to the Labour Court whose determination can be enforced by the Circuit Court. A determination of the Labour Court can be appealed to the High Court on a point of law only and no appeal lies from the High Court. Any person found guilty of an offence under this Act shall be liable on summary conviction to a fine of up to €3,000 and/or 6 months imprisonment and on indictment to a fine of up to €30,000 and/or 3 years imprisonment. The Act also provides for the appointment of Inspectors with powers of entry onto premises to inspect and ensure compliance with the Act.

TERMINATION OF EMPLOYMENT

5.9 MINIMUM NOTICE

The amount of notice you are entitled to by law will depend on how long you have been working for your employer pursuant to section 4 of **The Minimum Notice and Terms of Employment Act, 1973** as amended. Every employee who has been in the employment of their employer for at least thirteen weeks is entitled to a minimum period of notice before their employer can dismiss him or her. This period of notice ranges from one to eight weeks and is according to the length of the employee's service with the company. If the employer is not able to provide the required minimum notice they have the option of paying the employee notice in lieu of such notice.

Duration of employment	**Minimum Notice**
13 weeks to 2 years	1 week
2 years to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years to 15 years	6 weeks
15 years or more	8 weeks

While the notice entitlements under a contract of employment can exceed the minimum periods above, any provision for notice in a contract for less than the above is void. This essentially means that while a contract of employment can set down that an employee will receive a greater amount of notice than the law states above, if the contract states that an employee will get less than the law provides, then this part of the contract has no legal effect. The law however does not preclude an employer or an employee waiving their rights to the legally specified notice period. The law also does not preclude an employee accepting payment in lieu of notice.

An employee may be required to work the notice period, or they may accept payment in lieu of notice, if offered by the employer. Payment in lieu of notice means that an employee will not have to work for the period between receiving notice and the ending of their employment, but they will get the same amount of wages that they would have been entitled to, had they so worked.

Your employer **may dismiss an employee without notice** for serious misconduct. Waiving the right to notice Employment legislation in Ireland also sets down that if an employer and an employee agree, the employee can waive their right to notice. In addition, where the employer and employee agree, the employer can pay the employee in lieu of notice. If an employee accepts payment in lieu of notice, then the date of termination of the employee's employment is the date on which notice (if it had been given) would have expired.

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION AND GDPR IN RELATION TO EMPLOYERS

The Data Protection Acts, 1988 to 2018 and the General Data Protection Regulations (GDPR) govern the handling of personal information where the information is about living individuals who can be identified from such information. The introduction of the GDPR on the 25th of May 2018 requires that more attention be paid to the area of data protection, as breaches of ~GDPR can attract heavy penalties, including fines of up to €20million of 4% off annual global turnover.

PRIVACY NOTICES

Employers are required to provide employers with certain information prior to collecting their personal data pursuant to Article 13 of the GDRP. This was in place in the previous regime; however, the new regime requires more detailed information and that the information is provided in concise, transparent and easily accessible plain language.

The notice should be given to the employee prior to collecting their data and must contain the following information:

- Data Controller – the notice must identify the data controller, who is defined as the entity which alone or with other, determines the purposes and means of the processing of personal data.
- Contact details for the Data Protection Officer – it is mandatory to appoint a Data Protection Officer in three situations, those being
  1. Where the date processing is carried out by a public authority or body except for courts acting in their judicial capacity
  2. Where the core activities of the data controller or processor consists of regular and systemic monitoring of data subjects on a large scale
  3. The core activities of the controller or processor consists of large-scale processing of special categories of data and personal date relating to criminal convictions.
- The information which the employer collects about the employee – personal data under the GDPR is defined as 'Any information relating to an identified or identifiable natural person ('date subject'); an identifiable natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number,. Location data, an online identifier or to one or more factors specific to the physical, psychological, genetic, mental economic, cultural or social identity of that natural person' this includes names addresses, phone numbers PPS numbers etc.
  In addition, details of special category data, that being sensitive personal data must be set out in the notice. Such data includes genetic data, medical data, data in relation to the employee's political opinions, race etc.
- Details of how the information will be used – Article 4 of the GDPR defines processing for the purposes of the GDPR. Details of how the person data is to be used and why it is to be used must be provided, for example bank account number may be collected and used to process payment to the employee

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION (CONTINUED)

PRIVACY NOTICES (CONTINUED)

- The Legal basis for the collection and use of data – In order to collect and use data the Employer must have a legal basis for doing so. Article 6 of the GRPD sets out the legal basis for the collection and processing of data, these reasons are as follows:

  1. Consent – explicit and freely given
  2. Necessity to perform a contract with the data subject
  3. Necessary to comply with a legal obligation
  4. Necessary to protect the vital interests of the data subject or another person
  5. Necessary for the performance of a task which is in the public interest
  6. Necessary for the carrying out of the legitimate needs of the data controller

Article 9 contains further categories which apple to 'special category' data as defined above.

