



MANDATE
TRADE UNION

Shop Steward Manual & Guide to Employment and Trade Union Law

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Section 1

- (1) Message from John Douglas General Secretary
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(1) A message from John Douglas, General Secretary

Shop stewards and activists are the heart of what Mandate Trade Union is all about, helping workers gain respect, dignity and a decent living. Every day in employments organised by Mandate, shop stewards and activists take action to ensure that their fellow workers as Mandate members are treated fairly.

We have all seen the challenge facing workers in our sectors, and the effects of the “race to the bottom”. Anti-union employers drive down wages and conditions in their own employments thereby putting pressure on existing agreements in unionised companies because these anti-union employers have an unfair competitive advantage.

As our economy has become more global and corporations continue to grow through mergers and acquisitions, the imbalance of power between these corporations and working people poses a greater challenge to us all. Despite their size and power, we can take a stand against these corporations if we work together. We must not let our differences in age, language, gender, nationality, length of service or other factors keep us from working together. Our history shows that we can rise above phony divisions and learn to understand and respect each other as fellow workers. Together we can turn that mutual respect into strength as we recognise the motto – an injury to one is an injury to all.

Mandate Trade Union has a strategy to recruit, organise and campaign on behalf of the many thousands of non-union workers in our sectors and help restore the balance of power in workplaces and society in favour of working people. Every Mandate shop steward and activist must continuously broadcast to our existing members and potential members that there is strength in numbers and that every non-union worker weakens our position at the negotiating table.

This guide describes the role of the shop steward in Mandate and provides some of the information and advice needed to assist shop

stewards to take the necessary actions to defend our past achievements and build upon them for our vision for the future. This guide is one of the valuable resources which will assist both new and experienced shop stewards make this change a reality.

Yours fraternally

A handwritten signature in black ink, appearing to read 'John Douglas', written in a cursive style.

John Douglas

General Secretary

(2) Where to find Mandate

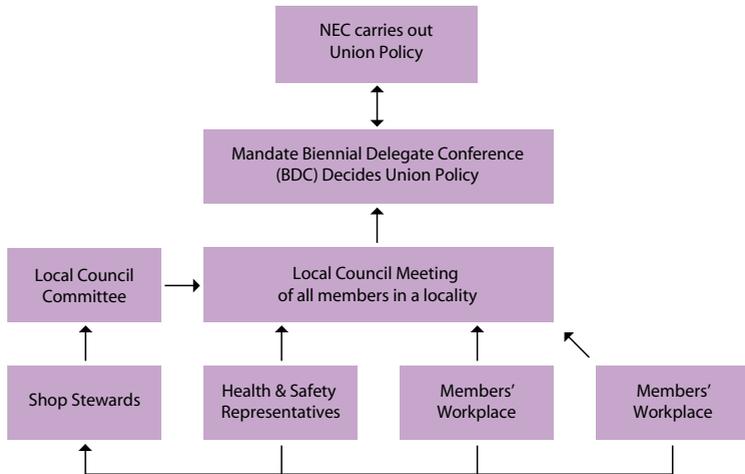
Dublin	O'Lehane House 9 Cavendish Row Dublin 1	Tel: 01 875 6321/2/3 Fax: 01 872 9581 Email: mandate@mandate.ie
Organising & Training Centre	Distillery House Distillery Road Dublin 3	Tel: 01 836 9699 Fax: 01 884 4114 Email: mandateotc@mandate.ie
Cork	IBS House 1-2 Emmet Place Cork	Tel: 021 427 0101/2 021 427 7634 Fax: 021 427 2188 Email: cork@mandate.ie
Galway	Mary Street Galway	Tel: 091 562 750 Fax: 091 562 559 Email: galway@mandate.ie
Limerick	Killoran House Catherine Street Limerick	Tel: 061 310 010 Fax: 061 314 648 Email: limerick@mandate.ie
Waterford	36 Michael Street Waterford	Tel: 051 874 631 Fax: 051 870 830 Email: waterford@mandate.ie
Mandate Website	www.mandate.ie	

Cash & wrap



(3) Structures of Mandate Trade Union

Mandate is the third largest trade union in the Republic of Ireland with a growing and increasingly active membership across the Irish retail and bar trade.



The Local Union

Activists and local committees will normally be elected to maintain Mandate's services in local stores, offices or licensed premises as appropriate.

The size of the committee varies; however, it should be representative of all the interests of the members it serves.

Local activists are the backbone of our union and are given every opportunity to avail of the excellent training opportunities offered by Mandate. It is important to remember that **members** elect their local activists at a general meeting.

Well trained activists produce advice and representation, directly to members. They are well informed of all relevant developments in the union and the company.

Remember – the members are Mandate Trade Union.

Local Councils

The membership of the union is divided into Divisions and Local Councils are based on geographical areas. Council structures meet on a regular basis as provided for in the union's rule book.

Officers of Local Councils:

Local Council Chairpersons

Preside at respective Council meetings and ensure that union rules are followed.

Local Council Vice-Chairpersons

Assist/deputise for the Chairperson.

Local Council Secretaries

Convene meetings, arrange for minutes to be taken, deal with relevant correspondence and are usually the point of contact with/for Mandate Head Office.

Local Councils

Members play a vital role in the union. You can ensure your voice is heard by attending local Council meetings and actively participating in the Mandate Organising, Campaigning and Recruitment agenda in your area and nationally. A well run local Council holds regular meetings and ensures active participation at the Biennial Delegate Conference (BDC), takes direct responsibility for the recruitment of workers into membership and the relevant activists will be well known as the face of Mandate throughout their general locality. In short, the Local Council is effective because of its activity, enthusiasm and the leadership of its officers and Council members.

Divisions

Local Councils are grouped into Divisions which are the organisation's electoral units for the National Executive Council (NEC). Divisions are formed, dissolved, amalgamated or sub-divided by Mandate's NEC.

National Executive Council (NEC)

The NEC carries out the general administration of the union's business and governs the union between meetings of the BDC. Each Division is allocated a number of ordinary seats on the NEC in accordance with the rule book.

Biennial Delegate Conference (BDC)

The BDC is the supreme governing policy making body of the union which meets on a biennial basis. The BDC is composed of member delegates from the various local councils of the union.

(4) Education and Training of Shop Stewards and Mandate members

Well designed training programmes are the pillar which will ensure that activists have the necessary skills, knowledge and competencies to represent members and to move the organisation to a stronger recruiting, organising and campaigning union.

The following are just some of the training courses available to activists:

- Union Representative Introductory and Advanced courses
- Skills for organising [campaigning/organising/mapping]
- Computer Training – Basic and Advanced skills
- Training for Health and Safety Representatives
- Tutor Training
- Communication skills
- Pensions

Mandate's Training Centre is a FETAC Accredited Centre. Mandate members who wish to achieve the FETAC award/s (Further Education and Training Awards Council) can participate in courses designed for that purpose, including courses specifically relating to the retail and bar trade. FETAC is the national award body for further education and training in Ireland.

Educational Grants to Members

Mandate offers annual financial assistance to members to pursue further educational opportunities. Preference will be given to those pursuing courses with a broad trade union and social perspective. Shop Stewards will be notified when applications are being sought.

Gaeltacht Scholarship

A number of Gaeltacht Scholarships are awarded to Mandate members or their family members each year. Application can be made through your local Mandate office.

Section 2

(1) Recruitment, Organising, Campaigning

(1) Recruitment, Organising, Campaigning

Recruitment

Unions are built on the principal of strength in numbers. More union members equals a stronger collective voice for workers and a stronger Mandate. We must continue to recruit new members to be able to protect current terms and conditions as well as working towards better pay and conditions into the future.

Shop stewards are key figures in building the strength of their union. You have the inside knowledge in relation to your workplace and in many cases are the first point of union contact for new employees.

New employees should be approached and educated about your role and the aims and objectives of your union Mandate. It is crucial that after you have completed this initial education that you ask your work colleague to join your union. Our organising department may be available to help you in your important recruitment work as they work in cooperation with your union official to assist in work places, where appropriate.

The Mandate Step Up Programme has developed the role of member organisers who may be available to assist in this important recruitment work, where appropriate. Member organisers are working members of your union who have taken special training and enjoy the challenges of recruiting new staff. Additional training and support is available if members are interested in becoming member organisers.

Organising

Organising demands a whole new way of thinking, working and behaving as trade unionists. Organising is an attitude. It is the attitude that you and your co-workers can collectively work together to improve your working lives. Remember, you are not alone, a key function of the shop steward is to build relationships within your employment. Good organising involves more listening than talking. It is vitally important that you encourage open and honest debate about issues. This will encourage others to organise with you.

Mandate's key aim and your role as a representative is to help workers sort out problems for themselves by getting organised and standing

together. On your own you will have limited success in delivering for your co-workers, but when you can encourage and promote the ideals of collective solidarity, your power and that of your co-workers at work will increase significantly.

So what should I do to organise?

- Encourage workers to discuss their issues and problems and provide leadership to encourage collective action
- Get workers active e.g. circulate a petition, put up posters and notices, attend meetings
- Get members involved, have a visible presence and actively recruit new members
- Identify natural leaders and encourage them to become involved in their union.

Campaigns

Campaigns are run on issues that directly affect you, your family and/or the wider society.

Mandate Trade Union has an agenda to pursue better working conditions for our members and to constantly make a difference in the wider Irish Society. As a shop steward you are encouraged to develop ideas for campaigns at local level and to embrace and actively encourage others to participate in local and national campaigns.

Section 3

- (1) The Role of the Shop Steward
- (2) Rights and Responsibilities
- (3) Communications
- (4) Code of Practice
- (5) Handling Members' grievances
- (6) Occupational Injuries
- (7) Subscriptions

(1) The Role of the Shop Steward

General

The Shop Steward is elected by their co-workers to be the workers' representative in their place of work. When they are elected the members trust the shop steward to represent them fairly in all matters connected with their employment.

For the great majority of trade union members, the Shop Steward is their principle direct personal link with the union. Where possible shop stewards should attend all new employees' induction sessions, introduce yourself as the Mandate shop steward, welcome them and recruit them into the union. You should advise them that if they should have any difficulties or questions, you are there to help them.

The Shop Steward is the first important link between the members and the union and between the worker and the employer.

Your Union official depends on the shop steward to communicate union policy to the members, to represent members at meetings at local level and to relay the views of the members to the employer and to the Union office and the views of the employer to their union official.

(2) Rights and Responsibilities

The Shop Steward has certain responsibilities in relation to the members and equally, members have responsibilities to the Shop Steward:

- The Shop Steward works to protect and improve the wages and working conditions of members.
- She/he ensures that members are aware of, and receive union and other benefits
- She/he keeps informed about new union policy and practices/ workplace changes/employment legislation and amendments/ collective agreements
- She/he represents members when they have grievances or problems, particularly in the area of disciplinary action by the employer

- She/he seeks to secure Management's compliance with collective agreements and protective legislation which may apply to the members

The Shop Steward works to strengthen the union by:

- Circulating updated information in an accessible format
- Ensuring Management's compliance with local and national agreements and the law
- Ensuring members are informed of the outcome of union conferences/ meetings/ negotiations
- Keep the Union office informed about changes in the workplace, such as the opening of a new store where members might be recruited
- Keeping good channels of communication with members
- Make sure that all workers starting in a work area/ department/ store are members of Mandate
- Recruiting new members internally and externally and encouraging existing members to become more active participants in the union
- Setting a good example by promoting union policies
- Attending Training/ Meetings / Forums,

Dealing with the employer:

- Adhering to agreements and procedures
- Keeping lines of communication and reporting accurately to the members and the Union office
- Not taking advantage of her/his position as Shop Steward
- Representing members at grievance and disciplinary meetings.

A Shop Steward's Rights from the members:

- Loyalty – their loyal support when a collective decision has to be made
- Information – to be kept informed about any developments of importance to the workplace which the members may hear about
- Participation – to the members' assistance in carrying out any collective decision which has to be taken

↑ Please Pay Here



- Support when difficult situations arise
- Membes will attend meetings when arranged.

From the Union:

- **Information** to ensure she/he has the necessary information about union policy and the technical and legal aspects of her/his job in the form of circulars, manuals, documentation and leaflets
- **Protection** in the event of victimisation or attacks from the employer because of her/his role as a shop steward
- **Training and Support** to equip her/him to carry out her/his duties competently

From the employer:

Mandate will endeavour to ensure that in their agreements the following facilities are afforded to Shop Stewards:

- To afford the shop steward the right to represent members in the workplace
- SI 169 Code Of Practice on Duties and Responsibilities of employee representatives and the protection and facilities afforded them by their employers
- **Communications'** opportunities and facilities to communicate with members, other shop stewards and with management as necessary
- **Freedom of Movement** to carry out the job of workplace representative and to represent members
- **Information** – all information about the operation of the company necessary to enable the Shop Steward to represent the interests of the workers effectively. This should include finances, capital developments, change in the workforce, company policy, as well as documentation required by law, such as Employee Handbooks setting out the terms and conditions of employment, particularly if they are deemed to be part of the Contract of Employment. The provision of all such information should comply with the terms of the European Union's Information and Consultation Directive.
- **Training and Education** – release to participate in courses and other education opportunities to equip her/him to carry out the job of Shop Steward competently

(3) Communication

Strong interpersonal and communications skills are an essential part of the Shop Steward's equipment. These can be developed with training. The main point to remember is dealing with people is central to the role of the shop steward by:

- Recording accurate accounts of disciplinary and grievances meetings
- Influencing, persuading and negotiating
- Making representations
- Organising meetings
- Listening to members
- Recruitment of new members
- Understanding and being understood

Communication includes listening, speaking and writing.

(4) Code of Practice on Grievance / Disciplinary Procedures

Grievance and Disciplinary Procedures

All employments should have their own Grievance and Disciplinary procedures. Shop stewards need to be familiar with the grievance/disciplinary procedures in their workplace. All company procedures must comply with the principles of the Codes of Practice on Grievance and Disciplinary Procedures as outlined below.

This Code of Practice contains general guidelines on the application of grievance and disciplinary procedures and the promotion of best practice in giving effect to such procedures. The principles and procedures of this Code of Practice should apply unless alternative agreed procedures exist in the work place.

The Importance of Procedures

Procedures are necessary to ensure that grievance and disciplinary measures are applied in a fair and consistent manner. Considerations of equity, natural justice and the maintenance of a good industrial relations atmosphere at workplace level require that acceptable procedures exist and be observed.

General Principles

The essential elements in any procedure for dealing with grievance and disciplinary issues are that they be rational and fair, that the basis for disciplinary action is clear, that the range of penalties that can be imposed is well defined and that an internal appeals mechanism is available. Procedures should be reviewed and updated periodically so that they are consistent with changed circumstances in the workplace, developments in employment legislation and case law and good industrial relations practice generally.

The procedures applied must comply with the general principles of natural justice and fair procedures and should include:

- i) That details of the allegations or complaints be put to the employee concerned;
- ii) That the employee concerned be given the opportunity to respond fully to any such allegations or complaints;
- iii) That the employee concerned is given the opportunity to avail of representation
- iv) That the employee concerned has the right to a fair and impartial determination of the issues being investigated, taking into account the allegations or complaints themselves, the response of the employee concerned to them, any representations made by or on behalf of the employee concerned and any other relevant or appropriate evidence, factors or circumstances.

These principles may require that the allegations or complaints be set out in writing, that the source of the allegations or complaint be given or that the employee concerned be allowed to confront or question witnesses.

As a general rule, an attempt should be made to resolve a disciplinary issue between the employee concerned and his or her immediate manager/supervisor. This could be done on an informal or private basis.

Disciplinary Procedures

In the interest of good industrial relations, disciplinary procedures should be in writing and presented in a format and language which is easily understood. Copies of the procedures should be given to all

employees and should be included in any induction programme for new employees. The consequences of a departure from rules and employment requirements should be clearly set out, particularly in respect of breaches of discipline which, if proved, would warrant suspension or dismissal.

Disciplinary action may include:

- (a) An oral warning
- (b) A written warning
- (c) A final written warning
- (d) Suspension
- (e) Transfer to another task or section of the enterprise
- (f) Demotion
- (g) Some other appropriate disciplinary action short of dismissal
- (h) Dismissal

The steps in the procedure should be progressive – for example, an oral warning, a written warning, final written warning, dismissal. However, there may be instances where more serious action including dismissal, is warranted at an earlier stage. **An employee may be suspended on full pay pending the outcome of an investigation into an alleged breach of discipline.**

Procedures should set out clearly the different levels in the company at which the various stages of the procedures will be applied and **warnings should be removed from an employee's record after a specified period and the employee advised accordingly.**

The operation of a good disciplinary procedure requires the maintenance of adequate records. It also requires that all members of management (including supervisory personnel) and all employees and their shop stewards be familiar with and adhere to the terms of the procedure. When attending a disciplinary meeting, ensure to record details of the meeting in the Record Book.



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(5) Handling Members Grievances and Disciplinary Issues

Meeting with Management

All shop stewards will be required to talk to management at some stage. These discussions could range from informal conversations with supervisors on the shop floor to formal talks as part of a Mandate negotiating team. Whatever the situation, effective negotiations require:

- The support of a well informed membership
- A well prepared case and
- A well organised Mandate delegation

Remember the following checklist before commencing talks with your employer.

Points to Note

- Always ensure that you have copies of the main company/union agreements to hand. It is particularly important to have copies of the grievance and disciplinary procedures at your disposal.
- Don't accept management's invitation to a meeting unless you know what the meeting is about.
- Shop stewards should always be accompanied by another union member when meeting with management.
- Take basic notes at the meeting using the Mandate Report Book, such as the date, the names of those present, what issue was under discussion and what the outcome of the meeting was.
- Don't be afraid to take a break for a private discussion with the other union members present or to telephone your local **Mandate** office for advice.

Preparing your case:

- Get the facts and check them
- Look at agreements, policies and legal rights
- Decide what you want to achieve

- Decide on your key arguments
- Anticipate the company's arguments

Work out a fallback position – what is the minimum you will settle for.

Team Work

- Before meeting with management, call a meeting of the union delegation
- Select a main speaker
- Ask one of the union delegation to take notes
- Agree your arguments and your approach

Meeting Management

- Never disagree in front of management
- Feel free to take a break for private discussions at any time
- Steer the discussion towards your strongest points
- Listen for any indication of an offer from management
- Try to ensure that both sides clearly understand the position when the meeting is over

Reporting Back

- Keep the member or members informed of developments
- Consult the member or members before agreeing anything with management
- Update your official

Representing Individual Members

As a shop steward you will deal with a wide range of problems. Individual grievances and attempts by management to discipline members will form a sizeable portion of a shop steward's workload. The following check lists may be of assistance:

Members Grievance

Always ensure that you have a copy of the company grievance procedure

If the matter is not resolve at one stage of the procedure, move on to the next stage

If the procedure is exhausted and the member is not happy with the outcome, refer the matter on to the union

Keep the member informed of all developments

Disciplinary Measures

- Always ensure that you have a copy of the company disciplinary procedure
- Never accept management's invitation to a meeting without knowing, in advance, what the meeting is about
- Insist that management outline the full nature of the charges against the member before answering any questions
- On receipt of this information, take a break from the meeting and ask for the member's version of events
- Seek advice from the union office if you think the matter is of a particularly serious nature
- Management are entitled to expect answers to reasonable questions. Explain the member's position as best you can. Try to avoid a blunt admission to the charges by outlining any extenuating circumstances applicable.
- Remember that private and sometimes embarrassing information may emerge from disciplinary meetings with management. Such information should be treated as strictly confidential.

(6) Occupational Injuries

Mandate offers legal advice and representation to members who are injured at work. Legal aid forms are available from your Mandate Office.

(7) Subscriptions

Members' subscriptions fund all the work done by the Mandate. Each member pays a contribution that is usually deducted at source by their employer. There is also a facility for members to pay their subscription through their bank directly to the Union office. New members might prefer this option if they are on short term contracts or if they do not want their employer to be aware of their trade union membership.

Every member pays the same amount in their subscription, regardless of whether they are part-time or full-time workers. This is because each member is entitled to and receives the same level of commitment from the Union in terms of benefits and services.

The amount of the subscription is set by the members attending Biennial Delegate Conference (BDC).

If a member becomes unemployed, the contribution can be reduced for as long as that person remains out of work. They will still be entitled to all the benefits and rights as a member paying a full subscription, with the exception that they cannot run for election to the NEC.

Clothing Allowance

Tax relief is available to Mandate members for the upkeep of their uniform. The level of tax relief is re-negotiated periodically by the Union and members should be reminded to include this item in any tax returns completed.

Section 4

(1) Third Party Institutions

(1) Third Party Institutions

The Labour Court

The Labour Court was established to provide a free, comprehensive service for the resolution of disputes about industrial relations, equality, organisation of working time, national minimum wage, part-time work and fixed-term work matters.

The Labour Court is not a court of law. It operates as an industrial relations tribunal, hearing both sides in a case and then issuing a Recommendation (or Determination/Decision/Order, depending of the type of case) setting out its opinion on the dispute and the terms on which it should be settled.

The Labour Court is a court of last resort and cases should only be referred to the Court when all other efforts to resolve a dispute have failed.

The Labour Relations Commission

The Labour Relations Commission was established:

“To promote the development and improvement of Irish industrial relations policies, procedures and practices through the provision of appropriate, timely and effective services to employers, trade unions and employees”.

The Commission carries out this mission by providing the following specific services:

- an industrial relations Conciliation Service
- industrial relations Advisory and Research Services
- a Rights Commissioner Service
- a Workplace Mediation Service
- assistance to Joint Labour Committees and Joint Industrial Councils in the exercise of their functions.

The Commission undertakes other activities of a developmental nature relating to the improvement of industrial relations practices including:

- the review and monitoring of developments in the area of industrial relations
- the preparation, in consultation with the social partners, of codes of practice relevant to industrial relations
- industrial relations research and publications
- organisation of seminars/conferences on industrial relations/human resource management issues.

Legal Status

The Labour Relations Commission was established on 21 January, 1991 under section 24 of the Industrial Relations Act, 1990.

Employment Appeals Tribunal

The Employment Appeals Tribunal is an independent body established to provide a speedy, inexpensive and relatively informal means for adjudication of disputes on employment rights under the various legislations that come under the following statutes:

- Redundancy Payments Acts, 1967 to 2007
- Minimum Notice and Terms of Employment Acts, 1973 to 2001
- Unfair Dismissals Acts, 1977 to 2005
- Protection of Employees (Employers' Insolvency) Acts, 1984 to 2001
- Organisation of Working Time Act, 1997
- Payment of Wages Act, 1991
- Terms of Employment (Information) Act, 1994 and 2001
- Maternity Protection Act, 1994 to 2004
- Adoptive Leave Act, 1995 to 2005
- Protection of Young Persons (Employment) Act, 1996
- Parental Leave Act, 1998 to 2006
- Protections for Persons Reporting Child Abuse Act, 1998

- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003
- European Communities (Protection of Employment) Regulations, 2000
- Carer's Leave Act, 2001
- Competition Act, 2002

The Equality Tribunal

This is an impartial forum to hear or mediate complaints of alleged discrimination under equality legislation. It is independent and quasi-judicial and its decisions and mediated settlements are legally binding.

