

NERA Activity from January to September 2012

Awareness & Information:

In the period January to September 2012 the NERA call centre provided information to over 54,203 people, a decrease of 43% on the same period of 2011 where information was provided to 94,696 people. The information provided comprised 40,505 callers dealt with directly by experienced Information Officers, 7,479 callers accessing the NERA 24 hour recorded information service and 6,219 eform queries (a decrease of 39% on the same period in 2011 when 10,265 eform queries were received).

Web page impressions have increased by over 17% to 1.1 million from 937,000 in the same period in 2011.

Employees and former employees accounted for 73% of callers, while an estimated 18% were employers. Redundancy, payment of wages, working hours, terms of employment, and unfair dismissal consistently represent the most common categories of queries dealt with.

The Workplace Relations Customer Services (www.workplacerelations.ie), based in NERA, is now the single portal for all employment rights complaints. 10,199 employment rights complaints were received by the WRCS in the first nine months of 2012. These can be broken down as follows:

- Employment Appeals Tribunal 2,536
- Early Resolution Service 1
- Equality Tribunal 515
- Labour Court 376
- NERA 328
- Rights Commissioners 6,443

NERA Workplace Inspections:

(See breakdown by Sector and Legislation on Page 2)

NERA carries out workplace inspections to ensure compliance with employment rights legislation.

In the period January to September 2012 a total of 3,140 inspection cases were completed involving over 51,000 employees. This compares to 4,199 cases in the same period on 2011. The amount of unpaid wages recovered was €659,435, compared to €1,622,979 in 2011.

Prosecutions:

In the period January to September 57 cases were referred for prosecution (in the same period last year 102 cases were referred). 46 convictions were recorded in cases heard by the Courts over the period resulting in fines of €102,000 being imposed and arrears of wages of over €37,700 being awarded to employees.

Employment Agency Licences:

Under the Employment Agency Act, 1971 an Employment Agency must hold a licence if it is to carry on its business. In the nine month period to end September 386 applications for licences were received. 317 licences were issued in same period.

Summary of Inspections & Breaches Detected by Industry Sector: January to September 2012

Sector	No of Inspections Concluded	Compliance Rate%	Unpaid Wages Recovered (€)
AGRICULTURE	80	41%	12,479
CATERING	322	61%	102,374
RETAIL GROCERY	87	47%	20,528
HOTELS	57	37%	70,551
CONTRACT CLEANING	22	46%	2,907
SECURITY	20	75%	1,318
CONSTRUCTION	183	49%	99,844
ELECTRICAL	30	63%	35,226
OTHER	23	65%	89,651

Summary of Inspections & Breaches by Employment Legislation: January to September 2012

Legislation	No of Inspections Concluded	Compliance Rate%	Unpaid Wages Recovered (€)
NATIONAL MINIMUM WAGE	969	50%	224,557
PROTECTION OF YOUNG PERSONS	1,347	100%	n/a

Enforcement of EAT/Labour Court

Orders:

In the period January to September 60 new cases were opened and 54 cases were concluded. 95 such cases were on hands at the end of September 2012.

Protection of Young Persons

Licences:

146 licences, allowing children (i.e. under 16s) to be employed in cultural, artistic, sports or advertising work, were issued in the period January to September 2012 in respect of 282 children working in the arts/TV/film.

Employment Permits Inspections:

NERA inspectors are authorised officers under the Employment Permits Acts. Compliance checks under this legislation are an integral element of all NERA inspections. Joint inspections may also be carried out as part of investigations involving Revenue, Department of Social Protection staff and An Garda Síochána.

In the period January and September 271 employers were found to be in breach of the Employment Permits Acts with 548 persons detected working without legal authorisation.

Young persons employed in theatrical work

With the holiday season approaching it may be useful to remind employers and parents of the legal situation regarding young people and theatrical work.

Section 3(2) of the Protection of Young Persons (Employment) Act, 1996 allows the Minister to authorise, by licence, in individual cases, the employment of a child up to 16 years in cultural, artistic, sports or advertising activities which are not likely to be harmful to the safety, health or development of the child and which are not likely to interfere with the child's attendance at school, vocational guidance or training programmes or capacity to benefit from the instruction received.

