



Unfair Dismissals Acts, 1977 to 2005

Explanatory Booklet

This book is intended to give a general guidance to employers and employees about the Unfair Dismissals Acts, 1977 to 2005. It is not a complete or authoritative statement of the law and is not a legal interpretation. The intention is to present in non-legal language an outline of obligations and rights under the Acts.

In cases of doubt or where further information is required, interested parties should refer to the Acts or contact the **Employment Rights Information Unit**, Department of Enterprise, Trade and Employment, Davitt House, 65a Adelaide Road, Dublin 2 Telephone **(01) 631 3131** Lo-Call telephone service (if calling from outside the (01) area) **1890 201 615**. www.entemp.ie Copies of this booklet may be obtained from the Information Unit.

Other useful telephone numbers:

Department of Enterprise, Trade & Employment 01 631 2121
Employment Appeals Tribunal 01 631 2121
Labour Relations Commission 01 613 6700
Rights Commissioner Service 01 613 6700
Department of Enterprise, Trade and Employment, Dublin 2.

CONTENTS.

1. PURPOSE OF THE ACT	3
2. WHO IS COVERED?	3
3. BURDEN OF PROOF?	6
4. JUSTIFICATION	6
5. UNFAIR DISMISSALS.....	7
6. CLAIM FOR UNFAIR DISMISSALS AND TIME LIMITS	8
7. REDRESS UNDER UNFAIR DISMISSALS ACTS.....	9
8. REDRESS SOUGHT AT COMMON LAW.....	10
9. REDRESS SOUGHT UNDER OTHER ACTS	11
10. CLAIM BEFORE A RIGHTS COMMISSIONER	11
11. APPEAL FROM RECOMMENDATION OF RIGHTS COMMISSIONER.....	12
13. EMPLOYMENT APPEALS TRIBUNAL	13
14. NON CO-OPERATION WITH EMPLOYMENT APPEALS TRIBUNAL.....	13
15. APPEAL TO THE CIRCUIT COURT	14
16. ENFORCEMENT IN THE CIRCUIT COURT	14
17. WRITTEN NOTICE OF REASONS FOR DISMISSAL	15
18. NOTICE OF DISMISSAL PROCEDURES.....	16

19. SPECIAL PROVISIONS	16
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20. FORMS	24
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1. Purpose of The Act

The purpose of the Acts is to protect employees from being unfairly dismissed from their jobs by laying down criteria by which dismissals are to be judged unfair and by providing an adjudication system and redress for an employee whose dismissal has been found to be unfair.

2. Who is covered?

In general, the Acts apply to any person

- I. working under a contract of employment or apprenticeship
- II. employed through an employment agency.

In the case of persons employed through an employment agency, the third party (hirer/user) is deemed to be the employer for the purpose of redress under the Acts.

The Acts do not generally apply to a person who has been in the continuous service of the employer for less than one year. Continuous service is determined by rules set out in the amended First Schedule, Minimum Notice and Terms of Employment Act, 1973 to 2001.

Prior to December 20, 2001 the Acts did not apply to a person who was normally required to work for the employer for less than 8 hours a week. However, from that date the Protection of Employment (Part-Time Work) Act, 2001 has removed the exclusion to the number of hours worked.

The requirement of one year's continuous service does not apply where the dismissal results from:

- I. an employee's pregnancy, giving birth or breastfeeding or any matters connected therewith (see paragraph 19 (g)),
- II. the exercise or proposed exercise by an employee of a right under the Maternity Protection Act, 1994 & 2004 (see paragraph 19(h)),
- III. the exercise or contemplated exercise by an employee of the right to adoptive leave, or additional adoptive leave under the Adoptive Leave Act, 1995 & 2005(see paragraph 19(j)),
- IV. the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act, 1998 & 2006 (see paragraph 19 (l)),
- V. an employee's entitlements, future entitlements, exercise or proposed exercise of rights under the National Minimum Wage Act 2000 (see paragraph 19 (q)),
- VI. an employee's trade union membership or activities (see paragraph 19(n)),
- VII. the exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act, 2001 (see paragraph 19(r)).