The equality legislation prohibits discrimination on nine grounds – gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community.



Section 5

Glossary of Terms

Glossary of Terms (A–Z)

Additional Adoptive Leave – an additional, unpaid 16 week entitlement under the Adoptive Leave Act, 1995-2005, that runs with immediate effect after Adoptive Leave. Such leave does not break an employee's continuity of service but is reckonable for purposes of calculating statutory or employment-based entitlements.

Additional Maternity Leave – an additional, unpaid 16 week entitlement under the Maternity Protection Act, 1994-2004, that runs with immediate effect after the eighteen weeks' Maternity Leave has ended. Such leave does not break an employee's continuity of service but is not reckonable for purposes of calculating statutory or employment-based entitlements.

Adoptive Leave – an employee may take 24 weeks unpaid Adoptive Leave under the Adoptive Leave Act, 1995-2005. Such leave is regarded as service and all employment rights are preserved. Employees may claim Adoptive Benefit, a Social Welfare payment during the 24 standard leave weeks. Since 2007, employees may also claim 16 Additional Adoptive Leave unpaid weeks immediately after Adoptive Leave ceases. This additional leave is neither paid by the employer nor does it attract a Social Welfare benefit.

Affiliated – An affiliated organisation can be associated or allied with a larger representative organisation.

Agency Worker – an employee employed by or through an employment agency. Such an employee's employer is the party who pays their wages. See Employment Agency.

All Out Picket – awarded by the Irish Congress of Trade Unions (ICTU) in disputes either involving more than one trade union or where a particular trade union wishes to have support for its pickets from other trade unions. These trade unions can object prior to its award but if the ICTU awards the All Out Picket it acquires the status of an Official Picket for all trade unions concerned. The operation of the All Out Picket is recognised within the Industrial Relations Act, 1990 provisions on balloting.

Annual Leave – four weeks' paid Annual Leave are provided for by the Organisation of Working Time Act, 1997 if employees work 1,365 hours in the Leave Year. If this is not the case, employees who work 117 hours in a calendar month are entitled to one and two-third days' paid Annual Leave for each such month worked. If neither of these two cases obtain, employees are entitled to eight per cent of all hours worked as paid Annual Leave.

Ante-Natal Medical Visits – a woman is entitled to paid Ante-Natal and Post-Natal Medical Visits under the Maternity Protection Act, 1994.

Appellant – an employee claiming that they have been denied a legal entitlement before an industrial relations tribunal.

Arbitration – occurs when two parties to a dispute refer the matter to a third party who imposes a settlement. The Labour Court provides arbitration but, in most cases, the resulting Labour Court Recommendation is not binding on the parties. Exceptions are – industrial relations referrals as an appeal of a Rights Commissioner Recommendation; a referral by a trade union under Section 20, Industrial Relations Act, 1969; or cases where both parties agree in advance to be bound by any decision. In these circumstances, the Recommendation is binding on the union side or, in the latter case, both parties. An Arbitrator imposes a settlement on the parties; on the other hand, a Conciliator attempts to get the parties to arrive at a mutually agreed settlement.

Authorised Trade Union – a trade union within the meaning of the Industrial Relations Act, 1990 and holding a negotiating licence. Immunity from tort arising out of trade disputes only extends to trade unions that are authorised.

Award – an award of damages or compensation from a court of law or a tribunal.

Ballots – the Industrial Relations Act, 1990, obliges trade unions to have rules requiring the conduct of secret ballot of all members whom they think may be involved either in strike action or other forms of industrial action. The ballot must be declared in a prescribed manner to those members. All trade union rule-books have been amended to incorporate these requirements to conduct secret ballots. Without conducting such ballots, the trade union concerned risks exposure to an injunction restraining the strike or industrial action. In addition, if action proceeds in disregard of the outcome of a ballot, the immunities will not be available.

Bank Holiday – has no statutory basis. Public Holidays are those declared by Statute – the Organisation of Working Time Act, 1997 – to be days when all workers are entitled to a paid day off or equivalent compensation. The only Bank Holiday – a day when banks traditionally closed for business – that is not also now a Public Holiday is Good Friday. Good Friday is not a Public Holiday.

Benchmarking – The practice of one company identifying the leading company in its particular industry. It then sets out to measure its own performance in comparison with the market leader and undertakes to take action to narrow the gap in terms of its own performance. It allows firms to find and adopt best practice. In IR terms, it has been used in recent years to set conditions for public service employees in comparison with private sector employees.

Benefits or Benefit Packages – Non-cash incentives to a workforce. They may range from benefits-in-kind like subsidized meals in the company canteen to shares in the company sold to employees at a preferential rate. Benefit packages may also include paid study leave, subsidised foreign holidays, educational fees, low interest on house loans. Packages like this can compensate workers for having lower basic pay than workers doing similar work in other companies.

Benefit-in-Kind – Additional benefits given by an employer are often called benefits-in-kind, such as travelling expenses, medical insurance and employer pension contributions.

Best Practice – This is a firm following the example of excellent work practices in other firms in an effort to improve. This is the same thing as benchmarking – measuring performance against best practice in other firms.

Breaks At Work – the Organisation of Working Time Act, 1997 provides that all employees are entitled to a fifteen-minute break after four and a half hours at work or half an hour after six hours. Breaks cannot be taken at end of shift. The law is silent on the matter of paid breaks. The Protection of Young Persons (Employment) Act, 1996 lays down minimum break entitlements for children and young persons.

Bullying – the definition of bullying provided by the Task Force On Workplace Bullying and used in the three Codes Of Practice on workplace bullying issued by the Equality Authority, Health & Safety Authority (HSA) and Labour Relations Commission (LRC), is ‘repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying’.

Burden Of Proof – in cases taken under the Unfair Dismissals Acts, 1977–2001, all dismissals are deemed to be unfair unless an employer can show that there were substantial ground justifying the dismissal. The burden of proof is thus on the employer. The exception to this rule is if an employee claims that they were dismissed because of their trade union membership or activity or if they are claiming constructive dismissal.

Burden Of Proof in Gender Discrimination Cases – generally, discrimination must be proved by the person alleging it. However, since the European Communities (Burden Of Proof In Gender Discrimination Cases) Regulations, 2001, SI 337, ‘in any proceedings that are established by or on behalf of a person from which it may be presumed that there has been direct or indirect discrimination in relation to him or her, it shall be for the other party concerned to prove the contrary’. In other words, if a *prima facie* case of discrimination can be shown, the burden of proof falls on the employer to show evidence disproving this.

Capital – This can come in many forms e.g. liquid capital, fixed capital, circulating capital, social capital – All types of capital are valued and can be exchanged using money. The economic return on capital is interest.

Capital Expenditure – Spending on the purchase or creation of fixed assets such as roads, hospitals, schools etc. These assets contribute to increasing the productive capacity of the country in the long term.

Careers advancement opportunities – Training and job transfers within a company to enhance the employees’ chances of advancement within the organisation.

Carer's Leave – is taken by a person claiming Carer's Leave to provide full-time care and attention for a person needing such care and attention (a Relevant Person). Restrictions are placed on carers as to what work or training they may undertake whilst on Carer's Leave. Those on Carer's Leave may be entitled to Carer's Benefit.

Casual – there is little in law defining what a casual employee is. In the Protection Of Employment (Part-Time Work) Act, 2001, however, a casual employee is defined as any part-time employee continuously employed with the same employer for less than thirteen weeks and who is not either obviously seasonal or regular.

Centralised structure – Organisations are centralised when important decisions are taken by managers at the top of the organisation.

Child – defined in the Protection of Young Persons (Employment) Act, 1996 as any person under sixteen or school leaving age.

Circuit Court – employment law cases may be referred to the Circuit Court if the employer either ignores or refuses to implement Determinations of the Employment Appeals Tribunal (EAT) or Labour Court. The Circuit Court, in most cases, is empowered to make an Order compelling compliance without rehearing the case. The maximum amount that can be considered before the Circuit Court is {38,092.

Civil Law – under civil law a person or organisation sues another person or organisation for a declaration, damages or an injunction. See Common Law.

Claimant – someone bringing a claim for a denied right to an industrial relations institution such as the Employment Appeals Tribunal. See – Appellant.

Code of Practice – issued by a Minister to establish good practice. A Code of Practice is admissible in proceedings before industrial relations tribunals or courts of law.

Collective Agreement – the outcome of collective bargaining where the parties agree to a settlement which may or may not be recorded in writing. The terms of a collective agreement may be incorporated into a contract of employment. In union organised employments, the collective agreement sets out the pay, conditions and procedures agreed by the employer and trade union(s).

Collective Bargaining – an arrangement where employees negotiate collectively with their employer through a representative body – normally a trade union. A contract of employment is an individual contract between employer and employee but the law recognises that many employees negotiate through collective bargaining systems. Collective bargaining is a voluntary system.

Collective Redundancy – defined under the Protection of Employment Act, 1977 as any redundancy of 10 per cent of a workforce over a thirty day period. If this is proposed the employer must notify the Minister of their intention, suspend the collective redundancy for thirty days and enter discussions with the employees or their trade union and identify the names and numbers of those proposed for redundancy, the reasons for such action, and possible ways of averting or minimising the redundancies.

Common Law – judge made law in decisions handed down on the basis of evidence presented in court proceedings and the precedent of previous cases.

Comparable Employee – a comparable full-time employee with whom a part-time employee is claiming *pro rata temporis* [that is proportionately] as defined in the Protection of Employees (Part-Time Work) Act, 2001.

Comparator – the person against whom a claimant is claiming either equal pay or equal treatment within the meaning of the Employment Equality Act, 1998.

Compassionate Leave – is not provided for by Statute. Many employments grant paid Compassionate Leave for a death in the immediate family – usually the day before, day of and day after the funeral –and lesser leave for other family or personal related circumstances.

Compensation – an amount awarded by an industrial relations tribunal or court of law to compensate for the denial of a legal entitlement or for personal injury caused by the employer's negligence.

Conciliation – occurs where parties to a dispute refer a matter to a third party in the hope that their differences may be reconciled through the medium of such a conciliator. The Labour Relations Commission (LRC) provides a highly successful Conciliation Service and the LRC Industrial Relations Officers (IROs) are skilled in identifying common ground and inducing compromise and agreement between the parties. In conciliation, an agreement is arrived at between the parties – it is not imposed on them. LRC conciliation is usually a necessary pre-condition for referral to the Labour Court.

Conditions of Employment – all terms and conditions of employment, expressed or implied, of an employee's contract of service/contract of employment. Employees are entitled to a written statement of their terms of employment under the Terms of Employment (Information) Acts, 1994–2001.

Conduct – an employee's behaviour. Conduct may determine what is the normal, expected behaviour of an employee, even if this differs from the expressed terms of a contract of employment.

Confirmation Document – prepared by those seeking Parental or Carer's Leave confirming the manner in which they intend to avail of their leave entitlement.

Constructive Dismissal – where an employee feels that conditions or an employer's attitude at work have become so bad that they have very little choice but to resign. This might occur in a situation of bullying, harassment or sexual harassment where either the employer is the perpetrator or ignores or deals very inadequately with the employee's complaints of such behaviour. The burden of proof is on an employee to prove that a constructive dismissal has taken place.

Consultation – means the exchange of views and the establishment of dialogue between employees' representatives and the employer. There are circumstances when the employer is legally obliged to consult their employees – matters of safety and health, collective redundancy, transfer of undertakings, and worker participation legislation.

Continuity of Employment – employment is continuous – that is to say unbroken – unless an employee either resigns or retires, is dismissed or made redundant. Most Acts allow for breaks in employment – for illness, injury, or when taken by agreement with the employer – without that breaking an employee’s ‘continuity of service’. Indeed, absences of up to twenty-six weeks between consecutive periods of service do not, in general, break continuity. For the rules for defining continuity, each Act should be consulted as there are differences between different Acts – even if the concept of ‘continuity’ is common.

Contract of Employment – is a contract between an employer and employee, established after an offer of employment is made for a consideration or remuneration by the employer and accepted by the employee. Employees on contracts of employment are covered by all protective legislation. Contracts of employment may be expressed orally or in writing and they can be open-ended or for fixed-time or fixed-purpose.

Contract for Service – a contract between an employer and an independent contractor or self-employed person to provide a service, including labour. Those engaged on contracts for service generally have no protection under employment laws with the exception of the Safety, Health & Welfare at Work Act, 1989.

Contributory Negligence – if, in seeking compensation for personal injury or industrial disease caused by a workplace accident or exposure to a hazardous article or substance, the evidence shows that the employee concerned disobeyed safety procedure, or did not wear the appropriate personal protective equipment provided, or was indulging in ‘horse play’ that caused the accident, they may be judged to have ‘contributed’ to their own injury or disease through their own negligence and any award adjusted accordingly. It is possible for contributory negligence to be considered to be slight or absolute depending on the degree of age, experience, training, etc.

Corporation Tax – A tax on company profits.

Court Order – an order from a Court compelling a person or organisation to do or not do something or to implement the Decision or Determination of an industrial relations tribunal. Under the Safety, Health & Welfare at Work Act, 1989, a court order may be sought by a Health & Safety Inspector under Section 39 to close a premises or part of a premises where serious and imminent risk persists or where other measures to try to remove or control such risk have been ignored by the employer. See also, Injunction.

Criminal Law – in criminal law, the State prosecutes an individual or corporate body in order to secure a conviction leading to a fine, probation or imprisonment.

CSR – Corporate Social Responsibility is where a company recognises the society in which it exists and attempts to benefit it in some way. Most successful companies should view social responsibility as an important, valuable aspect of their organisational objectives.

Custom and Practice – something done by employees that affects the terms of a written or oral contract of employment. An extension of a ten minute tea break or the establishment of an unofficial tea break are common examples of workplace behaviour being determined not by formal agreement but through custom and practice. The law recognises matters established through custom and practice provided they are lawful and conform to the principles of being ‘reasonable, certain and notorious’.

Damages – sought by a claimant or plaintiff in a civil court action against a person or corporate body for a wrong (tort) committed – for example a personal injury. Industrial relations tribunals can order that an employee’s statutory entitlements be given or compensated for but cannot, by and large, award damages.

Data Controller – a person seeking, compiling and controlling the use of personal information on any individual stored electronically within the meaning of the Data Protection Act, 1988. A Data Controller must gather such information fairly, only use it for its intended purpose and for no longer than is necessary, not divulge the information to others, and hold the information securely.

Data Protection Commissioner – person to whom an individual complains if they feel that personal information about them, stored on computer by a Data Controller, is inaccurate, misleading or outdated, and/or that the Data Controller has ignored or denied the individual's request for access to such data.

Declaration – a 'Declaration' by a court of law as to what the legal position in any contested matter is. A case may be taken as a 'test case' in order to clarify or establish a legal precedent by seeking such a declaration. The decision of the Employment Appeals Tribunal in relation to claims coming before it under the Protection of Employees (Employers' Insolvency) Acts, 1984–2001, is also called a Declaration.

Deduction from Wages – the Payment of Wages Act, 1991 imposes restrictions on employers in terms of what and how they can make deductions from an employee's wages. Other than deductions the employer is obliged to make by law – PAYE and PRSI – it is generally the case that no deduction can be made without the employee's consent. An employee must receive an itemised pay slip.

Defendant – a person defending an action in a civil court or a prosecution in a criminal court.

Defined Benefit Scheme – a pension scheme in which the pension benefits are clearly defined. The member of the scheme knows what the pension benefit is going to be from the time they join the scheme. Also see Final Salary Scheme.

Defined Contribution Scheme – a pension scheme in which the contribution to the scheme is defined but not the benefit. The benefit on retirement depends on the investment returns earned on the contributions.

Delegation – Delegation involves the transfer to others of responsibility for carrying out certain tasks, functions or decisions.

Determination – a Determination by the Employment Appeals Tribunal, Equality Tribunal or Labour Court that a claimant has or has not established that a legal entitlement has been denied them by an employer and any course of action or financial amount that the employer is ordered to follow or to pay to rectify matters. Cases resulting in a Determination would be equality matters and issues arising under the Organisation of Working Time Act, 1997. A Determination is also issued for cases taken under Section 20, Industrial Relations Act, 1969 or an appeal from a Rights Commissioner Recommendation.

Dignity at Work – a right for all employees whilst at work and supported by the Dignity at Work Charter. Harassment and sexual harassment are expressly forbidden at work and workplace bullying is considered by the Health & Safety Authority (HSA) to be a workplace hazard and, if not removed, liable to cause personal injury.

Directives – A type of legislation issued by the EU which is binding on Member States in terms of objective but which leaves choice of method to Member States.

Direct Discrimination – defined in the Employment Equality Act, 1998 and Equal Status Act, 2000, where a person is directly and blatantly the victim of discrimination – a marriage bar, a refusal to serve people of a certain racial or ethnic origin, etc. Most discrimination is now more subtle than that. See Indirect Discrimination and Discrimination by Association.

Discrimination – unlawful discrimination is defined in the Employment Equality Act, 1998 and Equal Status Act, 2000 as where the treatment of one person is less favourable than how another person is, has been or would be treated. Discrimination can either be direct, indirect or discrimination by association.

Discrimination by Association – is forbidden by the Employment Equality Act, 1998 and Equal Status Act, 2000 and occurs where someone is discriminated against because of their association with other individual(s) who fall into one of the nine discriminatory grounds. An employer might, for example, refuse to employ a woman because 'the last woman we had here was inefficient' or a Traveller may be refused service because a Service Provider might say 'I've had trouble with your sort before'. Both instances would be examples of discrimination by association.

Disciplinary Procedure – a well-established collective agreement that ensures discipline must follow certain ‘steps’ – informal verbal warning, final verbal warning, written warning, etc. This practice is now contained in the Code of Practice on Grievance & Disciplinary Procedures, 2000, SI 146, which all employers are expected to comply with.

Discriminatory Grounds – the Employment Equality Act, 1998 and Equal Status Act, 2000 identify nine grounds upon which it is unlawful to discriminate in the matters of pay, treatment within an employment or provision of services. The nine grounds are gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller Community.

District Court – an industrial relations case may in certain circumstances be referred to a District Court if an employer has either ignored or refused to implement a Decision or Determination of an industrial relations tribunal. The maximum amount considered by the District Court is €6,349.

Duty Of Care – a common law duty imposed on all employers to provide a safe place of work, safe plant and equipment, safe systems of work and reasonably competent fellow employees. An employer’s duty of care may extend further – for example, if, having provided a reference, this reference must be accurate and not misleading. Employees also owe a general duty of care to safeguard their own safety and health and that of their fellow employees. ‘Horse play’ and ‘mucking about’ might thus breach this duty, as might name calling or ‘slagging’ if this constitutes bullying or harassment and damages a fellow employee’s safety, health and welfare or dignity at work.

Employee – generally, a person who is employed, or was employed, on a contract of service, that is a contract of employment, or apprenticeship, with an employer.

Employer – a person who engages, or did engage, a person on a contract of service – that is a contract of employment – or apprenticeship.

Employers’ Liability – an employer is liable for the safety, health and welfare at work of those they employ and those affected by their employment. This is sometimes referred to as civil liability.

Employment Agency – as defined by the Employment Agency Act, 1971, must be licensed to operate and cannot charge a client a fee simply for looking for employment for them. An employment agency may be an employer if they pay the wages of persons they place in employments. If they are the employer of such persons, they will have employer's liability to that person and responsibility to extend all statutory employment rights to them.

Employment Appeals Tribunal (EAT) – an industrial relations tribunal that determines an employee's legal entitlements under a wide range of employment law on the basis of evidence presented under oath. EAT Determinations are enforceable in a court of law and/or can be appealed to the High Court on a point of law.

Employment Regulation Order (ERO) – an Order issued by the Labour Court arising from the deliberations of a Joint Labour Committee (JLC) in establishing legally applicable minimum standards for the industrial sector covered by the JLC.

Employment Rights – all normal employment rights, such as job position, service and seniority, are guaranteed by law while an employee is on Maternity, Adoptive, Parental, Force Majeure or Carer's Leave. Most employment rights will be determined by the collective agreement drawn up between the employer and the trade union.

Equal Pay – an employee is entitled to equal pay – equal remuneration – where they perform the same, similar or work of equal value compared to another employee, earning higher pay employed by the same or associated employer.

Equal Pay Clause – the Employment Equality Act, 1998 provides that an entitlement to equal pay is implicit in every employee's contract of employment.

Equal Status – all persons are entitled to equal status with all other persons when purchasing goods or services from a Service Provider. A Service Provider, in particular, cannot discriminate on the nine discriminatory grounds listed in the Equal Status Act, 2000.

Equal Treatment – employees are entitled to be treated the same as other employees in terms of access to employment, training, promotion and other matters once employed. Discrimination is outlawed on the nine grounds listed in the Employment Equality Act, 1998 other than for exempted or objective reasons.

Equality Audit – provided for by the Employment Equality Act, 1998, where an employer may be directed to carry out an equality review and develop an action plan to demonstrate how they intend to remove identified inequalities and/or correct the impact of past inequality in access to employment or training, promotion, etc, or equal pay.

Equality Authority – dedicated agency set up by the Employment Equality Act, 1998 to replace the Employment Equality Agency. Monitors the operation of the Employment Equality Act, 1998; Equal Status Act, 2000; Maternity Protection Act, 1994; Adoptive Leave Act, 1995; and Parental Leave Act, 1998. It provides support and advice for those considering taking cases under this legislation.

Equality Tribunal – dedicated tribunal setting up a system of adjudication and redress for cases heard under the Employment Equality Act, 1998 and Equal Status Act, 2000, through Mediation or investigation by Equality Officers. Set up as the Office of the Director of Equality Investigations, it adopted the working title of Equality Tribunal in 2002. Decisions and Determinations are issued by the Director, Equality Tribunal.

European Court Of Justice (ECJ) – court of the European Union to which an industrial relations case may be appealed from the Irish courts of law if it is felt that a decision was in breach of or contrary to the provisions of a European Directive, Regulation or Decision. This has happened in equality law cases.

European Works Council (EWC) – is a mechanism for employee – employer information and consultation in a trans-national company which is located in at least two member states of the EU.

Examinership – an option when a company is clearly getting into financial difficulties. An application is made to the High Court to appoint an Examiner to evaluate the company's viability and, if it is salvageable, to develop a long-term strategy for survival and growth. Once in Examinership, the company is under the court's protection and cannot be wound up and all correspondence, invoices and orders must be stamped 'In Examination'. Examinership is one of the definitions of insolvency' contained in the Protection of Employees (Employers' Insolvency) Act, 1994.

Express Terms – terms of a contract of service or contract of employment expressed to the employee in writing or verbally.

