

Review of 2012



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Foreword:

NERA is now five years old and our organisation continues to change.

The last year has brought many changes. In line with the reforms as announced by Minister Richard Bruton our Information Unit became the Workplace Relations Customer Service Unit and in January 2012 the first three priority projects were launched;

- A single complaint form
- A new interim website
- A single point of contact

Staff at the NERA offices now process complaints for the State's other Employment Rights and Industrial Relations bodies.

NERA also worked closely during the year with the Departments Reform Programme Office and a number of NERA staff are seconded to work in this office.

In relation to compliance with employment rights law, of 2,423 full inspections carried out in 2012, 53% were not fully compliant at the start of the Inspection.

Over 2000 unannounced visits were carried out in 2012. Most of these were at night or at weekends and many involved joint visits with other agencies. Inspectors also undertook surveillance of businesses and took part in road-side checkpoints with other agencies.

During 2012 NERA took on the issuance of Employment Agency licences, a role previously carried out by our parent department, the Department of Jobs, Enterprise and Innovation.

On Public Sector Outsourcing, a number of notifications under the Department of Public Expenditure and Reform circular 15/11 (*Mechanism to monitor compliance with employment law in outsourced operations under the Croke Park Agreement*) were received in 2012.

The number of employers that are prosecuted remains relatively low as a percentage of businesses inspected. However it is our intention in future to publish details of those employers where prosecution has taken place and the court has imposed a sanction.

Without the support of the 105 individual staff members, NERA would not have achieved the results shown. They continue to be committed and helpful, whether they are giving information or carrying out inspections.

Finally I thank the NERA Advisory Board for their guidance over the last year.

Padraig Dooley

Deputy Director

May 2013

Awareness & Information:

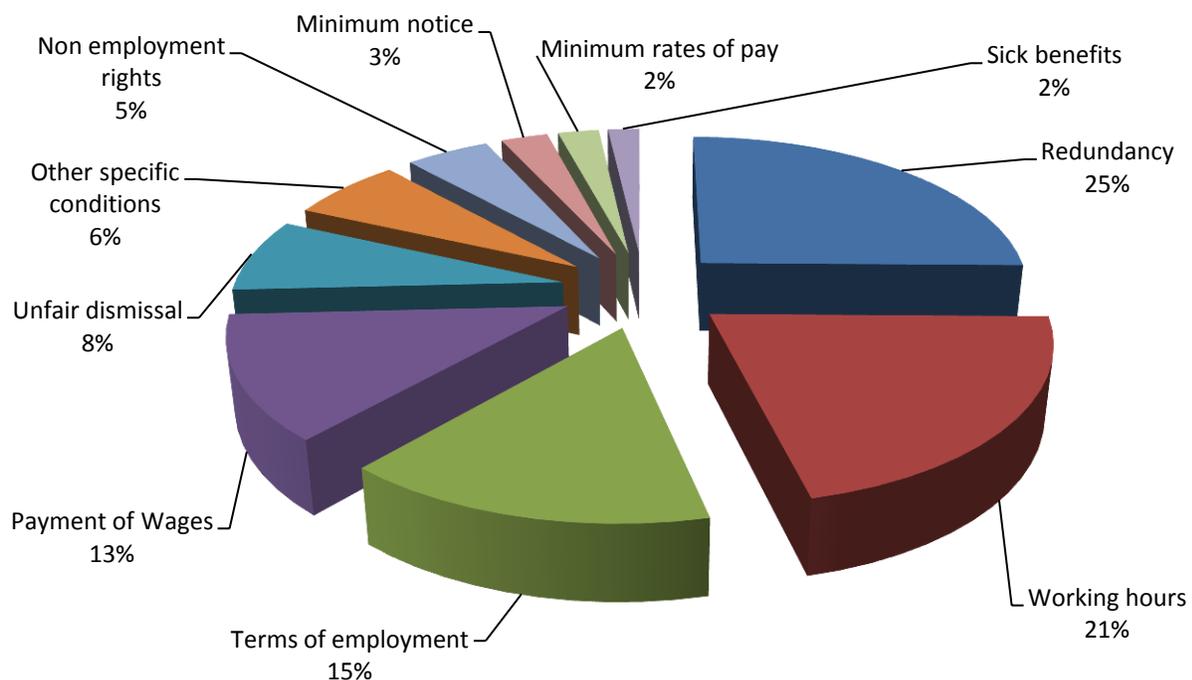
In 2012 the Customer Service Unit provided information to over 69,715 people. The information provided comprised 61,583 callers dealt with directly by experienced Information Officers, 9,444 callers accessing the NERA 24 hour recorded information service and 8,132 eform queries.

