

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 and 2001



Explanatory Booklet for
Employers and Employees

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Issued by

Department of Enterprise, Trade and Employment

Terms of Employment (Information) Act, 1994 and 2001 Explanatory Booklet for Employers and Employees

This booklet gives general guidance to employers and employees on the Act and is not a legal interpretation. Its purpose is to present in non-legal language an outline of the rights and obligations under the Act.

In cases of doubt or where further information is required please refer to the Act or contact the Employment Rights Information Unit, Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2. Phone 01-6313131, **Lo-Call 1890 201 615**.

Website: www.entemp.ie. Copies of this booklet may be obtained from the Information Unit.

Other useful telephone numbers:

Employment Appeals Tribunal	(01) 631 2121	Lo-Call 1890 220 222
Labour Relations Commission	(01) 613 6700	Lo-Call 1890 220 227
Rights Commissioner Service	(01) 613 6700	Lo-Call 1890 220 227
Labour Court	(01) 613 6666	Lo-Call 1890 220 228

Note: The Lo-Call numbers may be used by callers from outside the 01 area.

Standard forms are available from the Department of Enterprise, Trade and Employment which may be used by employers to provide the written statement of particulars of employment to which employees are entitled under the Act. A sample form, together with relevant notes on completion of the form, is included at the back of the booklet.

*Department of Enterprise, Trade and Employment,
Dublin 2.*

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Terms of Employment (Information) Act, 1994 and 2001

1. SUMMARY OF THE ACT AND ITS SCOPE

Commencement Date Of Act

1.1 The Act came into operation on 16 May, 1994.

Purpose of Act

1.2 The purpose of the Act is to implement an EU Directive which requires employers to provide a written statement to employees setting out particulars of the employee's terms of employment. The Act also repeals sections 9 and 10 of the Minimum Notice and Terms of Employment Act, 1973 as those sections are overtaken by the provisions of this Act.

Who Is Covered By The Act

1.3 In general, the Act applies to any person

- working under a contract of employment or apprenticeship
- employed through an employment agency or
- in the service of the State (including members of the Garda Síochána and the Defence Forces, civil servants and employees of any local authority, health board, harbour authority of vocation education committee).

However, the Act does not apply to a person who has been in the continuous service of the employer for less than 1 month.

Prior to December 20, 2001 the Act 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 relating to the number of hours worked.

In the case of agency workers, the party who pays the wages (employment agency or client company) is the employer for the purposes of this Act and is responsible for providing the written statement.

Main Provisions

- 1.4 The Act provides that an employer must provide his/her employee with a written statement of the particulars of the employee's terms of employment. It also provides that an employer must notify the employee of any changes in the particulars as given in the statement.

Existing Employees And New Employees

- 1.5 In the case of contracts of employment entered into on or after 16 May, 1994 (commencement date of the Act), the written statement of particulars must be provided by the employer within two months of the date of commencement of employment. In the case of employees whose employment commenced before 16 May, 1994, the written statement must be provided by the employer within two months of being requested to do so by the employee.

Complaints Procedure

- 1.6 The Act provides a right of complaint to a Rights Commissioner where an employer fails to provide a written statement in accordance with the terms of the Act or fails to notify the employee of changes to the particulars contained in the statement. There is a right of appeal by either party to the Employment Appeals Tribunal from a recommendation of a Rights Commissioner.

2 WRITTEN STATEMENT

Information To Be Included In The Written Statement

- 2.1 The Act requires an employer to provide an employee with a written statement of the following particulars of the terms of employment:
 - the full names of the employer and the employee;
 - the address of the employer in the State or, where appropriate, its principal place of business or, the registered address of the employer as registered with the Companies Registration Office;

- the place of work or where there is no main place of work, a statement indicating that the employee is required or permitted to work at various places;
- job title or nature of the work;
- date of commencement of employment;
- if the contract is temporary, the expected duration of employment;
- if the contract is for a fixed term the date on which the contract expires;
- the rate of remuneration or method of calculating remuneration;*
- the pay reference period for the purposes of the National Minimum Wage Act, 2,000 (see paragraph 2.7)
- whether remuneration is paid weekly, monthly or otherwise;*
- terms or conditions relating to hours of work (including overtime);*
- terms or conditions relating to paid leave (other than paid sick leave);*
- terms or conditions relating to incapacity for work due to sickness or injury;*
- terms or conditions relating to pensions and pension schemes;*
- periods of notice which the employee is entitled to receive and required to give on termination of employment; where this cannot be indicated when the written statement is given, the written statement must state the method for determining the period of notice to be given;*

- a reference to any collective agreements which affect the terms of employment. Where an employer is not a party to the agreement, the written statement must indicate the bodies or institution which made the agreement.

The Time Limit For Providing The Statement is Set Out At Paragraph 1.5 of this Booklet.

***Reference to Other Documents Containing Relevant Information**

- 2.2 In the case of the particulars marked with an asterisk in the previous paragraph, the employer, as an alternative to providing all the details in the statement, may use the statement to refer the employee to certain other documents containing the particulars. For example, the employer may refer the employee to the provisions of relevant legislation, an Employment Regulation Order of the Labour Court, and employment agreement registered in the Labour Court, or a collective agreement, provided that the document is reasonably accessible to the employee.

Other Requirements Relating To The Written Statement

- 2.3 The statement must be signed by or on behalf of the employer. The statement must be retained by the employer during the employment and for 1 year after the employee's employment has ceased.
- 2.4 Even if the employee leaves the employment within the 2 month period for giving a written statement, the statement must still be given to the ex-employee.
- 2.5 Regulations made under the Act, require employers to give to their workers under 18 a copy of the official summary of the Protection of Young Persons (Employment) Act within one month of taking up a job.
- 2.6 The Terms of Employment (Additional Information) Order, 1998 further provides that where, under the Act, an employer is required to provide an employee with a written statement of certain particulars of his or her terms of employment, such statement shall, after 1st March, 1998, include details of the times and duration of (and any other terms and conditions relating to) the rest periods and breaks referred to in

sections 11, 12 and 13 of the Organisation of Working Time Act, 1997 that are being allowed to the employee.

