

# The Employment (Miscellaneous Provisions) Act

## New legislation all employers need to know about

by Derek McKay

The Employment (Miscellaneous Provisions) Act came into force in the first week of March 2019. The objective of the Act is to address issues that arise for workers with unspecified/insecure hours of work by the provision of new statutory protections and rights and the prohibition of the use by employers of zero-hour contracts, save in certain limited circumstances.

The main provisions in the Act contain amendments to the following Acts:

- a) **Terms of Employment (Information) Acts 1994 – 2014**
- b) **Organisation of Working Time Act 1997; and**
- c) **National Minimum Wage Act 2000**

Key elements of the Acts for organisations to be aware of include:

### Amendments to the Terms of Employment (Information) Acts 1994 – 2014

The Terms of Employment (Information) Acts 1994 – 2014 is amended in two significant respects:

1. By requiring employers to notify Employees in writing of five core terms of employment within five days of the commencement of employment; and
2. By protecting Employees from penalisation for exercising their rights under the 1994 Act.

#### 1. The requirement to notify Employees in writing of five core terms of employment within five days of commencement of employment

Presently, an Employer must provide a written statement to an Employee outlining 15 core terms of employment within two months of the commencement of the Employee's employment. Failure to do so enables an Employee to make a complaint to the WRC which, if successful could result in an award of up to four weeks' remuneration.

The Employment (Miscellaneous Provisions) Act provides that an employer must notify an Employee of five core terms of employment within five days from the commencement of employment.

These core terms are as follows:

1. Names of employer and employee;
2. Address of employer;
3. Expected duration of temporary employment or the end date of a fixed-term contract;
4. The method of calculating pay and pay reference period for the purposes of the National Minimum Wage Act 2000; and
5. The number of hours which the employer "reasonably expects" the normal length of the employee's working day and week will be\*.



This provision supplements, rather than replaces, an Employer's existing obligations under the 1997 Act.

\*The Act does not define "reasonably expects". Where an Employee's hours of work are not fixed and vary from week to week, it is likely that an Employer will be in compliance if it provides such information as it is able to determine from the outset of the employment relationship. Examples of provisions in statements of employment which might be acceptable are as follows:

"You will work x hours per day, y hours per week [insert days]" or

"You will work x hours per day, y hours per week on such days as are determined by the Company from time to time" or

"You will work x hours per day on such days as will be determined by the Company from time to time"

Where the Employer does not comply with the new obligation in the Act, an Employee can bring a claim to the WRC and/or the Labour Court and be awarded compensation of up to four weeks' remuneration.

In order to bring a claim, an Employee must have at least one month's continuous service.



Further, failure to provide the required information within one month can give rise to a criminal offence. Sanctions on conviction include a Class A fine, i.e. a fine not exceeding €5,000, or imprisonment of up to twelve months or both.

Directors, managers, secretaries or other officers of a company can be individually liable, i.e. be prosecuted individually for offences.

## 2. Anti-penalisation provision

The Act also introduces an anti-penalisation provision whereby an Employer may not penalise an Employee for exercising rights under the 1994 Act. An Employee who is penalised can be awarded compensation of such amount as the WRC considers just and equitable having regard to all of the circumstances, but not exceeding four weeks' remuneration.

## Amendments of the Organisation of Working Time Act 1997

**Zero Hours Contracts:** A zero hours contract of employment is a type of employment contract where the Employee is available for work but does not have specified hours of work.

Currently, Section 18 of the Organisation of Working Time Act 1997 entitled "Provision in Relation to Zero Hours Working Practices", governs the legal position regarding zero hour contracts. In effect Section 18 provides that an Employee under a zero-hours contract who works less than 25% of their hours in any week should be compensated. The level of compensation depends on whether the Employee got any work or none at all. If the Employee got no work, then the compensation should be either for 25% of the possible available hours or for 15 hours, whichever is less. If the Employee got some work, they should be compensated to bring them up to 25% of the possible available hours.

There is no entitlement to such payment under Section 18 of the Act where the Employee is under no obligation to accept work [no mutuality of obligation]. These arrangements are frequently described as 'Casual' work or 'if and

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when' work arrangements. Because they operate on an expectation as distinct from an obligation to work, there is no payment entitlement applicable.

The Employment (Miscellaneous Provisions) Act amends Section 18 of the Organisation of Working Time Act 1997 Act in five significant respects:

1. By **prohibiting zero hours**

**contracts** save in situations of genuine casual employment and where such hours are essential to allow Employers to provide cover in emergency situations or to cover short-term relief work to cover routine absences for the Employer.

2. By providing **minimum payments to Employees who are required to be available to work** but are not called into work.

The new Section 18 provisions maintain the same payment mechanism as per zero hour contracts, i.e. the lesser of 25% of the contract hours or 15 hours. The additional feature under the Employment (Miscellaneous Provisions) Act is a new minimum payment of three times the national minimum hourly rate of pay or three times the minimum hourly rate of pay established by an employment regulation order.

3. Employees enjoy a new right to be placed in a **band of hours**

that more accurately reflects the hours they habitually work over a 12-month reference period as against their contractual hours. The Employee must make a written request to be placed in a band of weekly working hours. The Employer must then place the Employee in the appropriate band not later than four weeks from the date the Employee makes the request. The appropriate band is determined by the Employer on the basis of the average number of hours worked by the Employee per week during the reference period.

Band	From	To
A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
G	31 hours	36 hours
H	36 hours and over	-

4. The requirement that an **Employee who is placed in a band is entitled to work such hours** the average of which falls within the band for a period of 12 months following placement in the band.

An Employer may refuse to place an Employee in the band in one of the following circumstances:

- a) Where there is no evidence to support the Employee's claim;
- b) Where there have been significant adverse changes to the business, profession or occupation carried on by the Employer during or after the reference period;
- c) Due to exceptional circumstances or an emergency, the consequences of which could not have been avoided despite the exercise of all due care, or otherwise due to the occurrence of unusual and unforeseeable circumstances beyond the employer's control; or
- d) Where the average hours worked by the Employee were affected by a temporary situation that no longer exists.

The section will not apply to banded hour arrangements entered into by way of a collective bargaining agreement.

An Employer is not required to offer hours of work to an Employee in a week that the Employee was not expected to work, nor offer hours of work in a week where the Employer's business is not being carried out.

An Employee can bring a complaint to the WRC, which can issue a

decision placing the Employee in an appropriate band of hours but cannot award compensation.

5. **Prevention of penalisation of**

Employees for exercising their rights under the 1997 Act. The Act replaces the penalisation provision in the 1997 Act with a new penalisation provision.

An Employee who claims to have been penalised for invoking rights under the Act can bring a claim to the WRC and be awarded compensation of up to two years' remuneration.

**Amendments to National Minimum Wage Act 2000**

Under the new Act, changes have been applied to the National Minimum Wage Act 2000 and wage rates for employees under 18 and those over 18 have been simplified and will be solely based on age. Trainee rates of pay have been abolished.

**Conclusion**

The new employment legislation introduced will impact both Employers and Employees. With further protections provided to Employees, this will hopefully ensure fairness in relation to Employees employment terms and conditions. It will however place a further administrative burden on Employers, which we would expect is not necessarily welcomed.



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