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Do not act or fail to take action based upon reading of this paper.

Terms of employment

Terms of Employment (Information) Acts, 1994 - 2001

This legislation requires employers to provide a written statement to employees setting out terms of employment.

The Act applies to any person working under a contract of employment or apprenticeship or employed through an employment agency or in the service of the State.

The statement detailing the terms and conditions of employment must be given to a new employee within two months of commencing employment.

Information to be included in the statement:

- Full name of the employer and the employee
- The address of the employer in the state
- The place of work or a statement indicating that the employee will be required to work at various places
- Job title and/or nature of the work
- Date of commencement of employment
- If the contract is temporary the expected duration
- If the contract is fixed term the date on which the contract expires
- The rate of remuneration or method of calculating remuneration
- Details of how remuneration is paid i.e. weekly, monthly etc..
- Terms and conditions relating to hours of work (including overtime)
- Terms and conditions relating to paid leave 1 Terms and conditions relating to incapacity

- Terms and conditions relating to pensions and pension schemes if applicable
- Period of notice which the employee is entitled to receive and required to be given on termination
- A reference to any collective agreement which affects the terms of employment
- Details of rest periods and breaks

The statement must be signed and dated by or on behalf of the employer. The employer is obliged to keep this statement for a period of one year after the termination of the employment.

The employer may include additional terms and conditions e.g.

- Requirements regarding shift work
- Grievance procedure
- Disciplinary procedure including company rules and regulations
- Deductions from pay
- Provision for lay off/short time

Employers must, within 28 days of the commencement of the employment, give new staff a written summary of the procedures that would be used should it become necessary to dismiss them.

Referral of Complaints

An employee may present a complaint to a Rights Commissioner if it appears that his employer has failed to provide a full and accurate written statement of the particulars of the terms of employment or has failed to notify the

employee of any changes to the particulars in the statement.

Minimum Notice

Minimum Notice and Terms of Employment Acts 1973
to 2001

Employees are entitled to statutory minimum notice or pay in lieu except where they are dismissed for misconduct. The statutory entitlements to minimum notice are based on periods of continuous service and are as follows:

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

An employee must give an employer at least one week's notice unless the employment contract specifies to the contrary.

Employers and employees may agree longer periods of notice.

Procedures and Enforcement: Redress for breach of the Minimum Notice and Terms of Employment Acts 1973 to 2001 is obtained by application to the Employment Appeals Tribunal.

Working time

Organisation of Working Time Act 1997

The Act regulates working hours as follows:

- **Maximum 48 hour week:** subject to averaging provisions and some exceptions, the most important of which is those in a position to decide their own working time.
- Minimum 15 minute break every 4.5 hours or 30 minutes every 6 hours
- At least 11 consecutive hours rest in 24 hours.
- **Sundays off:** unless otherwise stated in the contract of employment. An employee who is required to work Sundays must be compensated with a reasonable allowance or increase in pay or time off or a combination of the above.
- **Night Worker:** someone who works at least 3 hours between 12 midnight and 7.00 am. at least 50% of annual working time.
- **Limitations:** Average 8 hours per night over two-month period for those not involved in work of special hazard or physical or mental strain, in which case the limit is 8 hours each night.

Exemptions: Certain sectors of activity are exempted from the rest provisions of the Act. Most of the derogations are by means of statutory instruments. Where there are specific exemptions in the Act, in almost all cases, an equivalent compensatory rest period must be given. It is important to verify if a particular activity is subject to a specific regulation.

There are exemptions from the daily and weekly rest provisions for split shift workers and from other provisions for workers where there may be exceptional or unforeseen circumstances or emergencies.

One needs to have regard to a number of relevant regulations made under the Act, which affect certain sector clients.

Working time

Relevant Statutory Instruments:

1. Organisation of Working Time Act, 1997 (Commencement) Order, 1997 SI No 392 of 1997
2. Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 SI No 475 of 1997
3. Organisation of Working Time (Exemption of Transport Activities) Regulations, 1998 SI No 20 of 1998
4. Organisation of Working Time (General Exemptions) Regulations, 1998 SI No 21 of 1998
5. Organisation of Working Time (Code on Compensatory Rest and Related Matters) (Declaration) Order, 1998 SI No 44 of 1998
6. Organisation of Working Time (Exemption of Civil Protection Services) Regulations, 1998 SI No 52 of 1998
7. Organisation of Working Time (Breaks at Work for Shop Employees) Regulations 1998 SI No 57 of 1998
8. Organisation of Working Time (Code of Practice on Sunday Working in the Retail Trade and Related Matters) (Declaration) Order, 1998 SI No 444 of 1998
9. Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations, 1998 SI No 485 of 1998
10. Organisation of Working Time (Public Holiday) Regulations, 1999 SI No 10 of 1999

11. Protection of Young Persons (Employment) Act 1996 (Employment in Licensed Premises) Regulations 2001 S.I. 350 of 2001
12. Organisation of Working Time (National Day of Mourning) Regulations 2001 S.I. 419 of 2001
13. Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations, 2001 S.I. 473 of 2001.

Wages – minimum and payment requirements

National Minimum Wage Act

This Act modifies all existing contracts of employment, collective agreements or legislative provisions insofar as they provide for less favorable remuneration than is provided for by the Act. This Act enables the Minister for Enterprise, Trade and Employment to prescribe a national minimum hourly rate of pay by Statutory Order. Ministerial orders are issued providing for a National Minimum Wage per hour with the rate as of March 2004 at €7.00.

Procedures and Enforcement: Disputes will be referable by an employee to a Rights Commissioner, although an employee must seek a written statement of pay before making an appeal. An appeal against a Rights Commissioner's decision may be made to the Labour Court within six weeks. If an employer fails to comply with a decision by the Rights Commissioner, the employee may refer the matter to the Labour Court, which will make a determination directing the same redress, i.e. enforcing the decision of the Rights Commissioner. A failure to follow a determination by the Labour Court may be referred to the Circuit Court, which will make an Order directing the

same redress.