In determining if an employee has the necessary service to qualify under the Acts, a Rights Commissioner, the Employment Appeals Tribunal or the Circuit Court, as the case may be, may consider whether the employment of a person on a series of two or more contracts of employment, between which there was no more than 26 weeks of a break, was wholly or partly for or connected with the avoidance of liability by the employer under the Acts. Where it is so found, the length of the various contracts may be added together to assess the length of service of an employee for eligibility under the Acts. (See also paragraph 19(b) in relation to second or subsequent fixed term/fixed purpose

contracts).

The Acts do not apply to the following:

- (a) employees who have reached *the* normal retiring age *in that particular employment* or who on that date had not attained the age of 16 years;
 - (b) persons working for a close relative in a private house or farm, provided both also live in the same house or farm;
 - (c) members of the Defence Forces and the Gardai;
 - (d) persons undergoing full-time training or apprenticeship in FÁS establishments -see paragraph 19(d) about statutory apprenticeships;
- (e) Officers of the vocational education committees and the Chief Executive Officer of the Health Service Executive.
- (f) a County Manager or a City Manager

The exclusions from the Acts of persons working for close relatives, as at (b) above, and persons undergoing full-time training or apprenticeship in FÁS establishments, as at (d) above, shall not apply where the dismissal results from

- (i) the employee's pregnancy, giving birth or breastfeeding (or any matters connected therewith);
- (ii) the exercise or proposed exercise by the employee of rights under the Maternity Protection Act, 1994 & 2004;
- (iii) the exercise or contemplated exercise by an employee of his/her rights to adoptive leave or additional adoptive leave under the Adoptive Leave Act, 1995 & 2005;
- (iv) the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act, 1998 & 2006;
- (v) the exercise or proposed exercise by the employee

of the right to carer's leave under and in accordance with the Carer's Leave Act, 2001.

The exclusions from the Acts of members of the Gardai and persons referred to in points (a) (b) (d) and shall not apply where the dismissal results from the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act 1998 & 2006, or carer's leave under and in accordance with the Carer's Leave Act, 2001.

There are other specific circumstances in which a person may not qualify under the Acts and these are detailed at paragraph 19 of this booklet in the section on special provisions

Since 4th July 2006, the Acts apply to most State employees (including civil servants up to and including Assistant Secretary level) except for those State employees listed above who are still excluded from the Acts. The exclusion from the Acts for most State employees was removed by the Civil Service Regulation (Amendment) Act 2005 and the relevant sections of this Act became operational on 4th July 2006.

3. Burden of Proof?

In general, the Acts provide that every dismissal of an employee will be presumed to have been unfair unless the employer can show substantial grounds justifying the dismissal. (This general principle does not apply to dismissals for trade union membership mentioned in paragraph 19(m)).

4. Justification

To justify a dismissal, an employer must show that it either resulted from one or more of the following causes:

- (a) the capability, competence of qualifications of the employee for the work s/he was employed to do;
- (b) the employee's conduct;
- (c) Redundancy;
- (d) the fact that continuation of the employment would contravene another statutory requirement;

or that there were other substantial grounds for the dismissal.

5. Unfair Dismissals

Dismissals will be unfair under the Acts where it is shown that they resulted wholly or mainly from any of the following:

- (a) an employee's trade union membership or activities, either outside working hours or at those times during working hours when permitted by the employer (see paragraph 19(n));
- (b) religious or political opinions;
- (c) race or colour or sexual orientation;
- (d) the age of an employee;
- (e) an employee's membership of the travelling community;
- (f) legal proceedings against an employer where an employee is a party or a witness;
- (g) unfair selection for redundancy (see paragraph 19(f));
- (h) an employee's pregnancy, attendance at ante-natal classes, giving birth or breastfeeding or any matters connected therewith (see paragraph 19(g));
- (i) the exercise or proposed exercise by the employee of the right under the Maternity Protection Act 1994 to any form of protective leave or natal care absence, within the meaning of Part IV of that Act, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by section 8 of the Maternity Protection (Amendment) Act 2004), or to time off from work or a

reduction of working hours for breastfeeding in accordance with section 15B (inserted by section 9 of the Maternity Protection (Amendment) Act 2004), of the first-mentioned Act;

- (j) the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act, 1998 & 2006 (see paragraph 19(l));
- (k) the exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act, 2001 (see paragraph 19(r)).

