

# Irish employment law



## ► Inside

- Commencing employment
- Working time
- Wages and salaries
- Leave
- Agency workers
- Fixed-term/part-time employees
- Data protection
- Transfer of undertakings
- Termination of employment
- Workplace Relations Commission



## Introduction

This Inbrief provides a whistle-stop tour of the most important Irish employment law issues, from the beginning of the employment relationship through to its conclusion.

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## Commencing employment

**Recruitment:** Prospective employees are protected against discrimination in accessing employment. The nine protected characteristics are gender, age, race, religion, civil status, family status, sexual orientation, disability and membership of the Traveller Community. Employers need to be cautious when advertising vacancies and conducting interviews. Interview questions should be carefully considered and the reasons for rejecting each candidate should be non-discriminatory.

**Contract of employment:** The contract of employment is the bedrock of the relationship between the employer and the employee. While employers have extensive freedom to decide on the terms of an employment contract, all employees must be given five core terms of employment no later than five days after starting work. In addition to the five core terms of employment, a written statement containing certain minimum terms and conditions of employment must be given to employees no later than two months after starting work.

**Policies:** It is important for employers to have some basic workplace policies and procedures in place. Employers must give employees a copy of any applicable dismissal procedure within 28 days of starting work. A statutory code of practice gives general guidelines for preparing and applying disciplinary and grievance procedures. Failing to follow these guidelines could be held against an employer if an employee disputes his or her dismissal. A bullying and harassment policy is also recommended (and this should be separate from the grievance procedure). The Equality Tribunal, Health and Safety Authority and Labour Relations Commission have each published a code of practice giving guidance on how these issues should be dealt with in the workplace.

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## Working time

An employer may not permit an employee to work for more than an average of 48 hours per week, though this can be averaged over a period of four months (in certain circumstances the reference period may be longer or shorter). Unlike in the UK, employees in Ireland cannot opt out of the 48-hour average working week. However, there is an exemption for senior or

specialist employees who determine their own working time. This exemption is strictly construed against employers. Employees are entitled to a 15-minute rest break (where 4.5 hours have been worked) or 30 minutes (where 6 hours have been worked and this can include the earlier 15-minute break).

Employees are also entitled to at least 11 hours consecutive rest every 24 hours and 24 hours consecutive rest every seven days. A premium rate must be paid for Sunday working.

Zero-hour contracts are prohibited, except for genuine casual work, emergency cover or short-term relief absence.

If an employee is not required to work at least 25% of the time they are required to be available for work, the employee will be entitled to payment for 25% of the expected hours or 15 hours, whichever is less. Further, an employee will be entitled to a minimum payment for 25% of the expected hours or for 15 hours, whichever is less, where they are called in to work but sent home without completing 25% of the scheduled hours. The minimum payment on each occasion above will be three times the national minimum hourly rate of pay.

Where an employee's contract does not accurately reflect the average number of hours worked per week over a 12-month reference period, the employee is able to make a written request to be placed in a band of weekly working hours. The employee must be placed in an appropriate band not later than four weeks from the date of request. The bands are:

- A - from three hours or more to less than six hours
- B - from six hours or more to less than 11 hours
- C - from 11 hours or more to less than 16 hours
- D - from 16 hours or more to less than 21 hours
- E - from 21 hours or more to less than 26 hours
- F - from 26 hours or more to less than 31 hours
- G - from 31 hours or more to less than 36 hours
- H - 36 hours or more.

Employers must keep records of an employee's working time for at least three years. This obligation extends to recording the number of hours worked, details of leave granted, breaks

taken and a weekly record of start and finish times.

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### Wages and salaries

The minimum hourly rate of pay is €10.10 per hour. An employee is entitled to a written statement of wages and any deductions made. Deductions must be made for income tax, social insurance contributions and to cover amounts payable under court orders. Other deductions can only be made after obtaining written consent from the employee.

If an employer does not operate an occupational pension scheme or where certain restrictions apply to the occupational pension scheme, access to a Personal Retirement Savings Account (PRSA) must be provided to employees.

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### Leave

Employees in Ireland have various rights to take leave from work (summarised below).

**Holidays:** The statutory annual leave entitlement for full time employees is 20 days. There are also nine public holidays. Employees are entitled to a paid day off on the public holiday (or on another day) or an additional day's pay. Employees accrue statutory annual leave while on certified sick leave.

**Ordinary maternity leave (OML) and additional maternity leave (AML):** Employees are entitled to 26 weeks' OML and 16 weeks' AML. Employers are not obliged to pay employees during OML or AML but an employee may be entitled to receive state benefit during OML.

**Ordinary adoptive leave (OAL) and additional adoptive leave (AAL):** Employees are entitled to 24 weeks' OAL and 16 weeks' AAL. Employers are not obliged to pay employees during OAL or AAL but an employee may be entitled to receive state benefit during OAL.

**Paternity leave:** Employees are entitled to two weeks' paternity leave which must be taken within six months of the birth or adoption. Employers are not obliged to pay employees during paternity leave but an employee may be entitled to receive state benefit during this time.

**Parent's leave:** Employees are entitled to two weeks' parents which must be taken within a

year of the child's birth or placement.

Employers are not obliged to pay employees during parent's leave but an employee may be entitled to receive state benefit during this time parental leave which must be taken before their child is 12 years old (or 16 years old if the child has a disability or long term illness).

**Parental leave:** Employees with 12 months' service are entitled to 22 weeks' unpaid parental leave which must be taken before their child is 12 years old.

**Force majeure leave:** Employees are entitled to three days' paid force majeure leave in a 12-month period or five days' paid force majeure leave in a 36-month period. This leave may be taken where, for urgent family reasons owing to an injury/illness of a specified person (e.g. child, spouse, sibling) an employee's immediate presence with the specified person is indispensable.