Payment of Wages Act 1991

This Act establishes a range of rights for all employees relating to the payment of wages and the main rights established are a right to a readily negotiable mode of wage payment, a right to a written statement of wages and deductions and protection against unlawful deductions from wages.

The Act provides a right of complaint to a Rights Commissioner for any employee who has had an unlawful deduction from wages. The following payments are regarded as wages:

- Normal basic pay as well as any overtime
- Shift allowances or other similar payments
- Any fee, bonus or commission.

- any holiday, sick or maternity pay
- any other return or payment for work (whether made under contract of employment or otherwise and any sum payable to an employee in lieu of notice of termination of employment)
- The Act specifies a range of legally acceptable modes of wage payment.

Employers must arrange that a written statement of wages be given to every employee with every payment of wages. If wages are paid by credit transfer, the statement of wages should be given to the employee as soon as possible after the credit transfer has taken place. In every other case, the statement of wages must accompany the wage statement.

Each statement of wages must show the gross amount of wages payable to the employee and itemize the nature and amount of each deduction.

The Act allows an employer to make the following deduction from the wages of an employee:

- any deduction required or authorised by law, PAYE, PRSI
- any deduction or payment required or authorised by a term of the employee's contract
- 1 any deduction agreed to in writing in advance by the employee such as VHI premium.

Any deduction arising from any act or omission of an employee must satisfy certain conditions:

- the employee must be given particulars in writing of the act or omission and the amount of deduction or payment at least one week before the deduction is made and the deduction must be made no later than six months after the act or omission became known to the employer.

This Act modifies all existing contracts of employment, collective agreements or legislative provisions insofar as they provide for less favourable remuneration than is provided for by the Act. This Act enables the Minister for Enterprise, Trade and Employment to prescribe a national minimum hourly rate of pay by Statutory Order. Ministerial orders are issued providing for a National Minimum Wage per hour.

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Holidays

Organisation of Working Time Act 1997 (Part HI)

Annual Leave:

- 4 working weeks where at least 1365 hours have been worked in the leave year **or**
- one third of a working week where the employee works at least 117 hours in a calendar month **or**
- 8% of the hours worked in a leave year.
- A "leave year" begins on 1 April each year.
- Periods of sick leave are not counted as hours worked but maternity leave and parental leave are.

Holiday pay must be paid in advance. If the pay is static it is the normal rate for the working hours in the week immediately preceding the holiday. If it varies it is the average for the normal working hours in the 13 weeks before the holiday.

The employer can determine the time of annual leave but must give one month's notice and have regard for the employee's family circumstances. Annual leave must be taken within the leave year or by agreement within six months of its end. Pay cannot be given in lieu. If an employee falls ill on annual leave, it shall not be counted as annual leave.

Public Holidays: All employees are entitled to public holidays but may at the option of the employer be given either a paid day off or a paid day off within a month or an extra day's annual leave or an additional day's pay.

Current public holidays are:

- 1 January (New Year's Day)
- St Patrick's Day
- Easter Monday
- the first Monday in May
- the first Monday in June

- the first Monday in August
- the last Monday in October
- Christmas Day
- St Stephen's Day

The employer can be requested not more than 21 days before the public holiday to nominate the option he proposes to take.

Absence: No entitlement where employees are absent from work for 52 weeks due to an occupational illness; 26 weeks in the case of other illness or injury; 13 weeks for authorised absence. No entitlement during a strike.

Public Holiday Work: An employee who normally works on a public holiday is entitled to an additional day's pay. Otherwise they are entitled to 1/5 of a week's pay.

The calculation of pay for a public holiday is the same as that for annual leave.

Where an employee leaves employment on the week ending on the day before a public holiday then they will be entitled to pay for that holiday provided they have worked for the employer during the preceding four weeks.

Procedures and Enforcement: A claim may be brought, in writing, to a Rights Commissioner within 6 months of the date of any contravention (twelve months where "reasonable cause" is shown for the failure to bring a claim within 6 months). If the employee issues other claims, such as redundancy payment, then any holiday claim can be added to the redundancy claim instead of separate proceedings.

Maternity leave

Maternity *Protection Act* 1994

The Safety, Health & Welfare at Work (Pregnant
Employees, etc)

Regulations 1994 SI 446 of 1994

Maternity Protection Act, 1994 (Extension of Periods of Leave)
Order, 2001

Legislation (Maternity Protection (Amendment) Bill 2003) amending the Maternity Protection Act 1994 will, when enacted, improve maternity protection for employees. The legislation will implement the recommendations made by the Working Group on the Review and Improvement of the Maternity Protection Legislation.

The main provisions of the Bill are as follows:

- Provision, subject to the employer's agreement, for the termination of (unpaid) additional maternity leave in the event of sickness;
- Provision, subject to the employer's agreement, for the postponement of maternity leave/additional maternity leave in the event of the hospitalisation of the child;
- Provision for expectant mothers to attend one set of ante-natal classes without loss of pay;
- Provision of a once off right to fathers to paid time off to attend the last 2 ante-natal classes;
- Provision for breastfeeding mothers who have given birth within the previous 4 months with an entitlement, without loss of pay, to either breastfeeding breaks, where breastfeeding facilities are provided by the employer or a reduction of working hours and;
- Provision that an employee's absence from work on additional maternity leave will count for all employment rights associated with the employment (except remuneration and superannuation benefits),

such as seniority and annual leave.

Rights under Maternity Protection Act, 1994 apply to all pregnant employees, all employees who have given birth in the previous 14 weeks, and all employees who are breastfeeding up to 26 weeks after the birth, provided they have notified their employer of their condition. No minimum length of service is required.