Web page impressions have increased by over 15% to 1.45 million from 1.26 million in the same period in 2011.

Employees and former employees accounted for 69% of callers, while an estimated 23% were employers. Redundancy, working hours, terms of employment, payment of wages, 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. 13,219 employment rights complaints were received by the WRCS in 2012.

Breakdown of call received by NERA in 2013 by topic



Workplace Inspections:

NERA carries out workplace inspections to ensure compliance with employment rights legislation. Inspections also provide the opportunity to inform employers of the requirements of legislation, discuss best practice for compliance and deal with queries they may have. In general inspections are carried out under the under the following legislation:

- National Minimum Wage Act 2000
- Payment of Wages Act 1991
- Organisation of Working Time Act 1997
- Protection of Young Persons (Employment) Act 1996
- Employment Permits Acts
- Industrial Relations Acts

In 2012 a total of 4,689 inspection cases were completed involving over 91,778 employees. This compares to 5,591 cases in the same period on 2011. The amount of unpaid wages recovered in 2012 was €855,937, compared to €1,905,262 in 2011. Issues relating to statutory minimum pay rates arose in 13% of businesses where a full inspection was carried out.

NERA inspections are undertaken as a result of complaints (763 in 2012), cases and sectors identified on the basis of risk analysis (including out of hours inspections) and a small number selected on a random basis.

In 2012 NERA inspectors have carried out a number of inspections in homes where domestic workers are employed. We will continue to monitor compliance in this sector in the coming year.

Summary of Inspections & Breaches Detected by Industry Sector in 2012

Sector	No of Inspections Concluded	Compliance Rate%	Unpaid Wages Recovered (€)
AGRICULTURE	94	41%	15,087
CATERING	500	37%	132,005
RETAIL GROCERY	107	45%	30,765
HOTELS	67	37%	105,847
CONTRACT CLEANING	30	40%	15,034
SECURITY	22	73%	1,504
CONSTRUCTION	219	51%	102,821
ELECTRICAL	40	60%	40,047
OTHER	28	64%	89,651

Summary of Inspections & Breaches by Employment Legislation in 2012

Legislation	No of Inspections Concluded	Compliance Rate%	Unpaid Wages Recovered (€)
NATIONAL MINIMUM WAGE	1,316	51%	323,176
PROTECTION OF YOUNG PERSONS	2,266	100%	0

Prosecutions:

It is NERA policy to seek voluntary compliance where breaches of employment law are detected. NERA will work with employers and allow them every reasonable opportunity to rectify breaches in preference to prosecution. As a result of this approach the number of prosecutions instituted as a result of inspections is very low. From the table below it can be seen that the vast majority of cases are resolved during the inspection process, with only a very small number (1.5%) prosecuted.

There were some changes to our approach to prosecutions. In two cases a number of witnesses were brought from abroad to testify at the Court hearings. One of those cases involved the prosecution of a number of foreign companies. In the majority of prosecutions it is the employer, be it a sole trader or a limited company, who is prosecuted. However we have found it necessary to bring prosecutions against individual directors and a third party in respect of specific issues.

Our approach continues to evolve and it is our intention in future, to publish details of cases which are brought before the courts.

	Number of Employers Inspected	Prosecutions as a result of Inspections
2011	5,591	56 (1%)
2012	4,689	70 (1.5%)

NERA also carries out prosecutions for non-compliance with Labour Court determinations under the Industrial Relations Acts. These determinations arise where an employee secures a determination of the Labour Court and NERA, at the request of the Labour Court, initiates a prosecution for failure to comply with the determination. This was usually in REA cases for non-payment of pay or pension contributions to an agreed scheme, however a decision of the Supreme Court of 9 May 2013 declared Part III of the Industrial Relations Act 1946 unconstitutional and Registered Employment Agreements ceased to have statutory effect from that date.

	Prosecutions from Labour Court Orders
2011	93
2012	79

Civil Enforcement of Labour Court or EAT Awards by NERA:

Where an employee has received an award through a Rights Commissioner hearing or an EAT/Labour Court hearing and the employer has failed to pay the award, NERA on behalf of the Minister, can bring proceedings through the Civil Courts for enforcement of the award.

