



An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission

## Employment (Miscellaneous Provisions) Act 2018

### FAQ for Employers

#### Q1. What is the Employment (Miscellaneous Provisions) Act 2018?

The *Employment (Miscellaneous Provisions) Act 2018*, hereafter known as the 'Act', makes changes to the *Terms of Employment (Information) Act 1994*, the *Organisation of Working Time Act 1997*, the *National Minimum Wage Act 2000*, the *Unfair Dismissal Act 1997* and the *Workplace Relations Act 2015*.

#### Q2. When does the Act come into effect?

The Act comes into effect from Monday 4 March 2019

### Terms of Employment (Information) Act 1994

#### Q3. What changes have been made to the *Terms of Employment (Information) Act 1994*?

Currently, you must provide new employees with their terms of employment in writing within two months of starting a new position. These terms set out specific details of the employment relationship and include information like place of work, job title, start date, working hours etc.

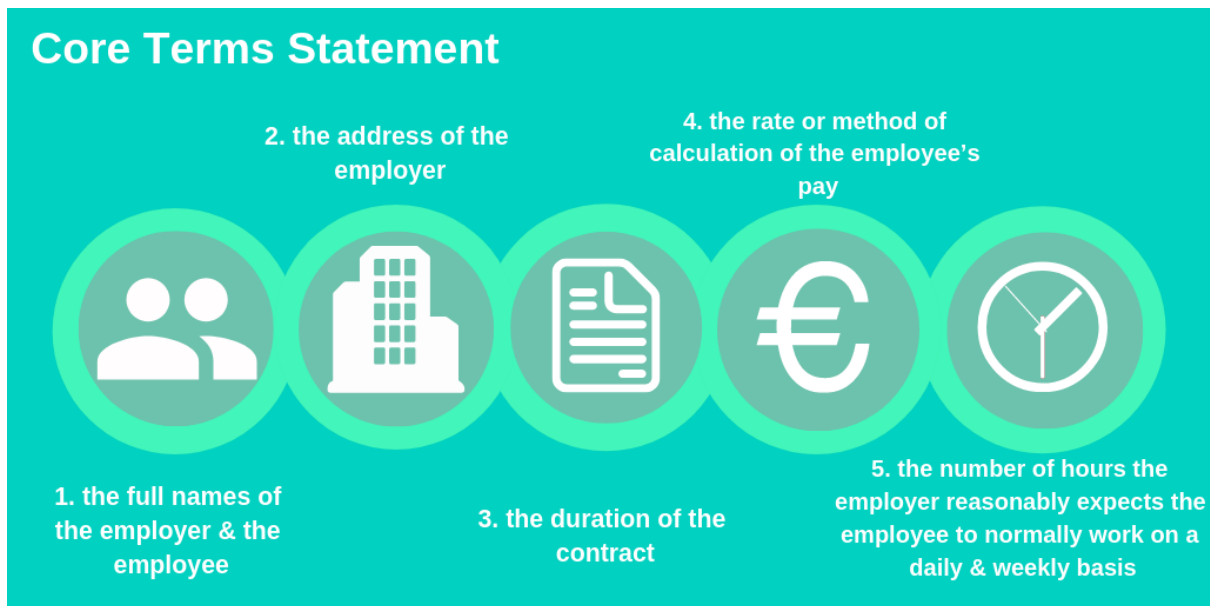
#### What is a statement of core terms?

Under the new Act you must now provide new employees with **five** core terms of employment within **five** days of starting a new job. These core terms are:

1. the full names of the employer and the employee,
2. the address of the employer,
3. the duration of the contract (where temporary or fixed-term),
4. the rate or method of calculation of the employee's pay, and
5. the number of hours the employer reasonably expects the employee to normally work on a daily and a weekly basis.

You must provide these terms to the employee in writing. The remaining terms of employment must also be provided to new employees in writing within two months. All written statements must be signed and dated by you and a copy kept on file for one year.

For a template of the statement of core terms, see [www.workplacerelations.ie](http://www.workplacerelations.ie)



### **What about my employees going to work abroad?**

Where an employee is working for at least one month outside the state they must be given their statement of core terms before they leave as well as their full statement of Terms.

### **What about existing employment contracts?**

Existing employees will now be able to request a statement of core terms from you and you must provide this document within two months. Some employees may request this as they may wish to know what you reasonably expect their normal working day and working week to be.

### **What if the employment relationship ends before two months?**

You must still provide the employee with their terms of employment within two months.

### **What happens if I don't provide the statement of core terms or terms of employment within two months?**

Failure to provide a statement of core terms and written terms of employment to new or existing employees may result in an employee taking a case for adjudication at the Workplace Relations Commission. If the Workplace Relations Commission (WRC) finds in favour of the employee, they may be awarded up to four weeks' pay.

It is an offence for an employer to fail to provide the statement of core terms to employees within one month of starting employment. It is also an offence for an employer to deliberately or recklessly

provide false or misleading information to an employee in their statement – for example to put the incorrect name of the employer on this statement.