It can also be construed as dismissal if a person's conditions of work are made so difficult that s/he feels obliged to leave. This is called constructive dismissal.

Employees claiming dismissal due to (a), (h), (i), (j) or (k) may bring an unfair dismissal claim even though they do not have one year's continuous service with their employer.

6. Claim For Unfair Dismissals and Time Limits

If an employee considers that s/he has been unfairly dismissed, s/he may submit a claim for redress under the Acts to a Rights Commissioner or a claim may be submitted direct to the Employment Appeals Tribunal. If a claim is to be made directly to the Tribunal, one of the parties must notify the Tribunal that s/he objects to the claim being heard by a Rights Commissioner.

Written notice of claim, which must contain certain prescribed particulars, must, *within six months of the date of dismissal*, be submitted by the employee (preferably by registered post) either to:-

- (i) a Rights Commissioner or

(ii) the Employment Appeals Tribunal.

The written notice of a claim to a Rights Commissioner should be sent to the Rights Commissioner Service, Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4. Claims and appeals to the Employment Appeals Tribunal should be sent to the Employment Appeals Tribunal, Davitt House, 65a Adelaide Road, Dublin 2. The time limit for submitting a claim for redress for unfair dismissal may be extended to 12 months in cases where exceptional circumstances have prevented the lodgement of the claim within the normal time limit of 6 months.

Where a claim is heard by a Rights Commissioner, the Rights Commissioner will issue a recommendation and either party may appeal that recommendation to the Employment Appeals Tribunal.

Where a claim or appeal is heard by the Employment Appeals Tribunal, the Tribunal will issue a determination. There is a right of appeal by either party to the Circuit Court from a determination of the Tribunal.

7. Redress Under Unfair Dismissals Acts

Where an employee has been unfairly dismissed, s/he can, under the Acts, depending on the merits of the case, be awarded either

(i) re-instatement in his/her old job, thereby entitling the employee to benefit from any improvement in terms and conditions of employment which may occur between the date of dismissal and the date of re-instatement or

(ii) re-engagement in his/her old job or in a suitable alternative job on conditions which the adjudicating bodies consider reasonable or

- (iii) (a) where financial loss has been sustained by the employee, financial compensation in respect of such loss, subject to a maximum of two years' remuneration. The precise amount of compensation can depend on such matters as where the responsibility for the dismissal lay, the measures taken to reduce financial loss or the extent to which negotiated dismissal procedures were followed, if these *existed*, or
- (b) where no financial loss has been sustained by the employee, financial compensation may be awarded subject to a maximum award of four weeks remuneration.

Where ownership of the business that dismissed an employee is transferred to new ownership, an award of compensation under the Acts may be made against the new owner. (The new owner of the business will be required to take on liability for any claim for unfair dismissal against the former employer).

In calculating financial loss (for the purpose of compensation), payments to an employee under the social welfare and income tax codes will be disregarded.

8. Redress Sought at Common Law

If an employee wishes, s/he may seek redress in respect of a dismissal at common law or an employee may seek redress in respect of the dismissal under these Acts but the employee must choose between a common law action and a claim under these Acts. The employee may change a claim between redress in common law and unfair

dismissals legislation, subject to the following:

- I. the employee retains the right to damages at common law for wrongful dismissal up to the time that either a Rights Commissioner makes a recommendation in the case or a hearing by the Employment Appeals Tribunal has commenced;
- II. an employee retains his/her right to redress under the unfair dismissals legislation up to the time that his/her claim for damages for wrongful dismissal in the civil courts has commenced.

