



NERA

National Employment Rights Authority



REVIEW OF 2010

www.employmentrights.ie

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NERA Review of 2010

Welcome to the review of NERA activity for 2010, our fourth full year of operation. During 2010 we continued to promote and enforce compliance with employment law, recover monies for workers who had been paid less than their statutory minimum entitlement and hold to account the minority of employers who deliberately flout employment law.

We aim to achieve compliance by assisting and educating employers to become and remain compliant. We are in constant communication with employers and encourage them to contact us for information and assistance. An example of this approach during 2010 was the workshops delivered around the country. These were aimed at assisting employers to familiarise themselves with key requirements of employment law. They also gave employers and employees the opportunity to discuss, on a free and confidential basis, their employment legislation queries. We also provided information through the NERA website www.employmentrights.ie, our telephone and email service, and through our education and awareness programme.

In addition to the information service, the inspection, enforcement and prosecution roles provided by NERA continue to play a key role in securing compliance with employment law. Where there is evidence of non-compliance with the relevant employment rights legislation, we work with employers to achieve compliance. If there are underpayments of statutory minimum rates of pay, we seek to have this money paid to the worker concerned. Where breaches are not rectified, or where an employer fails to cooperate, NERA may initiate a prosecution.

Details of NERA's information, inspection and enforcement activity for 2010 is set out in this Review.

There has been considerable emphasis on the need to improve the performance and flexibility of the public sector. NERA is among the organisations which are setting the pace in this regard. We are already working smarter and more efficiently in terms of delivering a more joined up approach to the overall employment rights arena.

NERA has taken a proactive approach in identifying specific, practical areas to streamline and improve our administrative and service functions. During 2010 we also identified areas where we could provide assistance to our colleagues in the Employment Appeals Tribunal (EAT) and the Labour Relations Commission (LRC). The benefits of this collaboration will be recorded in 2011 in terms of assisting with the administration of the increased number of claims that these two organisations have experienced as a result of a rapid increase in demand for their services. In addition NERA continued to provide information to applicants for redundancy payments.

Our staff are to be commended for the flexible and positive approach they have taken in delivering these services. These are the kind of initiatives which must be encouraged across the public service.

I want to extend my gratitude to the staff of NERA for their hard work and flexibility over the last year. I would also like to thank the Chairman and members of the Advisory Board for their ongoing advice and support and express my gratitude to the Minister and officials of the Department of Enterprise, Trade and Innovation for their support and cooperation.

We will continue to work hard to achieve our goals and to contribute to the overall improvements in the delivery of public services. I look forward to working with all NERA's staff and stakeholders to build greater collaboration with the other employment rights and industrial relations bodies in order to create even greater efficiencies services improvements across the employment rights sphere in 2011 and beyond.



Ger Deering

Director
NERA

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ADVISORY BOARD

NERA has worked in close cooperation with the Advisory Board which was established on an interim basis in 2008.

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 Jobs, Enterprise and Innovation

Mr. Jimmy Somers, former trade union official

Persons nominated by organisations representative of employees:

Ms. Patricia King, SIPTU

Ms. Linda Tanham, Mandate

Mr. Owen Wills, TEEU

Persons nominated by organisations representative of employers:

Ms. Mary Cryan, IBEC¹

Mr. John Flanagan, IBEC

Mr. Eddie Keenan, CIF

1. Ms Cryan resigned from the Advisory Board on her appointment as a member of the Labour Court.

EDUCATION, AWARENESS AND INFORMATION

In 2010 NERA continued to provide a broad range of information on employment legislation through a variety of channels.

The NERA lo-call helpline (1890 80 80 90) dealt with 121,435 calls in 2010. This was a decrease of 19% by comparison with the very high level of calls dealt with in 2009 at 150,485 and contrasts with an increase in calls of 24% in 2009 and 32% in 2008.

A total of 95,485 of these callers had their queries dealt with by our experienced Information Officers. They provided direct information to callers and referral to other services if the matter was not within NERA's remit.

The balance of 25,950 callers availed of the option to listen to recorded information on key employment rights topics (this service is available 24 hours a day).

Of the total calls dealt with in 2010, 28% were from employers with 72% from employees or former employees.

The major topics of enquiry were redundancies, holiday entitlements, terms of employment and payment of wages.

