

# Overview of the Employment and Industrial Relations Act

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## ARRANGEMENT OF ACT

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# Contents of the EIRA

# Title I - Employment Relations



- (3) The functions of the Board shall be -
- (a) to make recommendations to the Minister as to any national minimum standard conditions of employment, hereinafter referred to as a national standard recommendation, for eventual inclusion in a national standard order;
  - (b) to make recommendations to the Minister as to any sectoral conditions of employment, hereinafter referred to as a sectoral regulation recommendation, for eventual inclusion in a sectoral regulation order;
  - (c) to advise the Minister on any matter relating to conditions of employment, or on any matter referred to the Board by the Minister;
  - (d) to carry out the functions assigned to it by article 73 and any other function that may be assigned to it by law from time to time.

# The Employment Relations Board



- Working hours & overtime
  - Organisation of Working Time Regulations
  - Overtime Regulations
- Written statement of particulars
  - Information to Employees Regulations
- Occupational Health & Safety
  - OHS Act and its Regulations
- Collective Agreements
- Any orders and regulations made under the EIRA - non-compliance is an offence

# Conditions of Employment



- Wages may be paid **in legal tender (i.e. money)**
- Wages can also be paid in provisions such as accommodation or food (excluding alcohol or drugs), so long as this is given over and above the minimum wage at least

# Wages



- Can conditions be put on wages?
- Can wages be deducted or attached?
- Is wage deduction permissible?
- When are statutory bonuses paid out?
- What about whole-time employees on reduced hours, or part-time workers?
- What if an employee is not paid their wage?

## Protection of Wages



- Can employees be fined?
- What conditions must exist for an employee to be fined?
- Can the fine be deducted from one's wages?

Fines





- The Guarantee Fund is set up as an emergency fund for the payment of wages, overtime, leave payments and notice due to employees who've lost their job due to their employer's insolvency.
- The maximum claim one can make is up to **13 weeks' minimum wage**
- Applications (with evidence) are to be made to the Chairperson of the Fund's Board

## Guarantee Fund



- If, during liquidation of the employer, the employee receives some money, an equal amount to that received needs to be paid back to the fund
- Persons lodging false claims will incur a fine *multa*

# Guarantee Fund



'Discrimination' in the EIRA:

*" ... any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers' association."*

Discrimination & Employment



When can discrimination occur?

What constitutes discriminatory treatment?

- Gender inequality
- **Equal** pay for **Equal** work of **Equal** value
- Harassment
- Victimisation

Discrimination & Employment



An employee who believes s/he have been discriminated against may lodge a claim for **compensation** before the Industrial Tribunal within 4 months from the alleged breach.

Punishments for harassment or victimisation may even result in a fine *multa* or even a prison sentence.

# Taking action against Discrimination



- Is the contract **fixed term** or **indefinite**?
- Can conditions in one's contract be worsened at any time? What if your employment is terminated (for whatever reason) and you're re-employed within 1 year?
- Can an indefinite contract change to a fixed term contract?
- What happens once a fixed term contract expires? – Remember the 12-working day rule!

## Duration of Employment



- Probation
  - No need to provide a reason for termination
  - 1 week's notice
- Redundancy
  - No need to provide a reason
  - Notice must be paid as usual
  - Last in first out (LIFO) rule
  - Re-employment within 1 year if possible
- Termination of Fixed Term vs Indefinite Contracts

# Termination of Employment - Article 36



The law sets down **minimum** notice periods for indefinite contracts:

- 1 month - 6 months: **1 week**
- 6 months - 2 years: **2 weeks**
- 2 years - 4 years: **4 weeks**
- 4 years - 7 years: **8 weeks**
- Over 7 years: **8 weeks + an additional week for each year, up to a maximum of 12 weeks**

A contract may however provide for **longer (but not shorter!)** notice periods.

## Termination of Employment - Article 36





- What happens when the employer gives notice, or fails to do so?
- What happens when the employee gives notice, or simply abandons his service?
- In what case can one terminate without notice?
- What is the 6 month-gap rule? (only applies to indefinite employment)
- Can termination occur during a period of **incapacity** to work, or during **maternity leave**?
- Can a woman not return to work after maternity leave, or resign shortly after returning to work?

## Termination of Employment - Article 36



- Specific regulations exist on the subject
- Employee representatives must be notified of the plan to effect collective redundancies, and may negotiate and make proposals

## Collective Redundancies



- Specific regulations exist on the subject
- Employee representatives must necessarily be consulted
- Employees of the business being transferred must be retained on the same conditions as with their previous employer
- The transferee must continue observing any existing collective agreements, at least until they expire

## Transfer of Business



- An employee whose employment is terminated may request a certificate of service indicating:
  - The duration of employment
  - The nature of work carried out
  - The reason for termination (if requested)
  - Rate of wages paid (if requested)

## Certificate of Service



- Employers cannot impose conditions on employees which are less favourable than those provided for in the law
- **An exception** exists where the employer can prove that such action is taken to avoid effecting redundancies (the employees affected must acceded to any proposed changes)
- A permit needs to be formally obtained from the DIER (with justifications), which must be renewed every 4 weeks
- Prior to effecting changes, such as reduction of working hours/days, available leave balances should be used up (forced leave)

## Article 42 - Conditions Less Favourable



- Inspectors have the power to:
  - To enter employer premises for inspections
  - To carry out any inspection necessary to ensure compliance with the law, including interrogation of employer or employees, and the requirements to present any books, registers or other documents as required by the EIRA
- Inspectors should give notice, unless it may be prejudicial
- No person may give false answers, fail to produce required documentation, prevent persons from appearing before the inspectors, or in any way obstruct the inspection

## Enforcement



- A fine *multa* of between €232.94 and €2,329.37 may be imposed on any employer contravening the EIRA or other regulations
- The employer may be made to pay employees any amount due in the case that such employer:
  - fails to pay the minimum wage or statutory bonuses
  - made illegal wage deductions
  - withheld remuneration or payment in lieu of notice
  - prohibited vacation leave
  - failed to pay any other money due to employees

## Penalties



- Composition
  - Chairpersons
- Reference
- Jurisdiction
  - Unfair dismissals & Discrimination
- Procedure
- Powers
  - Bear great similarity to those of the superior courts (particularly as regards the calling of witnesses to testify under oath)

# The Industrial Tribunal







Question Time



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