- Who receives the information – this should include the identities of any natural or legal person or any other entity which receives the employee's personal data
- Is the data transferred to a country outside the scope of the GDPR, and if so what safeguards are in place – It is necessary to specify if the data is to be sent outside the EU and what safeguard are in place if it is sent outside
- How long with the data be retained – Details of how long data will be retained should also be provided. Data must not be retained for longer than necessary. Differing time periods apply pursuant to statutes; data should not be retained for longer than is necessary or required under statue.
- What right does the employee have – Details of the rights which the employee enjoys under the GDPR should be provided to the employee. These rights include the right to access and to port data, to restrict, rectify and erase data, to object to data processing, and to withdraw consent in relation to the processing of the data. Employees also have a right to compensation in relation to misuse of their data.
- Details regarding the security of the data – details on how the data is to be kept secure should be provided.
- The complaints procedure – the employee should be advised of the internal complaint's procedure with regard to how to make a complaint. In addition, they should be informed of their option to make a subject access request

Subject Access Requests
To make an access request the data subject must:

- apply to you in writing
- give any details which might be needed to help you identify him/her and locate all the information you may keep about him/her e.g. previous addresses, customer account numbers
- No fee is payable for such a request unless the request is manifestly unfounded or excessive in particular because of its repetitive character,
- The request must be complied with 'without undue delay' and in any event within one month form the data of the request. There is a provision to allow for the extension of time by two months, however the data subject must be informed of the delay in writing within the initial one-month period.

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION (CONTINUED)

PRIVACY NOTICES (CONTINUED)

Security of Information
Employers are required to ensure that all personal data is kept securely and safely, and appropriate organisational and technical measures are in place guarantee the security of the data. This includes secure email addresses and online platforms. Privacy is a key concern in any new process or system commenced by the employer.

Reporting of data Breaches
Where data breach occurs and that breach is likely to cause a risk to the rights and of the employee, the employer is obliged to report the breach to the Data Protection Commissioner without undue delay and in any event within 72 hours of the breach. Consideration must also be given to informing the Data Subjects if the breach is such that there is a high risk to the rights and freedoms of the Data Subjects.

Data Processing Agreements
There is an obligation on data controllers to have in place written agreements with Data processors when those data processors are appointed. An example of such a data processor would be an outsourced payroll service. In such circumstances a written agreement with regard to GDPR must be in place.

Compliance
An employer must be in a position to demonstrate compliance with the GDPR. In order to do this the employer should have in place written Data Protection Policies demonstrating that data processing is done in accordance with the GDPR. In addition, it is necessary to show that the policy is being implemented through training etc.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY

The Safety, Health and Welfare at Work (General Application) Regulations 2007 came into force on the 1st November 2007 and apply to all employments and impose certain duties on the employer as follows:

- Workplace
- Use of Work Equipment
- Personal Protective Equipment
- Manual Handling Loads
- Display Screen Equipment
- Electricity
- Work at Height
- Control of Noise at Work
- Control of Vibration at Work
- First Aid
- Young Persons and Children
- Pregnant, post-natal and breast feeding employees
- Night Work and Shift Work
- Safety Signs and Places of Work
- Explosive Atmospheres

The Safety, Health & Welfare at Work Act, 2005 - A Summary

1 **Purpose/Aim of Legislation**

- To secure the safety, health & welfare of persons at work and for enforcement of relevant statutory provisions
- To encourage improvements in the safety and health of workers at work
- To provide for the further regulation of work activities, to continue in being and confer additional functions on the national Health & Safety Authority

Sections 8, 9, 10, 11, 12, govern general duties of employer, and basically refer to the obligation on the employer to provide a safe workplace and safe work practices; instruction, training and supervision of employees in relation to the same; prevent emergencies, serious and imminent dangers, and what to do in the event of these occurring.

Sections 13 and 15 govern duties of employee, requiring them to take reasonable care to protect their safety, welfare and health, together with that of their fellow employees; ensure that they're not under intoxicating influence; undergo testing for same if required by employer; report any health/safety/welfare issues to employer.

Discussion

In addition to the above, the **The Safety, Health & Welfare at Work Act, 2005** repeals the former 1989 Act which imposed a duty of strict liability on employers. Now however, under the new legislation, the employee owes a strict duty to themselves to ensure their own safety, and protect that of their fellow workers (section 13 requires employees to comply with safety procedures, report breaches of same, prohibition of intoxicant use at work, etc).

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

2 Protective & Preventive Measures

Section 19 – Hazard Identification & Risk Assessment

- Section 19 states that every employer shall identify the hazards in the workplace, assess the risks presented by those hazards and be in possession of a written assessment (to be known as and referred to in the Act as a "Risk Assessment") of the risks to the safety, health and welfare at work of their employees.
- For the purposes of carrying out a risk assessment, the employer shall, taking account of the work being carried on at the place of work, have regard to the duties imposed by the relevant statutory provisions.
- The risk assessment shall be reviewed by the employer where there:
  i there has been a significant change in the matters to which it relates, or
  ii there is another reason to believe that it is no longer valid,
  and, following the review, the employer shall amend the risk assessment as appropriate.
- In relation to the most recent risk assessment carried out by an employer, they shall take steps to implement any improvement considered necessary relating to the safety, health and welfare at work of employees and to ensure that any such improvement is implemented in respect of all activities and levels of the place of work.