The reduction in the number of calls dealt with in 2010 is more than likely attributable to the reduction in the number of people at work and more recently to the reduction in the number of redundancies. As a result NERA has been in a position to offer services to other employment rights bodies and Departments including the Department of Social Protection, the Rights Commissioner Service and the Employment Appeals Tribunal.

The NERA website (www.employmentrights.ie) continued to be a major source of information on employment legislation in 2010. It contains comprehensive information on employment rights. It has specific sections aimed at employers and employees and is regularly updated to reflect legislative or policy changes or current issues.

During 2010 almost 1.3M hits were recorded compared with 1.5M in 2009. The website provides a facility where information can be requested by completing an E-form. Over 13,000 customers, an increase of almost 1,000 on the previous year, had their E-form queries dealt with in 2010.

NERA also provides information through booklets and leaflets. We have produced a range of publications including

- * the *'Guide to Employment Rights'* leaflet ,
- * *'Employment Law Explained'* a booklet which summarises the main points of a broad range of employment laws and
- * *'Starting or Expanding a Business'*.



Guide to
Employment
Rights



These publications together with a considerable number of other publications which deal with various topics of employment legislation are available on the NERA website or from our offices.

In 2010, NERA identified a need to provide more information to employers in advance of inspections. To achieve this we produced *An Employer's Guide to NERA Inspections*, which provides a detailed guide and information on how NERA inspections are carried out.

This Guide is now sent with appointment letters to all employers in advance of an inspection. It is also available to download at

<http://www.employmentrights.ie/en/media/Guide%20to%20Inspections%20pdf.pdf>

The Guide assists employers to prepare for and understand the inspection process. It also aims to reassure employers that a NERA inspection need not be a difficult or onerous event.

NERA also proactively provides information by participating in seminars and exhibitions and by making presentations to groups and organisations. During 2010 we participated in 46 events organised by trade unions, employer bodies, public bodies, educational institutions and civic society groups throughout the country.

During 2010 NERA also undertook a series of regional road shows throughout the country to provide information to employers and employees. A particular focus was to assist employers in achieving compliance. Working in collaboration with our stakeholders we promoted the road shows directly to SMEs, start-up businesses, accountancy firms and employees.

The roadshows reached key audiences at locations suitable to them, and in an in-formal setting. They also assisted employers with compliance and employees with queries at local level.

NERA is committed to providing information and services which are fully accessible to all of our customers. We are in a position to provide copies of our publications in Braille, large print and audio.

The NERA website has been designed in accordance with the WC3 Web Content Accessibility Guidelines. Information of key employment issues is available in 12 languages in addition to English and Irish.

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INSPECTIONS

In addition to providing information in order to achieve compliance NERA also carries out compliance checks (inspections) of employers. These inspections are carried out:

- * In response to complaints received of alleged non-compliance with relevant employment rights legislation;
- * As part of NERA's compliance campaigns which focus on compliance in a specific sector, or in respect of a specific piece of legislation, and,
- * As routine inspections, which act as a control measure.

NERA Inspectors are required to form an independent opinion in relation to the level of compliance with relevant employment law. It is therefore essential that an Inspector obtains all of the records, information and explanations necessary to provide them with sufficient evidence on which to base their opinions and reports. Inspectors are required to act independently of the employer and employee in arriving at their opinions.

Where evidence of non-compliance with the relevant employment rights legislation is found, NERA works with the employer to achieve compliance. If there are underpayments of statutory minimum rates of pay, NERA seeks redress for the individual/s concerned. Where employers refuse or fail to cooperate with inspectors or where breaches are not rectified, or where there are substantial breaches of employment rights legislation, NERA may initiate a prosecution.

In 2010 we concluded 7,164 employer inspections. This compares with 8,859 in 2009.

The reduction in the number of employers inspected is attributable to

- * an increased focus on information provision for employers,
- * a move towards a risk based approach to inspections, and
- * a reduction in the number of inspectors.

There was an overall compliance level of 73% in the cases closed in 2010. However, there is a very wide variance in the level of compliance under the various pieces of legislation and sectors as can be seen from Tables 1 and 2 below.

