



REVIEW OF 2009

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Dara Calleary T.D.,
Minister for Labour Affairs



MINISTER'S FOREWORD

Since I assumed the role of Minister for Labour Affairs last year, it is fair to say that the labour market has seen the emergence of significant challenges, not least arising from the unprecedented economic situation worldwide. 2009 was a difficult year for many engaged in business in Ireland.

Nevertheless, it was one in which we remained aware of the need to maintain vigilance in relation to the rights of those in work and to ensure that our businesses are competing fairly. Indeed the National Employment Rights Authority (NERA) has perhaps had its busiest ever year despite, and indeed because of, the emergence of these difficult circumstances.

Employment law exists for a reason and we are proud of the protection we offer to workers here in Ireland while balancing this against the need, ever more apparent, to allow for necessary flexibility in the workplace in order for business to survive in difficult times. The law is not there to catch people out: rather it is to ensure that everyone is afforded the same rights. NERA's activities help not only individual workers to obtain their entitlements but also ensures that employers operate on a level playing pitch whereby no competitive advantage can be gained by illegally undercutting workers' statutory entitlements in the area of pay and conditions.

At this time, we need to do as much as we can to assist business. I am therefore pleased that NERA has, during 2009, invested considerable resources in assisting employers to meet their obligations under employment law, through a proactive education and awareness programme supported by focused inspection activity. NERA also worked closely during the year with a number of employer representative bodies including the Small Firms Association and the Restaurants Association of Ireland to encourage the compliance agenda and I believe that there is a lot of merit in this type of collaborative working arrangement and am heartened that NERA is planning more of this in 2010. That said, of course for those who repeatedly or deliberately break the rules, NERA has had to initiate enforcement action in 2009.

The past year has also seen NERA assume a number of new roles which have significantly benefited my Department and I want to put on record my thanks to NERA for this work. In April 2009, in response to my request, NERA took responsibility for all redundancy-related telephone enquiries so that the Redundancy Payments Section in my Department could focus completely on the processing of redundancy payment claims against a huge influx of claims lodged. NERA also took on the enforcement role in relation to employment permits legislation during 2009. In the current climate, the ability of an organisation to be flexible is key and NERA has not been found wanting in this regard.

2010 will no doubt offer its own new challenges and I fully expect NERA as a responsive organisation to meet these challenges. NERA is ably supported in its task by the Advisory Board chaired by John Dennehy and I would like to acknowledge the contribution which the Board is making to NERA's work. In particular, I am grateful to the Board for the work undertaken at my request in July 2009 on a draft code of practice for use by NERA staff in the conduct of their compliance work. I look forward to reviewing the work of the Board in this area shortly and ultimately, to having the code finalised and put into practice.

A handwritten signature in black ink that reads "Dara Calleary".

Dara Calleary T.D.,
Minister for Labour Affairs

**Ger Deering**Director
NERA

DIRECTOR'S REVIEW OF 2009

As a society we have an expectation that regulation can and should protect businesses and individuals. These protections are more necessary than ever in difficult economic circumstances when people may be tempted to ignore or flout the law to gain competitive advantage. It is therefore essential that compliance with statutory minimum pay and conditions for workers is promoted and enforced in the current climate.

The year just ended was a very challenging one for employers, employees and of course, for those who have lost their jobs. NERA has been busy; both in assisting employers understand their obligations and assisting employees in relation to their entitlements under employment legislation. In addition we ensured that appropriate action was taken where breaches of employment law were detected.

A feature of 2009 was the extent to which individual employers and their representative bodies requested that NERA play its role in ensuring a level playing field, by identifying and dealing with non-compliant employers who pose a business threat to legitimate employers. Breaches of employment law and the underpayment of statutory minimum rates of pay, whether through ignorance of the law or deliberate non-compliance, give an unfair competitive advantage. It is also unfair on employees who are underpaid and denied their statutory minimum entitlement. NERA protects both compliant employers and sustainable jobs by ensuring that those who abide by the law are not disadvantaged. In addition vulnerable employees are not exploited. We achieve this through effective, efficient and proportionate enforcement of employment legislation.

Information

One of NERA's key strategic activities is the provision of information on employment legislation to both employers and employees. Through this service we provide clear, concise and accurate information both proactively and in response to queries. In 2009 we also took on the role of dealing with calls in relation to redundancy on behalf of the Department of Enterprise, Trade and Employment. This means that in addition to accessing general information on employment law and redundancy issues, callers to NERA can also receive limited information on their redundancy claims. This has enabled Department staff to prioritise the processing of redundancy claims.

