

# Terms of Employment (Information) Act, 1994

The Terms of Employment (Information) act, 1994 sets out the basic terms of employment which the employer must provide to the employee in a written form within 2 months of starting the employment.

(1) An employer shall, not later than 2 months after the commencement of an employee's employment with the employer, give or cause to be given to the employee a statement in writing containing the following particulars of the terms of the employee's employment, that is to say—

- (a) the full names of the employer and the employee,
- (b) the address of the employer in the State or, where appropriate, the address of the principal place of the relevant business of the employer in the State or the registered office (within the meaning of the [Companies Act, 1963](#) ),
- (c) the place of work or, where there is no fixed or main place of work, a statement specifying that the employee is required or permitted to work at various places,
- (d) the title of the job or nature of the work for which the employee is employed,
- (e) the date of commencement of the employee's contract of employment,
- (f) in the case of a temporary contract of employment, the expected duration thereof or, if the contract of employment is for a fixed term, the date on which the contract expires,
- (g) the rate or method of calculation of the employee's remuneration,
- (h) the length of the intervals between

the times at which remuneration is paid, whether a week, a month or any other interval,

- (i) any terms or conditions relating to hours of work (including overtime),
- (j) any terms or conditions relating to paid leave (other than paid sick leave),
- (k) any terms or conditions relating to—
  - (i) incapacity for work due to sickness or injury and paid sick leave, and
  - (ii) pensions and pension schemes,
- (l) the period of notice which the employee is required to give and entitled to receive (whether by or under statute or under the terms of the employee's contract of employment) to determine the employee's contract of employment or, where this cannot be indicated when the information is given, the method for determining such periods of notice,
- (m) a reference to any collective agreements which directly affect the terms and conditions of the employee's employment including, where the employer is not a party to such agreements, particulars of the bodies or institutions by whom they were made.

(2) A statement shall be given to an employee under *subsection*

(1) notwithstanding that the employee's employment ends before the end of the period within which the statement is required to be given.

(3) The particulars specified in *paragraphs (g), (h), (i), (j), (k) and (l)* of the said *subsection (1)*, may be given to the employee in the form of a reference to provisions of statutes or instruments made under statute or of any other laws or of any administrative provisions or collective

agreements, governing those particulars which the employee has reasonable opportunities of reading during the course of the employee's employment or which are reasonably accessible to the employee in some other way.

(4) A statement furnished by an employer under *subsection (1)* shall be signed and dated by or on behalf of the employer.

(5) A copy of the said statement shall be retained by the employer during the period of the employee's employment and for a period of 1 year thereafter.

(6) (a) The Minister may by order require employers to give or cause to be given to employees within a specified time a statement in writing containing such particulars of the terms of their employment (other than those referred to in *subsection (1)*) as may be specified in the order and employers shall comply with the provisions of such an order.

(b) The Minister may by order amend or revoke an order under this subsection, including an order under this paragraph.

(7) This section (other than *subsection (6)*) shall not apply or have effect as respects contracts of employment entered into before the commencement of this Act.

### ***Terms of Employment (Additional Information) Order, 1998***

You must also consider regulations introduced in [S.I. No. 49/1998 – Terms of Employment \(Additional Information\) Order, 1998](#) which set out the information which must be provided about rest breaks.

3. (1) *In relation to an employee who enters into a contract of employment after the commencement of this Order, the employee's employer shall, within two months after the employee's commencement of employment with the employer, give or cause to be given to the employee a statement in writing containing particulars of the times and duration of the rest periods and breaks referred to in sections 11, 12*

*and 13 of the Act that are being allowed to the employee and of any other terms and conditions relating to those periods and breaks.*

*(2) In relation to an employee who has entered into a contract of employment before the commencement of this Order, the employee's employer shall, if requested by the employee to do so, give or cause to be given to the employee, within 2 months of the request being made, a statement in writing containing particulars of the times and duration of the rest periods and breaks referred to in sections 11, 12 and 13 of the Act that are being allowed to the employee and of any other terms and conditions relating to those periods and breaks.*

### **Employment (Miscellaneous Provisions) Act 2018 – Effective March 1<sup>st</sup> 2019**

This act is due to come into effect March 1<sup>st</sup> and aims to protect people in employments with unpredictable and insecure working hours. However it has implications for all employees and most especially all employers. Its stated objective is to improve the security and predictability of working hours for employees on insecure contracts with variable working hours. This is achieved through the grant of additional rights and legal protections to employees. Worryingly for employers this legislation creates new offences for them to be aware of. These offences are punishable summarily in the District Court with Class A fines up to €5,000 for each offence and/or imprisonment up to 12 months, along with paying all legal costs of the WRC if found guilty. Significantly for limited company employers any director, secretary, manager, or any other person or officer who gave their consent to a breach of this legislation is also individually liable and may be punished along with the company.