9. Redress Sought Under Other Acts

If an employee who has been dismissed has referred the case of the dismissal to the Director of the Equality Tribunal, under The Employment Equality Act, 1998, and the Equality Act, 2004 and either a settlement has been reached by mediation or the Tribunal has begun an investigation, the employee is not entitled to seek redress under the Unfair Dismissals Acts, in respect of the dismissal unless the Director having completed the investigation directs otherwise. (Section 101 (2)(b) of Employment Equality Act, 1998).

The processing of a claim/dispute both under unfair dismissals legislation and by a Rights Commissioner or the Labour Court under industrial relations legislation is prohibited.

10. Claim Before a Rights Commissioner

A Rights Commissioner, on receipt of a claim from an employee, will send a copy of the claim to the employer. The Rights Commissioner will then give the parties an opportunity to be

heard by him/her and to present any evidence relevant to the claim. After hearing the parties, the Rights Commissioner will issue a written recommendation, specifying one of the remedies listed at paragraph 7.

Rights Commissioners are appointed by the Minister for Enterprise and Employment. They travel around the country to hear cases and the hearings are held in private.

11. Appeal From Recommendation of Rights Commissioner

An employer or an employee may appeal to the Employment Appeals Tribunal from a recommendation of a Rights Commissioner. The appeal must be made within 6 weeks of the date on which the Rights Commissioner communicated the recommendation to the parties.

An appeal may be made by giving notice of the appeal in writing to the Employment Appeals Tribunal, Davitt House, 65a Adelaide Road, Dublin 2. The Tribunal will copy the notice to the other party concerned. Copies of a notice of appeal form may be obtained from the Department of Enterprise, Trade and Employment, Davitt House, 65a Adelaide Road, Dublin 2.

The Tribunal will give the parties an opportunity to be heard and to present any evidence relevant to the appeal. The Tribunal will then issue a written determination in relation to the appeal, specifying, as in the case of a Rights Commissioner, one of the remedies listed at paragraph 7.

12. Non-implementation by Employer of Recommendation of Rights Commissioner

Where an employer has neither implemented nor appealed a Rights Commissioner's recommendation, an employee may

submit a claim to the Employment Appeals Tribunal seeking implementation of the recommendation. The employee must notify the Tribunal in writing of the claim. The appropriate claim form, as in the case of the appeal form mentioned in paragraph 11, may also be obtained from the Department of Enterprise, Trade and Employment. In such cases, the Tribunal is empowered to issue a determination without rehearing the case and, if it upholds the claim, to confirm the recommendation of the Rights Commissioner in its determination.

13. Employment Appeals Tribunal

The Employment Appeals Tribunal consists of a Chairman and Vice-Chairmen together with an equal number of members nominated by the Irish Congress of Trade Unions and the various employers' organisations.

Normally it sits in divisions, each division consisting of either the Chairman or a Vice-Chairman and two members, one drawn from the employers' side of the panel and one from the trade unions' side. Like the Rights Commissioners, the Tribunal travels around the country hearing cases at times and in places to suit the convenience of the parties. The Employment Appeals Tribunal's hearings are normally open to the public unless, at the request of one of the parties, the Tribunal decides otherwise.

14. Non Co-operation With Employment Appeals Tribunal

Failure to appear before the Employment Appeals Tribunal where a subpoena is served and/or failure to produce documentation is an offence liable, on summary conviction, to a fine of up to 1,269.74 (€1,000).

15. Appeal to the Circuit Court

An employer or an employee may appeal to the Circuit Court from a determination of the Employment Appeals Tribunal. The appeal must be made within 6 weeks of the date on which the Tribunal communicated the determination to the parties.

16. Enforcement in The Circuit Court

(a) Enforcement of determination of Employment Appeals Tribunal

An employer must carry out a determination of the Employment Appeals Tribunal within Six weeks of the date on which the determination was sent to the parties, unless the determination is under appeal to the Circuit Court. If an employer does not carry out, within the said six week period, the terms specified in a determination of the Employment Appeals Tribunal (which has not been appealed), the employee concerned or the Minister, on behalf of the employee, may apply to the Circuit Court for an order directing the employer to implement the Tribunal determination. In such circumstances, the Circuit Court is empowered, without rehearing the case, to issue an order directing the employer to implement the terms of the Tribunal determination. Alternatively, the Circuit Court, if it considers it appropriate, may, in cases where the Tribunal determination directed the re-instatement or re-engagement of the employee, alter that determination to make an order for financial compensation to the employee concerned.