Discussion

While the legislation above obliges/requires the employer to carry out a risk assessment, in practice the employer would be expected to engage a professional for this task, particularly given that different, specific hazards exist for different, specific industry types and workplaces. Nonetheless, for a small workplace, an employer may be able to use the following headings as a starting point for an assessment:

- **Section**
- **Workplace**
- **Assessor**
- **Activity**
- **Hazard Identification**: List hazard which you could expect to result in harm.
- **Risk Assessment**: What's the risk under normal conditions in your workplace?
- **Affects**: List groups of people who might be harmed.
- **Control Measures**: What, if any, existing control measures are in place?
- List additional controls required
- Responsible person to implement controls
- Date to implement.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

2 Protective & Preventive Measures (Continued) Section 20 – Safety Statement

- Every employer shall prepare, or cause to be prepared, a written statement (to be known and referred to in this Act as a "Safety Statement") based on the identification of the hazards and the risk assessment carried out under section 19, specifying the manner in which the safety, health and welfare at work of their employees shall be secured and managed.
- Every employer shall ensure that the safety statement specifies the following:
  - **i** the hazards identified and the risks assessed
  - **ii** the protective and preventive measures taken, and the resources provided for protecting safety, health and welfare at the workplace
  - **iii** the plans and procedures to be followed and the measures to be taken in the event of an emergency or serious and imminent danger, in compliance with section 8 (General Duties of Employer – to create and maintain safe workplace) and section 11 (procedures in respect of Emergencies and Serious and Imminent Dangers)
  - **iv** the duties of their employees regarding safety, health and welfare at work, including cooperation with the employer and any persons who have responsibility under the relevant statutory provisions (i.e. Inspectors, etc) in matters relating to safety, health and welfare at work
  - **v** the names, and where applicable, the job title or position held of each person responsible for performing tasks assigned to them pursuant to the safety statement, and
  - **vi** the arrangements made regarding the appointment of safety representatives and consultation with, and participation by, employees and safety representatives, in compliance with sections 25 and 26 including the names and the members of the safety committee, if appointed.
- Every employer shall bring the safety statement in a form, manner and as appropriate, language that is reasonably likely to be understood, to the attention of:
  - **i** their employees, at least annually and, at any other time, following its amendment in accordance with this section,
  - **ii** newly recruited employees upon commencement of employment, and
  - **iii** other persons at the place of work who may be exposed to any specific risk to which the safety statement applies.
- Where there are specific tasks being performed at the place of work that pose a serious risk to safety, health or welfare, an employer shall bring to the attention of those affected by that risk relevant extracts of the safety statement setting out:
  - **i** the risk identified,
  - **ii** the risk assessment, and
  - **iii** the protective and preventive measures taken in accordance with the relevant statutory provisions in relation to that risk.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

2 Protective & Preventive Measures (Continued) Section 20 – Safety Statement (Continued)

- Every employer shall, taking into account the risk assessment carried out under section 19, review the safety statement where:
  - **i** there has been a significant change in the matters to which it refers,
  - **ii** there is another reason to believe that the safety statement is no longer valid, or
  - **iii** an inspector in the course of an inspection, investigation, examination, inquiry under section 64 or otherwise directs that the safety statement be amended within 30 days of the giving of that direction, and, following the review, the employer shall amend the safety statement as appropriate.
- A copy of a safety statement, or relevant extract of it, shall be kept available for inspection at or near every place of work to which it relates while work is being carried out there.
- It shall be sufficient compliance with this section by an employer employing 3 or less employees to observe the terms of a code of practice, if any, relating to safety statements which applies to the class of employment covering the type of work activity carried on by the employer.
- Every person to whom sections 12 or 15 applies shall prepare a safety statement in accordance with this section to the extent that their duties under those sections may apply to persons other than their employees.

Discussion
Section 20 above is self-explanatory. It obliges the employer to prepare a safety statement, based on the identification of the hazards and the risk assessment carried out under section 19. The safety statement is to include protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the place of work. The employer is also bound to review the safety statement at least annually and make a copy of the same available for inspection if requested; in practice, displaying the same in a prominent place would be a recommended approach.

.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

3 Safety representatives

- Sections 25 and 26 permit the appointment of an employee designated as "the safety representative" to represent fellow employees in consultation with the employer over matters of safety, health and welfare in the workplace.
- Safety representatives have almost unfettered powers of inspection of workplace, subject to giving reasonable notice of same to employer, whether on their own initiative or in response to complaints and can accompany/assist an inspector during their investigations, subject to the inspector's discretion.
- Section 64 gives the Inspector far-reaching powers, based only on their "reasonable grounds/ reasonable cause" of a breach taking place, to inspect workplace and obtain any information in relation to same, and even if they suspect that a serious obstruction may occur, may be accompanied by Gardai during their inspection (s 64(8)). Severe penalties attach to employers for failing to comply with Inspector's request/obstructing their investigation.