Qualifying employees are entitled to:

- 18 weeks maternity leave, to include at least 4 weeks before the expected date of birth and at least 4 weeks after the birth
- 8 weeks additional maternity leave (optional)
- Social welfare payment, if applicable, during the 18 weeks maternity leave.

Employees must give employers at least 4 weeks written notice before:

- Taking maternity leave
- Taking additional maternity leave
- Returning to work

Other categories of protective leave under the Maternity Protection Act:

Natal Care Leave

Employees are entitled to paid time off to receive antenatal or post-natal care. 2 weeks notice of appointments should be given to the employer where possible

Father's Leave

If a mother dies during maternity or additional maternity leave, the father may avail of the outstanding balance of the leave.

Health and Safety Leave

Employers are required to identify any risk to which employees covered by the Maternity Protection Act might be exposed. If a risk is established, the employer should remove it or transfer the employee to suitable alternative

work. If no such work is available, the woman must be granted health and safety leave.

Employers are obliged to pay employees for the first 3 weeks of health and safety leave, after which social welfare benefits may apply. Health and Safety provisions may also apply to employees who normally work at night (subject to medical certification).

- The right to maternity leave accrues after 24 weeks of pregnancy.
- All employment rights other than the right to remuneration are either preserved or suspended during protective leave.

SI 446 of 1994 requires an employer to assess the workplace for risks to pregnant workers, workers who have recently given birth or who are breast feeding. If a risk is established to a woman who fits into one of these categories, the employer must put in place measures to remove the risk and if this is not possible, to provide suitable alternative work or else grant health and safety leave.

Procedures and Enforcement: Disputes arising under the Act (entitlement to leave, time off for antenatal or post-natal care etc but excluding a dismissal claim) may be referred to a Rights Commissioner (6-month time limit, 12 months in "exceptional circumstances"); this decision may be appealed to the Employment Appeals Tribunal within 4 weeks.

A claim relating to dismissal must be brought under the Unfair Dismissal Acts.

The one year continuous service requirement under the Unfair Dismissals Acts does not apply where the employee is dismissed for pregnancy, giving birth or breastfeeding or any matters connected therewith.

Adoptive leave

Adoptive Leave Act 1995

An employed adopting mother or sole male adopter is entitled to 14 consecutive weeks of unpaid adoptive leave and a further 8 weeks additional unpaid adoptive leave.

In general, the leave commences on the day of placement, but, in the case of a foreign adoption, some or all of the leave may be taken immediately before the day of placement.

Where an adopting mother dies, the adopting father is entitled to a period of leave equivalent to the outstanding balance of the adopting mother's leave.

Employees must give at least 4 weeks written notice of:

- Taking adoptive leave
- Taking additional adoptive leave
- Returning to work

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

Social welfare benefit, if applicable, is available during adoptive leave.

The employee has a right to return to the same job or suitable alternative.

Procedures and Enforcement: Any dispute (within 6 months from the day of placement or within 6 months of first

notification to intention to take leave - 12 months in "exceptional circumstances") under the Act (other than a dismissal arising from the employers failure to allow the employee to return to work - claim under Unfair Dismissals Acts) can be brought to a Rights Commissioner who can award up to 20 weeks remuneration or may give "such directions" as the Rights Commissioner "considers necessary or expedient for the resolution of the dispute".

Parental leave/force majeure leave

Parental Leave Act 1998

14 weeks' unpaid leave is available to parents for each child born or adopted.

Employees must have 1 year's continuous service to avail of the full 14 weeks' parental leave; a proportion of the leave is available to employees with shorter service in certain circumstances. The leave must be taken before the child reaches the age of 5. However, special provisions apply in the case of certain adopted children. The leave may not be transferred between the parents. The leave may be taken as one block or, by agreement between employer and employee, broken into weeks, days or hours off. The leave must be used to take care of the child. Notification (6 weeks in advance) and confirmation must be given to the employer in writing. An employer may postpone the leave for up to 6 months on certain stated business grounds.

Employment Rights

All employment rights other than remuneration and

superannuation benefits are protected during parental leave. Employees are also entitled to return to the same job or suitable alternative employment when the leave ends.

Force Majeure Leave

This is paid leave that arises when injury or illness of a close relative (as specified in the Act) makes the immediate presence of the employee indispensable.

Maximum allowance is 3 days in 1 year or 5 days over 3 consecutive years. Part of a day is counted as a full day.

All employment rights are protected during force majeure leave and the employee has a right to return to the same job or suitable alternative.

Procedures and Enforcement: Any dispute (within 6 months from the occurrence of the dispute) under the Act (other than a dismissal - claim under Unfair Dismissals Acts) can be brought to a Rights Commissioner who can award up to 20 weeks remuneration or may give "such directions" as the Rights Commissioner "considers necessary or expedient for the resolution of the dispute".

Carers leave

Carer's Leave Act

The Act allows employees with 12 months continuous service or more to leave their employment temporarily to provide full-time care and attention for persons requiring such for a period of up to 65 weeks unpaid (however employees may be entitled to Carer's Benefit from the Department of Social, Community and Family Affairs). Carers will have their jobs kept open for

them for the duration of the leave. Carer's Leave does not affect employment rights other than the right to receive pay, holiday and pension benefit. In order for employees to be entitled to take this leave the following will be required:

- A medical assessment that the care recipient (i.e. the person for whose care the leave is taken), is in need of full-time care and attention.
- If an employee does not live with the care recipient, a direct system of communication must exist between the employee's residence and that of the care recipient: - An employee who wishes to apply for the Carer's Leave will not need to be related to the care recipient.
- At any one time, not more than one employee may take Carer's Leave in respect of the same care recipient. There is however, one exception to this provision whereby the two care recipients reside together.
- An employee may not be dismissed because he/she exercises the right to avail of Carer's Leave.
- Carer's Leave may be taken in a block of up to 65 weeks, or in a series of lesser periods not exceeding an aggregate of 65 weeks.