(b) Enforcement of Circuit Court Order

Where a determination of the Tribunal is appealed by either party to the Circuit Court and the Circuit Court makes an order awarding redress to the employee but the employer fails to

comply with that order, the employee concerned or the Minister, on behalf of the employee, may apply to the Circuit Court seeking enforcement of that Circuit Court order. In such circumstances, the Circuit Court is empowered, where the original order directed there-in statement or re-engagement of the employee concerned, to vary the original order to make an order for payment of financial compensation to the employee concerned.

(c) Other Enforcement Provisions

The Circuit Court is empowered, in relation to any orders which it makes awarding financial compensation to the employee, to direct the employer to include interest on the amount of any financial compensation awarded. In relation to any orders which it makes affirming the re-instatement or re-engagement of the employee, the Circuit Court, if it considers it appropriate, may direct the employer to pay to the employee financial compensation, in respect of the loss of wages suffered by the employee as a consequence of the employer's failure to comply with a Tribunal determination to re-instate or re-engage the employee.

17. Written Notice of Reasons for Dismissal

An employer who has dismissed an employee must, if asked, give him/her in writing, within 14 days, the reasons for his/her dismissal. However, in the hearing of a claim for unfair dismissal, account may be taken of any other substantial grounds that would have justified the dismissal.

18. Notice of Dismissal Procedures

The Acts are not intended to replace dismissal procedures within an undertaking and these can take their course before a claim is initiated under the Acts. In order to ensure full recognition of these procedures where they exist, the employer must give a written notice of any agreement or dismissal procedures that exist between him/her and a trade union or of any procedures that have been established by custom and practice, to every employee within a 28 day period. These requirements are satisfied if, for example, this information is incorporated in a staff handbook or similar publication given to each employee when s/he takes up employment. It is in the employer's own interest to have a clear and comprehensive set of procedures governing dismissals and to ensure that employees are fully conversant with the procedures.

19. Special Provisions

(a) Fixed Term/Specified Purpose Contracts

The Acts contain special provisions in respect of contracts for a fixed term or for a specified purpose of limited duration which could not be ascertained exactly at the time the contract was made. The Acts stipulate that a dismissal consisting only of the expiry of the fixed term (without renewal) or the completion of the specified purpose shall not be covered by the Acts, provided that:

- (i) the contract is in writing;
- (ii) it was signed by both parties and
- (iii) it contains a clause that the Acts shall not apply to such dismissal.

(b) Second or subsequent Fixed Term/Fixed Purpose Contracts

A Rights Commissioner (the Employment Appeals Tribunal or the Circuit Court) may examine any second or subsequent fixed term or fixed purpose contract of employment and between which there was no more than a 3 month break and take a view as to whether the fixed nature or fixed purpose of the contract was wholly or partly for or connected with the avoidance of liability under the Acts. Where it is so found, the length of the various contracts can be added together for the purpose of determining the length of service for eligibility under the Acts, and the service shall be deemed to be continuous.

(c) Probation/Training Contracts

The Acts do not apply to dismissal of an employee during a period at the beginning of employment when he is on probation or undergoing training, provided that:

- (i) the contract of employment is in writing;
- (ii) the duration of probation or training is one year or less and is specified in the contract.

The exclusion from the Acts of an employee who is on probation or undergoing training does not apply where the dismissal results from

- (a) the employee's pregnancy, giving birth or breastfeeding (or any matters connected therewith);
- (b) the exercise or proposed exercise by the employee of the right to protective leave or natal care absence under the Maternity Protection Act, 1994 & 2004;
- (c) the exercise or contemplated exercise by an employee of his/her rights to adoptive leave or additional adoptive leave under the Adoptive Leave Act, 1995 & 2005;
- (d) the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act, 1998 & 2006;
- (e) the exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the

Carer's Leave Act, 2001.