We provide information through a variety of channels. Our telephone information service provided information to over 150,000 people during 2009. This is an increase of over 30% on the 2008 figure of 115,000, which in turn was an increase of 30% on the previous year.

With the increase in demand for information we introduced a new 24 hour a day service, offering callers the option to listen to recorded information on key employment rights topics at a time that suited them. Almost 21,000 callers availed of this option. 129,500 callers had their queries dealt directly by our experienced Information Officers.

We estimate that employees and former employees accounted for approximately 61% of callers while an estimated 39% were employers. Redundancies, holiday entitlements, terms of employment and payment of wages represented the highest categories of queries.

Our website (www.employmentrights.ie) remains a very popular source of information, recording over 1.5 million web page impressions during 2009. We intend to develop the website further in the course of 2010. We received and dealt with over 12,000 queries through the website. We continue to provide a broad range of information through booklets and leaflets. These include '*Guide to Inspections*' and '*Guide to Employment Rights*' leaflets, a booklet entitled '*Employment Law Explained*' and a publication entitled '*Starting or Expanding a Business*'.

As part of our continuing commitment to provide fully accessible information and services to all our customers, we proactively provided information by participating in 35 events organised by trade unions, employer bodies, public bodies, educational institutions and civic society groups throughout the country. In 2010 we propose to provide workshops throughout the country where employers and employees can meet NERA staff in an informal setting with a view to getting information relevant to their particular circumstances.

Inspections

Monitoring and enforcing compliance with employment law through inspections is also a key element of our work. We inspected approximately 8,800 employers in 2009 compared to approximately 9,300 in 2008. The 8,859 cases closed in 2009 demonstrated an overall compliance level of 69% though there is a very wide variance in the level of compliance in the various sectors. The number of inspections carried out under the separate pieces of legislation totalled 22,445 in 2009 compared to 22,450 in 2008. In addition 3,352 calls and interviews were undertaken in 2009 by comparison with 5,444 in 2008.

To date, we have reported the actual number of inspections carried out under each piece of legislation. This meant that the inspection of a single employer could account for up to four inspections. From 2010 we intend to move to a case / employer based method of reporting on inspections carried out. We believe this additional information is more representative of the inspection process. However, data on inspections carried out under the separate pieces of legislation will continue to be collated and provided for comparison purposes.

Our inspections under both the Industrial Relations and Minimum Wage legislation saw a total of €2.5 million in unpaid wages recovered for over 6,000 workers who were identified as having been paid less than their statutory minimum entitlement. While the amount recovered for individual employees varied significantly, the average amount paid was approximately €410 per employee. In 2009 we were also given the additional important role of securing compliance with Employment Permits legislation.

Prosecutions

NERA aims to achieve voluntary compliance and 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. In addition to this to this, NERA also initiates District Court criminal prosecution cases in the name of the Minister for Enterprise, Trade and Employment on behalf of the Construction Industry Monitoring Agency (CIMA) and the Construction Workers Pensions Scheme (CWPS) where an employer has failed to comply with a Labour Court order directing the employer in question to register employees in a relevant pension scheme and / or remit contributions to the scheme. A total of 108 employers were referred in 2009 in comparison to 70 in 2008. A significant number of cases have been adjourned in the catering and electrical sectors due to ongoing and impending High Court cases or have been resolved prior to the court date. In 27 cases convictions were secured with fines ranging from €300 to €3,000.

Records play a key role in ensuring that employees' safety is protected, that they get paid for the hours that they work and receive their minimum holiday entitlement. Keeping proper records protects employees from being exploited and employers from mischievous or vexatious claims. Having identified significant problems in relation to record keeping on the part of some employers, NERA proposes to develop and distribute a guide to assist employers to meet their record keeping requirements in 2010.

Employers who are compliant or who are willing to become compliant have nothing to fear from NERA. In addition employers who keep their employment records in the manner required by statute will have inspections carried out quickly and with the minimum disruption.

Enforcement

In certain cases where employers fail to honour employment rights 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. A total of 45 such cases were concluded in 2009 in comparison with 46 in 2008. A total of €17,419 was paid to employees or former employees on foot of these cases.

NERA aims to achieve voluntary compliance and our priority is to have any breaches identified rectified and to have any sums of money due to employees paid.

Conclusion

We are committed to playing our part in driving the achievement of a national culture of compliance with employment legislation by continuing to proactively work with employer bodies, trade unions, individual employers and employees and all relevant stakeholders.