**Carer's leave:** Employees with 12 months' service are entitled to 104 weeks' unpaid leave to provide full-time care and attention to a person with a certified disability and who is deemed to be in need of this care. This person does not need to be a family member or spouse and could be a friend.

**Jury service:** Employers must continue to pay an employee for as long as he or she is required to spend time on jury service.

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### Agency workers

Agency workers must receive the same basic working and employment conditions as they would have received if employed directly by the end user. Basic working and employment conditions are pay, working time, rest periods, rest breaks, night work, overtime, annual leave and public holidays. Pay includes basic pay, shift premium, piece work, overtime, unsocial hours and hours worked on a Sunday. This list is exhaustive and therefore, unlike the position in the UK, agency workers in Ireland do not have a right to the same bonuses or other incentive arrangements as employees of the end user.

It is also worth noting that unlike the position in the UK, the Irish unfair dismissal legislation deems the agency worker to be the "employee" of the end user (rather than the employee of the agency) for the purpose of unfair dismissal claims.

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### Fixed-term/part-time employees

Fixed-term and part-time employees cannot be treated less favourably than comparable permanent or full-time employees.

Once an employee has been employed on two or more successive fixed-term contracts, the aggregate duration of these contracts must not exceed four years unless there is objective justification for doing so. If the aggregate duration does exceed four years, and no objective justification exists, the employee will be considered to be a permanent employee.

Unlike the position in the UK, it is still possible to exclude unfair dismissal protection from a fixed-term contract provided the contract is in writing, signed by both parties and contains specific wording excluding the applicable legislation. While this type of exclusion clause should be effective in the first fixed-term contract, it is less likely to be effective in the second or subsequent fixed-term contract if the nature of the second or any subsequent fixed-term contract is wholly or partly connected with the avoidance of the unfair dismissal protection.

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### Data protection

Employers, as data controllers, must ensure that personal data about their employees is collated and processed fairly, is kept accurate and up-to-date and is not kept for longer than is necessary. Employees, as data subjects, have the right to make a subject access request which means that, as in the UK, employees have the general right to request access to their personnel data.

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### Transfer of undertakings (TUPE)

The Irish TUPE Regulations provide that on a transfer of a business or undertaking, all rights and obligations arising from contracts of employment as well as any rights under collective agreements will automatically transfer to the new employer.

The Irish TUPE Regulations do not specifically apply where there is a change in service provider. However, depending on the circumstances, TUPE may still apply.

The transferor and transferee must inform, and in certain circumstances consult, the representatives of their employees that are affected by the transfer 30 days before the transfer takes effect.

Where an employer fails in its information and consultation obligations, they are liable to pay up to four weeks' remuneration per affected employee.

**Termination of employment**

An employer can terminate an employment contract without cause, provided this is done in accordance with the terms of the contract. However, if a term of the contract is breached, this can give rise to a claim for wrongful dismissal or, in certain circumstances, a claim for injunctive relief.

Employees also have statutory protection against unfair and discriminatory dismissals. An employer cannot lawfully dismiss an employee unless substantial grounds exist to justify the dismissal and a fair procedure has been followed prior to the dismissal. Subject to certain exceptions (e.g. discriminatory dismissal - see further below), employees must have at least 12 months' continuous service to qualify for protection against unfair dismissal. Awards of up to two years' remuneration can be made and are calculated on the basis of financial loss.

There is no service requirement where an employee alleges that he or she has been dismissed in a discriminatory manner and an employee can be awarded up to €40,000 or two years' remuneration (whichever is greater) as compensation.

Where an employer closes a workplace or work of a particular kind is no longer needed, redundant employees with a minimum of two years' service will be entitled to receive a statutory redundancy payment amounting to two weeks' remuneration per year of service (pro-rated for partial years' of service) with an extra bonus week. Weekly remuneration is currently capped at €600 per week.

The entitlement to receive a statutory redundancy payment may be lost if the employee refuses an offer of suitable alternative employment. Most employers pay substantially more than the statutory minimum even though there may well be no legal obligation to do so.

A collective redundancy situation arises where, in any period of 30 days, the number of dismissals by reason of redundancy reaches the following thresholds:

Number of redundancies	Total workforce
At least 5	21-49
At least 10	50-99
At least 10%	100-299
At least 30	300 or more

Where a collective redundancy situation arises, the employer has a duty to inform the Minister for Employment Affairs and Social Protection of specific information about the redundancies and to inform and consult with employee representatives in relation to the proposed redundancies. The information and consultation process must begin, and the Minister must be informed, at least 30 days before the first notice of redundancy is provided. If an employer fails to notify the Minister, a maximum fine of €250,000 could be imposed.

Should an employee bring a successful claim that an employer failed to inform and consult as required, an award of up to four weeks' remuneration could be made per affected employee.

**Workplace Relations Commission**

Complaints are heard in private by an Adjudication Officer. Any appeals are heard in public by the Labour Court. Labour Court decisions can only be appealed to the High Court on a point of law.

For further information on this subject please contact:

**Siobhra Rush**  
**Partner**  
 +353 1566 9874  
[siobhra.rush@lewissilkin.com](mailto:siobhra.rush@lewissilkin.com)

**Sean Dempsey**  
**Partner**  
 +44 20 7074 8032  
[sean.dempsey@lewissilkin.com](mailto:sean.dempsey@lewissilkin.com)

**Linda Hynes**  
**Partner**  
 +353 1566 9875  
[linda.hynes@lewissilkin.com](mailto:linda.hynes@lewissilkin.com)