Father's Leave – a provision in the Maternity Protection Act, 1994 and Adoptive Leave Act, 1995 where a father may assume the leave entitlements of the mother who dies while on Maternity or Adoptive Leave. Further Father's Leave is the father's version of Additional Maternity or Adoptive Leave. See Paternity Leave.

Fixed Time & Fixed Purpose Contracts – a contract of employment defined by a time, say a six month or one year contract, or by a fixed purpose, to paint a building or complete a special administrative task for example.

Force Majeure – paid leave granted under the Parental Leave Act, 1998, where the immediate and indispensable presence of the employee is required at the place where a close family member is ill or injured. Leave is confined to three days in any year or five days in any three years.

Freedom of Information – the Freedom of Information Act, 1997 obliges the public sector generally to make open information about their activities, services and methods of service and gives individuals a right to access personal information kept about them. The information can be stored in any format –paper or electronic.

Frustration of the Contract – for example, when absence is deemed to have reached unacceptable levels, whether for genuine reason or not, to prevent the employee fulfilling their primary contractual obligation to their employer to make themselves available for work.

Final Remuneration – The term used by the Revenue Commissioners for the maximum amount of earnings which it will permit to be used for the purposes of calculating maximum approvable benefits.

Good Friday – see Bank Holiday.

Grievance – an issue with an employer arising from the denial of an employment right provided for in the contract of employment or in Statute Law, a difference of opinion or interpretation of the in-house collective agreement or law, a disputed change in work practice occasioned by the introduction of new technology or new systems of work, or discipline imposed by an employer arising from an employee's behaviour or work performance.

Grievance Procedure – an agreed procedure between employer and employees for handling grievances. The Code of Practice on Grievance & Disciplinary Procedures, 2001, SI 146 lays down standards for what might be included in Grievance Procedures.

Gross Misconduct – behaviour so serious in its nature that it may warrant severe discipline of the employee concerned by the employer. This discipline may include suspension or even dismissal. Most collective agreements define such 'offences' within their Grievance & Disciplinary Procedures but, leniency applied in previous cases, may have built up considerable precedent within any employment as to what actually constitutes 'gross misconduct'. Typical offences listed under the heading of 'gross misconduct' include physical or sexual assault, menacing or threatening behaviour, theft of company or personal property, someone badly under the influence of alcohol or drugs, etc.

Harassment – harassment on the grounds of gender, civil status, family status, sexual orientation, religion, age, disability, race, or membership of the Traveller Community is unlawful within the terms of the Employment Equality Act, 1998. See Bullying and Sexual Harassment.

HACCP (Hazard Analysis and Critical Control Point) – A systematic approach to the identification, evaluation and control of food safety hazards based on a number of generally accepted principles.

Hazard – A hazard is anything that can cause harm (e.g. dangerous chemicals, electricity, an exposed wire, or working at heights from ladders).

Health & Safety Authority (HSA) – a dedicated institution established under the Safety, Health & Welfare At Work Act, 1998, to monitor and enforce the Act, and to promote an improved safety consciousness within employment and generally.

Health & Safety Leave – a provision of the Maternity Protection Act, 1994 where a pregnant or breastfeeding woman who has recently given birth is put at risk by a workplace risk that the employer cannot adequately remove or control, and where there is no suitable alternative employment available. For the first twenty days of such leave the employee must be paid by the employer, after that the employee transfers to Health & Safety Benefit, a Social Welfare payment.

High Court – either party may appeal Determinations by industrial relations tribunals to the High Court on a point of law. Employees who find that their employer has ignored or refused to implement such Determinations may seek an Order from the High Court compelling compliance by the employer.

Holiday Pay – under the Organisation of Working Time Act, 1997, holiday pay must be paid in advance and is based either on normal earnings or, where earnings may vary in relation to work done, a payment based on the average wage of the employee over the thirteen weeks immediately preceding the holiday. The Act expressly excludes overtime pay from Holiday Pay but the Labour Court has recommended it be included where overtime is ‘regular and rostered’.

Hours Worked – the hours worked to calculate entitlements under any legislation where entitlements depend on hours worked – such as the holiday provisions of the Organisation of Working Time Act, 1997. See also Time at Work and Working Time.

Human Resource Management – The management of the workforce of a business to ensure sufficient staff levels with the right skills, properly rewarded and motivated.

IBEC – The Irish Business and Employers Confederation is an interest group that represents most large businesses in the country i.e. those with over 50 workers. With over 4,000 members it is the voice of employers and as such represents its members when dealing with the “social partners”.

ICTU – The Irish Congress of Trade Unions is an umbrella body for most of the trade unions in the country. ICTU seeks improvements in working conditions and pay for its members and represents the trade union movement amongst the “social” partners.

Immunity – immunity from torts arising out of trade disputes within the meaning of the Industrial Relations Act, 1990. Without such immunity, an employer could sue a trade union for damages arising from industrial action or strikes. Immunity is also dependent on there being a trade dispute and the trade union giving due notice to the employer and not acting contrary to a ballot of its members.

Implied Terms – terms implicit in every contract of service/contract of employment, deriving from common law and imposing duties on employers and employees. Employees must make themselves available for work, obey lawful orders, give faithful and honest service and exercise care. Employers must pay (agreed) wages, provide work (sometimes), indemnify their employees against costs, and exercise care. See Custom & Practice, Duty Of Care, Equal Pay Clause, and Equal Treatment Clause.

Improvement Direction, Plan & Notice – sought by a Health & Safety Inspector where breaches of legislation are discovered, or imposed where the employer’s response is considered inadequate.

Incorporated Terms – terms automatically incorporated into an individual’s contract of employment from newly enacted statutes, collective agreements, and national agreements.

Independent retailers – These are shops usually owned by sole traders or family concerns. They have no link to any voluntary group. They are attractive to consumers because they have very long opening hours and often offer credit to long standing customers. They sometimes provide delivery services and most still have a friendly atmosphere to shop in.

Indirect Discrimination – a condition of employment introduced by the employer – and not a necessary condition – that will disproportionately discriminate against a particular group. An example would be a minimum height qualification for an administrative worker that is not a necessary qualification for the job but which, if introduced, would eliminate most female candidates for appointment.

Industrial Action – defined in the Industrial Relations Act, 1990 as anything done in contemplation or furtherance of a trade dispute designed to compel the employer to accede to the employees' demands. Such action could be a work-to-rule, overtime ban or withdrawal of co-operation and any such action can only be carried out after the trade union members concerned have been balloted and have agreed to the action, and the action has been sanctioned by the union Executive and due notice of seven days notified to the employer.

Information Commissioner – office to which complaints are made that a body or organisation has denied or ignored an individual's request for information under the Freedom Of Information Act, 1997, or that such a body or organisation has declined to rectify any inaccuracy, misleading or outdated detail in an individual's personal information held.

Injunction – a court order sought to prevent something from continuing or not continuing in circumstances where the court is satisfied that continuance or non-continuance of such action would damage the interests of the party seeking the injunction. Breach of the injunction's terms by the person(s) or body it is awarded against would render that person(s) or body in contempt of court.

Insolvency – defined under the Protection Of Employees (Employers' Insolvency) Act, 1984–2001, as bankruptcy, examinership, liquidation or receivership, and, in such circumstances, employees can claim unpaid wages, holidays, notice, etc, from the Social Insurance Fund.

Inspectors – Inspectors employed either within the Department Of Enterprise, Trade & Employment or the Health & Safety Authority to inspect work premises to check on compliance with protective legislation and safety, health and welfare at work legislation. Inspectors have powers to enter premises, seek and inspect records or documents, take samples, etc. Inspections that find that legal obligations have been ignored by employers or employees could lead to prosecutions for such offences. It is an offence to obstruct Inspectors in their work.

Integrated Pension Scheme – is one that takes into account the contributory old age pension or other similar contributory benefits under social insurance, in designing the overall benefit of the scheme.

The International Labour Organisation (ILO) – is the United Nations agency which deals with employment and labour market issues. The mission of the ILO is to improve standards and conditions of work and to encourage productive employment throughout the world. As part of the Treaty of Versailles, the ILO was established on the principle that lasting and universal peace could only be achieved on a solid foundation of social justice. In 1923, the ILO became the first international organisation, which the new Irish state joined.

Industrial Relations Officer (IRO) – An officer of the LRC appointed to mediate in industrial disputes. All IROs come from an independent public service background. They are trained and experienced experts in mediation and conciliation techniques.

Industrial Relations – The quality of relations between employers and employees. The Industrial Relations Act 1990, established by the LRC, set out the rules for proper conduct during industrial disputes.

Infrastructure – A country's stock of assets. It includes economic assets such as roads and airports and social assets such as museums and libraries.

Intranet – A form of internal communications by computer. Transnational organisations can use the Intranet to communicate with branches worldwide sharing information on best practice and functions like research and development. The information is encrypted in such a way that only these branches can access the information on the site.

Joint Industrial Councils – (at Tom Johnson House, Beggars Bush, Dublin 4. Telephone: (01) 613666 LoCall 1890 220228). The 1946 Industrial Relations Act provided for the registration by the Labour Court as "qualified" joint industrial councils of bodies, representative of workers and employers which sought harmonious relations and had rules providing that a strike or lock-out would not take place before a dispute had been considered by the body concerned. The court was empowered to appoint, on request, a Chairperson and a secretary to a registered Council. The Act imposes three conditions for registration of a Joint Industrial Council. The Council must be substantially representative of the workers affected and of their employers and its object must be the formation of harmonious relations between those it represents. The rules must provide that if a trade dispute arises, a strike or lock-out will not be undertaken until the dispute has been referred to the Council and

considered by it. Three such Councils were registered, in 1948, 1964 and 1965, and still exist. There are also eleven Joint Industrial Councils which have not sought registration. They are chaired by Industrial Relations Officers of the Labour Relations Commission (LRC) and an officer of the Labour Court acts as their secretary.

Joint Labour Committees – (at Tom Johnson House, Beggars Bush, Dublin 4. Telephone: (01) 613666 LoCall 1890 220228). Joint Labour Committees (JLCs) are bodies established under the Industrial Relations Act, 1946 to provide machinery for fixing statutory minimum rates of pay and conditions of employment. They may be set up by the Labour Court on the application of (i) the Minister for Enterprise, Trade & Employment, or (ii) a trade union, or (iii) any organisation claiming to be representative of the workers or the employers involved. A JLC is made up of equal numbers of employer and worker representatives appointed by the Labour Court and a chairperson and substitute chairperson appointed by the Minister for Enterprise, Trade and Employment. JLCs operate in areas where collective bargaining is not well established and wages tend to be low.

Labour Court – established under the Industrial Relations Act, 1946 to provide a system of investigation of disputes and the issue of Recommendations aimed at settling such disputes. The Industrial Relations Act, 1990, separated Conciliation with the establishment of the Labour Relations Commission (LRC). This was intended to re-establish the Labour Court, in industrial relations terms, as a ‘court of last resort’.

Labour Relations Commission (LRC) – dedicated body set up by the Industrial Relations Act, 1990 to promote good industrial relations by offering assistance to employers and trade unions through an Advisory Service, a Conciliation Service – now separate and independent from the Labour Court, and the services of Rights Commissioner, Joint Industrial Councils, Labour Committees and other such structures.

Labour Force – This comprises those who are either working or available for work producing goods or services of economic value. The proportion of the population participating in the labour force varies greatly with age. It is zero under the age of 15 and very low among those over 65.

Last In First Out (LIFO) – a principle for determining, on a seniority basis, selection of employees for redundancy.

Lay Off – in effect a suspension of the employee's contract by the employer which s/he anticipates will be temporary.

Leave Year – defined under the Organisation of Working Time Act, 1997 as 1 April to 31 March, as the period in which entitlement to Annual Leave is calculated and when such leave must be taken. Many employments operate a Leave Year from January to December or from annual shut down to shut down – August to July.

Liability – an employer owes a duty of care to their employees and others who may be affected by their work. They are also liable for the actions of such employees. See Duty of Care, Employers' Liability, Occupier's Liability, and Vicarious Liability.

Light Work – a term that has no basis in law. Occupational physicians – and many insurance companies – would now argue that an employee is either fit for work – or is not fit. Alternative employment may, however, be offered to pregnant workers, and those who have recently given birth or are breastfeeding, within the meaning of the Maternity Protection Act, 1994.

Like Work – defined in the Employment Equality Act, 1998 as 'same, similar or work of equal value'.

Liquidation – terminates a company's existence and distributes its assets in a preordained way. A Liquidator is appointed by a company's creditors, members or by a court of law and realises all of the company's assets to distribute to those creditors.

Local Bargaining – collective bargaining between employer and employees and their trade union(s) at the level of the employment/enterprise.

Lock Out – an employer's refusal to allow employees attend work under existing conditions or a simple refusal to allow workers enter the premises. Many trade unions pay Dispute Benefit to their members who are Locked Out.

Lump Sum Payment – a payment from an employment in settlement of an outstanding claim – most usually a back payment of monies owed (for example retrospection of a pay increase) or a severance payment.

Live Register – One measure of the level of unemployment; it is the register which must be signed by people who are unemployed and/or seeking welfare payments.

Maternity Leave – 26 weeks Maternity Leave is provided for under the Maternity Protection Act, 1994-2004. While on leave, which is not paid by the employer, the employee may claim Maternity Benefit. The leave is regarded as service and all employment rights are preserved. The employee may take 16 weeks Additional Maternity Leave, which is not paid by the employer or by benefit, immediately after the Maternity Leave ceases.

Maximum Working Week – forty-eight hours a week, averaged over the Reference Period, as defined in the Organisation of Working Time Act, 1997.

Mediation – a process of allowing two parties in dispute, through the agency of a Mediator, to arrive at an agreed solution. The Equality Tribunal offers Mediation as an option for settling cases that are referred to it under the Employment Equality Act, 1998 or Equal Status Act, 2000.

Minimum Notice – a statutory entitlement to a minimum of one week's notice after thirteen weeks' continuous service, rising to an entitlement to eight weeks' notice after fifteen years continuous service, as provided for in the Minimum Notice & Terms of Employment Acts, 1977–2001.

Misconduct – behaviour deemed inappropriate within the terms of an employer-trade union agreement and, if agreed disciplinary procedures are referred to and followed, possibly warranting some form of penalty. The Code of Practice on Grievances & Disciplinary Procedures, 2000, SI 146 lays down standards for such procedures and the Unfair Dismissals Acts, 1977–2001, lay down criteria that provide for 'fair dismissals' that include an employee's conduct.

Multiples – A number of shops, owned by the one owner.

National Minimum Wage – defined under the National Minimum Wage Act, 2000.

National Pay Agreement: Towards 2016 – Negotiated early in 2006 this is the seventh in a series of agreements between Government and the social partners dating back to 1987.

Natural Justice – a concept based on the idea of Fair Procedures and including basic elements such as the requirement that an employee should be given full notice of charge(s), has a right to be represented and to have a full opportunity to offer a defence of charges, has the right of appeal, and that

any penalty should be proportionate to the offence. The concepts of Natural Justice are written in company-trade union agreements and are reflected in the Code of Practice on Grievances & Disciplinary Procedures, 2000, SI 146.

Negligence – for an employee to prove that an employer was negligent there has to be a duty of care between the parties, the employer must have failed to observe the required standard of care, and the employee must have suffered reasonably foreseeable damage. See Contributory Negligence.

Negotiating Licence – granted to authorised trade unions with the minimum membership and financial requirements demanded by the Industrial Relations Acts and whose rules are accepted by the Registrar of Friendly Societies and accord with the legislation. Trade unions without negotiating licences have no immunity for their actions in damaging employers.

Night Work – defined within the Organisation Of Working Time Act, 1997 as between midnight and 7am; in the Maternity Protection Act, 1994 as 11pm–7am; and in the Protection Of Young Persons (Employment) Act, 1996 as 8pm–8am for children (those under 16 years of age), and 10pm–6am for those 16–17 years old.

Normal Pensionable Age – means the earliest age at which a member of a pension scheme is entitled to receive benefits under the rules of the scheme on retirement from the relevant employment, disregarding provisions under such rules for early retirement on grounds of ill-health or otherwise.

Notice – a minimum period of notice either set out in the Minimum Notice & Terms Of Employment Acts, 1973–2001, where notice relates to lengths of continuous service, or greater entitlements set out in a collective agreement or contract of employment.

Notice of Intention – document required for those seeking to avail of Parental or Carer’s Leave. Once the Notice of Intention is confirmed it cannot be overturned or varied without the agreement of the parties and confirmed by a Confirmation Document. See Confirmation Document.

Objective Grounds – grounds other than discriminatory grounds that justify a differential in pay or treatment as between one worker and another, or between a comparable full-time employee and a part-time worker. Such grounds might be a person retaining a personal rate (red circle rate) when

transferred from a higher paid to a lower paid job, say on health grounds. In such circumstances, other employees or part-time employees would not be able to claim equal pay or pro rata temporis under the Employment Equality Act, 1998 or Protection Of Employees (Part-Time Work) Act, 2001.

Obligatory Notice – The statutory two weeks Redundancy Notice that must be accompanied by the RP1 Certificate. See also Redundancy Notice.

Occupational Injuries Scheme – Injury Benefit, Disablement Benefit, Unemployability Supplement, Constant Attendance Allowance, Medical Care Costs and Death Benefits provided under the Social Welfare (Occupational Injuries) Act, 1966.

Occupational Pension Scheme – Defined Benefits or Defined Contribution Schemes as defined under the Pensions Acts, 1990–2002.

Occupiers' Liability – the liability of an occupier of a premises for injuries sustained by those working in, purchasing goods or doing business in, visiting, or even perhaps even trespassing in.

Oireachtas – the Irish legislature comprising Dáil Éireann, Seanad Éireann and the President.

Overtime – not specifically defined in legislation but implicit as any hours between thirty-nine hour week and maximum forty-eight hour week under the Organisation Of Working Time Act, 1997. Overtime rates are not expressed in legislation but a Sunday Premium must be paid. Overtime worked counts when calculating entitlement to Annual Leave but is excluded from calculation of pay for Annual Leave – unless overtime is 'regular and rostered' when the Labour Court may recommend its inclusion. However, overtime rates are paid for any hours in excess of an employee's normal, contracted hours.

P45 – this form is issued to an employee when he/she leaves employment. It states gross salary, tax, PRSI and other deductions paid from the start of the tax year to the last day in the job.

P60 – This is issued to all employees at the end of each tax year. It states gross pay for the tax year, tax paid, PRSI and other deductions for that tax year.

Parental Leave – entitlement to 18 weeks unpaid leave for any children up to five years of age, eight if adopted and for children up to 16 years of age with a long term illness.

Part-Time Worker – any employee who is not a full-time worker. If a part-time worker can compare themselves with a comparable full-time employee, they will be entitled to the same *benefits pro rata temporis* – in proportion to the hours worked – and cannot be discriminated against in any way under the Protection Of Employees (Part-Time Work) Act, 2001.

Paternity Leave – is not provided for by statute. Trade unions have negotiated Paternity Leave with individual employers and many employments grant Paternity Leave of three days – day before, day of and day after the birth.

Pay – defined within the Payment of Wages Act, 1991. Pay must be paid in cash or a readily negotiable mode of payment. See also Remuneration.

PAYE – Pay As You Earn – the system whereby tax is deducted from the employee's gross wages by the employer and forwarded to the Revenue Commissioners.

Pay Slip – an entitlement to an itemised pay slip is provided for in the Payment Of Wages Act, 1991 and a written explanation of the nature and duration of wages payments, and the methods for calculating pay, are contained in the Terms Of Employment (Information) Act, 1994.

Personal Information – defined under the Data Protection Act, 1988 as information held about a person (employee) by another person (employer) on computer. Employees have an entitlement to access this information and seek correction or deletion of any information that is inaccurate, misleading or outdated.

Personal Injury – defined in the Safety, Health & Welfare at Work Act, 1989 as any impairment of a person's physical or mental health. Similarly defined at common law.

Personal Protective Equipment (PPE) – appropriate and suitable personal protective equipment to be provided to an employee by the employer, as a last resort, if an identified hazard cannot be eliminated, substituted or controlled. In general, PPE should be provided by the employer at no cost to the employee. A non-exhaustive list of PPE is contained in the Safety, Health & Welfare at Work (General Application) Regulations, 1993, SI 44.

Personal Public Service Number – This unique reference number will help you to access benefits and information from public service agencies more quickly and more easily. This includes services such as Social Welfare, Revenue, Public Healthcare and Education.

Personal Retirement Savings Accounts (PSRAs) – A PSRA is a contract between an individual and an authorised PSRA provider in the form of an investment vehicle used for long term retirement provision by employees, self-employed, homemakers and any other category of person.

Picketing – permitted by the Industrial Relations Act, 1990 provided it is peaceful and to communicate information to others about the trade dispute concerned. Picketing is confined to employees of the employer being picketed and officers of their trade union.

Plaintiff – person bringing an action under common law.

Positive Action – positive action is allowed under the Employment Equality Act, 1998 to promote equal opportunities, remove existing inequalities or counter the effects of past inequalities in the areas of gender, people over 50 years of age, those with disabilities, and members of the Traveller Community.

Post-Natal Medical Visits – a woman is entitled to paid Post-Natal and Ante-Natal Medical Visits under the Maternity Protection Act, 1994.

Preserved Benefit – in the case of a defined benefit pension scheme, it means a deferred pension, deferred retirement gratuity and benefits in the event of death before the pension commences. In the case of a defined contribution scheme, it refers to the accumulation of employer and employee contributions. The benefit is preserved when leaving the employment after a specified period of membership of the scheme.

Prohibition Notice – may be served on an employer by a Health & Safety Inspector where serious risk and/or breaches of statutory duty are found. Once served, work on the machine or area identified must cease until the necessary corrections or safety measures are put in place.

Public Holiday – nine Public Holidays are provided for by the Organisation Of Working Time Act, 1997 – 1 January, Saint Patrick's Day – 17 March, Easter Monday, first Monday in May, first Monday in June, first Monday in August, last Monday in October, Christmas Day – 25 December, and Saint Stephen's

Day – 26 December. Employees are entitled to a paid day off on a Public Holiday – or an extra day's pay, or a paid day off within a month, or an extra day's Annual Leave. See Bank Holiday.

Public Sector – This includes all workers employed in the civil service, the health services, education, defence, non-commercial and commercial state bodies and those employed in the local authorities. Therefore teachers, members of An Garda Síochána, staff of local authorities and health services belong to the wider public service.

Reckonable Service – service that is 'reckonable' for purposes of qualifying for any statutory benefit. Reckonable service is defined by the Minimum Notice & Terms of Employment Act, 1973, although some other Acts refine this definition for those particular Acts.

Receivership – usually initiated by a company's creditors when a company has defaulted on a contract to repay loans or debts outstanding. The receiver's role is to recover monies owed to creditors by selling off assets.