In 2010 we will introduce a customer feedback process to gauge perception of the quality of our services. It will provide valuable feedback on the level of satisfaction and identify areas requiring improvement. In addition, a code of practice for NERA staff is at an advanced stage of development. The Code of Practice, which was developed in consultation with staff and the Advisory Board will be submitted to Minister Calleary early this year. The Code of Practice will provide practical guidance on the delivery of a high standard of customer service in the performance of our functions. The Employment Law Compliance Bill, when enacted, will also make provision for the roll-out of this Code by means of statutory instrument. I welcome the development of such a Code of Practice, as it is entirely consistent with our commitment to delivering the highest quality and most transparent service to our customers. It will ensure a continuous improvement in the standard of service we provide.

I would like to thank the Tánaiste and Minister for Enterprise Trade and Employment, Mary Coughlan, the Minister for Labour Affairs Dara Calleary, the Management and staff of the Department of Enterprise Trade and Employment for their support and assistance in 2009. In addition I would like to thank the Chairman and members of the Advisory Board and all our stakeholders who have worked in cooperation with us throughout the year. In particular I wish to acknowledge the excellent work and achievements of the management and staff of NERA and express my sincere gratitude for the dedication, commitment and flexibility that they have demonstrated in meeting our customers' needs in 2009.

As our economy continues to navigate through the current economic turbulence, the work of NERA is more important than ever. We are committed to our mission and will continue to work with all our stakeholders to achieve a national culture of employment rights compliance.



Ger Deering

Director
NERA

ADVISORY BOARD

The Employment Law Compliance Bill provides for an Advisory Board for NERA. Pending enactment of the legislation that will establish NERA on a statutory basis early in 2010, the Minister for Labour Affairs, in 2008, established an Advisory Board on an interim basis. NERA has worked in close cooperation with the Advisory Board during 2009.

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:

Ms Stella Skowronska, language course coordinator and teacher

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

Ms Linda Tanham, Mandate

Mr Owen Wills, TEEU

Persons nominated by organisations representative of employers:

Ms Mary Cryan, IBEC

Mr John Flanagan, IBEC

Mr Eddie Keenan, CIF

ACCURATE RECORDS

PROTECTION FOR EMPLOYERS AND EMPLOYEES

The maintenance of proper records is a key element of ensuring compliance with employment law and protecting employees from being exploited. Lack of statutory records can also have very serious consequences for employees in terms of pension, social welfare and redundancy entitlements. It can also result in loss of revenue to the State.

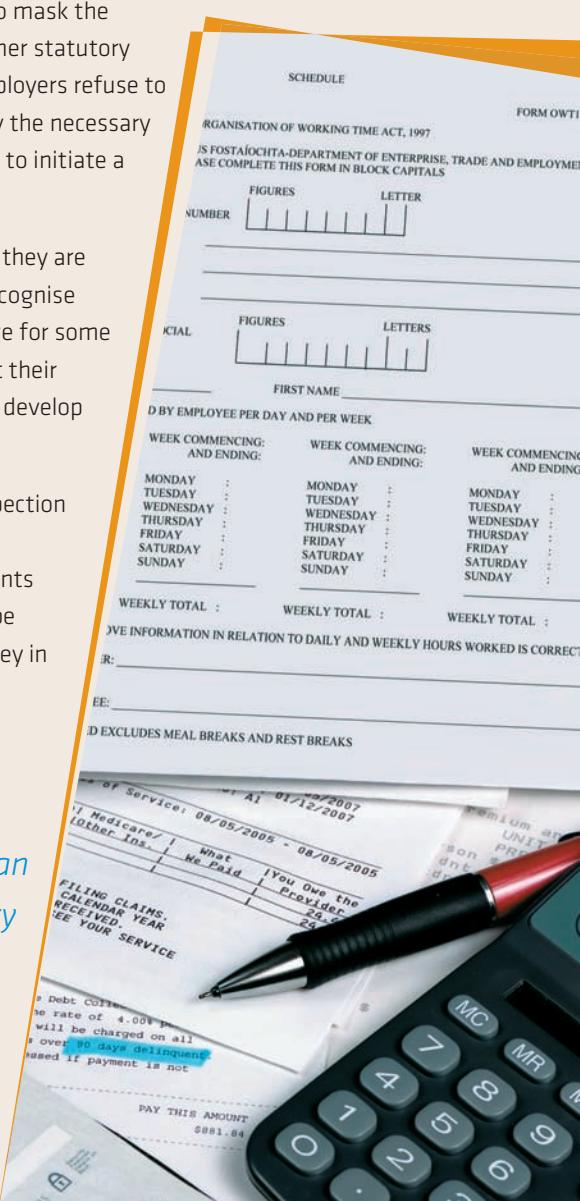
The failure to comply with the statutory requirements in relation to record keeping is a common breach detected by NERA. Some of the breaches detected can be minor and sometimes inadvertent. However, these infringements when brought to the employer's attention are generally rectified with no further action necessary. In a small number of cases the lack of records is of a much more serious nature.