4 Improvement and prohibition plans and notices

- Section 65 requires that if the Inspector is of the opinion that an activity is occurring, or is likely to occur, which endangers/risks the safety, health and welfare of employees, they may give a written direction to the employer requiring the employer to provide to the Inspector, an improvement plan.
- The written direction above shall identify the risky activity; require the submission to the inspector within one month, of an improvement plan specifying the remedial action proposed to be taken and requiring the employer to implement the same. The Inspector provides a copy of the improvement plan to the safety representative.
  - **i** Within a further month of receipt of an improvement plan, an inspector, by way of written notice to the person who submitted the plan, shall confirm whether or not they're satisfied of the adequacy of the plan or may direct that the plan be revised as specified in the notice and resubmitted to the Inspector within a period specified in the notice.
  - **ii** Section 66 outlines what happens if the employer does not adhere to the improvement plan; namely that an improvement notice be furnished by the Inspector to the employer. If this is not adhered to by the employer, then under section 67, a prohibition notice may issue, requiring the employer to cease the risk activity/practice.
  - **iii** Section 72 outlines power to require information, and the obtaining and disclosure of the same. Authority can serve, by way of written notice (called "information notice") on employer, notice requiring information. Employer has 7 days in which to appeal same to District Court.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

5 Offences and penalties

Sections 77 and 78 deal with offences and penalties. For present purposes, the most relevant offences in section 77 are breaches of the following provisions:

- obstructing an Inspector, including failure to comply with their requests or to provide them with information
- falsifying documents required to be kept under this Act
- not complying with improvement plans, improvement notices or prohibition notices.

Consistent with the strict, over arching duty of the employer under section 8 (they shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of their employees), severe penalties attach in the event of their non-compliance with the Act. Under section 78, these penalties are in the following ranges:

- on summary conviction to a fine not exceeding €3,000 or imprisonment for term not exceeding 6 months or both, or
- on conviction on indictment to a fine not exceeding €3,000,000 or imprisonment for a term not exceeding 2 years or both.

Any person responsible for a breach of health and safety law can be prosecuted. Companies are the most common defendants in criminal prosecutions, but individuals, including the directors, officers or servants of companies, can also be prosecuted. Indeed, the latter, being human entities as distinct from legal ones could, in sufficiently serious cases, be imprisoned, whereas a company can only be fined.

Prosecutions can arise as a result of a failure to comply with a Notice issued by an Inspector, or as a result of an unsafe practice or other technical breach of the health and safety statutes. It is unusual for the HSA to prosecute immediately where a breach is detected following a routine inspection because, more often than not, a Notice will achieve the desired remedial effect. However, where the breach is detected following an accident, particularly a fatal accident, a prosecution may well follow without the use of Notices.

APPENDICES

6.3 APPENDIX 3 – WORKPLACE THEFT

Actions upon discovering alleged theft by an employee
All employers in the retail trade should have a clear and defined policy on staff purchases, credit and discounts. Such policy should include the requirement that any staff purchase is not purchased unless authorisation has been sought in advance from a more senior member of staff. Such policy should be placed in a prominent position in the staff area to ensure all staff are fully appraised of their obligations. This policy should be applied and operated in a consistent manner by the employer.

One of an employer's worst nightmares is to discover that an employee has been engaging in theft, embezzlement, fraud, or some other offense against the company. Unfortunately, such events do occur, and an employer must be prepared to respond when an employee offence is uncovered.

Appropriate employer response is important not only so that the employee may be prosecuted for their actions, but also so that the employer may determine, to the greatest degree possible, the full nature and extent of the damage caused to the company by the employee's actions. Although every situation will necessarily vary according to its facts, the following is a suggested checklist of steps the employer should consider taking when it first receives notice of possible wrongdoing by an employee.

In dismissals arising from an alleged theft, the value of the goods taken is immaterial because if the employer has reasonable belief that goods were taken at all, there is a clear breach of trust.

If there are criminal proceedings pending, an employer can nonetheless carry out a full investigation and need not necessarily await the outcome of such legal proceedings. An employer can terminate employment on the reasonable belief that an employee committed the offence and does not decide the guilt of the employee. Advice should be sought from the legal advice helpline should such a situation arise.

APPENDICES

6.3 APPENDIX 3 – WORKPLACE THEFT (CONTINUED)

Actions upon discovering alleged theft by an employee (Continued)
Consequently, it is of paramount importance that an employer does the following:

1 **Act quickly but prudently – get all the facts**
Obviously if a crime is being committed against the employer, a rapid response is necessary. Failure to act may result in further harm to the company or in the loss of valuable evidence that is needed to prove the wrongdoing. At the same time, however, employers must balance the need to act quickly with an employee's legal rights. An employer that acts impetuously or rashly may find that it has taken action against an innocent employee and perhaps has exposed itself to numerous claims by the accused employee, including claims for defamation, unfair dismissal or bullying and harassment.

2 **Notify the legal advice helpline**
The legal ramifications of employee malfeasance are significant, both for the employer and the employee. Advice should be sought immediately when criminal activity is suspected.

3 **Confirm, to the extent possible, the misconduct**
Employers will serve themselves well by taking the necessary time to gather sufficient facts and to preserve evidence before acting against an employee. What may seem to be an egregious criminal offence at first glance may turn out to nothing more than a slight infraction of company policies.

Confirmation of the misconduct is also important because the employer will need to produce evidence of the wrongdoing if, in fact, criminal misconduct is involved. Gathering and preserving evidence such as CCTV footage together with till receipts for the appropriate time frame in cases involving the handing over of goods by an employee without seeking payment is critical.