Recommendation – a Recommendation from the Rights Commissioner or Labour Court is, in most cases, merely that – a non-binding recommendation. Unless a trade union is appealing a Rights Commissioner Recommendation to the Labour Court or bringing a case to the Labour Court under Section 20, Industrial Relations Act, 1969 when it is bound by the outcome, such Recommendations can be accepted or rejected.

Red Circling – an employee's rate of pay is 'red circled' personal to them, if they are to retain a rate higher than that normally paid for the grade if they have been transferred to that grade because of reorganisation or ill health.

Redundancy Lump Sum Payment – a lump sum payment made under the Redundancy Payments Acts, 1967–2003, based on the length of an employee's continuous service. Such payments are tax free. In some redundancy situations, employers may make payments over and above the statutory entitlements and such payments may be liable for tax.

Redundancy Notice – must be given by the employer to the employee on Form RP1 and should be a minimum of a fortnight or the Obligatory Notice required under the Redundancy Payments Acts, 1967–2003. An employee may be entitled to longer notice depending on their service under the Minimum Notice & Terms of Employment Acts, 1973–2001.

Reference – there is no legal obligation on an employer to provide a reference for an employee, either in writing or orally. But if the employer does provide a reference, the employer is obliged to give a true account and not give misleading or inaccurate information.

Reference Period – a period of time specified in legislation over which hours or earnings are calculated in order to establish whether there has been compliance by employer and employee to the minimum or maximum hours or earnings allowed or provided for within the particular Act. Examples would be under the Organisation of Working Time Act and National Minimum Wage Act when a ‘reference period’ is identified to measure compliance with maximum daily or weekly hours, rest period entitlements or wage rates.

Registered Agreement – collective agreements registered with the Labour Court concerned with the remuneration and conditions of employment which are then legally binding both on the parties.

Regulations – Statutory Instruments, secondary or delegated legislation, made by the Minister under the aegis of an Act, usually to set out technical or other standards. See Statutory Instrument.

Relevant Person – a person defined by the Carer’s Leave as being in need of full-time care and attention and certified as such by a Deciding Officer of the Department of Social, Community & Family Affairs.

Remuneration – is more than just pay, it is the entire package of earnings including bonus, allowances, pension, health and sick insurance, benefits-in-kind, etc. Remuneration may have slightly different definitions within different Acts but, in general, remuneration is total earnings. See Wages.

Respondent – a person, employer or representative of a corporate body answering a claimant’s case that they have been denied a legal entitlement before an industrial relations tribunal.

Rest Period – the Organisation of Working Time Act, 1997, provides that employees must have a fifteen minute break after four and a half hours at work, or a thirty minute break after six hours. Such breaks cannot be taken at the end of a shift. There must be a daily rest period of eleven hours and one, weekly rest period of thirty-five hours or a seventy hour break after a fortnight. The Protection of Young Persons (Employment) Act, 1996 provides rest and break period conditions for children and young persons.

Rights Commissioner – established by Industrial Relations Act, 1969 to deal with individual industrial relations grievances as distinct from collective grievances. Rights Commissioner Recommendations may be appealed to the Labour Court. Increasingly the Rights Commissioner has been given powers under individual employment rights Acts where Rights Commissioner Recommendations may be appealed to the Employment Appeals Tribunal.

Risk – measured by the frequency or likelihood that a hazard will affect a worker and the severity of outcome of such an effect.

Safety Representative – employees are entitled to select Safety Representatives under the Safety, Health & Welfare at Work Act. Safety representatives have legal rights to be consulted 'in advance and in good time' by the employer, carry out safety inspections, receive information from Inspectors, and investigate hazards and complaints.

Safety Statement – management's plan in writing, based on an identification of the hazards and assessment of the risks in the workplace, as to how they intend to create a safe and healthy working environment. A Safety Statement is an obligation on all employers and self-employed under the Safety, Health & Welfare at Work Act, 1989.

Seasonal Worker – an employee employed on a seasonal basis – such as a creamery worker or person taken on for the high tourist season. Such persons may claim either dismissal or redundancy if they are either not taken back when the next season commences when others are, or if no one is taken back when the new season commences.

Secondary Picketing – picketing premises not directly in dispute – is permitted only if those picketing have reason to believe that the second employer is doing something to thwart their dispute. See – Picketing.

Service Provider – defined within the Equal Status Act, 2000 as a person, organisation, public body or their employees providing goods, services or facilities to the public. Services include banking and finance products; entertainment, recreation and refreshment; cultural activities; transport or travel; professional or trade service; and service or facility provided by a club which is accessible to the public.

Severance – a termination of an employee’s contract of employment, usually by way of a package in the context of voluntary redundancy or an agreed ‘parting’ after a dispute over contract or job content.

Sexual Harassment – defined in the Employment Equality Act, 1998, as ‘in the course of employment, whether by an employer, another employee, clients, customers or business contacts of the employer, unwanted physical intimacy, requests for sexual favours, spoken words or gestures, and the display or circulation of written words, pictures or other materials in the workplace. Unwelcome requests or conduct that could reasonably be regarded as sexually or otherwise offensive on the gender ground, offensive, humiliating or intimidating, shall constitute sexual harassment’.

Short Time – defined in the Redundancy Payments Acts, 1967–2003, as a period where hours or earnings are less than half normal. To have a claim for redundancy lump-sum payment, short-time must have been for four consecutive weeks or six weeks out of any thirteen consecutive weeks.

Social Insurance Fund – fund from which Redundancy Lump-Sum Payments or monies due under claims made under the Protection of Employees (Employers’ Insolvency) Acts, 1984–2001 are made.

Special Negotiating Body (SNB) – is an employee body for negotiating the establishment of European Works Councils (EWCs).

Statute – an Act of the Oireachtas entered into the ‘statute book’.

Statute of Limitations – the Statute Of Limitations Acts, 1957–1991, mean for example that personal injury claims must be brought by an employee against their employer within two years of an accident occurring or the symptoms of an occupational disease first manifesting themselves.

Statutory Instrument – Regulation or Order made by a Minister under powers delegated under an Act.

Strike – a withdrawal of labour to compel the employer to agree to employees demands in a trade dispute. Trade union members must have held a secret ballot and a majority voted in favour before a strike can take place after due notice to the employer. Rules to this effect have been written into trade union rule books to comply with the Industrial Relations Act, 1990.

Subsidiary Requirements – are the provisions that apply in situations where the central management fails to respond to representations to establish a European Works Council (EWC) or where the Special Negotiating Body and the central management fail to reach an agreement on an EWC within the defined period.

Subsistence – Meal and Accommodation payments to cover travel.

Substantial Grounds – grounds justifying a dismissal under the Unfair Dismissals Acts, 1977–2001. In addition to reasons justifying dismissal – capability, conduct, redundancy and the fact that continued employment would contravene another statutory requirement – other substantial grounds can be considered.

Sunday Work – the Organisation of Working Time Act, 1997 provides that those engaged on Sunday Work must be paid a ‘reasonable allowance’ as compensation for working Sundays.

Supreme Court – highest court in the land and arbiter as to whether any statute or court decision is not repugnant to the Constitution. Industrial relations cases rarely reach the Supreme Court.

Termination – the termination of an employee’s contract can legally occur when the employee resigns or retires; a fixed-time contract expires or a fixed-purpose is completed; the employer terminates the contract by issuing notice of dismissal; or the employee is made redundant or claims redundancy when they are either laid off or on short-time.

Terms of Employment – all employees are entitled to a written statement of their terms of employment from their employer under the Terms of Employment (Information) Acts, 1994–2001. This information should include the name and address of the employer; place of employment; job title or nature of work; whether contract is permanent or for a fixed purpose or duration; rate of remuneration and method of calculating it; the Pay Reference Period for the National Minimum Wage Act, 2000; whether

pay is weekly, monthly or otherwise; hours of work and break times under the Organisation of Working Time Act, 1997; leave, sick pay and notice arrangements; and reference to any relevant collective agreement.

Time At Work – is the total time an employee spends at work, from clock-in to clock-out.

Time Limit – all legislation contains time limits within which an employee may claim an entitlement they have been denied. Only in exceptional circumstances will an industrial relations tribunal extend such time limits. If claims are not made within the time limit, the employee forfeits the entitlement concerned.

Trade Dispute – to gain immunity under the Industrial Relations Act, 1990 employees and the trade union members must be pursuing a trade dispute. A trade dispute requires the right parties – employer and workers – and the right subject matter – anything connected with the employment or non-employment, terms and conditions of employment of any employee. A trade dispute can only involve strike or industrial action if there has been a secret ballot of the trade union members concerned and due notice given to the employer. In the case of single person disputes, industrial action can only take place where industrial relations procedures have been resorted to by the employees and exhausted.

Transfer of Undertakings – the transfer of an undertaking (business) as a going concern from one employer to another. In such circumstances, all employment rights transfer from the transferor (the original owner) to the transferee (new owner), these are rights guaranteed by the European Communities (Safeguarding of Employees' Rights on the Transfer of Undertakings Regulations), 1980, SI 306 and 2000, SI 487.

Trustee – means a person who holds and looks after the property of a pension trust fund.

Under Protest – an employee who does not wish to challenge the authority of a member of management giving an order but who may wish to question the content or validity of that order, may do so by 'working under protest'. In this way, the employee's conduct in carrying out the order will not signal acceptance of the order. Such 'protests' should be investigated as soon as possible by the Union Representative with a view to settling the matter in dispute.

Unfair Dismissal – an action taken by an employee under the Unfair Dismissals Acts, 1977–2001, which give definitions as to what constitutes fair and unfair dismissal.

Union Recognition – is the acceptance by an employer of a trade union(s) for the purpose of collective bargaining and employee representation. Many Acts require employers to consult with their employees and their trade union on particular issues.

Vicarious Liability – an employer’s liability for the acts or omissions of those they employ. For example, an employer may be liable for an injury caused to a member of the public by an employee.

Victimisation – a person is victimised if they have been dismissed for claiming or proposing to claim an entitlement under the Employment Equality Act, 1998; Maternity Protection Act, 1994; Adoptive Leave Act, 1995; Parental Leave Act, 1998; National Minimum Wage Act, 2000; or Carer’s Leave Act, 2001. All such dismissals are deemed unfair unless there are other substantial grounds justifying the dismissal.

Voluntary Redundancy – occurs when an employer wishes to reduce the workforce and seeks employees to ‘volunteer’ to accept redundancy. In these cases, the lump-sum payments made are generally above basic statutory entitlements.

Wages – gross earnings excluding any non-wage benefits. The entire package from the employer is referred to as remuneration, see above. There is a definition of what constitutes wages and what does not in the Payment of Wages Act, 1991. Wages must be paid in a readily negotiable mode of payment.

Work Permit – generally required by any non-EEA (European Economic Area – European Union, Norway, Iceland and Liechtenstein) or Swiss citizen to work in Ireland. Application must be made by the prospective employer.

Worker – different Acts provide different definitions of ‘worker’ but, increasingly, worker or employee means any person who is or was employed on a contract of service (contract of employment) or apprenticeship. Some Acts exclude officers in the public service and civil servants, Gardaí or members of the Defence Forces, seamen, and close relatives of the employer. To check whether an employee/worker is covered by a particular Act, the Act itself should be consulted.

Worker Director – an employee member on the board of a company, usually a public sector enterprise.

Worker Participation – refers to the involvement of workers in managerial decision-making. Worker Directors, employee information and consultation are parts of a process of worker participation.

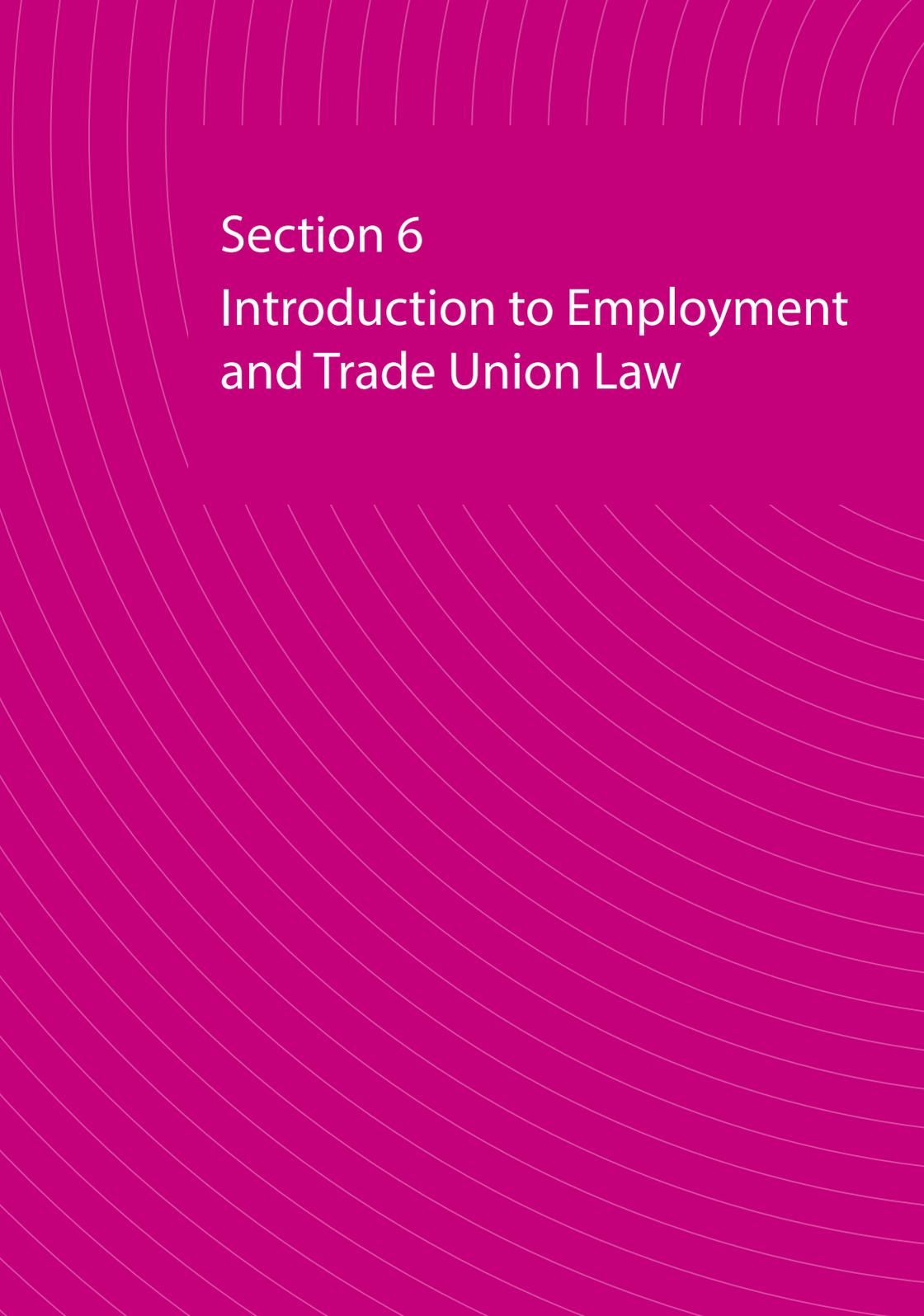
Worker Trustee/Member Trustee – is a person selected by qualified members for appointment as a trustee of the relevant pension scheme.

Working Time – is time spent at work less any breaks. This is the definition contained in the Organisation of Working Time Act, 1997. See also 'time at work' and 'hours worked'.

Wrongful Dismissal – an action for wrongful dismissal is one brought by an employee to the courts under common law as opposed to the statutory remedy of unfair dismissal.

Young Person – defined under the Protection of Young Persons (Employment) Act, 1996 as a person from 16 and to 18 years of age.

Zero Hours – a zero hours contract is one where an employee is contracted to be available for work but is not guaranteed any particular hours. The Organisation of Working Time Act, 1997 now obliges the employer to pay a zero hours contract employee a minimum of fifteen hours pay or 25 per cent of the contract hours in a week in which no work is provided.



Section 6

Introduction to Employment and Trade Union Law

(1) Introduction to Employment and Trade Union Law

Labour law is based on the concept of a contract of employment between an employer and an employee. Every employee has a contract of employment, which might be written down in a formal document, a letter of appointment or a company-union handbook or agreement. It might merely be an oral agreement between the employee and the employer.

Contracts of employment can be subject to change – custom and practice, collective bargaining, the terms of National Agreements or a new employment law can all have an impact.

That is why it is vital that shop stewards immediately document all changes in the contract of employment when they are agreed, whether agreement is a verbal understanding or a formal document. A copy of any change should be given to the Union Official dealing with the employment concerned.

This section outlines in brief the key items of labour and trade union legislation that are most relevant for Mandate members. It is included here for your guidance but further information is also available at

National Employment Rights Authority

www.employmentrights.ie/en/informationforemployees/

Irish Statute Book Online

www.irishstatutebook.ie

Department of Jobs, Enterprise and Innovation

www.djei.ie/employment/index

Citizens Information

www.citizensinformation.ie/categories/employment

If you are in any doubt at all about the provisions of employment law, you should consult your Mandate official.

Section 7

Contract of Employment

- (1) Terms of Employment (Information) Acts, 1994–2001
- (2) Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007
- (3) Payment of Wages Act 1991
- (4) National Minimum Wage Act 2000

(1) Terms of Employment (Information) Acts, 1994 and 2001

The Terms of Employment (Information) Acts 1994 and 2001 state that an employer is obliged to provide an employee with a written statement of terms of employment within the first two months of the commencement of employment.

The statement of terms must include the following information:

- The full name of the employer and the employee
- The address of the employer
- The place of work
- The title of job or nature of work
- The date the employment started
- If the contract is temporary, the expected duration of the contract
- If the contract of employment is for a fixed term, the details
- The rate of pay or method of calculation of pay
- The pay reference period for the purposes of the National Minimum Wage Act, 2000
- Pay intervals (whether they are daily, weekly, monthly or otherwise)*
- Hours of work (these must conform to the provisions of the Organisation of Working Time Act 1997)*
- Details of paid leave (breaks, rest periods and leave must conform to the Organisation of Working Time Act 1997)*
- Sick pay and pension (if any)*
- Period of notice to be given by employer or employee*
- Details of any collective agreements that may affect the employee's terms of employment.*

* In the case of these items instead of giving each employee the details in writing, the employer may refer an employee to other documents, for example, a pension scheme booklet or a collective agreement, provided that the employee has easy access to such documents.

The employer may also refer the employee to other documents or Orders of the Labour Court which contain the information required. The statement must be signed by or on behalf of the employer and must be retained by the employer for one year after the employment has ceased. An employer is further required to notify the employee of any changes to the particulars listed above, not later than one month after the change comes into effect.

Probationary period

The contract can include a probationary period and can allow for this period to be extended. The Unfair Dismissals Acts will not apply to the dismissal of an employee during a period at the beginning of employment when she/he is on probation or undergoing training, provided that:

- The contract of employment is in writing
- The duration of probation or training is one year or less and is specified in the contract.

The above exclusion from the Acts will not apply if the dismissal results from trade union membership or activity, pregnancy related matters, or entitlements under the maternity protection, parental leave, adoptive leave and carer's leave legislation.

If your employer fails to give you written details of the terms of your contract, you can bring a complaint to a Rights Commissioner through your Mandate official. You must make the complaint while you are in employment or within six months of leaving your employment.

(2) Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007

This Act is designed to give greater protection to groups of workers faced by redundancy. In Ireland, collective redundancies arise where, during any period of thirty consecutive days, the employees being made redundant are:

- Five employees where 21–49 are employed
- Ten employees where 50–99 are employed
- Ten per cent of the employees where 100–299 are employed

Thirty employees where 300 or more are employed.

Under the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 some collective redundancies may be referred to a Redundancy Panel of the Department of Jobs, Enterprise and Innovation to determine whether redundancies were (or are being) carried out in order to replace the employees with workers on lower pay or other less favourable terms and conditions. These are known as exceptional collective redundancies. If the panel decides the redundancies were carried out for this reason, the employees concerned will be able to take action for unfair dismissal.

*A ruling of the European Court of Justice in *Junk v Wolfgang Kühnel* (Case C-188/03, January 2005) has established that this obligation commences when the employer tells workers of an intention to make some or all of them redundant, not once they have given notice to terminate the contracts.

(3) Payment of Wages Act 1991

This Act is designed to ensure that every employee is paid by way of a readily negotiable mode of wage payment. An employee must be paid in cash, by cheque, credit transfer, by postal/money order or by bank draft. It is prohibited to pay an employee in vouchers, for example, or in groceries or by the provision of goods instead of wages.

This Act gives all employees in Ireland the right to a written statement of wages (pay slip) which shows the gross wage and details of all deductions. A pay slip is essentially a statement in writing from the employer to the employee that outlines the total pay before tax and all details of any deductions from pay and it must be included with each pay packet. Where an employee is paid by credit transfer, the pay slip should be given to the employee as early as possible after the credit transfer has taken place.

An employer may not make deductions from your wages unless:

- They are required by law, for example, tax (PAYE) and social insurance (PRSI),
- They are provided for in the contract of employment, for example occupational pension contributions.
- They are made with your written consent, for example, trade union subscriptions
- They are to recover an overpayment of wages or expenses
- They are required by a court order, for example, an attachment of earnings order in a family law case
- They arise due to your being on strike.

Where your employer suffers loss through your fault, for example breakages or till shortages or your employer supplies a service as part of the job, for example, a uniform, deductions may be allowed but only where:

- They are allowed for in your contract
- They are fair and reasonable

- You have received a written notice of the deduction – a full week's notice if the deduction arises from your mistake
- The amount of the deduction does not exceed the loss or cost of the service
- The deduction takes place within six months of the loss/cost occurring.

Complaints about unauthorised deductions from wages under the Payment of Wages Act 1991 should be made to your Mandate official, who can bring the case to a Rights Commissioner. A complaint must be brought within six months of the date of the deduction. The Rights Commissioner may extend the time limit for up to a further six months, but only where there are exceptional circumstances which prevented the complaint being brought within the normal time limit.

An employer who fails to provide a pay slip or provides one that is deliberately falsified is guilty of an offence under the Payment of Wages Act 1991 and may be fined.

(4) National Minimum Wage Act 2000

The National Minimum Wage Act 2000 lays down a national minimum hourly rate of pay which will be increased from time to time. Mandate members generally earn higher rates of pay than those contained in this Act but the criteria for calculating the minimum wage is worthy of note.

The entitlement to a minimum hourly rate of pay is calculated by reference to two items:

- Reckonable pay in respect of what is called a “pay reference period” and
- The number of hours worked by the employee during that period.

Pay Reference Period

The employer selects the period, known as the pay reference period, from which the average hourly pay will be calculated. This might be, for example, on a weekly or fortnightly basis, but cannot be for a period longer than a month. 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 the employer of their average rate of pay for any pay reference period within the last twelve months. The employer has four weeks to supply the statement.