Poor or false records are sometimes used in an attempt to mask the underpayment of statutory minimum rates of pay and other statutory entitlements. This can lead to situations where some employers refuse to cooperate with NERA Inspectors or fail or refuse to supply the necessary records, which ultimately leaves NERA with no option but to initiate a prosecution in such cases.

When an employer is notified of an impending inspection they are also informed of the records that will be examined. We recognise that knowing what records to keep can present a challenge for some employers. In order to further assist such employers meet their obligations under law in relation to records we propose to develop and distribute a guide to keeping records in 2010.

In addition to proving compliance and simplifying the inspection process, good record keeping can also protect employers from false or vexatious allegations. In the case of complaints investigated by NERA where the employer was found to be compliant the records maintained by the employer were key in demonstrating compliance.

Poor or false records are sometimes used in an attempt to mask the underpayment of statutory minimum rates of pay and other statutory entitlements.



LEGISLATIVE ANALYSIS

National Minimum Wage Act

Experienced adult workers are entitled to a minimum rate of pay, the current minimum rate is €8.65 per hour. There are some exceptions including those employed by close relatives, those under 18 years of age and trainees or apprentices. NERA received 412 complaints in relation to the National Minimum Wage Act in 2009 and carried out 2,981 inspections under this legislation. We found a very high level of compliance at 93% of those inspected and a total of €198,000 was paid in 2009 to employees who had been identified as underpaid.

The main area of non-compliance related to employees who had been incorrectly paid a training rate or those paid the inexperienced worker rate when they should have been paid the minimum wage rate of €8.65. In one such case an employee at a hardware premises was being paid €6.50 an hour as an 'apprentice' where no formal apprenticeship scheme was in place. As a result of an inspection by NERA, the employer paid the employee a sum of €2,500 he was due in underpayment of the National Minimum Wage. Discrepancies in holiday entitlements and record keeping were also discovered. The employer was advised to rectify these matters. It is often the case that where an employer is non-compliant in one area, there will also be non-compliance in other areas. The employer in this case rectified the matters concerned and no further action was necessary.

Outside of Dublin and Cork, where hairdressing is subject to EROs (Employment Regulation Orders), the sector is subject to the National Minimum Wage. Considerable non-compliance with the National Minimum Wage was found in a number of hairdressing establishments. Three examples are worth noting. In the first case, two experienced non-Irish nationals were being underpaid in a salon in the West of Ireland on the basis that their experience abroad was not regarded as relevant in Ireland. This is not the case – an experienced employee must be paid the relevant minimum rate. Over €2,400 was repaid in this case.

In the second case, in the Midlands, a salon was required to pay in excess of €9,000 to five employees who they had classed as trainees. However they were not participating in structured training and there was no training plan or assessment in place as is required by law. Not only did this example result in payment of arrears, it also resulted in the employer putting a proper training scheme in place.

The main area of non-compliance related to employees who had been incorrectly paid a training rate or those paid the inexperienced worker rate when they should have been paid the minimum wage rate of €8.65.



Finally, a salon in the North West with a single employee was found to have been underpaying this employee, who subsequently received over €1,000 in arrears. This example is notable, as it is often lone employees, or those working in small numbers who most need NERA's services. Furthermore, it can be the case that new, small businesses are the ones who need assistance in understanding their full legal obligations.

Full details in relation to the National Minimum Wage, including criteria relating to training are available on our website and in the *Detailed Guide to the National Minimum Wage Act*, available in hard copy from NERA.

Payment of Wages Act

All employees are entitled to receive a statement of earnings (payslip) with every payment of wages. This should show gross wages and the nature and amount of each deduction made. Breaches under the Payment of Wages Act generated the highest number of complaints received by NERA in 2009, totalling 555. It was also one of the highest ranked topics of calls to the NERA information line. A total of 4,210 inspections were carried out under this legislation in 2009. These inspections recorded compliance levels of 87% in 2009.

The main breaches detected related to failure to provide payslips, making illegal deductions or not recording gross wages and / or deductions on the payslip. It appears to be a particular issue where board and lodgings are provided and charged for by the employer. The practice of not showing gross wages or deductions can have implications for the employee in terms of entitlements in the event of losing their job and for the State in terms of lost revenue.

A typical example is the case of a small business in County Dublin where none of the employees were receiving payslips unless they asked for them. In addition the employer was deducting €20 per day for every day taken as annual leave. The accountant at the business was calculating pay correctly on the payslips and was unaware of the deductions. Given the fact that staff were not receiving the payslips, the practice went unnoticed for some time. Interviews with employees during the inspection uncovered the problem and over €8,500 was reimbursed to staff as a result.