4 **Keep information on a "need-to-know" basis**
The investigation and confirmation of the wrongdoing should be conducted using a minimal number of personnel. If employees learn that an investigation is underway, the employer may be further damaged in a couple of respects. Firstly, the employee who is suspected of engaging in the wrongdoing may get wind of the investigation and destroy valuable or necessary evidence of the wrongdoing. As a result, the employer may be unable to prove the crime occurred or may be unable to assess the severity of the criminal activity. Secondly, by allowing word of an investigation to seep out, the employer may subject itself to a defamation claim when the other employees learn that a co-worker is being investigated, especially if it transpires that such employee is innocent of any criminal activity. Employers thus should take precautions to maintain the confidentiality of the investigation.

APPENDICES

6.3 APPENDIX 3 – WORKPLACE THEFT (CONTINUED)

Actions upon discovering alleged theft by an employee (Continued)

5 **Apply company policies in a consistent and non-discriminatory manner**
Before acting on an employee's misconduct, be sure that the company is applying its policies in a manner that is consistent with natural justice and fair procedures. For example, if an employee has been caught giving a family member or friend free goods, an action that unquestionably both violates company policy and the law, the employer must also consider how it has treated previous violators, if any have existed. If the accused employee is a member of a protected class pursuant to **The Employment Equality Act, 1998**, and is treated more harshly than others in the past, the employer likely has exposed itself to civil liability, even if the employee actually engaged in the misconduct. If, for example, a company has previously merely reprimanded a male employee who was caught giving family members free goods and then subsequently dismisses a female employee who has engaged in the same conduct, the employer will not fare well in any ensuing discrimination action. Employers should apply company policy and practice consistently.

6 **Depending on the offense - contact An Garda Siochana**
For obvious reasons, as soon as evidence of criminal activity is confirmed, the Gardai should be informed. Employers should be aware of section 19 of the Criminal Justice Act, 2011 which makes it an offence to fail to disclose information which is believed or known to be of material assistance in preventing the commission of certain offences or in securing the apprehension, prosecution or conviction of any other person for certain offence. The range of offences stated in the act runs to approximately 130. The offences specified include theft and fraud offences. Advice should be sought from the legal advice helpline should this situation arise.

7 **Confront the employee**
Following the initial investigation, the employer should if satisfied that theft has indeed taken place; suspend the employee on full pay pending the outcome of a full and detailed investigation. Once the evidence has been compiled same must be furnished to the employee in advance of an arranged Disciplinary Hearing. The evidence may include witness statements or perhaps video evidence. The employee should be advised of his/her right to have a representative present, i.e. friend, colleague or family member. The employee should be advised in writing in advance of such hearing of the full allegations against him or her and the right to Appeal such decision if available.

Legal Advice on this or any other issue should be sought from the Legal Advice Helpline on 0818 670 747 at the earliest opportunity.

APPENDICES

6.4 APPENDIX 4 – LIABILITY FOR WORK-RELATED STRESS

Liability of an employer for stress suffered by an employee
The unanimous decision of the English Court of Appeal in the case of ***Hatton -v- Sutherland*** laid down 16 propositions regarding how an employer may be become liable for work-related stress suffered by an employee. These propositions have been accepted in Ireland by Ms. Justice Laffoy in the case of ***McGrath -v- Trintech***:

1 There were no special control mechanisms applying to claims for psychiatric, or physical, illness or injury arising from the stress of doing work the employee was required to do. **The ordinary principle of employer's liability applied**.

2 The threshold question was whether this kind of harm to this particular employee was reasonably foreseeable. That had two components: (**a)** an injury to health, as distinct from emotional stress, which was (**b)** attributable to stress at work, as distinct from other factors.

3 **Foreseeability** depended upon what the employer knew, or ought reasonably to have known, about the individual employee. Because of the nature of mental disorder, it was harder to foresee than physical injury, but might be easier to foresee in a known individual than in the population at large. An employer was usually entitled to assume that the employee could withstand the normal pressures of the job unless he knew of some particular problem or vulnerability.

4 The test was the same whatever the employment: there were no occupations which should be regarded as intrinsically dangerous to mental health.

5 The **factors** likely to be relevant in answering the threshold question included:
(a) the nature and extent of the work done by the employee and
(b) signs from the employee of impending harm to health.

6 The **employer was generally entitled to take what he was told by his employee at face value**, unless he had good reason to think to the contrary. He did not generally have to make searching enquiries of the employee or seek permission to make further enquiries of his medical advisers.

7 To trigger a duty to take steps, the **indications of impending harm to health** arising from stress at work had to be plain enough for any reasonable employer to realise that he should do something about it.

8 The employer was only in breach of duty if he **failed to take the steps which were reasonable in the circumstances**, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which might occur, the costs and practicability of preventing it, and the justifications for running the risk.

9 The **size and scope of the employer's operation**, , its resources and the demands it faced were relevant in deciding what was reasonable; these included the interests of other employees and the need to treat them fairly, for example in any redistribution of duties.

10 An employer could only reasonably be expected to take steps which were likely to do some good; the court would be likely to need **expert evidence** on that.

APPENDICES

6.4 APPENDIX 4 – LIABILITY FOR WORK-RELATED STRESS (CONTINUED)

Liability of an employer for stress suffered by an employee (Continued)

11 An employer who offered a confidential advice service, with referral to appropriate counselling or **treatment services** was unlikely to be found in breach of duty.