The Acts do not apply also to dismissals during training for qualification or registration as a nurse or for other specified para-medical employment except where the dismissal results from

- (a) the employee's pregnancy, giving birth or breastfeeding (or any matters connected therewith);
- (b) the exercise or contemplated exercise by the employee of the right to protective leave or natal care absence under the Maternity Protection Act, 1994 & 2004;
- (c) the exercise or contemplated exercise by an employee of his/her rights to adoptive leave or additional adoptive leave under the Adoptive Leave Act, 1995 & 2005;
- (d) the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act, 1998 & 2006;
- (e) the exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act, 2001.

(d) Statutory Apprenticeships

The Acts shall not apply to persons engaged under a statutory apprenticeship during

- (i) the six months after commencement of the apprenticeship and
- (ii) the period of one month following completion of the apprenticeship provided the employee is not absent from work on protective leave.

For this purpose, a statutory apprenticeship is an apprenticeship in an industrial activity designated by FÁS -the Training and Employment Authority.

The exclusion from the Acts of persons engaged under a statutory apprenticeship shall not apply where the dismissals results from

- a) the employee's pregnancy, giving birth or breastfeeding (or any matters connected therewith);
- b) the exercise or contemplated exercise by the employee of the right to protective leave or natal care absence under the Maternity Protection Act, 1994 & 2004;
- c) the exercise or contemplated exercise by an employee of his/her rights to adoptive leave or additional adoptive leave under the Adoptive Leave Act, 1995 & 2005;
- d) the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act, 1998 & 2006;
- e) the exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act, 2001.

(e) Lock-Outs and Strikes

The lock-out of an employee is regarded, for the purpose of these Acts, as a dismissal and it will be deemed to be an unfair dismissal if, after a lock-out, that employee is not re-instated or re-engaged within the meaning of the Acts and one or more other employees are.

Dismissal of an employee for taking part in a strike or other industrial action is regarded as unfair if

- I. one or more employees of the same employer who took part in the strike or industrial action were not dismissed
- or*
- II. one or more employees who were dismissed for such participation were later re-instated or re-engaged within the meaning of the Acts whereas s/he was not.

(f) Unfair Selection for Redundancy

An employee dismissed due to redundancy may, in addition, have

a claim of unfair dismissal if his/her selection for redundancy, instead of other employees in similar employment, was

- (i) due to one of the grounds on which dismissals are deemed unfair under the Act (paragraph 5)

or

- (ii) contrary to an existing redundancy procedure in the undertaking and there were no special reasons for departing from that procedure.

If the employee succeeds in his/her claim for unfair dismissal and is consequently re-instated or re-engaged, any payments made under the Redundancy Payments Acts must be refunded.

(g) Pregnancy Dismissals

Dismissal of an employee will be deemed to be unfair under the Acts if it results from the employee's pregnancy, giving birth or breast feeding (or any matters connected there with).

An employee who claims she was dismissed due to pregnancy, or for having recently given birth or for breastfeeding (or any matters connected therewith) may bring her unfair dismissal claim even though she does not have one year's continuous service with her employer.

(h) Exercise of Rights under the Maternity Protection Act, 1994 & 2004

The dismissal of an employee solely or mainly because of the exercise, or proposed exercise by her of her rights under the Maternity Protection Acts will be deemed to be unfair. These rights include:-

- (a) the right to take the specified forms of protective leave or ante-natal or post-natal care absence;

(b) the right to return to work (provided she has complied with all the notification procedures);

The general requirement of one year's service does not apply where an employee claims she was dismissed for exercising her rights under the Maternity Protection Acts.

(i) Replacement of an employee on leave or absence under the Maternity Protection Act, 1994 & 2004.

The Acts do not apply to the dismissal of an employee where the employer has informed the employee, in writing, at the commencement of employment that his/her employment will terminate upon the return to work of another employee who is absent on protective leave or natal care absence under the Maternity Protection Acts and the dismissal duly occurs for the purpose of facilitating the return to work of that other employee.

(j) Exercise of Rights under the Adoptive Leave Act, 1995 & 2005.