Full details in relation to payment of wages are available on our website and in the *Payment of Wages Act: Explanatory Booklet for Employers and Employees*, available in hard copy from NERA.

Organisation of Working Time Act

The Organisation of Working Time legislation sets out the statutory requirements in relation to holidays, public holidays, breaks, rest times and records to be maintained. In 2009, 144 complaints were received in respect of the Organisation of Working Time Act. The issue of holiday entitlement also remains the second highest topic for calls to NERA's information centre. NERA carried out 4,229 inspections under the Organisation of Working Time Act and found a 53% compliance rate among businesses inspected.



A key area of non-compliance (which has been identified separately in this report) relates to employers keeping insufficient or no records. Lack of records (in particular not recording the hours employees work), makes it difficult or impossible to check if employees are being paid their legal minimum rates. Employers must record the hours that employees work and where no electronic recording system is in place, employers are obliged to have their employees agree the records by signing them. This is not just a legal requirement but also protects employees from exploitation and employers from false or vexatious claims.

The evidence obtained from inspections carried out would suggest that in some cases there is a lack of understanding of how holiday entitlements apply. In one case it was discovered that a childcare facility in the Midlands not only failed to keep timesheets for employees, but was also not paying staff for any annual leave. As they only open for 37 weeks of the year, the employer thought that the staff were not entitled to any paid leave. This is not the case, part-time or seasonal workers are entitled to paid leave on a pro-rata basis. In this case the employees were owed and paid nearly €1,800 in unpaid holidays. In another case nearly €5,000 was paid to staff by an employer who was found to have deducted public holiday entitlements from their staff's annual leave entitlements.

The issue of holiday entitlement also remains the second highest topic for calls to NERA's information centre.

Protection of Young Persons

The Protection of Young Persons (Employment) Act 1996 is designed to protect the health of young workers, and to ensure that employment undertaken during the school year does not put their education at risk. The law sets minimum age limits for employment, and provides for rest intervals and maximum working hours and prohibits the employment of those under 18 years of age on late night work. It also sets out the criteria under which 14 and 15 year olds can be employed.

All NERA inspections have a Protection of Young Persons component. We also carry out spot checks on employers' premises after 10pm and at weekends to ensure compliance. In 2009 a total of 4,218 night-time inspections were carried out. Compliance in the businesses inspected was recorded at 99% for 2009. Notwithstanding this, NERA received 136 complaints with regard to

Protection of Young Persons in 2009.



In addition to its role in promoting compliance with and enforcing this legislation, NERA issues licences on behalf of the Minister for Enterprise Trade and Employment for children under 16 years of age to be employed in cultural, artistic, sports or advertising work. Licences are only issued for work which is deemed not to be harmful to the child's safety, health or development and does not interfere with their attendance at school, vocational guidance or training programmes or capacity to benefit from the instruction received. NERA issued 133 Licences in 2009.

Employment Permits

The principal purpose of the Employment Permits Acts, 2003 and 2006 is to prohibit the employment of non-EEA nationals (and at present Bulgarian and Romanian citizens) without an employment permit issued by the Department of Enterprise, Trade and Employment.

Section 22 of the Employment Permits Act 2006 enables the appointment of authorised officers to enforce the provisions of the Act. NERA Inspectors were appointed as authorised officers for the purpose of enforcing Employment Permits Legislation for the first time in 2009. A total of 1,115 inspections were undertaken under this legislation in 2009 and in the businesses inspected a compliance rate of 60% was recorded. The main breaches related to employers employing people who are not legally permitted to work in the State without a work permit. As with other areas of operation NERA found a general willingness among employers to become compliant following an inspection.

In most cases where employers were found to be employing people in contravention of employment permits legislation, employers claimed either not to know that employees required a permit, or not to know their nationality.

In one case, a maintenance services company in the West of Ireland was revisited following an underpayment case in 2005. The company was found to be compliant in respect of employment legislation, but did not have work permits for 42 foreign nationals working for them. After being told of the requirement, they applied for work permits for all 42 members of staff.

A business in Munster faced a similar issue, where four employees were identified as requiring a work permit. Again the employer sought and received permits for each employee as they felt they were invaluable to their business.

Other Legislation

NERA has a role in enforcing aspects of the Redundancy Payments Acts, the Part-Time Work Act and the Employment Agencies Act. A total of 12 inspections were carried out under these pieces of legislation with 10 of the 12 found to be compliant.