The miscellaneous provisions act amends the following existing employment legislation:

1. Unfair Dismissals Act 1977
2. Terms of Employment (Information) Acts 1994 – 2014
3. Organisation of Working Time Act 1997
4. National Minimum Wage Act 2000
5. Workplace Relations Act 2015

### ***Amendments to Unfair Dismissals Act 1977***

An adjudication officer of the Workplace Relations Commission (WRC) now has the right to request any person to attend and give notice in proceedings and produce any documents in their custody or control that relate to any matter the subject of proceedings. The rules for witnesses will be those of the High Court. Anyone failing to comply with such a request will render themselves guilty of an offence and upon summary conviction a Class E fine (€500 in District Court).

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

Employers are now required to notify employees in writing of the following 5 core terms of employment within 5 days of commencing employment:

1. names of employer and employee
2. address of employer
3. expected duration of temporary employment or expiry date of a fixed term contract
4. method of calculating pay and pay reference period for purposes of National Minimum Wage Act (not more than 1 month)
5. the number of hours the employer “reasonably expects” an employee to work broken down by normal working day and normal working week

It is important to get the wording of contracts right where hours are not fixed and vary from week to week. Of course existing legislation requires employers to provide new employees with an employment contract (15 core terms) within 2 months of commencing employment. Many employers may well now decide to provide full contracts within this new 5 day limit. Indeed employers are generally advised to provide contracts of employment on day 1 of all new engagements.

Except for this provision the Miscellaneous Provisions Act applies only to employees who are in continuous employment for 1 month and an employee must be employed for at least 1 month before they make a claim to the WRC under this section. There is an anti-penalisation provision providing compensation to any employee to a maximum of 4 weeks salary where an employer penalises an employee for exercising their rights under the act and this payment is calculated in accordance with regulations under the Unfair Dismissals Act 1977.

It's important to note that provision of these core terms applies to all staff, not just new staff. You should ensure all current employees have been provided with a written contract as from March 1<sup>st</sup> you may have committed a crime if found to be in breach.

### ***Amendments to Organisation of Working Time Act 1997***

The existing legislation has been changed in four major ways:

a) Prohibition on Zero Hour contracts except in exceptional circumstances

The old definition of zero hour contracts remains and refers to arrangements where an employee is asked to be available for work without the guarantee of work or where an employee is informed there will be work available on a specified day or days. These contracts are now prohibited except where work is done in an emergency or is short term relief work covering routine absences of other employees. Zero hour contracts may be distinguished from casual work (where an employee is under no obligation to accept a work assignment). Where employees are obliged to be available for work the number of hours on their contract must now be greater than zero. Employers should review, as a matter of urgency, their existing employment contracts and ensure they are in compliance with the provisions of the act.

b) Minimum payments to low-paid employees called into work and sent home without obtaining work

In accordance with previous zero hour contract legislation employees are entitled to be paid the lesser of 25 % of contracted hours or 15 hours in circumstances where they are not required to work in a week, or in a week work less than 25% of their contracted hours, or work less than 25% of the hours worked by another employee who worked a greater number of hours doing the same work in that week.

The act now provides that this minimum payment shall be calculated at 3 times the national minimum rate of pay per hour as set out in the National Minimum Wage Acts instead of the employee's normal hourly rate of pay and is payable on each occasion this occurs. Where a sectoral order applies then the rate is 3 times the sectoral rate.

The section doesn't apply to situations of temporary lay-off, short-time working, exceptional or unforeseeable circumstances beyond the employer's control, illness of an employee, employees on call.

c) Right to band of hours reflecting actual hours worked over previous 12 months

The act provides a right for an employee to make a written request to the employer to be placed in a band of weekly working hours and thereafter is entitled to work hours

the average of which should fall within this band for a period of at least 12 months. This arises where an employment contract does not reflect the number of hours worked per week over a reference period of 12 months (between date of commencement of employment and date of request). Bands are determined by the average number of weekly hours worked by an employee during a reference period. Bands from 3 hours to 6 hours increase in 5 hourly increments to 36+ hours.

An employee must be placed in a band within 4 weeks of making a request. An employer may refuse such a request where there is no evidence to support a claim, where significant adverse changes occurred in the business during the reference period, where the average hours worked by the employee during the reference period is affected by a temporary situation that no longer exists or by exceptional circumstances or an emergency or other unusual or unforeseeable circumstance beyond the control of the employer.

A request to be placed in a band of weekly working hours does not require an employer to offer hours in a week that an employee is not expected to work or a week in which the business is not being carried out.

#### d) Anti-penalisation provision of employees exercising their rights under the act

Where an employee believes an employer has unreasonably refused a request to be placed in a band of weekly working hours he/she may make a complaint to the WRC. An adjudicating officer may decide the complaint is not well founded or otherwise decide in the complainant's favour and order the employer to place the employee in an appropriate band. An employee who is penalised for invoking their rights under the act by their employer, or any person acting on behalf of the employer, can bring a claim to the WRC and may be awarded compensation up to 2 years salary.

#### Disclaimer:

*This document relates to certain acts of the Oireachtas pertaining to employment in Ireland and does not constitute legal advice and is for educational purposes only. You should seek appropriate legal advice for your own situation from a qualified legal practitioner in Ireland.*