Procedures and Enforcement: Disputes about Carer's Leave entitlement will be referable (by an employee or employer) to a Rights Commissioner. Disputes in relation to medical assessments will be referable to Deciding Officers and/or Appeal Officers of the Department of Social, Community and Family Affairs.

Part-time employees

Protection of Employees (Part-Time Work) Act
x00a

This Act has three main purposes which are:

- To prohibit discrimination against part-time workers
- To improve the quality of part-time work
- To facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time.

This Act has amended certain other Acts to apply rights and entitlements on a pro-rata basis to part-time employees.

The threshold which required that a part-time worker should be in the continuous service of the employer for not less than 13 weeks and should be normally expected to work not less than 8 hours for that employer, no longer applies. Part-time employee means an employee whose normal hours of work are less than the normal hours of work of a comparable employee in relation to him/her.

The Act provides that a part-time employee shall not be treated in a less favourable manner in respect of his/her conditions of employment than a full time employee. However, the Act provides that a part-time employee may be treated in a less favourable manner than a comparable full time employee where such treatment can be justified on objective grounds. A ground would be considered as an objective ground for treatment in a less favourable manner, if it is based on considerations other than the status of the employee as a part-time worker the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose.

The Act provides that a provision in any agreement shall be void insofar as it attempts to exclude or limit the application of any provision of the Act or is inconsistent with any provision of the Act.

Referral of Complaint

An employee may present a complaint to the Rights Commissioner if it appears that the employer has failed to

provide an entitlement to which the employee is due under the Act. Written notice of the complaint must be presented within six months of the date of the alleged contravention. The time limit for submitting a complaint for redress may be extended by a further 12 months if the Right Commissioner is satisfied that the failure to present the complaint under the normal six month period was due to a reasonable cause.

Agency workers

The Employment Agency Act, 1971 provides that any person carrying on the business of an employment agency must obtain a licence to do so from the Minister for Enterprise, Trade & Employment.

Agency workers are persons who register with employment agencies that make temporary workers available to an employer.

Complex legal issues arise in characterising the duties of care and obligation as between the parties in an agency arrangement. In recent times legislation has been introduced that improves the status of agency workers and these workers are now covered in the same way as direct employees in respect of the following rights.

- Payment of Wages
- Unfair Dismissal Legislation
- Maternity Protection Legislation
- Adoptive Leave
- Holidays, Holiday Pay, Rest Periods and Rest Breaks
- Information about Terms of Employment
- In certain specific legislation e.g. Unfair Dismissal (Amendment) Act, 1993 persons engaged through

employment agencies are covered by the scope of the legislation and for the purposes of dismissal the party hiring the individual from the employment agency is deemed to be the employer. Also the Protection of Employees (Part-Time Work) Act, 2001 protects agency workers from being discriminated in relation to their terms and conditions.

Fixed term employees

The purpose of the Act is to provide for the improvement of the quality of fixed term work by ensuring the application of the principle of non-discrimination so that fixed term workers may not be treated less favourably than comparable permanent workers. The Act prohibits discrimination against fixed term workers where such exists and the establishment of a framework to prevent abuse arising from the use of successive fixed term employment contracts.

Fixed term employee means a person who has entered into a contract of employment with an employer where the end of the contract is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event. The term "fixed term employee" does not include employees in initial vocational training or in apprenticeship schemes nor employees with a contract of employment concluded within the framework or publicly supported training, integration or vocational re-training programme.

The Act provides that a fixed term employee shall be informed in writing by his/her employer as soon as practicable of the objective condition determining the contract, i.e. whether it is:

- Arriving at a specific date;

- Completing a specific task; or
- The occurrence of a specific event.

The Act also provides that where an employer proposes to renew a fixed term contract the employee shall be informed in writing, not later than the date of the renewal, of the objective grounds justifying the renewal of the fixed term contract and the failure to offer a contract of indefinite duration.

Employees on fixed term contracts which commence prior to the passing of the Act, 14 July 2003

Once such an employee completes or has completed three years continuous employment with his/her employer or associated employer the employer may renew the contract for a fixed term on one occasion only and that renewal may be for a period of no longer than one year.

Employee on a fixed term employment contract which commences after the passing of the Act

Where such an employee is employed by his/her employer or associated employer on two or more continuous fixed term contracts the aggregate duration of these contracts may not exceed four years.

Where a term of an employment contract purports to limit the term of the employment contract of either category of employee mentioned above, in contravention of the above rules, that term shall be void, have no effect and the contract concerned shall be deemed to be one of indefinite duration - a permanent contract. An employee may refer a dispute in relation to an entitlement under the Act to a Rights Commissioner of the Labour Relations Commission for adjudication. The decision of the Rights Commissioner can be appealed to the Labour Court for a legally binding determination.

Health and Safety

A huge body of legislation has developed on health and safety matters in the workplace in the last fifteen years or so, mostly derived from European Community law. Further legislation is expected in the near future. There are generally applicable rules and there are detailed directives and regulations dealing with particular sectors and situations. The following is an outline of the main provisions of the two most important pieces of legislation.

Safety, Health and Welfare at Work
Act, 1989 General Application
Regulations, 1993 (as amended)

There is a duty on all employers to ensure the health, safety and welfare of all their employees including:

- Providing a safe place of work and safe access to the place of work
- Providing safe systems of work
- Providing and maintaining safe plant and equipment
- Providing information, training and supervision as necessary
- Undertaking preventative risk assessment

Safety representatives may be appointed by the employees from among their number at their place of work, and employers must notify the safety representatives when Health and Safety Authority inspectors visit.

Employers must prepare a Safety Statement. They are obliged to carry out far-reaching consultation with and participation by their workers in health and safety matters. They must train their staff.