12 If the only **reasonable and effective** step would have been to dismiss or demote the employee, the employer would not be in breach of duty in allowing a willing employee to continue in his job.

13 In all cases, therefore, it was necessary to **identify the steps** which the employer both could and should have taken before finding him in breach of his duty of care.

14 The **claimant had to show** that breach of duty had caused or materially contributed to the harm suffered. It was not enough to show that occupational stress had caused the harm.

15 Where the harm suffered had **more than one cause**, the employer should only pay for that proportion of the harm suffered which was attributable to his wrongdoing unless the harm was truly indivisible. It was for the defendant to raise the question of apportionment.

16 The **assessment of damages** would take account of any pre-existing disorder or vulnerability and the chance that the claimant would have succumbed to a stress related disorder in any event.

*NOTE: **Employers should take into consideration the foregoing propositions when dealing with work-related stress claims or indeed when compiling a workplace policy on the subject.***

APPENDICES

6.5 APPENDIX 5 – STRESS REDUCTION

Reducing the risk of claims for work-related stress The Management Standard Demands
Includes issues like workload, work patterns, and the work environment.

The standard is:
- Employees indicate that they are able to cope with the demands of their jobs; and
- Internal systems are in place to respond to an employee's concerns.

State to be achieved:
- The employer provides employees with adequate and achievable demands in relation to the agreed hours of work;
- People's skills and abilities are matched to the job demands;
- Jobs are designed to be within the capabilities of employees; and
- Employees' concerns about their work environment are addressed.

Control
How much say the person has in the way they do their work.

The standard is:
- Employees indicate that they are able to have a say about the way they do their work; and
- Internal systems/policies are in place to respond to an employee's concerns.

State to be achieved:
- Where possible, employees have control over their pace of work;
- Employees are encouraged to use their skills and initiative to do their work;
- Where possible, employees are encouraged to develop new skills to help them undertake new and challenging pieces of work;
- Employees are consulted over their work patterns.

APPENDICES

6.5 APPENDIX 5 – STRESS REDUCTION (CONTINUED)

Reducing the risk of claims for work-related stress (Continued)

Support
Includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues.

The standard is:
- Employees indicate that they receive adequate information and support from their colleagues and superiors; and
- Internal systems are in place to respond to an employee's concerns.

State to be achieved:
- The company has policies and procedures in place to provide support to employees;
- Systems/policies are in place to encourage and facilitate managers to support their staff;
- Systems are in place to enable and encourage employees to support their colleagues;
- Employees know what support is available and how and when to access it;
- Employees have the required resources to do their job; and
- Employees receive regular and constructive feedback.

Role
Whether people understand their role within the organisation and whether the organisation ensures that the person does not have conflicting roles.

The standard is:
- Employees indicate that they understand their role and responsibilities; and
- Internal systems are in place to respond to any employee's concerns.

State to be achieved:
- The employer ensures that, as far as practicable, the different requirements it places upon employees are compatible;
- The employer provides adequate information to enable employees to understand their role and responsibilities;
- The employer ensures that, as far as practicable, the requirements it places upon employees are clear and unambiguous; and

Change
How organisational change (large or small) is managed and communicated within the organisation.

The standard is that:
- Employees indicate that the employer engages them frequently when undergoing an employer change; and
- Internal systems are in place to respond to any employee's concerns.

State to be achieved:
- The employer provides employees with timely information to enable them to understand the reasons for proposed changes;
- The employer ensures adequate employee consultation on changes and provides opportunities for employees to influence proposals;
- Employees are aware of the probable impact of any changes to their jobs. If necessary, employees are given training to support any changes in their jobs.

APPENDICES

6.6 APPENDIX 6 – CODE OF PRACTICE ON VICTIMISATION

1 Introduction

1 Section 42 of **The Industrial Relations Act, 1990** provides for the preparation of draft Codes of Practice by the Labour Relations Commission, as it then was, for submission to the Minister, and for the making, by him/her of an order declaring that a draft Code of Practice received by him/her under section 42 and scheduled to the order shall be a Code of Practice for the purposes of the said Act.

2 In April 2003 the Minister for Enterprise, Trade and Employment requested the Labour Relations Commission, as it then was, under section 42(1) of **The Industrial Relations Act, 1990** to prepare a draft Code of Practice on Victimisation pursuant to the provisions of Article 8.9 of **Sustaining Progress Social Partnership Agreement 2003 - 2005**. This was later repealed and replaced by **S.I. No. 463/2015 - Industrial Relations Act 1990 (Code of Practice on Victimisation) (Declaration) Order 2015**

3 When preparing and agreeing this Code of Practice, the Commission consulted with relevant organisations and took account of the views expressed to the maximum extent possible.

4 The major objective of the Code is the setting out of the different types of practice which would constitute victimisation arising from an employee's membership or activity on behalf of a trade union or a manager discharging his or her managerial functions, or other employees.

2 Purpose

1 The purpose of this Code of Practice is to outline, for the guidance of employers, employees and trade unions, the different types of practice which would constitute victimisation.

2 Victimisation in the context of this Code of Practice refers to victimisation arising from an employee's membership or non-membership, activity or non-activity on behalf of a trade union or an excepted body, or a manager discharging his or her managerial functions, or any other employee in situations where negotiating arrangements are not in place and where collective bargaining fails to take place (and where the procedures under the Code of Practice on Voluntary Dispute Resolution have been invoked or steps have been taken to invoke such procedures).