Reckonable and non-reckonable pay

Reckonable pay is calculated by reference to a list which includes basic pay, shift premium, piece and incentive rates, commission and bonuses which are productivity related and any payments made pursuant to zero hours contracts. There are a number of items that cannot be included in the minimum wage calculation. These are overtime premium, call-out premium, service pay, unsocial hours premium, public holiday premium, Saturday and Sunday premium, allowances for special or additional duties such as a post of responsibility, expenses, payments related to absences from work such as sick pay, holiday pay and pension contributions.

Exceptions

There are some exceptions to those entitled to receive the national minimum wage. The legislation does not apply to a person employed by a close relative (for example, a spouse or parent) nor does it apply to those in statutory apprenticeships. Also some employees such as young people under eighteen and trainees are only guaranteed a reduced or sub-minimum rate of the national minimum wage.

Exemptions for employers

If an employer cannot afford to pay the national minimum wage due to financial difficulty the Labour Court may exempt an employer from paying the minimum wage rate for between three months and one year. Only one such exemption can be allowed. The employer must demonstrate that he/she is unable to pay the national minimum wage and that, if compelled to do so, would have to lay-off employees or terminate their employment. An exemption may only be sought from paying the full rate of the national minimum wage, not for cases covered by the reduced rate, for example, employees who are under 18 years of age.

The current rates payable under the National Minimum Wage Act 2000 will be provided by your local Mandate office.

Section 8

Hours, Holidays and General Conditions

- (1) Organisation of Working Time Act 1997
- (2) Protection of Employees (Part-Time Work) Act 2001
- (3) Protection of Employees (Fixed Term Work) Act 2003
- (4) Protection of Young Persons (Employment) Act, 1996

(1) Organisation of Working Time Act 1997

Work Hours (Including Holidays/Bank Holidays)

General

The Organisation of Working Time Act 1997 sets out statutory rights for employees in respect of rest, maximum working time and holidays. These rights apply either by law as set out in the Act, in Regulations made under the Act or through legally binding collective agreements. These agreements may vary the times at which rest is taken or vary the averaging period over which weekly working time is calculated.

Maximum Weekly Working Time

The maximum average working week is 48 hours. Averaging may be balanced out over a 4, 6 or 12 month period depending on the circumstances.

The 48 hour net maximum working week can be averaged according to the following rules:

- For employees where work is subject to seasonality, a foreseeable surge in activity or where employees are directly involved in ensuring continuity of service or production – 6 months
- For employees who enter into a collective agreement with their employers which is approved by the Labour Court – up to 12 months.
- In the case of young people under 18, hours of work are fixed by the Protection of Young Persons (Employment) Act 1996.

Rest

Every employee has a general entitlement to:-

- Daily Rest Period – 11 consecutive hours daily rest per 24 hour period.
- Weekly Rest Period – One period of 24 hours rest per week preceded by a daily rest period (11 consecutive hours).
- Rest breaks – 15 minutes where more than 4 and half hours have been worked; 30 minutes where more than 6 hours have been worked

which may include the first break. Mandate has agreements with many employers which specify that the fifteen minute breaks are paid breaks.

- Shop employees who work more than 6 hours and whose hours of work include the hours 11.30am – 2.30pm must be allowed a break of one hour which must commence between the hours 11.30am – 2.30pm.

These rest periods and rest intervals may be varied if there is a collective agreement in place approved by the Labour Court or if a regulation has been made for a particular sector. If there are variations in rest periods and rest intervals under agreements or in the permitted sectors, equivalent compensatory rest must be available to the employee.

Night Workers

Night time is the period between midnight and 7 am the following day.

Night workers are employees who normally work at least 3 hours of their daily working time during night time and the annual number of hours worked at night equals or exceeds 50% of annual working time.

Annual Leave/Holidays

Holiday pay is earned against time worked. All employees, full-time, part-time, temporary or casual earn holiday entitlements from the time work is commenced. The Organisation of Working Time act 1997 provides that most employees are entitled to 4 weeks annual holidays for each leave year with pro-rata entitlements for periods of employment of less than a year. In the case of employees working a normal 5 day week this would work out at 1 $\frac{2}{3}$ days per month worked or 20 days per leave year.

Depending on time worked, employees holiday entitlements should be calculated by one of the following methods:-

- (i) 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment).
- (ii) $\frac{1}{3}$ of a working week per calendar month that the employee works at least 117 hours.
- (iii) 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks).

The time at which annual leave may be taken is determined by the employer having regard to work requirements, and subject to the employer taking into account the need for the employee to reconcile work and family responsibilities, and the opportunities for rest and recreation available to the employee.

The Organisation of Working Time Act provides that the employees concerned or their trade unions are consulted at least 1 month in advance of the dates selected by the employer for annual leave. The employee's annual leave must be taken within the leave year to which it relates or, with the employee's consent, within 6 months of the next leave year. The pay for the annual leave must be given in advance of the commencement of the employee's annual leave, and is calculated at the normal weekly rate.

Mandate has also negotiated agreements with many employers providing for annual leave entitlement in excess of the minimum outlined above

Public Holidays

The Act also provides the following nine public holidays:-

- (i) 1 January (New Year's Day);
- (ii) St. Patrick's Day;
- (iii) Easter Monday;
- (iv) the first Monday in May;
- (v) the first Monday in June;
- (vi) the first Monday in August;
- (vii) the last Monday in October;
- (viii) Christmas Day;
- (ix) St. Stephen's Day.

In respect of each public holiday, an employee is entitled to:-

- (i) a paid day off on the holiday, or
- (ii) a paid day off within a month, or
- (iii) an extra day's annual leave, or
- (iv) an extra 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.

Most Mandate members who work on Public Holidays are entitled to be paid 'Time and a half' or 'Double time' in accordance with agreements between the union and employer.

There is no service requirement in respect of public holidays for full-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. Good Friday is not a Public Holiday).

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

Mandate has agreements with many employers specifying the premium payment that applies to Sunday Working.

Zero Hours

Employees will be entitled to be paid for 25% of the time which they are required to be available or 15 hours whichever is the lesser, e.g. if an employee's contract of employment operates to require the employee to be available for 48 hours in a week, he/she will be entitled to a minimum payment of 12 hours even if not required to work that week.

The Zero Hours provision does not apply to lay-offs, short-time, emergency or exceptional circumstances, employee illness or employee on-call.

Complaints

Complaints about any breaches of the Organisation of Working Time Act may be referred to a Rights Commissioner.

Records

Records are required to be kept by the employer. These records must be retained for 3 years and must be available for inspection by Labour Inspectors.

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.

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

What is a “part-time” worker?

A part-time employee is an employee whose normal hours of work are less than the normal hours of a comparable employee. People who share a job (see below) are viewed as part-time workers and have all the statutory entitlements of part-time workers.

What is a comparable employee?

A comparable employee (called a comparator) is one who is doing the same or similar work. The work of the part-time employee must be of equal or greater value to the comparator’s work. The comparable employees must be employed by the same or an associated employer, or in the same industry or sector, or designated as such in a collective agreement.

In general, a part-time employee may not be treated less favourably than a comparable full-time employee in respect of conditions of employment, including pay and pensions, unless the employer can objectively justify the different treatment. Any justification offered cannot be connected with the fact that the employee is on a part-time contract.

In relation to a pension scheme or arrangement, an employee who normally works less than 20 per cent of the normal hours of the comparable full-time employee can be treated in a less favourable manner. However, this does not prevent an employer and a part-time employee from entering into an agreement whereby the part-time employee receives the same pension benefits as a comparable fulltime employee. Where employers try to justify less favourable treatment on objective grounds, they have to show that the difference in treatment is based on grounds other than the part-time status of the employee.

Part-time employees cannot be victimised for invoking their rights under the Act.

Part-time casual employees may be treated less favourably if such a difference in treatment can be objectively justified. Casual employees are those with fewer than 13 continuous weeks’ service who are not in regular or seasonal employment or are regarded as casually based by a collective agreement to that effect.

Maternity leave

All female employees who have a contract of employment are now entitled to maternity leave (currently 26 weeks), regardless of the hours worked or length of service.

Annual Leave

Holiday entitlements of part-time workers are calculated in a different way to those of full-time workers. Under the Organisation of Working Time Act 1997 part-time workers are entitled to eight hours leave for every 100 hours worked, subject to a maximum of 4 working weeks (eight per cent of all hours worked, excluding lunch time).

Public holidays

Part-time workers who have not worked for their employer for at least 40 hours in total in the five weeks before a public holiday are not entitled to paid leave on the public holiday. Part-time workers who are entitled to paid leave on the public holiday but are due to work that day are entitled to an extra day's pay, or a paid day off within a month of the public holiday, or an extra day's annual leave, as the employer decides.

Those entitled to paid leave but not due to work on the public holiday are entitled to one fifth of their weekly pay instead of the actual day's leave or pro rata time off/annual leave as mentioned above. Where the pay varies, an average day's pay can be worked out by adding the number of hours worked over the previous thirteen weeks and dividing by the number of days worked.

Overtime

Part-time workers are entitled to overtime if a comparable full-time employee is paid overtime after working their maximum hours per week. However, the employer can decide that part-time employees must work the same number of hours as a full-time employee before they can claim overtime. Employers in Ireland are not required by law to pay employees higher rates for work completed in overtime but Mandate has negotiated time and a half or double time for overtime in most company agreements.

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

What is a fixed term worker?

A fixed term worker is a person with a contract of employment entered into directly with an employer where the end of the contract of employment concerned is determined by an objective condition such as:

- Arriving at a specific date
- Completing a specific task
- The occurrence of a specific event.

Written statement of the nature of the contract

An employer must provide a fixed-term employee with a written statement as soon as possible, outlining whether the contract will end on a specific date, following completion of a specific task or a specific event. In addition, where an employer intends to renew a fixed-term contract, a written statement must be supplied to the fixed-term employee not later than the date of renewal, setting out the objective grounds justifying the renewal and the failure to offer an open-ended contract.

The employer must include a clause stating that the Unfair Dismissals Acts 1977–2001 will not apply where the only reason for ending the contract is the expiry of the fixed term, or the completion of the specified purpose. Both the employer and the employee must sign the contract.

Renewal of fixed-term contracts

Where an employee is employed by their employer (or associated employer) on two or more continuous fixed-term contracts, the aggregate (or combined) duration of those contracts may not exceed four years. However, these rules do not apply where there are objective grounds justifying the renewal of a contract of employment for a fixed term only. Where a renewal of a fixed-term contract does not comply with these requirements and cannot be objectively justified, the contract is treated as an open-ended contract.

The Unfair Dismissal Acts 1977–2001 contain a provision aimed at ensuring that successive temporary contracts are not used in order to

avoid that legislation. Where a fixed-term or specified-purpose contract expires and the individual is re-employed within three months, the individual is deemed to have continuous service.

Employers are obliged to inform fixed-term employees of vacancies for permanent positions. This may be done by means of a general announcement. As far as is practicable, an employer is required to help a fixed-term employee to access training to enhance skills, career development and job mobility.

Only those fixed-term employees whose normal hours of work are less than 20 per cent of the normal hours of the comparable permanent employees can be excluded from entitlement to join a pension scheme.

Exceptions

The Act does not apply to agency workers placed by a temporary work agency at the disposition of a user enterprise; apprentices; a member of the Defence Forces; a trainee Garda or a trainee nurse. However, the Act applies to agency workers employed directly by an employment agency.

(4) Protection of Young Persons (Employment) Act, 1996

The Act sets minimum age limits for employment, sets rest intervals and maximum working hours, and prohibits the employment of children aged under 18 years of age on late night work. Employers must also keep specified records for those workers aged under 18.

- A “child” means a person who is under 16 or the school-leaving age (whichever is the higher)
- A “young person” means a person who has reached 16 or the school-leaving age (whichever is higher) but is less than 18 years of age.

In general, the Act prohibits the employment of children under the age of 16. However, employers can take on 14 and 15 year olds

- During the school holidays
- Part-time during the school term

- As part of an approved work experience or education programme where the work is not harmful to their safety, health, or development

Children (under 16s) can be employed in cultural, artistic, sports or advertising work which is not harmful to their safety, health, or development and does not interfere with their attendance at school, vocational guidance or training programmes or capacity to benefit from the instruction received.

Maximum weekly working hours for under 16s:

	(14)	(15)
Term time	Nil	8 hours
Holiday work	35 hours	35 hours
Work experience	40 hours	40 hours

Where the maximum week is 35 hours, the maximum day is seven hours. A maximum 40-hour week means a maximum eight hour day. During the summer holidays, under 16s must have least 21 days free from work. Time off and rest breaks for under 16s:

- Half hour rest break after four hours work
- Daily rest break – 14 consecutive hours off
- Weekly rest break – two days off, as far as practicable to be consecutive

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 4.5 hours work
Daily rest break	12 consecutive hours off
Weekly rest break	2 days off, to be consecutive as far as is practicable

Limits on night work and early morning work

In general, young people aged 16 and 17 are not allowed to work before 6am in the morning or after 10pm at night. Any exceptions to this rule must be provided by regulation.

The Protection of Young Persons Act 1996 (Employment in Licensed Premises) Regulations 2001 (SI 350 of 2001) permits young people employed on general duties in a licensed premises to be required to work up to 11 pm on a day that does not immediately precede a school day during a school term where the young person is attending school.

Records to be kept by employer

Employers must see a copy of the young person's birth certificate or other evidence of his or her age before employing that person. If the young person is under 16, the employer must get the written permission of the person's parent or guardian.

Employers must keep records for every employee aged under 18 including details of the employee's starting and finishing times for work.

Section 9

Other Leave Entitlements (Family Friendly Initiatives)

- (1) Adoptive Leave Act 1995-2005
- (2) Maternity Leave Act 1994-2004
- (3) Parental Leave Act 1998-2006
- (4) Carer's Leave Act 2001
- (5) The Juries Act 1976 & Civil Law Act 2008

(1) Adoptive Leave Act 1995-2005

Eligibility

An adopting mother, a sole adopting father, or an adopting father where the adopting mother has died, who is in employment is entitled to:

- a) a minimum of twenty four consecutive weeks adoptive leave commencing on the day of placement of the child and
- b) up to sixteen weeks additional unpaid adoptive leave

There is no obligation on an employer to pay an employee during the twenty four weeks standard leave. However, the initial twenty four week period of adoptive leave will attract social welfare benefits in most cases. Absence from work on adoptive leave will not affect any employment right except the right to wages. The additional sixteen weeks unpaid leave does not attract social welfare benefits.

Notification Requirements

Adoptive Leave

An employee must give the employer a minimum of four weeks notice before the expected placement of the child. Notice of the expected day of placement may be given later but must be in writing and as soon as is reasonably practicable.

Additional Adoptive Leave

An employee must inform the employer in writing, at least four weeks beforehand of the intention to take additional adoptive leave.

Return to Work

An employee must inform the employer in writing, at least 4 weeks beforehand of the date on which she/ he intends to return to work after adoptive leave or additional adoptive leave.

Evidence of the Placement

Irish Adoption

An employee who has commenced adoptive leave must furnish the employer with a certificate of placement as soon as is reasonably practicable but no later than four weeks after the date of placement.

Foreign Adoption

An employee must give her/his employer a copy of the declaration of eligibility and suitability before the commencement of adoptive leave or additional adoptive leave (whichever occurs first). Particulars of the placement must be furnished as soon as is reasonably practicable.

Time off to attend certain classes and meetings

An employee is entitled to time off work, without loss of pay or right related to the employee's employment to attend any pre-adoption classes and meeting which the employee is obliged to attend as part of the adoption process. An employee is obliged to notify the employer in writing of the dates and times of the classes concerned as soon as practicable but not later than two weeks before the date of the first class, and provides on request from the employer, an appropriate document indicating the dates and times of the classes concerned.

Right to Return to Work

The employee has a right to return to work after a period of adoptive leave or additional adoptive leave. She/he has the right to return to:

1. The job which she/he he held immediately before the start of the period and
2. Under the contract of employment under which she/he was employed immediately before the start of that period, (or where there is a change of ownership has occurred to an identical contract of employment with the successor) or
3. In either case under terms or conditions that are not less favourable than those that would have been applicable, and
4. That incorporate any improvements in the terms and conditions of employment to which the employee would have been entitled.

Annual Leave and Public Holidays

Employees on adoptive leave are entitled to be credited for any public holiday that occurs during their leave. This means in practice that they must be given either an extra day's pay, or a set paid day off within a month, or an extra day's annual leave for any public holiday that occurred during their leave. This also applies if the employer continues to provide full pay to the employee while on adoptive leave. Annual leave which accrues during an absence on adoptive leave shall be granted by the employer in accordance with Section 20 of The Organisation of Working Time Act 1997.

Redress

If there is a dispute between an employer and an employee on entitlements under the legislation, it can be referred to a Rights Commissioner, in the first instance, The Rights Commissioner's decision can be appealed to the Employment Appeals Tribunal. If an adopting parent is dismissed from his or her job because he or she wants to take adoptive leave or is taking adoptive leave or additional adoptive leave, this will be regarded as an unfair dismissal, unless there are substantial grounds justifying the dismissal. Redress in this case

(2) Maternity Leave Act 1994–2004

Basic Entitlement • The entitlement to a basic period of maternity leave i.e. 26 weeks, from employment extends to all female employees in Ireland (including casual workers), regardless of how long you have been working for the organization or the number of hours worked per week, if you become pregnant while in employment in Ireland.

Notice to Employer to take Maternity Leave • You must give your employer at least 4 weeks' written notice of your intention to take maternity leave, as well as providing your employer with a medical certificate confirming the pregnancy.

• Early birth: If your baby is born more than 4 weeks before your due date, you will have fulfilled the notice requirements if you give your employer written notice within 14 days of the birth.

Payment during maternity leave • Your entitlement to pay and superannuation during maternity leave depends on the terms of your contract of employment.

• Employers are not obliged to pay women on maternity leave. You may qualify for Maternity Benefit if you have sufficient PRSI contributions.

Additional maternity leave • From 1 March 2007 you are also entitled to take up to a further 16 weeks additional maternity leave. This period is not covered by Maternity Benefit, nor is your employer obliged to make any payment during this period. If you intend to take the additional 16 weeks' maternity leave you must provide your employer with at least 4 weeks' written notice. This notice may be given at the same time as the initial maternity leave notice.

Ill while you are on additional maternity leave

- If you become ill while you are on additional maternity leave you may ask your employer if you may end the additional maternity leave. If your employer agrees you will not be entitled to the remainder of the maternity leave, but will be treated as being on sick leave and you may be entitled to illness benefit.

Public holidays and annual leave

- You are entitled to leave for 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. This leave-time can also be used to accumulate annual leave entitlement.

Stillbirths and miscarriages

- If you have a still-birth or miscarriage any time after the 24th week of pregnancy, you are entitled to full maternity leave. To apply for Maternity Benefit following a stillbirth, you need to send a letter from your doctor with the Maternity Benefit application form, confirming the expected date of birth, the actual date of birth and the number of weeks of pregnancy.
- Payment is subject to PRSI requirements.

Health and safety leave

- An employer should carry out separate risk assessments in relation to pregnant employees and those who have recently given birth or are breastfeeding. If there are particular risks, these should be either removed or the employee moved away from them. If the risk cannot be eliminated, Health and Safety leave should be given.
 - During health and safety leave, employers must pay employees their normal wages for the first 3 weeks, after which health and safety benefit may be paid.
-

Father's entitlement to maternity leave

- If the mother dies within 24 weeks of the birth he has an optional right to the additional maternity leave. If the mother's death is over 24 weeks after the birth, the father is entitled to leave until 40 weeks after the birth. The leave starts within 7 days of the mother's death.

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 hospitalized, however your employer can 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 your employer to allow you to return to your job, then they must provide you with suitable alternative work.
 - Your employment conditions cannot be worsened by the fact that you have taken maternity leave, and if pay or other conditions have improved while you have been on maternity leave then you are entitled to these benefits when you return to work.
-

Medical visits

- This includes the time required to travel to and from the appointment and the time taken for the appointment itself.
- You will need to provide your employer with medical evidence e.g. appointment card, confirming the pregnancy, giving 2 weeks' notice of your medical visits. You may also take time off for medical visits after the birth for up to 14 weeks following the birth. You are entitled to be paid while keeping these medical appointments both before and after the birth. You may also be entitled to take paid time off to attend some ante-natal classes.
- Your entitlement is for one set of ante-natal classes except for the last 3 classes of the set. Fathers are entitled to paid time off to attend the last 2 classes in the set of ante-natal classes.

Returning to work

- 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 (but remember, your employer can refuse this application).
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(3) Parental Leave Act 1998–2006 (EUROPEAN UNION (PARENTAL LEAVE) REGULATIONS 2013)

Eligibility

- The Parental Leave Act 1998-2006, allows both parents in Ireland to take equal and separate unpaid parental leave from their employment in respect of certain children at the employer's discretion. One parent may if the employer agrees, transfer their allowance to the other parent. A person acting in loco parentis with respect to an eligible child is also eligible.
 - You must have been working for your employer for a year before you are entitled to parental leave. You may be entitled to a pro-rata leave entitlement i.e. 1 weeks leave for 1 months worked, if your child is very near the age threshold and you have been working for your employer for more than three months but less than one year.
-

Age of child

- Since 18 May 2006, leave can be taken in respect of a child up to 8 years of age. If a child was adopted between the age of 6 and 8, leave in respect of that child may be taken up to 2 years after the date of the adoption order.
 - Leave in the case of a child with a disability is up to the child is 16 years of age. Extension may also be allowed where illness or other incapacity prevented the employee taking the leave within the normal period.
-

Amount of parental leave

- Since the 8th March 2013, the leave has increased to 18 working weeks per child. The 18 weeks per child may be taken in one continuous period or in 2 separate blocks of a minimum of 6 weeks.
- There must be a gap of at least 10 weeks between the 2 periods of parental leave per child. However, if your employer agrees you can separate your leave into periods of days or even hours.

Limitation to the Leave

- Where an employee has more than one child, parental leave is limited to 18 weeks in a 12-month period. This can be longer if the employer agrees.
- Parents of twins or triplets can take more than 18 weeks of parental leave in a year.
- Parental leave is unpaid leave; however you have a contractual right to paid or part-paid leave.
- An employer may postpone the leave for up to 6 months. This must be done before the confirmation document is signed.

Social insurance contributions

- Your employer must write to the Records Update Section of Department of Social Protection (DSP), detailing the weeks you have not worked, so that you can get credited PRSI contributions for this time.

Transfer leave to New Employment

- If you change job and have used part of your parental leave allowance you can use the remainder after one year's employment with your new employer

Terms and Conditions Protected while on Parental Leave

- You are entitled to return to your job after your parental leave unless it is not reasonably practicable for the employer to allow you to return to your old job. If this is the case you must be offered a suitable alternative on terms no less favorable compared with the previous job including any improvement in pay or other conditions which occurred while you were on parental leave.
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Notification of Parental Leave

- You should inform your employer in writing at least 6 weeks before the leave is due to start, outlining proposed time frame for the leave etc. You will be required to confirm your intention not less than 4 weeks before the leave is due.