Summary of Inspections and Compliance Rate by Employment Regulation Orders and Registered Employment Agreements 2010

Sector	No of Cases Concluded	Compliance Rate (%)	Unpaid Wages Recovered (€)
Agriculture	76	29%	17,289
Catering	474	38%	176,600
Retail Grocery & Allied Trade	226	30%	295,245
Hotels	127	31%	153,757
Contract Cleaning	93	43%	24,913
Security	50	58%	55,253
Construction	407	56%	213,297
Electrical	40	60%	51,946
Other	93	52%	16,249

Summary of Inspections and Compliance Rate by Employment Legislation – 2010

Legislation	No of Cases Concluded	Compliance Rate (%)	Unpaid Wages Recovered* (€)
National Minimum Wage**	1,883	52%	155,899
Protection of Young Persons	3,535	98%	0
Employment Permits Acts	160	74%	0

*An additional €89,305 in unpaid wages due to workers in respect of leave and public holidays under the Organisation of Working Time Act, 1997 was paid to workers on foot of NERA inspections. The total of unpaid wages secured in 2010 was €1.25M.

**While 48% of employers were found to be non-compliant with the National Minimum Wage (NMW) legislation, these breaches related in the main to record keeping requirements. 85% of those inspected under NMW were compliant with the minimum rate of pay.

Unpaid Wages Recovered

Where there is evidence that employees have been paid less than their statutory minimum entitlement, the employer is requested to rectify the matter by paying the employee the correct rate going forward and making good previous underpayments. In this regard NERA secured a total of €1.25M in underpayments for approximately 3,200 employees and former employees in 2010.

Prosecutions

NERA aims to achieve voluntary compliance. Our priority is to have any breaches identified rectified and any sums of money due to employees paid. However, some employers either refuse or fail to rectify the breaches identified and/or pay money due to their employees. These employers are referred for prosecution. A total of 143 employers were referred for prosecution in 2010 compared to 108 in 2009.

Of the cases referred for prosecution in 2010, 89 arose on foot of NERA inspections, while the remaining 54 were referred due to non-compliance with Labour Court Orders.

A significant number of court cases were adjourned in sectors covered by EROs and in the electrical sector due to impending High Court cases. Others were resolved prior to the court date. In 32 cases convictions were secured with fines ranging from €150 to €13,000. The Courts awarded arrears of wages in the order of €94,000 to some of the employees concerned.

Civil Enforcement

In certain cases where employers fail to honour awards of either the Labour Court or the Employment Appeals Tribunal, NERA on behalf of the Minister, can bring proceedings through the Civil Courts for enforcement of the awards. NERA is receiving a significant increase in requests to enforce such awards.

A total of 39 such cases were concluded in 2010. In 17 of the cases concluded in 2010, the employer paid the award following NERA's intervention while a further 22 were deemed uncollectable as the employer had ceased trading, was in liquidation or legal action was not possible. As a matter of policy all employers who refuse or fail to pay such an award are investigated by NERA Inspectors.

WORKING WITH OTHER AGENCIES

NERA is empowered in legislation to exchange certain information with the Minister for Social Protection and the Revenue Commissioners. This provides very valuable information in relation to employers who may be at risk of being non-compliant. It also facilitates the operation of joint investigations by the three parties, or a combination of the parties, where breaches of law are suspected. The Garda National Immigration Bureau (GNIB) sometimes participates in joint operations with NERA.

During 2010 a total of 46 joint investigations took place with Revenue and/or the Department of Social Protection. In many other cases information exchanges helped to uncover non-compliance with employment law, secure payment of wages for employees and save money for the exchequer.

ANNUAL BUDGET AND STAFF

Providing value for money and delivering quality services with reduced resources was a key priority in 2010. At the end of 2010 we had 108 staff by comparison with 119 in 2009 and 132 in 2008.

We have continued to reduce the cost of providing our services. In 2010 the cost was €6.9M compared to €7.9M in 2009 and €9.6M in 2008.

Continuing to provide high quality services with diminishing resources is testament to the commitment and flexibility of NERA staff.

All NERA staff are employees of the Department of Enterprise Trade and Innovation and all finances are administered through the Departments budget and form part of the Departments accounts.

CONTACT DETAILS

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www.employmentrights.ie

NERA Information Service

Telephone: (059) 917 8990

Lo-Call 1890 80 80 90

Fax: (059) 917 8909

NERA Inspection Service

Telephone: (059) 917 8900

Lo-Call 1890 220 100

NERA Enforcement and Prosecution Services

Telephone: (059) 917 8890

Lo-Call 1890 220 200

Callers should note that the rates charged for the use of 1890 (Lo-Call) numbers may vary among different service providers.