APPENDICES

6.6 APPENDIX 6 – CODE OF PRACTICE ON VICTIMISATION (CONTINUED)

3 Definitions

1 For the purposes of this Code, victimisation is defined in general terms as any adverse or unfavourable treatment that cannot be justified on objective grounds (objective grounds do not include membership of, or activity on behalf of, a trade union) in the context referred to at Clause 2 above. It shall not include any act constituting a dismissal of the employee within the meaning of **The Unfair Dismissals Acts, 1977 - 2015,** where there is a separate recourse available. For the avoidance of doubt, "employee" in this Code includes any person in the employment concerned, the duties of whom consist of or include managing the business or activity to which the employment relates.

For the purposes of this Code none of the following:

(a) the employer;
(b) an employee; or
(c) a trade union or an excepted body shall victimise an employee or (as the case may be) another employee in the employment concerned on account of:
- **i** the employee being or not being a member of a trade union or an excepted body or
- **ii** the employee engaging or not engaging in any activities on behalf of a trade union or an excepted body or
- **iii** the employee exercising his/her managerial duties, where applicable, to which the employment relates on behalf of the employer.

2 Examples of unfair or adverse treatment (whether acts of commission or omission) that cannot be justified on objective grounds may in the above contexts include an employee suffering any unfavourable change in his/her conditions of employment or acts that adversely affect the interest of the employee; action detrimental to the interest of an employee not wishing to engage in trade union activity or the impeding of a manager in the discharge of his/her managerial functions.

3 The legal definitions of employer, employee, contract of employment and trade unions shall be as set out in Part III of **The Industrial Relations Act, 1990**. A trade union shall be taken to mean any authorised trade union as defined in The Trade Union Act, 1941.

4 Avoidance

Where there is a dispute in an employment where collective bargaining fails to take place and where negotiating arrangements are not in place, no person, be they union representative, individual employee or manager, should be victimised or suffer disadvantage as a consequence of their legitimate actions or affiliation arising from that dispute. The positions and views of all concerned should be respected and all parties should commit themselves to resolve issues in dispute expeditiously and without personal rancour.

5 Procedure for addressing complaints of victimisation

A procedure for addressing complaints of victimisation is set out in **The Industrial Relations (Miscellaneous Provisions) Act, 2004**. Section 9 of the Act provides that a complaint may be presented to the WRC.

APPENDICES

6.7 APPENDIX 7 – TRANSFER OF UNDERTAKINGS REGULATIONS

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) apply to any transfer of an undertaking, business or part of a business from one employer to another employer as a result of a legal transfer (including the assignment or forfeiture of a lease) or merger. The Regulations implement an EU Directive aimed at safeguarding the rights of employees in the event of a transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger.

These Regulations apply to public and private undertakings engaged in economic activities whether or not they are operated for gain.

Transfer means the transfer of an economic entity from one person to another person or from business to business whereby the nature and identity of such business is retained.

In general, the Regulations apply to any person
- working under a contract of employment, including apprenticeship
- employed through an employment agency or
- 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 harbour authority, health board or vocational education committee, and a member of the Garda Siochana 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 these Regulations.

Protection of Employment
All the rights and obligations of an employer under a contract of employment (including terms and conditions inserted by collective agreements, JLCs or Employment Regulation Orders) other than pension rights, existing on the date of transfer, are transferred to the new employer on the transfer of the business or part thereof. It is imperative that an employee's terms and conditions are not affected by such transfer. In essence, the only change should be the name of the employer.

An employee **may not be** dismissed solely by reason of the transfer. However, dismissals **may take place** for economic, technical or organisational reasons involving changes in the workforce.

If an employment is terminated because a transfer involves a substantial deterioration in the working conditions of the employee, the employer concerned is regarded as having been responsible for the termination.

In this regard, it should be noted that an employee who is dismissed within the meaning of **The Unfair Dismissals Acts, 1977 - 2015** with:

- **less than one year's service** may refer a case to a Rights Commissioner under the Regulations;
- **more than one year's service** may refer a complaint to a Rights Commissioner under the Regulations or under **The Unfair Dismissals Acts, 1975 - 2015**.

APPENDICES

6.7 APPENDIX 7 – TRANSFER OF UNDERTAKINGS REGULATIONS (CONTINUED)

Information and Consultation
In a transfer situation, both the original employer and the new employer must inform the representatives of their employees affected by the transfer, of:

i the date or proposed date of the transfer;
ii the reasons for the transfer;
iii the legal implications of the transfer for the employees and a summary of any relevant economic and social implications of the transfer for them, and any measures envisaged in relation to the employees.

The **original employer** must give this information to the employees' representatives; where reasonably practicable, not later than **30 days** before the transfer and in any event, in good time before the transfer occurs.

The **new employer** must give the information to the employees' representatives, where reasonably practicable, not later than **30 days** before the transfer occurs and, in any event, in good time before the employees are directly affected by the transfer as regards their conditions of work and employment.