Civil liability for employers may arise at common law but breach of the Safety, Health and Welfare at Work Act 1989 is not actionable in itself. Where the Regulation breached is derived

from EC law, such as a directive, civil liability may arise. Legal advice should be taken where any doubt arises.

The Health and Safety Authority was set up by the 1989 Act. It polices all of the legislation on Health and Safety in the workplace. Contravention of almost any aspect of the legislation is a criminal offence and the Health and Safety Authority has the power to prosecute either summarily or on indictment. The Health and Safety Authority has an extensive website (<http://www.hsa.ie/osh>). A list of all the regulations is kept there along with news of developments.

Examples of some of the areas covered by regulation are:

- use of VDUs in offices
- construction site safety
- standards for workplace equipment
- conditions on fishing vessels
- risk assessment during night work or pregnancy

Data protection

Employment Records

Employers' data protection obligations are set out in the Data Protection Acts 1988 and 2003 ('the Acts'); The Data Protection (Amendment) Act, 2003 implements the

European Data Protection Directive 95/46/EC. The Acts regulate how employers collect, store and use personal data held by them about their employees (past, prospective and current). More onerous obligations are imposed in respect of sensitive personal data. Infringement of the Acts can lead to investigation by the Data Protection Commissioner, fines of up to €100,000 or compensation claims from affected employees.

Employers, as data controllers, must ensure that sensitive personal data about their employees is collected and processed fairly, is kept accurate and up to date and is not kept for any longer than necessary. Appropriate security measures must be taken by employers against unauthorised access to, or alteration, disclosure or destruction of, personal data. Employers should have a data protection policy in place including a data protection notice, a defined policy on retention periods for all items of personal data and provide appropriate staff training in data protection.

Employee Access to Data

Employees as data subjects have the right to make a subject access request. This entitles them subject to certain limited exceptions, to be informed what personal data is held about them and to whom it is disclosed, to obtain a copy of their personal data and have personal data amended or deleted where it is incorrect. Employers should respond to subject access requests as soon as possible or within 40 days from receipt of the written request. Subject access requests cover personal data held in mutual and electronic form. Employers may charge up to €6.35 for supplying employees with a copy of their personal data.

Transmission of Data to Third Parties

Employers should not provide employees data to third parties otherwise than in accordance with the principles and

processing conditions set out in the Data Protection Acts, 1988 and 2003. It may be necessary to obtain express consent from the employee to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information and the location of the third party. Where the data is being transferred to a third party within the EEA a written contract should be entered into, in which the recipient agrees to process the data in accordance with the instructions of the transferor and comply with the security obligations set out in the Acts. Where the third party is based outside the EEA the Acts prohibit the transfer of data unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply. Where employee data is requested in the context of a commercial transaction anonymised data should be provided where possible. If this is not possible the recipient should be required to undertake in writing that it will only use the information in respect of the transaction in question, will keep it secure and will return or destroy it at the end of the transaction.

Young persons in employment

This Act is designed to protect young workers and to ensure that work during the school year does not put a young person's education at risk.

The Act applies generally to employees under 18 years of age:

- Child: under 16 years of age or the school leaving age (whichever is higher)
- Young person: 16-18 years of age

Conditions of employment, hours of work and rest

periods

Maximum weekly working hours for those aged under 16 years:

During the summer holidays: under 16's must have at least 21 days free

Time off and rest breaks for under 16's:

Working hours, time off and rest breaks for

Night and early morning work

- Under 16's may not be required to work before 8.00 a.m. or after 8.00 p.m.
- In general 16 and 17 year olds may not be employed before 6.00 a.m. or after 10.00 p.m.
- During school holidays and on weekend nights 16 and 17 year olds who have no school the next day may work up to 11.00 p.m. where there are exceptional circumstances and the Minister is so satisfied.

- Before a child under 16 is employed, the parent or guardian must furnish written permission.

A register must be kept containing the following information on any person employed under 18:

- Full name
- Date of birth
- Time work begins each day
- Time work finishes each day
- Rate of wages/salary paid
- Total amount of wages/salary paid

Regulations under the Act require employers to give to their workers aged under 18 a copy of the official summary of the Act.

Duties of Employers

Before employing a young person or child an employer must see a copy of the birth certificate or other evidence of age and before employing under 16 an employer must get the written permission of a parent or guardian.

Complaints about infringement of this Act may be made to the Employment Rights section. Department of Enterprise, Trade & Employment.

Referral of Complaints

The parent or guardian of a child or a young person may present a complaint to a Rights Commissioner that an employer has contravened section 13 (preservation of existing rates of pay and condition) or section 17 (refusal to co-operate with the employer in breaching the Act).

Equality in employment and inprovision of goods and services

Employment Equality Act, 1998

Prohibits discrimination in employment based on any of nine protected grounds (gender, marital status, family status, sexual orientation, religious belief or lack of belief, age, disability, race including nationality, and membership of the Traveller community) and related conduct.

Significant amendments to the Employment Equality Act, 1998 (the 1998 Act) will occur on the enactment of the Equality Bill, 2004. The Equality Bill 2004 contains a number of substantive and procedural changes to the 1998 Act partly to implement three recent EC Directives. The main provisions of the amending legislation are:

- provision for the extension of the scope of the 1998 Act to persons employed in a self-employed capacity;
- provision for the extension of positive action provisions to all nine grounds covered by the 1998 Act;
- provision for the extension of the age provision of the 1998 Act to persons under the age of 18 but over the minimum school leaving age and over sixty-five. Employers will still be allowed to set minimum recruitment ages of 18 or under and to set retirement ages;
- provision for the requirement on employers to provide reasonable accommodation for persons with disabilities subject to it not imposing a disproportionate burden rather than nominal costs;
- provision for the amendment of the redress provisions in respect of the defence forces in order to allow members of the defence forces access to the general

redress mechanism in respect of all grounds covered by the 1998 Act (except age and disability).