The dismissal of an employee which results solely or mainly from the exercise or contemplated exercise of the right to adoptive leave or additional adoptive leave, as provided for under the Adoptive Leave Acts will be regarded as unfair.

The general requirement of at least one year's continuous service does not apply where an employee claims he/she was dismissed for having exercised or having contemplated exercising his/her right to adoptive leave or additional adoptive leave under the Adoptive Leave Acts.

(k) Replacement of an employee on Adoptive Leave under the Adoptive Leave Act, 1995 & 2005.

The Acts do not apply to a dismissal where an employer in

forms an employee, in writing, at the commencement of the employment that the employment will terminate on the return to work of another employee from adoptive leave or additional adoptive leave under the Adoptive Leave Acts and the dismissal duly occurs for the purpose of facilitating the return to work of that other employee.

(l) Exercise of Rights under the Parental Leave Act, 1998 & 2006.

The dismissal of an employee which results wholly or mainly from the exercise or proposed exercise by the employee of the right to parental leave or force majeure leave as provided for by the Parental Leave Acts will be regarded as unfair.

The general requirement of at least one year's continuous service does not apply where an employee claims he/she was dismissed for having exercised or having contemplated exercising his/her right to parental leave or force majeure leave under and in accordance with the Parental Leave Acts.

(m) Working Abroad

The Acts do not apply to the dismissal of an employee who ordinarily worked outside the State unless

- (i) s/he was ordinarily resident in the State for the duration of the contract
- or*
- (ii) she/he was domiciled in the State for the duration of the contract and the employer was an individual ordinarily resident in the State or a firm having its principal place of business in the State.

(n) Dismissals due to Trade Union Membership or Activities

If it is shown that a dismissal resulted wholly or mainly from an employee's membership (or proposed membership) of a trade union or from his/her activities on behalf of a trade union, then the following exceptions do not apply:

- (i) requirement of a least one year's continuous service with the employer (paragraph 2);
- (ii) employee having reached the normal retiring age (paragraph 2);
- (iii) employee engaged on probation/training contract (paragraph 19 (c));
- (iv) Statutory apprenticeship (paragraph 19 (d)).

In such cases, the presumption that the dismissal was unfair and the requirements that the employer show justification (paragraphs 3 and 4) will not apply.

(o) Deceased Employees

If an employee dies at any time following his/her dismissal, his/her personal representative may pursue the claim of unfair dismissal under the Acts.

(p) Illegal Contracts

In the case of a contract of employment tainted with illegality the employee shall, nonetheless, be entitled to redress for unfair dismissal and the Revenue Commissioners or the Minister for Social Welfare shall be notified of the matter.

(q) Entitlements under the National Minimum Wage Act, 2000

The dismissal of an employee which results from his/her entitlement so future entitlements under the National

Minimum Wage Act, 2000 or from the exercise or proposed exercise of his/her rights under that act is an unfair dismissal within the meaning of the Unfair Dismissals Act 1973 to 2005. The general requirement of at least one year's continuous service does not apply where an employee claims he/she was dismissed for having exercised or proposed to exercise a right under the National Minimum Wage Act, 2000 or because of his/her entitlements or future entitlements under that Act.

(r) Exercise of Rights under the Carer's Leave Act, 2001

The dismissal of an employee which results wholly or mainly from the exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act, 2001 will be regarded as unfair. The general requirement of at least one year's continuous service does not apply where an employee claims he/she was dismissed for having exercised or contemplated exercising his/her right to carer's leave under the Carer's Leave Act, 2001.

(s) Replacement of an employee on carer's leave under the Carer's Leave Act, 2001

The Acts do not apply to a dismissal where an employer informs an employee, in writing, at the commencement of the employment that the employment will terminate on the return to work of another employee who is absent on carer's leave under the Carer's Leave Act, 2001 and the dismissal duly occurs for the purpose of facilitating the return to work of that other employee.

20. Forms

Forms connected with the Acts may be obtained from the

Department of Enterprise, Trade and Employment, the
Employment Appeals Tribunal and the Rights Commissioner
Service.