However, if the employees are represented by a union then such union should be notified well in advance of the purported transfer. These obligations apply whether the decision resulting in the transfer is taken by the employer or another undertaking controlling the employer. The fact that the information concerned was not provided to the employer by the controlling undertaking will not release the employer from those obligations and an employer is liable to the employees for such a failure to notify the employees and/or their representatives within the prescribed time frame.

NOTE: *You should contact the legal advice helpline in all circumstances relating to Transfers of Undertakings as this is a very complex area of employment law.*

APPENDICES

6.8 APPENDIX 8 – EMPLOYMENT RELATED INJUNCTIONS

In certain circumstances it may be open to an employee to seek an injunction restraining an employer from taking certain actions such as from proceeding with an investigation or disciplinary procedure, from dismissing them, or from being placed on suspension pending the outcome of such a process.

Injunctive relief is usually sought where an employee believes that there is imminent threat to their employment in combination with some significant defect in the procedures being used by the employer regarding the matter at issue. In such circumstances, and employee may seek to commence High Court proceedings against the employer, and as part of those proceedings they may seek interim and or interlocutory relief restraining and or compelling the employer from taking certain actions. The interim or interlocutory applications, if successful may result in an employer being required to take certain actions, or being restrained from taking other actions until the matter is heard in full by the High Court. The interim/ interlocutory orders are temporary in nature, and will remain in place until the case is decided or until the High Court modifies or discharges the order.

Prior to the commencement of such proceedings, an employer will almost certainly received a letter before action threatening their commencement. Careful consideration should be given to how to respond when faced with a threat proceedings in which injunctive relief is sought. If such correspondence is received, you should contact the legal advice helpline before responding.

NOTE: *It is imperative to seek legal advice where an injunction is threatened as the circumstances of each case determine the likelihood of success or failure of acquiring injunctive relief.*

APPENDICES

6.9 APPENDIX 9 – DESCRIPTION OF EMPLOYMENT FORUMS

The Workplace Relations Commission
There has been significant change in the structure with regard to the bodies established to deal with the employment disputes in recent times. On the 1st of October 2015 the Workplace Relations Commission (WRC) was established under the provisions of the **Workplace Relations Act, 2015**.

This Act has had the effect of amalgamating the Equality Tribunal, The National Employment Rights Authority (NERA), the Labour Relations Commission (LRC) and the first instance Function of the Employment Appeals Tribunal (EAT), into the WRC, which now deals with all complaints made first instance.

The Workplace Relations Commission also has an enforcement role under certain employment rights legislation. Inspectors have the power to enter premises, inspect wage sheets and other employee 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. See section 1.4 of this manual for further information. For convenience and reference, details of some of the bodies which the Workplace Relations Commission replaced are included below.

The Labour Court
The Labour Court was established under **The Industrial Relations Act, 1946** and provides a comprehensive service for the resolution of disputes about industrial relations, organisation of working time, national minimum wage, part-time work and fixed-term work matters. The Labour Court also establishes Joint Labour Committees and makes Employment Regulation Orders on foot of proposals received from relevant Committees.

The Labour Court consists of 9 full-time members:
- a Chairman
- 2 Deputy Chairmen
- 6 ordinary member representatives of employers (3) and workers (3).

The constitution and operation of the Labour Court are governed by **The Industrial Relations Act, 1946** as amended.

Employment Appeals Tribunal
The Tribunal was an independent body bound to act judicially and was set up to provide a speedy, fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights.

The Irish Human Rights and Equality Commission
The Irish Human Rights and Equality Commission is the Human Rights and Equality institution of Ireland. It is an independent public body that accounts to the Oireachtas. It has a mandate established under the **Irish Human Rights and Equality Commission Act 2014 (IHREC Act 2014)**. **The IHREC Act** included and further enhanced the functions of the former Irish Human Rights Commission and the former Equality Authority. Their purpose is to protect and promote human rights and equality in Ireland and build a culture of respect for human rights, equality and intercultural understanding in the State.

The Equality Tribunal
Prior to the establishment of the Workplace Relations Commission, the Equality Tribunal provided an accessible and impartial forum to remedy unlawful discrimination. It was an independent statutory body whose principal role was the investigation and mediation of complaints of discrimination in relation to employment and in relation to access to goods and services, disposal of property and certain aspects of education.

APPENDICES

6.10 APPENDIX 10 – USEFUL ADDRESSES AND TELEPHONE NUMBERS

ARAG LEGAL ADVICE HELPLINE
Tel: 0818 670 747

1 Hatch Street,
Dublin 2,
D02 PY28
www.arag.ie

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

The Workplace Relations Commission
Information and Customer Services
O'Brien Road
Carlow
Tel: (059) 9178990
www.workplacerelations.ie

The Labour Court
Landsdowne House
Landsdowne Road
Dublin 4
Tel: (01) 613 6666
www.workplacerelations.ie/en/WR_Bodies/labour_Court

Employment Permits
Department of Business, Enterprise and Innovation
Earlsfort Centre
Lower Hatch Street
Dublin 2
Tel: (01) 4175333
www.dbei.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits

Financial Services & Pensions Ombudsman's Bureau
Lincoln House
Lincoln Place
Dublin 2
Tel: (01) 5677000
www.fspo.ie

Irish Human Rights & Equality Commission
16-22 Greet Street
Dublin 7
Tel: (01) 8583000
info@ihrec.ie