Also the Social Welfare (Miscellaneous Provisions) Act 2004 will extensively amend the equality provisions of the Pensions Act, 1990. It prohibits discrimination based on any of the main protected grounds in regard to occupational pensions, with some exceptions, and it makes substantial procedural changes.

Employment Equality Act, 1998

Application

The Act applies to employers, advertisers of employment, employment agencies and providers of vocational training. Broadly speaking, all stages and aspects of employment and employment-related training are covered. The main exception is occupational pensions, which are specifically excluded from the scope of the Act and fall instead under the Pensions Act 1990. Agency workers are treated as employees.

Requirements of the Act

The Act prohibits:

- *Direct discrimination*
- *Indirect discrimination*
- *Discriminatory failure to provide equal pay for equal work (or work of equal value)*
- *Sexual harassment, or harassment based on any other protected ground*
- *Victimisation*

It also requires employers to provide "*reasonable accommodation*" for an employee with a disability, i.e. to do all that is reasonable to provide any special treatment or facilities, which will render the employee capable of doing the job, provided that the cost of so doing is not more than nominal. Case law has interpreted "nominal" as relative to the size and resources of the employer.

- *Direct discrimination* involves less favourable treatment based directly on the discriminatory ground. For example, a practice of not recruiting women would

- discriminate directly on the gender ground.
- *Indirect discrimination* involves less favourable treatment which is not based directly on a discriminatory ground, but on an apparently neutral factor. The claimant must show that in practice, this factor operates to disadvantage substantially more people in a protected category. For example, a practice of not recruiting employees with long hair might discriminate indirectly against women or against members of certain religions. The Act provides a justification defence. In cases to which European Community law applies, the respondent must show that the practice is objectively justified, i.e. that it is appropriate and necessary for reasons unrelated to discrimination. In other cases, it is enough to show that the practice is reasonable in all the circumstances.
 - *Harassment*: Defined as conduct which is unwelcome to the victim and may reasonably be regarded as offensive, humiliating or intimidating.
 - *Victimisation*: arises where a person is penalised solely or mainly for seeking redress under the Act in good faith, or in related circumstances.

Exceptions and exclusions

There are a number of detailed exceptions to the Act, for example those aged under 18 or over 64 are excepted from protection on the age ground. The main general exceptions are persons not competent, capable and available to do the job (except where reasonable accommodation applies), positive action (persons with a disability, aged over 50 or Travellers), and a limited exception where the protected ground amounts to an occupational qualification.

Vicarious liability

Under the Act employers may be vicariously liable for acts by their employees. There is a defence if employers can show they took "such steps as are reasonably practicable" to prevent conduct of this sort occurring.

Procedures

Practitioners' attention is drawn to the time limits for lodging claims under the Act (section 77).

Enforcement

The **Equality Tribunal** (formerly Office of the Director of Equality Investigations) is a new quasi-judicial body and is the main forum of first instance for deciding claims under the 1998 Act. It takes over, and extends, the role of Equality Officers previously attached to the Labour Court. Claims referred to the Director under the Act may be investigated and decided by a Tribunal Equality Officer, or, where both parties agree, may be referred to the Tribunal Mediation Service. Full details, including a database of decided cases, are available on the Tribunal website at www.odei.ie.

The Act provides two alternative fora:

- In any case of gender discrimination in employment, the claimant can opt for either the Tribunal or (with unlimited jurisdiction) the Circuit Court
- Discriminatory dismissals may not be referred to the Tribunal: jurisdiction over these claims remains with the Labour Court. Further details, including text of decided cases, are available on the Labour Court website at www.labourcourt.ie.

Redress

Decisions issued by the Tribunal are legally binding, with an appeal to the Labour Court. Mediated agreements are legally binding but are not published. Redress available in Decisions includes:

- An order for equal pay and arrears up to 3 years
- Compensation for the effect of discrimination or victimisation (maximum limit of 104 weeks' pay)
- An order that a person or person specified take a specified course of action
- Reinstatement or re-engagement (discriminatory dismissal)

Other bodies

The Equality Authority is a separate and distinct body from the Equality Tribunal, charged with advocacy and public policy functions. It works with all those interested to develop equality policy and best practice. It can also provide advice and legal representation to any person who considers they have experienced unlawful discrimination. Further details are available on the Authority's website at www.equality.ie

The Equal Status Act -2000

Deals with discrimination and related conduct in the provision of goods, services or facilities to the public or to a section of the public generally and is therefore beyond the scope of employment relationships. The scope is very broad, including disposal of interests in premises, access to and the use of places, banking, entertainment, education, transport or travel, accommodation, private clubs, professional services, and public services.

The protected grounds are gender, marital status, family status, sexual orientation, religious belief or lack of belief, age, disability, race including nationality, and membership of the Traveller community.

Requirements of the Act

The Act prohibits:

- *Direct discrimination*
- *Indirect discrimination*
- *Sexual harassment, or harassment* based on any other protected ground
- *Victimisation*

It also requires providers of goods, services or facilities to provide "*reasonable accommodation*" for a person with a disability, i.e. to do all that is reasonable to provide special treatment or facilities whose absence would make it impossible or unduly difficult for that person to avail of the goods/service/facility. However, this obligation does not apply if the cost of reasonable accommodation is greater than nominal. *Direct discrimination* involves less favourable treatment based directly on the discriminatory ground. For example, treating non-nationals less favourably than Irish nationals may discriminate directly on the race ground.

Indirect discrimination involves less favourable treatment which is not based directly on a discriminatory ground, but on an apparently neutral factor. For example, requiring evidence of fixed address as a condition of service might discriminate indirectly against Travellers or non-nationals. The complainant must show that in practice, this factor operates to disadvantage substantially more people in a protected category. The Act provides a justification defence, if such a practice is reasonable in all the circumstances.