	Awards referred to NERA for Civil Enforcement	Arrears paid to employees as a result of Civil Enforcement by NERA
2011	€854,462.48	€88,361.18
2012	€453,203.01	€105,212.00

A total of 105 enforcement cases were active at the end of December 2012.

Employment Permits:

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 2012 10% of employers inspected (472 employers) were found to be in breach of the Employment Permits Acts with 882 person's detected working without legal authorisation.

In 2011 20% of employers inspected during a sample period between 1 October 2011 and 15 November 2011 were found to be in breach of the Employment Permits Acts. The difference may be accounted for by the Irish government decision of 17th July 2012 to cease restrictions on access to the Irish labour market for Bulgarian and Romanian nationals with effect from the 1st January 2012.

NERA published a leaflet entitled '*Who can Work?*' detailing the categories of people that can legally work in Ireland. This is now available on our website in 15 languages.

Protection of Young Persons Licences:

NERA is responsible for issuing licences under Section 3 of the Protection of Young Persons (Employment) Act. These licences allow children (i.e. under 16s) to be employed in cultural, artistic, sports or advertising work which is not harmful to their safety, health, or development and does not interfere with their attendance at school.

In 2012 a total of 190 licences were issued in respect of 368 children working in the arts/TV/film (compared with 153 licences for 358 children in 2011).

Employment Agency Licences:

An employment agency must hold a licence if it is to carry on its business. In April 2012 NERA took over the role of dealing with applications for licences under the Employment Agency Act, 1971. This is a natural fit to our existing work as NERA Inspectors are authorised under this legislation to inspect such agencies.

A total of 510 applications for licences were received and 463 licences were issued during 2012.

A list of all employment agency licences is available on the NERA website, www.employmentrights.ie

Working with Other Agencies:

NERA is empowered under legislation to exchange information with the Department of Social Protection and the Revenue Commissioners. This enables a more comprehensive government approach to employers who may be at risk of being non-compliant and facilitates the operation of joint investigations by the three parties, or a combination of the parties, where breaches of law are suspected. NERA inspectors may also be accompanied by Gardaí during inspections and NERA works closely with Gardaí in matters relating to employment permits.

During 2012 a total of 401 joint investigations took place with Revenue and / or the Department of Social Protection, an increase of 283 on the 118 which took place in 2011. This now forms a sizable portion of our unannounced visit programme. Information exchanged helped to uncover non-compliance with employment law, secure payment of wages for employees and save the exchequer money.

NERA continued to engage with the International Labour Organisation (ILO) and EU agencies on areas of mutual interest.

Stakeholders are important in ensuring compliance with employment rights, be they unions, employer and business groups, citizen information centres, industry representatives, national & local government, NGOs, sector representatives or employee groups and NERA continues to have regular meetings with such groups.

Annual budget and staff:

At the end of 2012 NERA had 103 staff by comparison with 102 in 2011, 108 in 2010 and 119 in 2009. Included in this total are 58 inspectors and 31 staff trained as information officers. The number of staff seconded to other areas included in these figures is six.

NERA has continued to reduce the cost of the provision of its services over the past number of years. In 2012 NERA running cost was €6.4M, a reduction from the 2011 cost of €6.6M and the 2010 cost of €6.9M. NERA's budget was €7.9M in 2009 and €9.6M in 2008.

All NERA staff are employees of the Department of Jobs, Enterprise and Innovation and our finances are administered through the Department's budget and form part of the Department's accounts.

Advisory Board:

The Minister for Labour Affairs, in 2008, established the NERA Advisory Board on an interim basis.

The main functions of the Board are of a general advisory nature and include advising NERA on:

- issues relating to compliance with, and enforcement of, employment legislation including the provision of information
- aspects of NERA's work programme and strategy statement
- delivery of a high standard of customer service; and
- proposals for research, surveys and studies

The members of the Board are as follows:

Chairperson:

Mr. John Dennehy, former public representative

Minister's Nominees:

Mr. John Walsh, former Asst. Secretary, Dept of Enterprise, Trade & Employment

Mr Jimmy Somers, former trade union official

Persons nominated by organisations representative of employees:

Ms Patricia King, SIPTU

Mr Owen Wills, TEEU

Persons nominated by organisations representative of employers:

Mr. John Flanagan, IBEC

Mr Eddie Keenan, CIF

NERA

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www.employmentrights.ie

www.workplacerelations.ie