An employer should apply in writing to the Minister for a licence under section 3(2) at least 21 days before the employment commences.

The following conditions apply to employment of young people in these circumstances

1. Specific conditions apply to children under 7 years of age, children over 7 and under 13 and children over 13 and under 16 regarding periods of performance and rehearsal, rest periods, hours worked and finish times.
2. A suitably qualified chaperon shall be in charge of the child at all times while he/she is present at a place of performance or rehearsal except while the child is in the charge of a parent or guardian. The function of the chaperon shall include the care and control of the child with a view to securing his/her health, comfort, kind treatment and moral welfare.
3. When the child is employed during a school term, the employer shall ensure that, where the hours of work of

the child involves an absence from school; appropriate alternative teaching arrangements are put in place

4. Suitable arrangements must be made for adequate meals for the child, or the child to dress for performances or rehearsals and for the child's rest and recreation when not taking part in a performance or rehearsal, and that suitable and sufficient sanitary and washing facilities are provided.

5. The child shall not be required to take part in a performance or rehearsal which requires the child to be nude or partially nude without the express permission of the parent or guardian. A qualified nurse or social worker shall be in attendance during any such rehearsal or performance.

6. The employer shall ensure that arrangements, acceptable to the parent or guardian, are made for the child to get to his/her home or other destination after the last performance or rehearsal on any day.

7. All Sums earned (other than expenses) shall be lodged in a post office/bank account in the child's name.

8. The number of hours the child was present at the place of performance and rehearsal must be forwarded to the Department of Jobs, Enterprise and Innovation when the employment ceases

NERA (acting on behalf of the Minister) are empowered to make enquiries ensure that the provisions of the Act are complied with. Full information regarding obligations under the Act and details of applications for licences is available at www.employmentrights.ie or by telephoning lo-call 1890 80 80 90.

Rights of Posted Workers:

EU Directive 96/71/EC regulates the employment rights of posted workers. A posted worker is a 'person who, for a limited period of time, carries out his or her work in the territory of an EU Member State other than the Member State in which he or she normally works'. For example, a service provider may win a contract in another Member State country and send his employees there to carry out the contract.

The definition of a posted worker does not apply to individuals who decide of their own accord to seek employment in another Member State, seagoing personnel in the merchant navy or the self-employed.

EC Directive 96/71/EC on Posted Workers has been transposed into Irish law as a miscellaneous provision of the Protection of Employees (Part-time Work) Act 2001. The Act provides that the full range of Irish employee protection legislation applies to foreign workers posted to work in Ireland.

Under the Act, posted workers are entitled to receive the same basic employment rights as employees permanently employed in the State. These rights include an entitlement to a written statement of their Terms and Conditions of employment, a minimum wage rate, an average working week of no more than 48 hours, breaks during the working day, paid annual leave, Public holiday benefit, to be paid in a legal fashion and to receive a pay slip each time they are paid.

Certain industries (for example Construction and Electrical Contracting) have Registered Employment Agreements in place which entitle those working in these areas to have additional rights and specific rates of pay as prescribed under the agreement.

These additional rights and rates of pay also apply to construction and electrical workers posted to work in the State. Further details are available by contacting our Information Service at lo-call 1890 80 80 90.

Abolition of 3 JLC's

From 12 October 2012 the Aerated Waters and Wholesale Bottling Joint Labour Committee, the Clothing Joint Labour Committee and the Provender Milling Joint Labour Committee were abolished by order of the Labour Court under Section 40 of the Industrial Relations Act 1946. This is part of the reform process of the Joint Labour Committee system announced in the Programme for Government.

Industrial Relations (Amendment) Act 2012 (Commencement) Order

On 1 August 2012 the Minister made the above mentioned order bringing into effect all provisions of the Industrial Relations (Amendment) Act 2012 from that date.

NERA Contact Details

Information: Lo-call 1890 80 80 90

Inspection: Lo-call 1890 220 100

Prosecution & Enforcement:

Lo-call 1890 220 200

www.employmentrights.ie

www.workplacerelations.ie