Force Majeure Leave

- An employee shall be entitled to leave with pay from his or her employment, to be known and referred to in this Act as “force majeure leave”, where, for urgent family reasons, owing to an injury to or the illness of a person, the immediate presence of the employee at the place where the person is, whether at his or her home or elsewhere, is indispensable.

Family Members covered by the Act in relation to the employee concerned.

- A child or adoptive child of the employee, spouse, an employee or a person with whom the employee is living as husband or wife with, a person to whom the employee is acting as their parent, brother, sister, parent or grandparent of the employee, person living with the employee and who the employee is carer for. The sexual orientation of the persons concerned is immaterial.

Notification of Force Majeure Leave

- The employee must inform their employer as soon as possible after their return to work from a Force Majeure absence, that their leave was as a result of a Force Majeure leave. This notice must be in writing specifying the dates on which it was taken etc and contain a statement of the facts entitling why the employee is seeking *force majeure* leave

Leave Entitlement

- An employee may not take more than 3 days of force majeure
 - leave in any 12 consecutive months, or 5 days in any 36 consecutive months. Absence for part of a day is counted as one day of force majeure leave.
-

(4) Carer's Leave Act 2001

Eligibility of the Employee

- The Act allows employees in Ireland who have 12 months continuous service to leave their employment temporarily to provide full-time care for someone in need of full-time care and attention.
- The person you are proposing to care for, must be deemed to be in need of full-time care and attention by a deciding officer of the Department of Social Protection. The applicant for Carer's Leave must be the person providing the full-time care to the person who is in need of such attention. 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 eat, drink, wash or dress,
- Continuous supervision in order to avoid danger to themselves

**Carer's Leave Allowance/
Broken leave**

- The minimum period of leave is 13 weeks and the maximum period is 104 weeks (was 65 weeks).
 - You may apply to take carer's leave in one continuous period of 104 weeks or for a number of periods not exceeding a total of 104 weeks.
-

Paid or Unpaid Leave	<p>The Leave is unpaid leave from your Employer</p> <ul style="list-style-type: none">• You may only be on carer's leave in respect of any one person in need of full-time care at any one time. An exception is where 2 people live together and both are in need of full-time care and attention. In this situation the total amount of carer's leave is 208 weeks (104 for each person being cared for).• If your carer's leave to care for someone has terminated, you cannot commence another period of carer's leave to care for a different person until a period of 6 months has elapsed since the termination of the previous period of carer's leave
Refusal by Employer to Grant Carer's leave	<ul style="list-style-type: none">• The Employer may refuse the leave on reasonable grounds and must in those circumstances give their reasons in writing.
Notification Period of Leave	<ul style="list-style-type: none">• You must give your employer at least 6 week's notice of your intention to take carer's leave outlining the<ul style="list-style-type: none">• dates, duration,• manner in which leave will be taken,• conformation that you have made an application to the Department of Social Protection for a decision by a deciding officer under the Act that the person in respect of whom you propose to avail of carer's leave in order to provide full-time care, requires this care.
Intervals between each Leave Application	<ul style="list-style-type: none">• If you do not take carer's leave in one continuous period, there must be a gap of at least 6 weeks between the periods of carer's leave. An employee who wishes to avail of Carer's Leave for another relevant person cannot do so for a period of 6 months after availing of carer's leave for the previous relevant person.

Confirmation in Writing Granting Carer's Leave

- No less than 2 weeks before you intend to commence carer's leave, you and your employer must agree and sign a document specifying or confirming this arrangement etc, such as starting and completion times of the leave and how the leave will be taken.

Protection Against Penalisation including Dismissal

- Disputes with your employer under the Carer's Leave Act 2001 should be referred to the relevant dispute resolution adjudicating Body within 6 months of the dispute occurring. The time limit may be extended for up to a further 6 months, but only where there are exceptional circumstances .

Postponing or terminating your carer's leave

- The arrangement that is agreed between the employer and the employee can be changed by both parties, but must be signed off by the employer and employee.

Returning to work

- You must give 4 weeks notice of your return to work date to your employer in writing. Employee's terms and condition generally are to be treated as if you had been in work during your period of carer's leave except that you are not entitled to pay or annual leave and public holiday entitlement in respect of the first 13 weeks of carer's leave.

Records

- The employer must retain such records in the case of Carer's Leave for 8 years
-

(5) The Juries Act 1976 & Civil Law (Miscellaneous Provisions) Act 2008

Every British and Irish citizen aged 18 and upwards whose names are on the Dail Electoral Register may be required to go on Jury Service unless they are either ineligible, excusable or disqualified.

Jurors attend court in both criminal, civil matters and coroner's inquests to decide the facts of the case.

The Juries Act was amended by the Civil Law (Miscellaneous Provisions) Act 2008 and made some changes re eligibility e.g. removed the upper age limit

Excused Persons

- ~ Persons over age 65
- ~ Members of the Oireachtas
- ~ Members of Religious Communities
- ~ Some professional categories, e.g. Nurses, Doctors, School Principals.
- ~ Persons who have attended Jury Service within the last three years
- ~ A judge may excuse any juror on medical or humanitarian grounds for a period of time.

Disqualified Persons

- ~ Persons convicted of a serious offence in Ireland
- ~ Those who have ever been sentenced to a term of imprisonment of five years or more
- ~ Those who, within the last ten years, have been sentenced to a term of imprisonment of three months
- ~ People living in Ireland who are not Irish or British citizens

Employee Release for Jury Duty

It is the employer's duty to permit an employee to attend for Jury service. If this is not practical because of the nature of the work or extreme business pressures then a letter should be sent to the county registrar explaining the reasons and request to be excused. A person that is not excused may appeal to the court they have been asked to attend. The court's decision is final.

Payment of Wages while on Jury Duty

An employee should be paid by his/her employer for the entire period they are on Jury Duty. The act does not provide a method for calculating pay and difficulties have arisen in the past over loss of overtime, shift premia, and bonus. In such circumstances employers think it would be reasonable to average such pay. If you feel your employment rights have been infringed or you have lost employment rights while serving on a jury, you can make a complaint to a Rights Commissioner.

Section 10

Termination of Employment

- (1) Minimum Notice and Terms of Employment Acts 1973–2001
- (2) Unfair Dismissals Act 1977–2005
- (3) Redundancy Payments Acts 1967–2003
- (4) Protection of Employees (Employers' Insolvency) Acts 1984–2004
- (5) Protection of Employment Act 1977, Employees (Provision of Information and Consultation) Act 2006 and Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007
- (6) European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 – S.I. No. 131 of 2003)

(1) Minimum Notice and Terms of Employment Acts 1973–2001

This legislation outlines the periods of notice which workers must receive before the employer may dismiss them. The period varies according to length of service.

Length of Service	Minimum Notice
Thirteen weeks to two years	One week
Two years to five years	Two weeks
Five years to ten years	Four weeks
Ten years to fifteen years	Six weeks
Fifteen years or more	Eight weeks

The Act also provides that employers are entitled to at least one week's notice from employees who have been employed by them for thirteen weeks or more unless the contract of employment stipulates otherwise. This essentially means that while your contract of employment can set down that you will receive a greater amount of notice than the law states above, if your contract states that you will get less than the law provides, then this part of your contract has no effect. There is nothing, however, to prevent the employer or the employee from waiving their right to notice of accepting payment in lieu of notice.

The Act does not affect the right of an employer or an employee to terminate a contract of employment without notice due to the misconduct of the other party. Disputes concerning the right to notice, the length of notice or the calculation of continuous service may be referred to the Employment Appeals Tribunal by your Mandate official.

Holidays

Notice may be given while the employee is on sick leave or holidays but not during periods of maternity leave. If an employment is ending, the employee is entitled to receive a payment for annual leave which was earned but not taken. The payment should equal the amount that would have been paid had the annual leave been taken. The ending of employment is the only situation where it is legal to pay an employee instead of giving annual leave. If the employment stops during the week

ending on the day before a public holiday and the employee has been working for the employer for the previous four weeks, the employee must receive an additional day's pay for the public holiday. This also applies to part-time employees who have established a right to the public holiday by working at least forty hours in the previous five weeks.

If an employee changes her/his mind about giving notice, the notice cannot be withdrawn unless an agreement is reached with the employer to do so.

There is no statutory entitlement for an employee to be given a reference by an employer but an employer must supply a P45.

(2) Unfair Dismissals Act 1977–2005

This legislation provides redress for employees if they were unfairly dismissed from their employment. The Acts lay down criteria by which dismissals are judged and they provide an adjudication system and redress for employees whose dismissals have been found to be unfair.

A dismissal is considered to be automatically unfair if the employee is dismissed for any of the following reasons:

- Membership or proposed membership of a trade union or engaging in trade union activities, whether within permitted times during work or outside of working hours
- Religious or political opinions
- Legal proceedings against an employer where an employee is a party or a witness
- Race, colour, sexual orientation, age or membership of the Traveller community
- Pregnancy, giving birth or breastfeeding or any matters connected with pregnancy or birth
- Availing of rights under legislation to maternity leave, adoptive leave, carer's leave, parental or force majeure leave
- Unfair selection for redundancy.

Redress

If you are successful in your claim for unfair dismissal, redress may take one of the following forms:

Reinstatement

This means that you are treated as if you had never been dismissed. Not only are you entitled to loss of earnings from the date of the dismissal to the date of the hearing, you are also entitled to any favourable changes in the terms of employment during that period such as pay rises.

Reinstatement is very rare.

Re-engagement

This means that you will be given your job back but only from a particular date, for example, the date of the decision in your favour. This means that you will not be entitled to compensation for any loss of earnings. Often this remedy is used where it is felt that the employee contributed to the dismissal, even though the actual dismissal was unfair. Again, however, this remedy is rarely used.

Compensation

This is the most common remedy. It is essential to note that compensation is only awarded in respect of financial loss. You cannot therefore claim any compensation for such matters as injury to your feelings or stress caused by the dismissal.

(3) Redundancy Payments Acts, 1967–2003

These Acts impose a statutory obligation on employers to pay compensation to employees who are dismissed for reasons of redundancy. Redundancy arises where an employee's job ceases to exist because of the financial position of the firm, because there is insufficient work, because the firm closes down altogether or because of reorganisation.

An employee with 104 weeks' continuous service, aged between sixteen and sixty six, whose employment is terminated because of redundancy is

entitled to a redundancy lump sum payment, which is calculated as follows:

Two weeks pay for each year of continuous employment between the ages of sixteen and sixty six years plus a bonus week. All excess days should be calculated as a portion of 365 days, i.e. four years 190 days = 4.52 years.

Reckonable service is service EXCLUDING ordinary sick leave over and above twenty six weeks, occupational injury over and above fifty two weeks. All Breaks in Service should be within the last three years prior to the Date of Termination.

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 of earnings per week. Earnings in excess of this periodically reviewed ceiling are excluded from your statutory entitlements.

The lump sum must be paid by the employer direct to the employee.

In circumstances where the employer is unable or unwilling to pay the statutory lump sums involved, Mandate will apply to the Department of Jobs, Enterprise and Innovation for such payment and if a dispute arises, your Mandate official may refer the issue to the Employment Appeals Tribunal.

Shop Stewards should note that where redundancies are negotiated by Mandate, payments substantially in excess of the statutory amount are usually claimed. Such payments are normally based on service and paid in addition to the statutory amount.

(4) Protection of Employees (Employers' Insolvency) Acts, 1984–2004

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

- Arrears of wages, up to a maximum of eight weeks – normal pay is calculated in the same manner as under the Redundancy Payments Acts, 1967-2001

- Deductions such as trade union subscriptions, VHI, life assurance, etc. made by agreement with the employer but not paid over to the appropriate authority
- Arrears of sick pay due under an occupational sick pay scheme. The amount payable is limited to the difference between any disability or injury benefit in addition to pay-related benefit payable under the Social Welfare Acts and normal weekly remuneration
- Holiday pay, up to a maximum of eight weeks;
- Any award for minimum notice from the Employment Appeals Tribunal (EAT) under the Minimum Notice & Terms Of Employment Acts, 1973-2001
- Any amount an employer is required to pay by virtue of a Determination from the EAT, Recommendation from the Rights Commissioner or an Order by the Circuit Court under the Unfair Dismissals Acts, 1977-2001; Maternity Protection Act, 1994; Adoptive Leave Act, 1995; Parental Leave Act, 1998; or Carer's Leave Act, 2001. Such Determinations, Recommendations or Orders must have been made within 18 months prior to the date of the insolvency or after the date of the insolvency
- Any amount an employer is required to pay under an Employment Regulation Order (ERO)
- Any amount an employer is required to pay by virtue of a Recommendation of an Equality
- Officer; Decision/Determination or Compensation awarded by the Labour Court; a judgement of the High Court; a fine imposed under the Anti-Discrimination (Pay) Act, 1974; damages, award or fine imposed by a court under the Employment Equality Act, 1977
- Any amount an employer is required to pay by virtue of a Decision, Determination or Order from the Equality Tribunal, Labour Court or Circuit Court under the Employment Equality Act, 1998
- Arrears of wages, sick pay, holiday pay or damages at common law for wrongful dismissal by a court
- Employees' outstanding contributions to occupational pension

schemes which have been deducted from wages but not paid into the pension scheme. Unpaid employer contributions to pensions may also be paid, subject to certain limits.

Payments are made from the Social Insurance Fund and there are statutory limits on the amount that can be paid and the periods to which they apply.

The scheme covers employees who are over 16 years of age and are in employment which is insurable for all benefits under the Social Welfare Acts at the date of termination of employment. This includes employees over 66 years of age who are in employment, which but for their age, would be insurable for all benefits under the Social Welfare Acts.

Employees' claims for entitlements under the Scheme must be made through the employer's representative (usually the liquidator or receiver). Your Mandate full time official will assist you if you are affected by an employer's insolvency.

(5) Protection of Employment Act 1977, Employees (Provision of Information and Consultation) Act 2006 and Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007

Under the Protection of Employment Act 1977 your employer is obliged to enter into consultations* with a view to agreement with your representatives (Mandate). This legislation is separate from the Redundancy Payments Acts 1967–2007. These consultations must take place at the earliest opportunity and at least thirty 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 Jobs, Enterprise and Innovation in writing of the proposed redundancies at least thirty days before the occurrence of the first redundancy.

(6) European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 – S.I. No. 131 of 2003

These regulations are aimed at safeguarding the rights of employees in the event of the transfer of ownership of the business or part of the business, which results in a new employer taking over. The regulations provide that the obligations of the original owner are transferred to the new owner. Following such a transfer, the new employer must continue to observe the terms and conditions agreed in any collective agreement until that agreement expires or until a new agreement comes into force.

The transfer of a business or part of a business does not, in itself, constitute grounds for dismissal. However, it is possible for the new employer to make staff redundant for normal economic, technical or organisational reasons.

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 1973 to 2005 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 1973 to 2005.

An employee cannot obtain relief in respect of that dismissal under both the Regulations and the Acts.

The outgoing company and new employer must inform the trade union representing their employees who are affected by the transfer before the transfer is carried out, of:

- The reasons for the transfer
- The legal, economic and social implications for the employees and
- The measures envisaged which may affect the employees.

Details of any measures envisaged in relation to employees must be discussed with the trade union involved with a view to obtaining agreement on the measures in question.

Section 11

Equality

- (1) Employment Equality Acts 1998 and 2011
- (2) Equal Status Act 2000

(1) Employment Equality Acts 1998–2011

The Employment Equality Acts make discrimination in the employment context illegal. It prohibits discrimination across nine grounds and applies even before the employment relationship begins. There is no requirement to have a minimum amount of service and discrimination can occur at any stage for example: recruitment, treatment at work, transfer, promotion, training, pay, benefits, disciplinary action, work allocation etc, dismissal. The nine grounds under which discrimination is prohibited are as follows:-

- Gender: A man, a woman or a transsexual (specific attention is provided for pregnant employees and in relation to maternity leave)
- Civil Status: This is currently defined as single, married, separated, divorced or widowed, in a civil partnership, or being a former civil partner in a civil partnership that has ended by death or being dissolved.
- Family Status: A parent of a person under 18 years or the resident primary carer or a parent of a person with a disability.
- Sexual Orientation: Gay, lesbian, bisexual or heterosexual
- Religion: Different religious belief, background outlook or none.
- Age: This applies to all ages above the maximum age at which a person is statutorily obliged to attend school
- Race: A particular race, skin colour, nationality or ethnic origin.
- The Traveller community: People who are commonly called travellers, who are identified both by Travellers and others as being with a shared history, culture and tradition, identified historically as a nomadic way of life on the island of Ireland.
- Disability: This is a very broadly defined ground. It includes people with physical, intellectual, learning, cognitive or emotional disabilities. It also includes people with chronic ongoing disease or illness. Employers have an obligation to provide reasonable accommodation to assist the employment of people with disabilities.

Sexual Harassment and Harassment

Sexual harassment and harassment of an employee is prohibited in the work place or in the course of employment by another employee, the employer, clients, customers or other business contacts of an employer. The act defines sexual harassment as any form of unwanted verbal, non verbal or physical contact of a sexual nature. Harassment is defined as any form of unwanted conduct related to any of the discriminatory grounds. The code of practice on sexual harassment and harassment at work aims to give practical guidance to employers and employees on how to prevent sexual harassment at work and how to put procedures in place to deal with it. The acts apply to full-time, part-time and temporary employees.

The acts apply to

- Fulltime, Part-time and temporary employees
- Public and Private Sector Employees
- Vocational Training Bodies
- Employment Agencies
- Trade Unions, Professional and Trade Bodies
- Self Employed Contractors
- Partners in Partnerships
- People employed in other people's homes

Discrimination

There are different types of discrimination covered by the acts, including indirect discrimination, discrimination by imputation and discrimination by association. Discrimination is defined as the treatment of a person in a less favourable way than another person is, has been or would be treated in a comparable situation on any of the nine grounds which exists, existed, may exist in the future, or is imputed to the person concerned. The instruction to discriminate is also prohibited.

Direct Discrimination

Direct discrimination occurs when a person is treated in a less favourable way than another person in the same situation under any of the nine grounds covered in the acts.

Discrimination by Imputation

This takes place when a person is treated less favourable because it is assumed they belong to one of the categories covered by the nine grounds whether or not that is the case. For example, if you have a dark complexion and you are given less hours because your employer assumes you are of a different race or nationality, this would be discrimination on the race ground.

Indirect discrimination

Happens where there is less favourable treatment in effect or by impact. It happens where people are, for example, refused employment or training not explicitly on account of a discriminatory reason but because of a provision, practice or requirement of the job that they would find hard to satisfy. An example of this could be imposing dress requirements which clash with religious obligations, or imposing shifts or working hours which interfere with religious holidays could disadvantage members of particular religious communities. If the provision, practice or requirement of the employer puts people who belong to one of the grounds covered by the acts at a particular disadvantage then the employer will have indirectly discriminated, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Discrimination by Association

This can happen where a person associated with another person who falls within one of the nine grounds is treated less favourably because of that association. For example if you suffered discrimination as a result of having a partner that was disabled or a friendship with a person who was gay.

Advertising

It is prohibited to publish, display or cause to be published or displayed an advertisement which relates to employment which indicates an intention to discriminate or might be reasonably understood to indicate such an intention.

Equal Pay

The Act provides for equal pay for like work. Like work is defined as work that is the same, similar or work of equal value. It is a term of everyone's

contract of employment that there is an entitlement to equal pay. Equal pay claims can be taken on any on the nine discriminatory grounds.

Claiming Equal Pay

Mandate can make a claim for full equal pay from your employer. The union will identify the comparator within the employment or in an associated employment, who they believe is doing like work and in on a higher rate of pay.

Making a complaint

Any member who feels they have been the subject of discrimination should seek advice and assistance from their shop steward and Union Official. Your shop steward and official will assist you to pursue your claim through the agreed grievance procedure. If your claim cannot be resolved directly with your employer the Equality Tribunal, the Labour Court and the Circuit Court all have roles in relation to claims of discrimination. All employment discrimination claims (except for gender discrimination claims) must be referred in the first instance to the Equality Tribunal. Gender discrimination claims have the option of going to the Circuit Court. The Equality Tribunal is the quasi judicial body established to investigate, hear and decide on claims of discrimination.

Right to look for Information

Any person who believes they have experienced discrimination may write to their employer seeking information which may assist in deciding whether to refer a claim. Employers are not obliged to reply. Information should be requested using a standard form of questionnaire and reply (form EE2 and EE3)

Time Limits

A complaint of discrimination, harassment or victimisation must be made within the 6 month time limit from the last act of discrimination. The 6 month time limit can be extended up to 12 months by the Director of the Equality Tribunal for reasonable cause.

The onus of proof

A different onus of proof applies in discrimination claims. If an employee can establish facts from which it may be presumed that discrimination has occurred then the onus shifts to the employer to prove the contrary.

Mediation

The Director of the Equality Tribunal can at any stage with the consent of both parties appoint an Equality Mediation Officer. If a settlement is reached through mediation then the terms are legally enforceable.

Investigation

If either party does object to mediation or if the process of mediation is unsuccessful, the case will be referred to an Equality Officer for Investigation. Investigations are held in private. The Equality Officer will issue a determination which is enforceable through the Circuit Court.

Dismissal of a Claim

Cases can be struck out after a year if the Director of the Equality Tribunal decides they are not being pursued. The Director may dismiss a claim at any stage if of the opinion that:

- A. it has been made in bad faith; or
- B. is frivolous, vexatious; or
- C. misconceived; or
- D. relates to a trivial matter.

Remedy

Where the Equality Officer finds in favour of the complainant, the following orders can be made:

- A. In equal pay claims, an order for equal pay and arrears in respect of a period not exceeding three years;
- B. In other cases, an order for equal treatment and compensation for the effects of discrimination of up to a maximum of 2 years pay or €40,000, or €13,000 where the person was not an employee, can be made. The maximum compensation applies even where there was discrimination on more than one ground.

Appeals

Decisions of the Tribunal, including decisions on time limits, may be appealed to the Labour Court, not later than 42 days from the date of the decision.

(2) Equal Status Act, 2000

These acts aim to protect citizens against certain kinds of discrimination, harassment and sexual harassment that can happen in everyday living.

For Example, shopping, using services, going to school or college, socialising, or looking for accommodation. These acts are of great significance to Mandate members who are employed in the retail and bar sectors. The act prohibits discrimination, sexual harassment and harassment of people who:

- Buy Goods
- Use Services
- Obtain Accommodation
- Attend education establishments

Discrimination is prohibited on the following nine grounds:

- Gender: A man, a woman or a transsexual.
- Civil Status: This is currently defined as single, married, separated, divorced or widowed, in a civil partnership, or being a former civil partner in a civil partnership that has ended by death or being dissolved.
- Family Status: A parent of a person under 18 years or the resident primary carer or a parent of a person with a disability.
- Sexual Orientation: Gay, lesbian, bisexual or heterosexual
- Religion: Different religious belief, background outlook or none.
- Age: This applies to all ages above the maximum age at which a person is statutorily obliged to attend school
- Race: A particular race, skin colour, nationality or ethnic origin.
- The Traveller community: People who are commonly called travellers, who are identified both by Travellers and others as being with a shared history, culture and tradition, identified historically as a nomadic way of life on the island of Ireland.