- 2.7 The statement of terms of employment must indicate the pay reference period for the purposes of the National Minimum Wage Act, 2000 and must also state that the employee may request from the employer a written statement of the employee's average hourly rate of pay for any pay reference period falling within the previous 12 months, as provided in Section 23 of the National Minimum Wage Act, 2000.

3. EMPLOYMENT OUTSIDE STATE

- 3.1 Where an employee is required to work outside the State for a period of not less than one month, the employer is obliged to add the following particulars to the written statement.
- the period of employment outside the State,
 - the currency in which the employee is to be paid in respect of that period,
 - any benefits in cash or kind payable to the employee in respect of the employment outside the State,
 - any terms and conditions governing the employee’s repatriation.
- 3.2 The particulars listed above, together with the written statement as detailed in section 2 of this booklet, must be provided to the employee prior to the employee’s departure from the State.
- 3.3 For the purpose of providing information relating to the benefits in kind and the currency in which payment is to be made, the written statement may refer the employee to legislation, administrative provisions or collective agreement governing the relevant particulars.

4. NOTIFICATION OF CHANGES IN THE WRITTEN PARTICULARS

- 4.1 An employer is required to notify an employee of the nature and date of any change to the particulars contained in the written statement not later than one month after the change comes into effect. In the case of a change which results from an employee being required to work outside the State, the employer must notify the employee of any such change prior to the employee’s departure from the State.
- 4.2 The requirement to notify the employee of any change in the particulars set out in the written statement does not apply if the change results from a change in legislation, administrative provisions or collective agreements

to which the employer has referred the employee in the written statement.

5. COMPLAINTS TO RIGHTS COMMISSIONER

Referral Of Complaints

- 5.1 An employee may present a complaint to a Rights Commissioner if it appears that his/her employer has failed to provide a full and accurate written statement of the particulars of the terms of employment or has failed to notify the employee of any changes to the particulars in the statement. A complaint to a Rights Commissioner may be made by giving notice of it in writing on the appropriate form. The form is available from the Rights Commissioner Service, Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4 (phone 01 - 613 6700), Lo-Call 1890 220 227.
- 5.2 The Rights Commissioner, on receipt of a complaint, will send a copy of the notice of complaint 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 complaint. After hearing the parties, the Rights Commissioner will issue a written recommendation. Proceedings before a Rights Commissioner will be held in private.

Rights Commissioner's Recommendation

- 5.3 The recommendation of the Rights Commissioner shall do one or more of the following:-
 - (a) declare that the complaint was or was not well-founded,
 - (b)
 - (i) confirm all or any of the particulars contained or referred to in the written statement,
 - (ii) alter or add to the written statement for the purpose of correcting any inaccuracy or omission in the statement,
 - (c) order the employer to give the employee a written statement containing such particulars as may be specified by the Rights Commissioner,

- (d) order the employer to pay the employee compensation of a maximum of 4 weeks remuneration.

5.4 In relation to (b) (ii) above, where the Rights Commissioner alters or adds to the written statement for the purpose of correcting any inaccuracy or omission, the written statement as added to or amended by the Rights Commissioner shall be deemed to have been given to the employee by the employer.

Time Limit For Bringing Complaints

5.5 An employee may bring a complaint at any time during his/her employment and for up to 6 months from the date of termination of employment.

6. EMPLOYMENT APPEALS TRIBUNAL

Appeal From Recommendation Of Rights Commissioner

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

6.2 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.

6.3 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 which may affirm, vary or set aside the recommendation of the Rights Commissioner.

Non-Implementation By Employer Of Recommendation Of Rights Commissioner

- 6.4 Where an employer has neither implemented nor appealed the Rights Commissioner's recommendation, the employee may complain to the Employment Appeals Tribunal. The employee must notify the Tribunal in writing of the complaint. In such circumstances, the Tribunal is empowered to issue a determination without rehearing the case and, if it upholds the complaint, will confirm the recommendation in its determination.

Non-Co-Operation With Employment Appeals Tribunal

- 6.5 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 € 1269.74 (£1,000).

Appeals To High Court

- 6.6 A party to proceedings before the Employment Appeals Tribunal may appeal to the High Court from a determination of the Employment Appeals Tribunal on a point of law.

Referrals By The Minister To High Court

- 6.7 The Minister, at the request of the Tribunal, may refer a question of law to the High Court for determination.

7. ENFORCEMENT OF DETERMINATIONS OF EMPLOYMENT APPEALS TRIBUNAL

- 7.1 If an employer fails to carry out in accordance with its terms a determination of the Tribunal within 6 weeks from the date on which the determination is communicated to the parties, (no appeal having been brought against the determination, or if so, it having been abandoned) the District Court shall, on application to it in that behalf by -
- (i) The employee concerned,
 - (ii) The employee's trade union,

- (iii) The Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

Without hearing the employer or any evidence (other than in relation to the matters aforesaid) make an order directing the employer to carry out the determination in accordance with its terms and may also order the employer to pay interest on the amount of any financial compensation awarded.

8. REPEAL OF PROVISIONS OF MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACT, 1973

- 8.1 This Act repeals sections 9 and 10 of the Minimum Notice and Terms of Employment Act, 1973 which related to an employee's entitlement to information about terms of employment. Those sections have been overtaken by the provisions of this Act.