SECTORAL ANALYSIS

Specific Industry Agreements

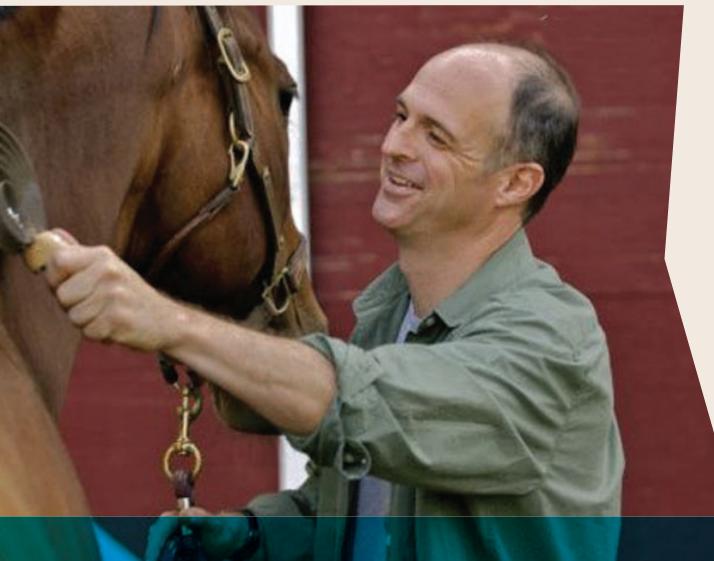
Employers and their employees in certain sectors are covered by specific agreements.

Agreements on pay and conditions made by Joint Labour Committees are known as Employment Regulation Orders (EROs). Collective Agreements resulting from negotiations between trade unions and employers registered with the Labour Court are known as Registered Employment Agreements (REAs). Employers in sectors covered by REAs and EROs are obliged by law to pay the wage rates and provide the conditions of employment prescribed by the respective orders and agreements. NERA has a role in enforcing these orders and agreements through awareness and information, and through workplace inspections. NERA plays no role in policymaking, formulation of law or setting of rates or conditions of employment.

The full list of EROs and REAs is available on our website with links to further details are available on the Labour Court website. Following are details of the sectors where NERA carried out significant compliance activity in 2009.

Agriculture

The Agricultural ERO applies to employers and employees in the agricultural, horticultural and equestrian sectors. NERA carried out 72 inspections in this sector in 2009. Compliance levels in the case of these inspections were recorded at 56% and €90,000 in underpayments of statutory minimum rates were identified and paid to workers. A particular problem detected concerned rest periods and payment of statutory minimum rates in the equestrian sector. For this reason we propose to engage with representatives of employers in the sector in 2010 to create awareness of their obligations and promote compliance. This will be supported by a compliance campaign which will involve providing information to this sector and an inspection campaign of equestrian employers.



In the case of one inspection carried out under the Agricultural ERO, an employer was found to have underpaid staff by almost €7,000. In addition the employer was not keeping a record of hours worked. When these breaches were pointed out, the employer paid the wages due to staff and started recording hours worked. No further action was required.

Catering

All catering establishments in the country are subject to a Catering ERO. Traditionally there are two Joint Labour Committees and two EROs – one for the Dublin area and one for areas outside Dublin. While there are still two Catering Orders, the rates and terms and conditions in both were made identical since June 2009. This makes it easier for employers to understand and comply with their obligations. A total of 442 inspections of catering employers were carried out in 2009 and a total of €737,000 was paid to employees to compensate for underpayments of their statutory minimum entitlements. This was a follow on from an intensive campaign in the catering sector in 2008, which involved inspections of over 1,000 catering employers. Despite this level of activity the level of compliance in businesses inspected in 2009 remained very low at 21%.

One of the issues our inspections have raised relates to the type of establishments that are subject to the Catering ERO. In this regard NERA welcomed the two Labour Court decisions in 2009 (under Section 57 of the 1946 Industrial Relations Act) which brought increased clarity in its finding that employees involved in the preparation of food for consumption on the premises are covered by the catering EROs. The Labour Court also clarified that catering establishments operating in food halls, for example in shopping centres, and that share the use of communal seating areas provided and maintained by the shopping centre, come within the scope of the catering JLCs and EROs.

A number of cases came to our attention in 2009 where employees in catering establishments were being underpaid. In excess of €7,000 was recovered for employees at an establishment in the South West who were only being paid €3 - €4 per hour and working long hours without breaks. A similar case was found in a County Dublin restaurant where one member of staff was working in excess of 50 hours per week and receiving only €5 per hour. In this case €6,000 was recovered for the employee. NERA can also recover wages owing to former employees. A public house in the Midlands was obliged to pay €3,400 to two former employees who had not received the correct rate for the duration of their employment.