- **Disability:** This is a very broadly defined ground. It includes people with physical, intellectual, learning, cognitive or emotional disabilities. It also includes people with chronic ongoing disease or illness.

Discrimination

There are different types of discrimination covered by the Acts, including indirect discrimination, discrimination by imputation and discrimination by association. Discrimination is defined as the treatment of a person in a less favourable way than another person is, has been or would be treated in a comparable situation on any of the nine grounds which exists, existed, may exist in the future, or is imputed to the person concerned.

The instruction to discriminate is also prohibited.

Direct Discrimination

Direct discrimination occurs when a person is treated in a less favourable way than another person in the same situation under any of the nine grounds covered by the acts

Indirect Discrimination

This takes place where an individual or group of people were placed at a disadvantage as a result of conditions or rules which they might find hard to satisfy and which cannot be reasonable be justified. For example height requirement might seem neutral but it has a more negative impact on women than men, this is indirect discriminatory unless it can be proved that the height requirement is justified, appropriate and necessary.

Discrimination by Association

This takes place when a person is treated less favourable simple because they are associated with or connected to another person. For example if a person was refused a product or service or was harassed because they were married to a person of a different religion, they are being discriminated against because they being associated with their partners belief and being refused on that basis.

Discrimination by Imputation

This takes place when a person is treated less favourable because it is assumed they belong to one of the categories covered by the nine

grounds whether or not that is the case. For example, if you have a dark complexion and you are refused a product or service because the service provider assumes you are of a different race or nationality, this would be discrimination on the race ground.

Sexual Harassment and Harassment

The acts state that the sexual harassment and harassment in the provision of goods and services, accommodation and educational establishments, are against the law. Harassment is any form unwanted conduct related to any of the nine discriminatory grounds. Sexual Harassment is any form of unwanted verbal, non verbal or physical conduct of a sexual nature. What is victimisation? In relation to the acts, victimisation is where a person is badly treated or penalised by others because they have made a complaint about discrimination to the Equality Tribunal or have been involved in some way in a complaint under the Equal Status Acts.

Making a claim

Anyone wishing to make a claim of discrimination must notify the person against whom the complaint is being made, in writing, within 2 months of the date of the most recent date of the occurrence of the discrimination. This notice must identify the nature of the claim and the intent to seek redress. The complainant who wishes to obtain further information must do so in the written notification. If this written notification is not sent, a claim cannot be pursued. If there is no reply or if the reply is unsatisfactory the complaint should then be referred to the Equality Tribunal within 6 months of the discrimination.

Mandate members should exercise great caution where an employer issues an instruction to discriminate (refuse service) to any of the nine groups listed above. Mandate Officials are available to give advice in this regard and/or make representations to the employer concerned. It is worth remembering that Mandate members, in their capacity as consumers, are covered by this legislation. If any Mandate member is discriminated against or harassed while buying goods, using services, obtaining accommodation or attending education establishments, they may take a case as outlined above.

Section 12

Pensions

(1) Pensions Acts 1990–2009

(1) Pensions Acts 1990–2009

The main purpose of these Acts is to establish standards for occupational pension schemes, to regulate their operation and to implement the European Pensions Directive (2003/41/EC).

The Acts provide for:

- The compulsory preservation of pension entitlements of members of occupational pension schemes who change employment and for the subsequent revaluation of such entitlements.
- A minimum funding standard for certain funded schemes.
- The disclosure of information to scheme members.
- Clarification of the duties and responsibilities of scheme trustees.
- Implementation of the principle of equal treatment of men and women in occupational benefit schemes.
- The establishment of the Pensions Board to monitor and supervise the requirements.

Types of Occupational Pension Schemes

There are two basic types of occupational schemes. These are Defined Benefit schemes and Defined Contribution schemes:

The Pensions Board defines Defined Benefit (DB) Schemes as schemes *“in which the pension and other benefits which will be paid to the members and/or their dependents are clearly defined in scheme rules. These benefits are often based on salary (wages) at, or close to, retirement and on pensionable service in the employment or the scheme. They are sometimes known as ‘final salary schemes’.*

The Pensions Board defines Defined Contribution (DC) schemes as schemes *“where the member’s benefit is determined solely by reference to the contributions paid into the scheme by the employer and, if contributory, by the member, and the investment returns earned on those contributions.”*

Employers' Obligations

Employers are not obliged to set up a company pension scheme. However, employers must either offer their employees access to an occupational pension scheme or provide access to at least one Standard Personal Retirement Saving Account (PRSA). If the employer sponsors a pension scheme it will design the benefit structure and deal with who is entitled to join the scheme, as well as conferring on it certain powers and discretions such as the power, with trustee consent, to amend the scheme and the discretion to provide special benefits. These are all bespoke terms. There are, however statutory obligations which oblige the employer to pay contributions within certain time frames and provide members with details of contributions withheld from pay and paid to the scheme trustees. Other statutory obligations require members to be provided with a summary of key information in relation to the pension scheme.

Many employers also provide some type of death-in-service arrangement.

Tax Incentives

Occupational pension schemes and Personal Retirement Savings Accounts (PRSA) qualify for generous tax benefits. Contributions from both employer and employee qualify for tax relief and investment income and gains are exempt from tax.

Pension Regulatory Bodies

a) Pension Board

This body is responsible for the regulation of occupational pension schemes and PRSAs as part of its statutory duty to monitor and supervise the operation of the Pensions Acts.

b) Revenue Commissioners

The Revenue Commissioners oversee the tax treatment of pension arrangements in Ireland. In order to avail of tax incentives all pension arrangements must be approved by the Revenue Commissioners.

The Pension Ombudsman

The Pension Ombudsman investigates complaints of financial loss due to maladministration and disputes of fact or law in relation to pension schemes or PRSAs. It is an independent office and its services are provided free of charge. Rulings are binding on both parties (subject to the right of appeal).

Equal Treatment

The principle of equal treatment is that there shall be no discrimination as set out in law in respect of any matter relating to an occupational benefit scheme. The principle also applies in relation to members' dependants as it applies to the members themselves.

Leaving Service of the Employer

If the employee has taken out a PRSA or RAC he or she will be entitled to the full value of the relevant product on leaving service. This may not be accessed, however, until the individual's retirement or earlier death.

The Family Law Act 1995 and Family Law (Divorce) Act 1996 confer rights on pension scheme members and their dependants where judicial separation or divorce occurs and enable the court to vary a member's pension scheme entitlements.

Social Welfare and Pensions Act, 2011

This Act introduced changes in relation to the State pension. The State pension (transition) will be discontinued with effect from 1st January 2014. This means that there will be a standard State pension age of 66 years from 1st January 2014. In addition the Act provides for an increase in the age of qualification for the State pension from 66 years to 67 years from 2021 and further increase to 68 years from 2028.

Section 13

Health and Safety

(1) Safety, Health and Welfare at Work Act 2005

(1) Safety, Health and Welfare at Work Act 2005

The Safety, Health and Welfare at Work Act 2005 sets out the main provisions for securing and improving the safety, health and welfare of people at work. The 2005 Act replaces the Safety, Health, and Welfare at Work Act 1989.

The 2005 Act sets out:

- The requirements for the control of safety and health at work
- The management, organisation and the systems of work necessary to achieve those goals
- The responsibilities and roles of employers, the self-employed, employees and others
- The enforcement procedures needed to ensure that the goals are met.

Duties of Employers

Employers (including self-employed persons) are primarily responsible for creating and maintaining a safe and healthy workplace. An employer's duties include:

- Managing and conducting all work activities so as to ensure the safety, health and welfare of people at work (including the prevention of improper conduct or behaviour likely to put employees at risk)
- Designing, providing and maintaining a safe place of work that has safe access and egress, and uses plant and equipment that is safe and without risk to health
- Preventing risks from the use of any article or substance or from exposure to physical agents, noise, vibration, and ionising or other radiations
- Planning, organising, performing, maintaining and, where appropriate, revising systems of work that are safe and without risk to health
- Providing and maintaining welfare facilities for employees at the workplace

- Providing information, instruction, training and supervision regarding safety and health to employees which must be in a form, manner, and language that they are likely to understand
- Cooperating with other employers who share the workplace so as to ensure that safety and health measures apply to all employees (including fixed-term and temporary workers) Providing employees with all relevant safety and health information
- Providing appropriate protective equipment and clothing to the employees (at no cost to the employees)
- Appointing one or more competent persons to specifically advise the employer on compliance with the safety and health laws
- Preventing risks to other people at the place of work
- Ensuring that reportable accidents and dangerous occurrences are reported to the Health and Safety Authority.

Duties of Employees

Employees (including full or part-time, permanent or temporary, regardless of any employment or contractual arrangement they may have) also have duties under the Act. They must:

- Comply with relevant laws and protect their own safety and health, as well as the safety and health of anyone who may be affected by their acts or omissions at work.
- Ensure that they are not under the influence of any intoxicant to the extent that they could be a danger to themselves or others while at work.
- Cooperate with their employer with regard to safety, health and welfare at work.
- Not engage in any improper conduct that could endanger their safety or health or that of anyone else.
- Participate in safety and health training offered by their employer.
- Make proper use of all machinery, tools, substances, etc. and of all personal protective equipment provided for use at work.

- Report any defects in the place of work, equipment, etc. which might endanger safety and health.

Penalisation

An employer is prohibited from penalising an employee for the following reasons:

- ~Acting as a Health and Safety Representative
- ~Complying with Health & Safety legislation
- ~Making a complaint about Health & Safety
- ~Giving evidence in enforcement proceedings
- ~leaving or while the danger persisted refusing to return to his or her work in the face of serious or imminent danger.

Penalisation is described in the Health and Safety at Work Act 2005 as any act or omission by the employer that affects, to his or her disadvantage and employee in respect of any term and condition of employment. E.g. Suspension, demotion, loss of opportunity, reduction in wages, change in working hours, coercion or intimidation.

A complaint of penalisation can be made to a Rights Commissioner within 6 months of the alleged penalisation.

Enforcement

The Health and Safety Authority is responsible for enforcing and promoting safety and health at work. For the most part, HSA Inspectors give advice and information during the course of an inspection. However, they have a wide range of enforcement powers that are used in appropriate circumstances.

An inspector may serve a direction for an improvement plan requiring the submission, within one month, of an improvement plan setting out the proposed remedial action for dealing with a specified risk.

Enforcement notices may be served to deal with a failure to comply with the law. An Improvement Notice gives a period of time for the matter to be remedied, while a

Prohibition Notice requires the immediate cessation of the activity that has created the risk. The Authority may also apply to the High Court for an order prohibiting or restricting the use of a place of work.

Following prosecution, the Courts may impose fines or prison sentences (or both), depending on the seriousness of the offence. Most offences, including any breaches of Regulations under the Safety, Health and Welfare at Work Act 2005 may be tried either in the District Court, where the maximum penalty is 3,000 per charge and/or up to six months imprisonment, or on indictment in the Circuit Court where the maximum penalty is €3,000,000 and/or imprisonment for a term not exceeding two years. The Authority also has the right to publish the names and addresses of those subjected to a prohibition notice, High Court order or a penalty following a court conviction.

The 2005 Act provides for the specification in Regulations of "On-the Spot" fines of up to 1,000 for certain offences to be prescribed in the Regulations.

Safety Statement

The Act provides that where employers and trade unions get together and agree practical guidance on health and safety in an industry or sector, that agreement can be recognised by the HSA and taken account of in enforcement.

Mandate Legal Aid Scheme

If you are injured at work and the injury was caused by the negligence of your employer, you may be entitled to take a civil action for damages. It is important to note that you can only recover compensation where the injury can be shown to have been caused by the negligence or breach of the duty of care by the employer.

The Mandate Legal Aid Scheme provides legal representation to any member considered by our legal advisors to have a statable case in law. Your local Mandate Office will provide the full terms and conditions of the scheme.

Safety Representatives

Employees will be entitled to select and appoint Safety Representatives, who will have wide powers to:

- Inspect
- Investigate accidents or dangerous occurrences
- Accompany a HSA inspector on an inspection
- Make oral and written submissions etc.

An employer must consider representations from a Safety Representative.

Health and Safety Information Line

The Health and Safety Authority operates a health and safety information during normal working hours: info-tel (01) 614 7010.

You can contact the Health and Safety Authority at:

Head Office

The Metropolitan Building
James Joyce Street
Dublin 1

Cork

Limerick Field Office

Ground Floor
Park House
1-2 Barrington Street
Limerick

Chemical Policy & Services

Head Office

and Kilkenny Field Office

Unit 4
IDA Industrial Estate
Purcellsinch
Kilkenny

Galway Field Office

Odeon House
Eyre Square
Galway

Waterford Field Office

5th Floor
Government Buildings
The Glen
Waterford

Sligo Field Office

Government Offices
Cranmore Road
Sligo

Cork Field Office

3rd Floor
1A South Mall

Athlone Field Office

Block A, 2nd Floor
Monksland Retail Business Park
Athlone

Section 14

Industrial Relations

- (1) Industrial Relations Act 1990
- (2) Industrial Relations (Amendment) Act 2000
- (3) Data Protection Acts 1998 & Data Protection (Amendment) Act 2003
- (4) Employees (Provision of Information and Consultation) Act 2006
- (5) European Works Council

(1) Industrial Relations Act 1990

The stated aim of the Act is to promote harmonious industrial relations between workers and employers and to amend earlier legislation such as the Trade Union Acts 1871 to 1982 and the Industrial Relations Acts 1946 to 1976. The 1990 Act repeals the Trade Disputes Acts 1906 to 1982.

The Act is divided into three main parts:

- Part I deals with preliminary matters
- Part II deals with trade union law
- Part III deals with industrial relations

Immunities

The Act provides immunities for trade unions and their members for specific actions which, if undertaken without the protection of the Act, would be unlawful. To qualify for the protection provided, however, the actions must be taken “in contemplation or furtherance of a trade dispute”. In other words, to picket a supermarket because you believe the prices charged are too high would not be a legitimate trade dispute. On the other hand, to picket a supermarket in an official strike designed to secure an increase in wages, is a legitimate trade dispute.

Dispute involving an individual

The protection of the Act does not apply to dispute concerning individual grievances unless the parties have availed of the full range of customary and agreed procedures (a Rights Commissioner, the Labour Relations Commission or the Labour Court). If the employer does not comply with the agreed procedures, the union is free to proceed with a dispute.

Picketing

The Act permits picketing to take place at the place of work or at the approaches to the place of work. It allows for one or more persons to attend for the purpose of “peacefully obtaining or communicating information or of peacefully persuading any person to work or to abstain from work”. Picketing should be peaceful and should involve as many

or as few members as are required to mount an effective picket. Large numbers should be avoided as mass picketing could lead to a court injunction preventing union members from engaging in a peaceful picket. It is not permitted to picket an employer's home unless it is clear that the employer carries on business from his/her home. Only employees involved in the dispute, their union officials or officers of the union or of a branch of the union, are allowed to participate in picketing.

Secondary Picketing

A picket on your own place of work is known as primary picketing. Secondary picketing involves the placing of a picket on the premises of an employer who is not a party to the trade dispute in question. Secondary picketing may be lawful only if those picketing believe that the "second" employer directly assisted the main employer by providing services so as to frustrate the industrial action. For example, if an employer takes all goods for sale in the first supermarket and places them for sale in a second supermarket, it is legitimate to place a secondary picket on the second location. Secondary picketing is not lawful in the case of the health services where the service in question is provided to maintain life.

Notice

A trade union must give an employer at least seven days notice of industrial action unless a procedural agreement between union and employer provides for a longer period of notice.

I.C.T.U. All-Out Picket

The 1990 Act recognises an I.C.T.U. all-out picket. Where a union is making application for an all-out picket and other unions are involved, the Act requires that union members from all unions be balloted. If the aggregate majority of members are in favour, an all-out picket could be sanctioned. A union may not support a strike organised by another union without I.C.T.U. sanction.

Secret Ballots

Section 14 of the Industrial Relations Act 1990 lays down that all trade unions must have provision in their rule books for voting by secret

ballot before strike action can be sanctioned. A union cannot organise, participate in, sanction or support a strike or other forms of industrial action, without a secret ballot. The right to vote applies to every trade union member who may be called on to engage in the strike and the union must ensure that members have a fair opportunity to vote without constraint or interference. If it is intended to confine a strike to one location, only the members of the union at that location need to be balloted. However, if it is subsequently decided to extend the action to another location, a secret ballot of the workers employed at that location would have to be held.

Legislation also provides for Mandate to pursue claims under the Industrial Relations (Amendment) Act 2000 and the Industrial Relations (Miscellaneous Provisions) Act 2004 in respect of recently recruited members in an employment where the employer refuses to engage in collective bargaining.

Injunctions

An injunction is a Court Order that directs a party to do or to refrain from doing some particular act.

An injunction can be granted on an interim, interlocutory basis.

The Industrial Relations Act 1990 places restrictions on the right of employers to obtain injunctions in dispute situations.

(2) Industrial Relations (Amendment) Act 2000

There is no legal right to trade union recognition in Ireland but there is a Constitutional right to join a trade union. The Constitution makes it a right for all citizens to form associations and unions. The Industrial Relations (Amendment) Act, 2001 does not provide for Trade Union Recognition as such - but it puts in place two distinct procedures which trade unions can use to bargain on behalf of members where their employer refuses to accept the union as their representative body. These procedures involve a number of stages and can take between 12 and 18 months to complete.

Voluntary Procedure

The first procedure involves a voluntary approach which has been incorporate into a Code of Practice on voluntary dispute resolution by the Labour Relations Commission. The steps of the voluntary procedure are as follows:

1. In the first instance the matter should be referred to the Labour Relations Commission (LRC) who will appoint an Officer from its Advisory Service to assess the issues in dispute.
2. The Officer of the LRC will work with the parties in an attempt to resolve the issues in dispute.
3. In the dispute cannot be resolved by the LRC intervention an agreed cooling-off period may be put in place. During the cooling-off period the LRC Advisory Service will continue to work with the parties in an attempt to resolve any outstanding issues. The Commission may engage expert assistance, including the involvement of ICTU and IBEC, if necessary.
4. If, after the cooling-off period all issues have been resolved, the LRC will disengage.
5. If the issues in dispute remain unresolved after the cooling-off period, the LRC will make a written report to the Labour Court on the situation. The Labour Court will in turn make a recommendation on the outstanding matters.

The Fall-Back Procedure

The second procedure allows a trade union to refer a dispute to the Labour Court in the following circumstances:

- Where it is not the practice of the employer to engage in negotiations and the normal procedures (if any) normally used by the parties concerned have failed to resolve the dispute
- Where the employer has failed to observe a provision of the Code of Practice on Voluntary Dispute Resolution or has not acted in good faith
- Where the trade union has not acted in a manner which, in the opinion of the Labour Court, has frustrated the employer in observing the provisions of the Code of Practice;
- Where the trade union has not engaged in industrial action after the dispute was referred to the Labour Relations Commission in accordance the Code of Practice.

It is possible therefore, for a union to engage in industrial action before the dispute is put into the new procedures but not afterwards. Presumably the union will take industrial action if it believes it has the strength to secure recognition without going through the lengthy procedures of the LRC and the Labour Court.

However, where the Court is satisfied that the four conditions outlined above have been met, it may issue a recommendation on pay, conditions and disputes procedures. At this stage, the recommendation is just that, a recommendation. It is not legally binding and it may or may not resolve the dispute. If the dispute is not resolved, the union may ask the Court to review all relevant matters and issue a determination which is binding in law. The determination will contain the same proposals on pay and conditions as the previous recommendation, except where the Court has agreed a variation with the parties or if it is convinced that its earlier recommendation was grounded on unsound or incomplete information.

A trade union may apply to the Circuit Court for an enforcement order where an employer has failed to comply with a Labour Court determination after 12 months.

The employer or a trade union may appeal to the High Court on a point of law only.

(3) Data Protection Acts 1998 & Data Protection (Amendment) Act 2003

The Data Protection Acts apply to all legal entities in Ireland whether government, private voluntary or charitable that control personal data. In general the Acts operate on the principle that individuals should be in a position to control how data relating to them is used. In particular the Acts gives certain rights to individuals. These include:

- A right to have your details used in accordance with the Act i.e. obtained and used fairly, kept for a lawful purpose, kept safely, be factually correct, kept up to date and is sufficient/relevant for the stated purpose.
- A right to know if personal details are being held.
- A right of access to personal details.
- A right to change or remove details held about you.
- A right to prevent the use of your details for anything other than the stated purpose.
- A right to freedom from decisions made about you by computer with no human input. e.g. your work performance or reliability.

How do I make a request for access to personal data?

To request access to your details, send a letter or email to the organisation or person holding your personal details and ask them for a copy of this information. The details should be easy to understand and you should receive them within 40 days. You may have to pay a small fee but this cannot be higher than 6.35.

Exemptions

There are some exemptions where individuals may not have a right to see information relating to them. These include:

- Information is kept for the purpose of preventing/detecting or

investigating fraud offences, prosecuting offenders, assessing/collecting taxes

- Information that would be likely to impair security or maintenance of good order in a prison or detention centre.
- Information that is kept for certain anti-fraud functions. (Only where allowing a right of access would impede any such function)
- Information that concerns an estimate of damages or compensation in respect of a claim against the organisation. (Where granting access would harm the interests of the organisation)
- Information that is impossible to obtain or would obtaining it would bear a disproportionate effort.

What do I do if I do not get a response to my data access request?

If an organisation does not comply with a valid data access request it is open to you to make a complaint to the Data Protection Commissioner. Before doing so it is recommended that you contact the organisation in question to establish the circumstances and indicate your intention to complain to the commissioner.

What is the difference between Freedom of Information & Data Protection?

The Freedom of Information Acts grant every person a right, subject to certain restrictions to access information held by government departments agencies and other designated bodies in receipt of state funding. The Data Protection Acts apply to all legal entities in the state and subject to certain restrictions grant access to information held.

When a request for access to data is made under the Freedom of Information Acts the organisation is also required to consider the request under the Data Protection Acts and give the person the maximum amount of information taking accounts of both sets of legislation.

(4) Employees (Provision of Information and Consultation) Act 2006

The Act requires employers of 50 people or more 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.

The Act provides 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.

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.

The Act provides that information and consultation can take place with employees directly or through an appointed or elected employee representative. It also contains provisions for the protection of employee representatives from penalisation by an employer for performing their information and consultation duties and functions. A rights commissioner can award up to two years' remuneration as compensation (not limited to financial loss) to an employee who has been penalised because of his/her role as an employee representative.