Harassment: Defined as conduct which is unwelcome to the victim and may reasonably be regarded as offensive, humiliating or intimidating.

Victimisation: arises where a person is penalised solely or mainly for seeking redress under the Act in good faith, or in related circumstances.

Exceptions and exclusions

There are a number of detailed exceptions to the Act. Any action required by another enactment is excluded. Other exceptions include disposals by will or gift, some risk-based assessments, and action taken in good faith to comply with the Licensing Acts.

Vicarious liability

Employers' vicarious liability applies here as under the Employment Equality Act. In addition, educational establishments and premises where goods facilities or services are offered to the public, are obliged not to permit customers, or other persons with a right to be present, to suffer sexual or other harassment on the premises. There is a defence that "such steps as are reasonably practicable" were taken to prevent this occurring.

Procedures

Attention is particularly drawn to the notification requirement

A complainant must serve written notification, referring to specific matters, on the respondent, within 2 months of the discriminatory act (extendable, in exceptional circumstances only, to four months). Absent such notification, the complaint cannot be treated. The complaint must be referred within six months of the discriminatory act (extendable in exceptional circumstances to a maximum of 12 months.)

Enforcement

All complaints are normally referred to the Equality Tribunal (formerly ODEI/ Office of the Director of Equality Investigations.) This is the quasi-judicial body which also deals with claims under the Employment Equality Act 1998. Claims are investigated and decided by a Tribunal Equality Officer, or, where both parties agree, may be referred to the Tribunal Mediation Service. Full details, including a database of decided cases, are available on the Tribunal website at www.odei.ie.

Complaints against registered clubs, or (under the Intoxicating Liquor Act 2003) licensed premises, are referred to the District Court.

Redress

Decisions issued by the Tribunal are legally binding, with an appeal to the Circuit Court. They may provide for payment of compensation up to a limit of €6,348, or for an order that a specified person takes a specified course of action. Mediated agreements are legally binding, but are not published.

Transfer of undertakings

European Communities (Protection of Employees on Transfer of Undertakings)

Regulations, 2003

The Regulations are aimed at safeguarding the rights of employees in the event of a transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer of merger.

These Regulations provide for:

- The rights and obligations arising from an employment contract or relationship or transfer from the original employer to the new employer;
- The new employer must continue to observe the terms and conditions of any collective agreement until it expires or is superseded;
- The interests of employees and persons no longer employed in the original employer's business at the time of the transfer in respect of immediate or prospective rights to old age, invalidity or survivor's benefits, under supplementary company pension or inter company pension schemes outside the Social Welfare Acts must be protected by the new employer;
- an employee may not be dismissed solely on the grounds of the transfer of an undertaking, business or part of a business by either the new employer or the old employer, however dismissals may take place for economic, technical or organisational reasons entailing changes in the workforce;
- if an employment is terminated because a transfer involves substantial deterioration in the working conditions of the employee, the employer concerned shall be regarded as having been responsible for the termination.

The original employer and the new employer must consult their

respective employees not later than 30 days before the transfer occurs and in any event in good time and (in the case of the new employer) in any event, before his/her employees are directly affected by the transfer as regards their conditions of work and employment concerning:

- the reasons for the transfer;
- the legal, economic and social implications of the transfer for the employees; and the measures envisaged in relation to the employees.

If the new or old employer involved in a transfer envisage measures in relation to their employees, they must consult representatives of the employees where reasonably practicable not later than 30 days before the transfer occurs and in any event in good time on such measures with a view to seeking agreement. Representatives in relation to employees employed in an undertaking business or part of a business who are affected or likely to be affected by the transfer of undertaking business or part of a business means trade unions, staff association or excepted body with which it has been the practice of the employee's employer to conduct collective bargaining negotiations or in the absence of such a person or persons chosen under an arrangement put in place by the employer by such employees from among their number to represent them in negotiations with the employer.

An employee or trade union, staff association or excepted body on behalf of an employee may present a complaint to the Rights Commissioner that an employer has not complied with regulations in relation to information and consultation of employees.

Dismissal – termination of employment

Unfair Dismissals Acts 1977-2001

Aggrieved employees have a choice of legal remedy:

[1] an action for wrongful dismissal in the civil courts where breach of

contract or breach of constitutional rights is alleged. There is a 6-year limitation period and damages are unlimited; or

[2] a claim within 6 months (12 months in "exceptional circumstances")

of the date of dismissal to the Employment Appeals Tribunal or Rights Commissioner under the Unfair Dismissals Acts 1977-2001.

Redress for unfair dismissal under the Unfair Dismissals Acts apply to employees who:

- have been dismissed or can prove that the employer's conduct was so unreasonable that resignation was justified
- have one year's continuous service. This service is not necessary where dismissal is on grounds of pregnancy or related matters or trade union activity
- are between 16 and 66 years of age
- are employed by or through employment agencies or directly by the employer

Presumption of unfair dismissal:

Once it is accepted that the employee was dismissed then the onus is on the employer to prove that the dismissal was not unfair. Certain specific grounds for dismissal are also deemed to be unfair:

- trade union membership/activity

- pregnancy or matters related
 - exercising statutory maternity rights
 - religious or political opinions
 - age
 - sexual orientation
-
- membership of the travelling community .
 - taking legal action against the employer

Grounds substantially justifying dismissal:

- Capability, competence or qualification I
conduct
- Redundancy provided selection criteria and procedures
are fair
- Other substantial reasons
- Fixed term contracts and fixed purpose contracts
(with certain exceptions).

Disciplinary Procedures under the Unfair Dismissals Acts

There is a legal obligation on all employers to supply all employees, not later than 28 days after commencing employment, with written procedures that the employer will observe before dismissing an employee. Any changes to the procedure must be notified to the employee within 28 days of the change being made.