In order to address some of these issues in the catering sector, NERA participated in a road show in cooperation with the Restaurants Association of Ireland in 2009 to provide information to employers in the sector. We also collaborated with Fáilte Ireland who prepared and distributed a detailed guide to assist restaurants to be compliant. We will continue to encourage compliance in the sector in 2010 through the provision of information, education and inspection.



Contract Cleaning

There are two EROs which set the rates of pay and terms and conditions for those employed in the contract cleaning industry – one for those located in Dublin and one for those based outside of Dublin. Through compliance checks in 2008 we identified a high level of non-compliance in this sector.

For this reason we carried out a compliance campaign in the industry in 2009. All employers identified were written to and informed of their obligations. Follow up inspections were carried out and a total of 178 employers were inspected. A compliance level of 50% was recorded in the workplaces inspected and €125,000 in underpayments in respect of statutory minimum rates were identified and paid to employees.

Some employers claimed they were not aware of ERO pay rates. In one such case a County Dublin cleaning firm was found to owe 10 employees a total of over €5,600. In addition they were not keeping proper records. A NERA inspection ensured that the underpayment identified was paid, that staff received the correct rate and that proper records are now maintained.

Retail Grocery and Allied Trades

The Retail Grocery and Allied Trades ERO sets the rates of pay and terms and conditions of those employed in grocery shops and convenience stores. The applicability of the order to certain employees in this line of business has been in dispute recently. This arose, particularly, in relation to convenience stores attached to fuel stations. NERA expects that the Labour Court will make a determination on at least one such case early in 2010. Such a decision will bring clarity and guidance in this area. NERA carried out 284 inspections in the sector in 2009 and found a 28% compliance level. A sum of €357,000 was paid to employees in the sector as a result of the inspections.

NERA will be carrying out a compliance campaign in this sector in 2010. We have had initial discussions with employer representatives and plan to have a more intensive collaboration with them in 2010 with a view to improving awareness with regard to their obligations. This will be supported by increased inspection activity in the sector.

Large name retailers are not immune from breaches of employment rights and examples in this sector include two well-known high street retail grocery outlets. In the first case, over €4,600 was recovered for 33 employees after the store was inspected. Although the employer had started to pay the correct rate a week before the inspection, an interview with staff revealed there had been nine months of underpayments.

A further example in Dublin revealed that 35 employees were being underpaid. The owners had an external company handling the payroll and had incorrectly assumed it would pay the required rates. In this case the arrears were paid and the inspector was able to give information to the employer on how to ensure the correct rates were applied in future. A final and interesting example in this sector concerned an employer who claimed that employee had requested that he reduce the employee's wages below the rate at which Family Income Supplement and One Parent Family Payment would be discontinued, thereby allowing the staff member to claim benefits to which there was no entitlement.

Hotels

Hotels in the Dublin, Cork and the Dun Laoghaire areas are subject to National Minimum Wage legislation while those outside these areas are subject to the rates of pay and terms and conditions set out in the Hotels ERO. NERA commenced a compliance campaign in the hotel sector in 2009. This involved working with Fáilte Ireland, the Irish Hotels Federation, IBEC, SFA and ISME to disseminate information to employers in the hotel sector regarding their obligations as employers. Working in cooperation with NERA, Fáilte Ireland developed a guide specifically for employers in the hotel sector to assist them in achieving compliance.

NERA carried out 131 inspections in the sector and found a 27% compliance rate. In addition €165,000 in underpayments identified was paid to workers. The main areas of non-compliance related to insufficient records, underpayment of the statutory minimum rates of pay and not recording the correct gross pay or deductions on payslips. Having carried out the information element of the compliance campaign and given that non-compliance remains high in the sector, NERA's focus in 2010 will be on carrying out an increased number of inspections to improve compliance levels.

Some high figures of underpayment of statutory minimum entitlements have been recorded in this sector. A hotel in the South was found to owe 90 employees in excess of €30,000. The full amount was paid within two months of the inspection. Where it is not possible to pay the full amount legally due immediately, employers and employees may agree to the money due being paid in instalments. This was the case in Co. Galway where 60 employees were owed over €15,500. NERA secured a commitment from the employer to pay the money due to employees in instalments and ensured that new rates were also paid in addition to ensuring that new terms and conditions applied and that new record keeping practices were put in place. NERA often works with employers in cases like this in an attempt to ensure an outcome, which enables staff to receive their legal entitlement without putting the business at risk.

NERA often works with employers in cases like this in an attempt to ensure an outcome, which enables staff to receive their legal entitlement without putting the business at risk.