**Q. 3 What are the new offences under the *Terms of Employment (Information) Act 1994*?**

- A. It is an offence for an employer to fail to provide the statement of core terms to employees within one month of starting employment.
- B. It is an offence for an employer to deliberately or recklessly provide false or misleading information to an employee in their statement of core terms.
- C. There are defences for employers e.g. where the employer exercised due diligence and took reasonable precautions to ensure that the Act was complied with or a genuine clerical error was made.

**Penalisation under the *Terms of Employment (Information) Act 1994***

Penalisation is broadly defined under the Act. If an employee feels they are being penalised for asking for or invoking any of their rights under the Act they can take a case to the Workplace Relations Commission for adjudication. The maximum redress an Adjudication Officer (AO) can award under this circumstance is four weeks' pay. However, this is in addition to redress an employee may receive for failure to receive either of the written statement of terms of employment (also maximum four weeks wages). Therefore an employee can be awarded 8 weeks (4 +4) wages under this Act.

**Prosecution**

A WRC inspector may issue a fixed payment notice in respect to either offence. This can occur where the inspector has reasonable grounds to believe your employer has committed an offence or. Prosecution may lead to a Class A fine of €5,000 or imprisonment of up to 12 months. Directors can also be liable for corporate offences.

## Organisation of Working Time Act 1997

### Q4. What changes have been made to the *Organisation of Working Time Act 1997*?

Under the Act

- the use of zero hours contracts has been restricted
- Minimum payments for an employee called into work in certain circumstances
- Employees have the statutory right to request to be placed on a band of hours that reflects hours of work

### What are the bands of hours?

Under the Act the bands of hours are as follows:

| Band | From              | To       |
|------|-------------------|----------|
| A    | 3 hours           | 6 hours  |
| B    | 6 hours           | 11 hours |
| C    | 11 hours          | 16 hours |
| D    | 16 hours          | 21 hours |
| E    | 21 hours          | 26 hours |
| F    | 26 hours          | 31 hours |
| G    | 31 hours          | 36 hours |
| H    | 36 hours and over |          |

### Do I have to comply with the banded hours provision?

Yes, banded hours will apply across all employments and sectors and not just those where banded hours arrangements are a normal part of the working environment. However, they will only apply where the criteria set out in the Act are met. An employee who is working over 12 months for you has the right to request to be placed in a band of hours which more accurately reflects the reality of the hours worked in the previous 12 months reference period. The banded hours provisions will **not** apply where you have a banded hours arrangement in place through collective bargaining.

### **Placing an employee on banded hours**

If your employee habitually works more hours each week than is provided for in their contract of employment or statement of terms of employment, they have the right to request to be placed in a band of weekly working hours that better reflects their actual working time.

They must make this request to you in writing. You then have four weeks to consider their request.

If an Adjudication Officer (AO) finds in the employees favour the redress will be that they are placed in the appropriate band of hours. You will not have to pay additional compensation other than to place them in the band of hours.

### **In what situations can I say no to placing an employee on a band of hours?**

- a. the facts do not support the employee's claim
- b. significant adverse changes have impacted on the business (e.g. loss of an important contract),
- c. emergency circumstances (e.g. business has had to close due to flooding),
- d. where the hours worked by the employee were due to a genuinely temporary situation (e.g. cover for another employee on maternity leave).
- e. if you have already entered **into** a banded hour arrangement through an agreement by collective bargaining with their employees

### **Penalisation provisions have been enhanced under the Organisation of Working Time Act**

An employer shall not penalise or threaten penalisation for

1. Invoking any right under the Organisation of Working Time Act
2. Opposing in good faith an action that is unlawful under this Act (e.g. refusing to conspire in falsifying hours worked)
3. Giving evidence in any proceedings under this Act (e.g. being a witness for somebody else pursuing a case under the Act in the WRC or Labour Court)
4. Giving notice of the intention of doing any of the above.

Examples of penalisation include:

- (a) suspension, lay-off or dismissal or the threat of suspension, lay-off or dismissal
- (b) demotion or loss of opportunity for promotion
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours
- (d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty)
- (e) coercion or intimidation

If an employee believes they have been penalised for asking for seeking clarification on their working time or invoking any right under this Act, they may pursue a case to the WRC.

If an employee believes s(he) has been penalised or threatened with penalisation for invoking any right under this Act, the Adjudication Officer may award up to two years of salary.

## National Minimum Wage Act 2000

### Q.5 What changes have been made to the *National Minimum Wage Act 2000*?

Under the new Act wage rates for employees under 18 and those over 18 have been simplified and will be solely based on age. Trainee rates of pay have been abolished.

**What are new wage rates? See box below**

| Age                   | Amount | % of NMW |
|-----------------------|--------|----------|
| Under 18              | €6.86  | 70%      |
| 18 years old          | €7.84  | 80%      |
| 19 years old          | €8.82  | 90%      |
| National Minimum Wage | €9.80  | 100%     |

### Q 6. I run an employment agency. Will it apply to my employees?

Yes – if the employment agency is liable to pay the wages of the employee then it is covered by the definition of employer.