Size and Structure of Forum

The Forum must be comprised of employees' representatives and have at least three but not more than 30 members. The employees' representatives must be elected in accordance with Schedule 2 of the Act, or in the absence of elections, appointed by the employees. It is the employer's responsibility to arrange the election process.

Rules of Procedure

The Forum must adopt its own rules of procedure, subject to some requirements. These include the right of the Forum to meet with the employer twice a year and the right to request an additional meeting with the employer in exceptional circumstances. Before any meeting with the employer, the Forum is entitled to meet without the employer concerned being present. Without prejudice to confidential information provisions in the Act, the members of the Forum shall inform the employees of the content and outcome of the meetings of the Forum.

Competence

For the purpose of the Standard Rules, information and consultation includes:

- a) Information on the recent and probable development of the undertaking's activities and economic situation
- b) Information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular where there is a threat to employment and
- c) Information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by legislation dealing with transfer of undertakings and collective redundancies.

Practical arrangements for Information and Consultation

The employer must give information in a timely manner and with the appropriate content to enable the Forum, in particular, to carry out an adequate study and, where necessary, prepare for consultation. Consultation must take place at the relevant level of management and representation, depending on the subject under discussion. The

method, content and timeframe must be appropriate. Consultation must take place on the basis of information supplied by the employer and on the basis of the opinion which the employees' representatives are entitled to formulate; in such a way as to enable the Forum to meet the employer and obtain a response and the reasons for that response, to any opinion they might form; and with a view to reaching an agreement on decisions referred to at point (c) above that are within the scope of the employer's powers.

Expenses

The employer is obliged to pay expenses incurred in the operation of the Forum. The employer must provide the members of the Forum with any financial resources that are necessary and reasonable to enable them to perform their duties in an appropriate manner.

(5) European Works Councils (Transnational Information and Consultation of Employees)

The Transnational Information and Consultation of Employees Act 1996 No. 20 of 1996, transposes EU Directive 94/45/EC into Irish law. The Act provides for the establishment of a European Works Council or a procedure in community-scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees. Community-scale undertakings are large multi-nationals with at least 1,000 employees across the member states and with at least 150 employees in each of at least two Member States.

Section 15

Family Law

(1) Family Law (Maintenance of Spouses and Children) Act 1976

(1) Family Law (Maintenance of Spouses and Children) Act 1976

This Act makes provision for payments by the spouse for the support of the other spouse and any dependent children of their family.

After hearing an application from a spouse, a Court may make a maintenance order requiring the spouse to make periodic payments to support the other spouse and any dependent children. In making the order, the Court will consider all the circumstances surrounding the application.

Where a spouse fails to make the payments outlined in the maintenance order, the Court may make an attachment of earnings order to ensure that payments are made. This order has the effect of directing an employer to make appropriate deductions from the spouse's earning so as to provide the necessary support for the other spouse and any children involved.

Family Friendly Working Arrangements

Job sharing

This is an arrangement to divide one full-time job or to share work between two people with the responsibilities and benefits of the job being shared between them. The job can be shared in a number of ways:

- On the basis of a split week; (e.g.: 2 and 3 day weeks).
- On the basis of a split day.
- On the basis of week on, week off.

Good management and communication are essential to effective job-sharing and this can be assisted where the job-sharer's can build and operate close working relations.

Job Splitting

This is an arrangement similar to job sharing except that the tasks involved in a full-time job are split between two people and each has responsibility for their own tasks rather than being equally responsible for the whole job. The need for co-ordination is, therefore, reduced.

An advantage of job splitting is that a job can be split in such a way that certain tasks requiring particular skills can be grouped together. In addition, in certain situations the working times of those who have split a job can also overlap.

Work sharing

Work sharing is a development of the job sharing/job splitting concept which attempts to achieve business tasks while allowing for a wider range of attendance patterns. This arrangement requires a high level of employer/employee co-operation with a view to achieving the tasks that make up the job. It is important that the tasks are clearly defined, targets identified and the level of service decided upon before the workload is divided up. At this stage the manager and jobholders can agree on a system of work attendance to complete the work that best accommodates the staff.

Part-time work

Part-time working basically means working fewer hours than a comparable full-time worker in the same organisation.

There are various forms of part-time working:

- 1. Fixed part-time working:** This is the most popular model. The employee works a reduced number of hours per day, or fewer days per week or even alternate weeks. This system is easy to understand and easy to manage.
- 2. Voluntary Reduced work-time:** This is a scheme whereby an employee is allowed to reduce working time for a limited period with a right to return to full-time work.

Section 16

Mainstreaming Equality

Equality Handbook for Trade Union Representatives

Mainstreaming Equality

Disclaimer: This document does not provide a legal interpretation for any of the referenced Acts. It is a summary of the main provisions of the legislation. It is not legal text or legal advice.

Dear Representative

Welcome to this Equality Handbook for Union Representatives.

This handbook is intended for Union Representatives or Members who want to become more involved with equality issues at work, or who are called upon to act as Representatives in equality-related matters.

This handbook is part of a suite of resources developed and produced with the financial support of the Equality Mainstreaming Unit in the Equality Authority. It covers a range of equality issues, including an introduction to the equality legislation and the equality institutions of the state.

This handbook is not and could not be comprehensive on all aspects of equality issues. It is meant to act as a resource which Representatives can use in their workplaces and is part of suite of tools developed to support Representatives in their role of mainstreaming equality at work. We have also developed a model 'Equality Policy for Trade Unions' which is available in hard-copy or may be downloaded from your union's website.

Remember that as a representative you will have the support of other representatives and your union officials.

We hope that you find this handbook useful and if you are interested in developing your equality role further talk to your union official about our Mainstreaming Equality training course.

PLEASE NOTE: Throughout the handbook we use the term 'Representative'. This is done for expediency as different unions use different titles, for example, Shop Steward, Branch Secretary, Equality Representative, etc.

You can read the full report of the Case Studies which are listed throughout the booklet on the equality tribunal website. Please see www.equalitytribunal.ie/Database-of-Decisions/

Acknowledgements

This Equality Handbook represents a collective approach between the Communications Workers' Union, IBOA - The Finance Union and MANDATE Trade Union.

It was funded by the Equality Mainstreaming Unit which is jointly funded by the European Social Fund 2007-2013 and by the Equality Authority.

We would like to acknowledge the ICTU, individual trade unions and the Equality Authority for their extensive work to date on equality issues. We have drawn on that work in producing this Equality Handbook. We would also like to acknowledge Anne Casey's work in developing this handbook.

Equality and the Role of the Trade Union Movement

The trade union movement has a long and established history of promoting equality and fairness at work. We want to build on this work and as part of our commitment to mainstreaming equality we have produced this Equality Handbook.

Equality is a core value of the trade union movement. Building on the movement's principal of solidarity, the challenge is to tackle issues of discrimination not just within workplaces but in wider society.

Developing a trade union equality perspective is about organising around different needs, for example work-life balance, disability, cultural awareness etc. An equality perspective, therefore, requires us to develop union representation

on various equality issues and with a diverse range of employees.

Notwithstanding advances made by the trade union movement in Ireland, the ICTU has noted in its publication 'Equality in the Workplace - Ireland, Europe and Beyond' that "indicators point to the emergence of a more unequal society". They cite as evidence:

- The low educational attainment of hundreds of thousands of workers limiting their potential to access better quality job opportunities
- Poor levels of participation of people with disabilities
- The barriers that deny the vast majority of lone parents the chance to work

or
to receive further education

- The unacceptably high levels of unemployment among members of the Traveller Community
- The denial of rights and benefits to same-sex couples
- The experience of those facing long-term economic disadvantage, including their exclusion and marginalisation
- The continued inequality of women manifested by their absence in senior roles and positions of power and their over-representation in low-paid, part-time work, and in jobs with poor advancement prospects
- The 14% gender pay gap
- The absence of comprehensive childcare provisions and supports in Ireland
- The emergence of a migrant worker pay gap of 18%, which rises to 31% for those coming from non-English speaking backgrounds

Why this handbook?

This handbook sets out to give representatives an introduction to the equality legislation and how workers are protected from discrimination.

It focuses on building a strong union equality ethos which fosters a collective approach when dealing with workplace issues.

It also outlines how members' issues can be best addressed and how to draw up an Equality Action Plan.

Why mainstream equality?

Mainstreaming equality in trade union activities and in the workplace means more than implementing specific programmes for women or migrant workers, or including reference to the nine grounds of equality in our publications.

The starting point for trade unions and Union Representatives is accepting the reality and consequences of inequality for individuals and for the trade union movement. Integrating an equality perspective means challenging

and changing attitudes, bearing in mind different points of view and concerns, and making these evident in all aspects of our work. By doing this, trade union activities become a vehicle for achieving real equality.

It is important that trade unions work with employers and employees to make their workplaces free from discrimination. This is reflected in workplace equality polices and workplace activities that promote equality.

What do I need to know about the law?

There are two distinct pieces of legislation in place in Ireland which set out important rights for people and which specifically outlaw discrimination. These are the Employment Equality Acts 1998–2011 and the Equal Status Acts 2000–2011.

These Acts outlaw discrimination in employment, vocational training, advertising, collective agreements and in the provision of goods and services.

Discrimination at work is covered by the Employment Equality Acts. If an individual is an employee or trying to get a job and believes they have been discriminated against unlawfully on any of the nine prohibited grounds, they can make a claim under these Acts. The legislation covers all aspects of work including recruitment and promotion, the right to equal pay, conditions of employment, training or experience.

The legislation prohibits discrimination on the following nine distinct grounds:

- The civil status ground: this is currently defined as single, married, separated, divorced or widowed, in a civil partnership, or being a former civil partner in a civil partnership that has ended by death or being dissolved
- The gender ground: a man, a woman or a transsexual person
- The family status ground: a parent of a person under 18 years or the resident primary carer or a parent of a person with a disability
- The sexual orientation ground: gay, lesbian, bisexual or heterosexual
- The religion ground: different religious beliefs, background, outlook or none

CASE STUDY: FAMILY STATUS

Case Number DEC-E2006-007

This dispute concerned a claim by the complainant that she was discriminated against by the respondent on grounds of gender and family status when she was not permitted to return to the post she occupied before she commenced maternity leave, when she resumed work after that absence.

The Equality Officer found that the respondent discriminated against the complainant on grounds of gender and family status. He ordered the respondent to pay her 15,000 by way of compensation for the distress suffered by her as a result of the discrimination. He also ordered the respondent to put in place a mechanism to ensure employees who are absent from work on statutory leave, but particularly maternity leave, are advised of any issues which have a potential impact on their employment with the respondent.

Source: www.equalitytribunal.ie

- The age ground: this applies to all ages above the maximum age at which a person is statutorily obliged to attend school
- The race ground: a particular race, skin colour, nationality or ethnic origin
- The Traveller Community ground: people who are commonly called Travellers, 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
- The disability ground: this is broadly defined including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions

Discrimination outside the workplace is covered by the Equal Status Acts. If you feel you are discriminated against unlawfully through the provision of goods and services, on any of the nine prohibited grounds, you can take a claim under these Acts. The legislation covers the provision of many different goods and services.

What is discrimination?

Direct Discrimination is defined as less favourable treatment than another person is, has been or would be treated in a comparable situation on any of the nine grounds which exists, existed but no longer exists, may exist in the future, or is imputed to the person concerned. An instruction to discriminate is also prohibited.

Indirect Discrimination occurs where there is less favourable treatment by impact or effect. If a provision, practice or requirement puts people who belong to one of the grounds covered by the Acts at a particular disadvantage, then the employer will have indirectly discriminated, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Aspects of employment that are covered include:

- unequal pay
- advertising
- access to employment
- vocational training & work experience
- terms & conditions of employment
- promotion
- classification of posts
- dismissal
- collective agreements

In this handbook there are examples of equality cases taken to the Tribunal. It is important to note however that not all equality cases succeed.

Who are the relevant Equality Bodies?

Currently there are two main institutions involved:

- The Equality Tribunal
- The Equality Authority

The Equality Tribunal and the Equality Authority have separate and distinct roles.

CASE STUDY: RACE

Case Number DEC-E/2007-018

The claimant claimed that he was discriminated against on the ground of race, contrary to the provisions of the Employment Equality Acts 1998 and 2004, when he was harassed by co-workers. He claimed further that he was subjected to discriminatory dismissal because of his complaints to management.

The Equality Officer found that the “respondent discriminated against the complainant contrary to the provisions of the Employment Equality Acts 1998 - 2004, when he was harassed by fellow employees and in its failure to prevent his isolation within the workplace. I find that the complainant’s dismissal is outside my jurisdiction to investigate. I hereby order that the respondent pay the complainant the sum of 7,500 in compensation for the effects of the discrimination and carry out a review of all of its employment procedures and ensure that its harassment and bullying policies are formally and adequately disseminated among its employees”

Source: www.equalitytribunal.ie

The function of the Equality Tribunal is to investigate, hear and decide claims of discrimination under the Employment Equality Acts (EEA) 1998-2011 and the Equal Status Acts (ESA) 2000-2011. The Labour Court hears and decides appeals of determination of the Equality Tribunal under the EEA 1998-2011.

The Equality Authority does not hear and decide claims of discrimination. It is a specialised equality body which promotes equality and seeks to eliminate discrimination. It is important to understand that if you contact the Equality Authority, you have not made a complaint of discrimination under the EEA 1998- 2011. With the exception of gender claims which have the option of going to the Circuit Court, only the Equality Tribunal has jurisdiction to adjudicate on claims of discrimination (and the Labour Court on appeal).

The Equality Authority has no role or function in relation to receiving claims of discrimination or the management of claims before the Equality Tribunal.

Time Limits

The ICTU Guide states “It is difficult to overestimate the importance and significance of time limits. A complaint must be referred within six months of the date of the discrimination. If a claim is not lodged in time then the employee will not be able to pursue the claim. Time limits can be extended to up to twelve months for ‘reasonable cause’ but it is not safe to rely on this. You cannot assume that a time limit will be extended because an employee for example is invoking a grievance procedure or trying to resolve the matter informally. An application has to be made to extend the time limit.”

(Equality How? An ICTU guide to taking cases under the Employment Equality Acts, 1998- 2011)

Union policy on Taking Cases

Check what your union policy is on dealing with equality complaints. You can call on your full-time Officials for advice. In some unions it is the full-time Officials who handle equality cases under the legislation.

Remember a case can be lodged for hearing with the Tribunal and if it is subsequently resolved in the workplace, it can be withdrawn from the Tribunal.

Role of the Representative

Union Representatives can play a central and unique role in promoting equality in workplaces. Some trade unions have Equality Representatives who work with other Union Representatives and Officials and the Equality Committee, if there is one.

Representatives are the first point of contact when members want to make a complaint or discuss an equality related matter.

The Representative can also encourage diverse members to become active in the union. It is important that Representatives are seen to support members, including dealing with complaints of discrimination. We need to ensure that equality is at the core of trade union activities and functions and not something that is specialised, or an afterthought to policies and

procedures or is an item on the end of a meeting agenda.

REPRESENTATIVE CHECKLIST:

- ✓ Become familiar with your union's Equality Policy
- ✓ Check your union website for information on equality
- ✓ Keep a copy of your company policy on equality
- ✓ Seek that all employees are treated fairly in terms of practices in employment and promotion
- ✓ Involve members and seek that the union provides equal opportunity to everyone to be active within its different structures and activities
- ✓ Enforce agreements with employers that promote equal treatment for all workers
- ✓ Seek that equality is at the core of activities and functions and not left as a specialist activity
- ✓ Be pro-active in the recruitment of diverse members

CASE STUDY: DISABILITY

Case Number DEC-E2012-011

This dispute concerns a claim by An Employee that he was subjected to discriminatory treatment, including a failure to provide reasonable accommodation, victimisation and dismissal by A Logistics Company on the grounds of his disability. The date of dismissal was 30 March 2009.

The Equality Officer found that the complainant had not established a prima facie case of discrimination on the disability ground. Therefore, this complaint fails but had established a prima facie case of discriminatory dismissal on the disability ground. This has not been rebutted by the respondent.

"In accordance with the Acts I award the complainant 5,000, approximately 2 months gross salary. This relatively low amount reflects the fact that I am satisfied that the complainant exasperated the situation by failing to notify the respondent of his disability in a timely manner".

Source: www.equalitytribunal.ie

The role of the Representative is also about ensuring fair practices in employment, and about involving members and ensuring that the union provides equal opportunity to everyone to be active within its different structures and activities.

How do I address members' issues?

If a member comes to with you with an issue, it is important that you take action as quickly as possible.

You must first establish the facts and keep notes of your meetings with the member.

Encourage the member to keep a record of any incidents and the date/time of when the incident occurred, what was said or done, and if there were any witnesses.

Find out if there is any evidence of similar incidents against other employees occurring in the past. Is it an individual issue or is there evidence that a group of employees is being put at a disadvantage by a particular policy or practice?

Check to see what your policy/ procedures say about raising an issue and see that the member gets a copy of the policy/procedures. Support the member in raising the issue with the appropriate manager or the HR department.

If they feel unable to raise the matter themselves, then they may wish you to raise it on their behalf. If it is an issue that cannot be resolved informally then support the member in raising a grievance through formal workplace procedures.

If it looks likely that the issue is not going to be resolved within the workplace, seek the advice of your union head office if you have not done so already.

Remember that there are time limits for bringing tribunal claims as outlined previously in this handbook.

MEMBERS' ISSUES CHECKLIST:

- ✓ Establish the facts
- ✓ Get the member to make a note of any incidents, including date and time
- ✓ Were there any witnesses?
- ✓ Is it an individual issue or is there more than one person affected?
- ✓ Check your policies and procedures
- ✓ Remember there are time limits for taking an equality case to the Equality Tribunal
- ✓ Inform your full-time Officials immediately as they may advise the member to register the case with the Tribunal – if the case is then settled in the workplace, it can be withdrawn
- ✓ Be supportive to your member

How do we mainstream equality?

The culture of an organisation is formed by the actions and behaviours of all employees and not only by management. A key strategy in mainstreaming equality is through a partnership approach, involving management, employees and Union Representatives.

The majority of employers will have a policy on equal opportunities in the workplace. Many of these policies are aimed at protecting employees from discrimination and the focus is on promoting the diversity of the workforce. The equality policy reflects the commitment to equal opportunities in any given organisation. It is the commitment to treat all employees, and potential employees, fairly and considerately and with dignity and respect.

Involving Members

On general equality issues, talk to other Representatives, members and potential members. Get their view or ideas on what they think the union can do to make improvements.

Try and encourage them to become involved in the union campaign for raising equality. You could consider:

- Are there any issues that the union needs to focus on?
- Are all members kept informed of union activity?
- Are minority groups/individuals active in union affairs?
- How do you currently engage with your membership and how could you do so better in the future?

How do I draw up an Equality Action Plan?

An Equality Action Plan will assist you to identify issues in your own workplace. Begin with something small and that way you won't feel overwhelmed. Don't forget to seek advice and support from your union while you draw up your plan.

The starting point is for Union Representatives to agree on the actions they are going to take. Include actions that you hope to achieve within realistic time scales. Don't forget to take your own union's rules and priorities into consideration. Get some guidance from your Officials. Build on your strengths, for example, if you have a good network of activists include them in drafting and implementing the Equality Action Plan.

It is important to remember that you adopt an approach that is proportionate to the size of your workplace and the resources available to you.

Priorities

Agree your priorities. Some examples of what your plan could include:

- Reading and discussing your equality opportunities policy
- Identifying the bargaining priorities and needs for different groups of your members
- Increasing participation by minority workers in union activities
- Including and discussing the Equality Action Plan with your union's

Equality Officer and seeking their input to the plan

- Reviewing your plan on a regular basis

CASE STUDY: AGE

Case Number DEC-E/2007-048

This dispute concerns a claim of discrimination on the ground of age, contrary to the provisions of the Employment Equality Acts 1998 and 2007, when the claimant was asked his date of birth at an interview.

The Equality Officer stated "I do not find that the complainant would have been successful at interview if he had not been asked about his age. The respondent adduced evidence, undisputed by the complainant, that the successful candidate was a well qualified native German speaker. I accept the respondent's explanation that the complainant's age was referred to solely in the context of trying to engage him in German-language conversation, but the respondent should consider drawing up some standard format questions to ensure discriminatory remarks or questions do not inadvertently arise. Based on the foregoing, I find that the respondent discriminated against the complainant on the ground of age, contrary to the provisions of the Employment Equality Acts 1998 to 2007. I hereby order that the respondent pay the complainant the sum of 1,000 in compensation for the effects of the discrimination.

Source: www.equalitytribunal.ie

Glossary of Terms

Direct Discrimination is defined as less favourable treatment. Direct discrimination occurs when a person is treated in a less favourable way than another person is, has been or would be treated, in a comparable situation on any of the nine grounds which exists, existed, may exist in the future or is imputed to the person concerned.

Indirect Discrimination occurs where there is less favourable treatment by impact or effect. It may involve no intention to discriminate whatsoever and can occur where practices or policy, which may appear to be non-

discriminatory, puts a particular group or class of persons at a particular disadvantage.

Discrimination by Association happens where a person associated with another person (belonging to a discriminatory ground) is treated less favourably because of that association.

Positive Action involves taking specific steps to redress imbalances and to give employees with disadvantages linked to any of the discriminatory grounds full equal opportunities.

Harassment is generally defined not necessarily by its intention but by the impact of the behaviour on the recipient. Equality legislation defines harassment “as any form of unwanted conduct related to any of the nine discriminatory grounds, and such conduct may consist of acts, requests, spoken words, gestures, or the production, display or circulation of written words, pictures or other material which may have the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person”.

Sexual Harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person and such conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Vicarious Liability means that employers are liable for acts of harassment by employees, whether or not these acts were done with the employer’s knowledge. Employers are also responsible for the actions of agents of the company.

Victimisation is the unlawful penalisation of an individual for taking an action pursuant to the enforcement of the legislation.

Contacts

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(01) 613 6700
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IBOA - The Finance Union IBOA House

Stephen Street Upper
Dublin 8
(01) 4755908
www.iboa.ie

MANDATE

O'Lehane House
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Dublin 1
(01) 874 6321/ 2/ 3
www.mandate.ie

Irish Congress of Trade Unions

31/32 Parnell Square
Dublin 1
Ireland
(01) 8897777
www.ictu.ie

The Equality Authority

2 Clonmel Street
Dublin 2
(01) 417 3336
info@equality.ie

The Equality Tribunal

2 Clonmel Street
Dublin 2
(01) 477 4100
www.equalitytribunal.ie

Publications

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'Your Equal status Rights Explained'

Guide to the Equal Status Acts 2000–2008, (Equality Authority)

'Your employment equality rights explained' (Equality Authority)

Note These publications can be downloaded free from ICTU and the Equality Authority websites.

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