The use of disciplinary procedures is strongly recommended to employers where an employee's conduct, attendance or performance is of concern. Failure to use or comply with procedures, of itself, may render the dismissal unfair.

Procedures should normally include a set of graduated steps from verbal and written warnings to suspension on pay and eventually dismissal. There is no set rule about how many warnings there should be in any case. The test is: what would a reasonable employer do? If appropriate, the employer should notify the employee of any shortcomings, suggest improvements and give a period of time in which to make the

improvements. The employee should also be notified of the consequence of not making the improvements e.g. dismissal might be considered. In cases of serious misconduct, it may be appropriate to move to a later stage of the procedure much more quickly. If requested, an employer must give the reason(s) for dismissal in writing within 14 days of the request.

See Labour Relations Commission website: <http://www.lrc.ie/>

Procedures and Enforcement: A claim under the Unfair Dismissals Acts may be brought, in writing, to a Rights Commissioner or Employment Appeals Tribunal within 6 months of the date of any contravention (twelve months in "exceptional circumstances"). Redress:

- reinstatement, or
- re-engagement, or
- compensation to a maximum ceiling of 2 years' remuneration. "Remuneration" includes salary, benefits in kind (car, VHI, lodgings etc.) and employers pension contributions.

Awards of compensation are usually based on the actual financial loss of the employee however in cases of no loss e.g. where the employee is immediately employed at the same salary the Tribunal has discretion to award up to four weeks remuneration.

Employment

Redundancy Payments Acts 196J-1005 Protection of Employment Act 1977

Under the Unfair Dismissals Act 1977 (as amended) the dismissal of an employee is an unfair dismissal unless, having regard to all the circumstances, there are substantial grounds justifying the dismissal. Redundancy is one such ground. There are five alternative definitions of redundancy contained in the Redundancy Payments Acts 1967-2003. Strict adherence to those definitions is required if an employee is to be dismissed by reason of redundancy. A redundancy may be justified by one or more of these five definitions and these are:

- the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes for which the employee was employed by him, or has ceased or intends to cease to carry on that business in the place where the employee was so employed; or
- the fact that the requirements of that business for the employee to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish; or
- the fact that the employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by the other employees or otherwise; or
- the fact that the employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforth be

done in a different manner for which the employee is not sufficiently qualified or trained; or

- the fact that the employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforth be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained.

Redundancy – termination of employment

Once a genuine situation of redundancy has been established, there is a further issue as to the fairness of selection of the employees to be made redundant (if there is not to be a complete plant closure). According to the legislation, redundancy dismissals have to pass the test of "reasonableness". Section 6(7) Unfair Dismissals Act, 1977 provides that:

"in determining if a dismissal is an unfair dismissal, regard may be had... to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal, and... to the extent (if any) of the compliance or failure to comply by the employer in relation to the employee with [any dismissal procedure] or with the provisions of any code of practice".

Legal Entitlements

Assuming that the employer decides to dismiss its employees by reason of redundancy, the legal entitlements are:

- [i] Notice in accordance with the employee's contract (or, at the employer's option, payment of salary in lieu of that notice period).
- [ii] An employee with 104 weeks continuous service is entitled to a redundancy lump sum payment (see details below).
- [iii] An employee who is being dismissed by reason of redundancy is entitled to 2 weeks notice in writing of the proposed dismissal. A statutory Form RP1 must be used for this purpose. A duplicate of the Form RP1 fully completed must be sent to the Department of Enterprise, Trade and Employment at the same time as

it is given to the employee. Failure to comply with these requirements renders the company open to a fine of up to €380.92.

An employee is, during the 2 weeks redundancy notice period entitled to reasonable paid time off to look for new employment, or to make arrangements for training for future employment,

[iv] An employee who is dismissed by reason of redundancy must be given a redundancy certificate by the company, the original of which must be given to the employee not later than the date on which the dismissal takes effect. The redundancy certificate must be on the prescribed Form RP2. Non-compliance with this requirement renders the employer open to a fine of up to €380.92. The employer must send a fully completed copy of each redundancy certificate to the Department when it claims rebate for the redundancy lump sums paid.

[v] A lump sum redundancy payment is payable by the employer directly to the employee, and the amount of the payment is related to: the employee's length of service with the company; and the employee's normal earnings (but only up to maximum earnings of €507.90 per week) prior to redundancy.

The lump sum payment is calculated as follows:

- (a) Two weeks pay for every year of service;
- (b) in addition, the equivalent of one week's normal pay subject to the statutory ceiling of €507.90.

[vi] An employer who makes a lump sum payment to an employee is entitled to a rebate from the Irish Government of 60% of the statutory component of each lump sum payment made provided the company has given the employee 2 weeks notice of redundancy. The company should forward Form RP2 together with Form RP3 (which is, in effect, the company's claim for the 60% rebate) to the Department.

Where collective redundancies occur i.e.

- 5 employees in a company employing between 20 to 50 employees.
- 10 employees, in a company employing between 50 to 100.
- 10% of employees in a company employing between 100 to 300
- 30 employees in a company employing more than 300 employees.

Then there is an obligation to notify employees and the Minister for Enterprise Trade and Employment 28 days before the redundancies are due to take place. There is also an obligation to consult with employees prior to the redundancies taking effect.

Where companies are in business in more than one EU state, the workers concerned and their representatives may have certain consultation and information rights under EC legislation.

European Communities

(Protection of Employment) Regulations, 2000 (S.I. No. 488 of 2000)

The consultation requirements under the 1977 Act, referred to above, are extended by these Regulations to include consultation with employee representatives where there is no recognised trade union. The Regulations also provide for increases in the level of fines for failure to initiate consultation, failure to notify the Minister of proposed redundancies and failure to keep records.