Security

The Security ERO sets the rates of pay and terms and conditions of those employed in the contract security industry. During the period of 2007 and 2008 NERA carried out a compliance campaign in the security industry. Working in cooperation with the Private Security Authority, we provided all employers and employees in the industry with details of the Security ERO. This was followed by an extensive inspection campaign. In 2009 a further 48 inspections were carried out in the sector and a 46% compliance level was recorded among businesses inspected and a total of €285,000 was paid to employees who had been underpaid. In one case, a security firm was found to owe its employees nearly €35,000. Again, this company was allowed to pay staff in instalments to ensure they continued trading and all employees have now been paid their legal entitlement and are in receipt of the correct rate of pay.

Construction

The Construction REA provides the rates of pay and terms and conditions that should apply in the construction sector. NERA carried out 395 inspections in the construction sector in 2009. Among businesses inspected a compliance rate of 45% was recorded and €252,000 in unpaid wages was recovered for workers.

In general, NERA inspections in the Construction area arise as a result of:

- Requests from the Labour Court (relating mainly to the Construction (Pensions & Sick Pay) Registered Employment Agreement)
- Complaints received by NERA
- Construction campaign activity. NERA is currently undertaking compliance checks on publicly funded construction projects
- Employment Permit compliance checks

In the case of one Construction Company inspected in 2009, the hours people worked were not recorded and four employees were not paid their statutory minimum entitlement. The employer paid the four employees the €1,266 that was due to them and corrected their record keeping. In another case where records were not properly maintained one employee was found to have been underpaid by €3,679. The employer made good the underpayment and corrected the records breach. In a case referred to NERA by a Trade Union, 25 employees were paid a total of €43,000 between them in respect of underpayments of their statutory minimum rate.

ANNUAL BUDGET AND STAFF

Providing value for money was a key focus of NERA's operations in 2009. In much of our activity we managed to increase or maintain service levels with reduced resources. At the end of 2009 we had 119 staff by comparison with 132 at the end of 2008. The total cost of providing our services in 2009 was €7.9 million by comparison with €9.6 million in 2008. Achieving the level of services outlined above with diminishing resources is testament to the dedication of NERA staff who have shown a strong commitment to quality customer service.

All NERA staff are employees of the Department of Enterprise Trade and Employment and all finances are administered through that Department's budget and form part of the Department's accounts.

WORKING WITH OTHER AGENCIES

NERA is empowered in legislation to exchange certain information with the Minister for Social and Family Affairs 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 2009 a total of 58 joint investigations took place with Revenue and / or the Department of Social and Family Affairs. In many other cases information exchanges helped to uncover non-compliance with employment law, secure payment of wages for employees and save the Exchequer money.

In a number of cases where applicants sought to claim Family Income Supplement, the Department of Social and Family Affairs requested that NERA investigate why applicants were paid less than their statutory entitlement. Over 50 such cases were referred to NERA in 2009. In many cases, when following the NERA inspection, the employers paid the employees their statutory entitlement, the State was not required to pay the Family Income Supplement to the employee. In one case in the Midlands a joint effort established that not alone was the employer paying his employees the incorrect rate, but the employees were not registered with either the Revenue Commissioners or the Department of Social and Family Affairs. In addition the employer was actually claiming a social welfare payment. This collaborative approach with other agencies is a good example of where a joint approach taken across Government Departments and State Agencies can benefit both the individuals and Exchequer.



2009 AT A GLANCE

Information Services Summary

- * **150,485** calls dealt with in 2009
- * **12,224** emails dealt with in 2009
- * The most requested information categories were:
 - ✳ Redundancy
 - ✳ Holiday Entitlements
 - ✳ Terms of Employment
 - ✳ Payment of Wages
- * **1,501,378** website hits in 2009

Prosecution Activity Summary

- * **108** cases were referred for prosecution
- * **27** cases resulted in a conviction

Enforcement Activity Summary

- * **51** new cases were received
- * **45** cases were concluded

Inspection Services Summary

- * **25,797** calls, interviews and inspections were carried out in 2009 by NERA's inspectors.
- * **€2,495,508** in unpaid wages due to employees was recovered.

Summary of Inspections and Compliance Rate by Industry Sector – 2009

| Sector | No of Inspections | Compliance Rate (%) | Unpaid Wages Recovered (€) |
|-------------------------------|-------------------|---------------------|----------------------------|
| Agriculture | 72 | 56 | 89,713 |
| Catering | 442 | 21 | 736,469 |
| Retail Grocery & Allied Trade | 284 | 28 | 356,742 |
| Hotels | 131 | 27 | 164,918 |
| Contract Cleaning | 178 | 50 | 125,432 |
| Security | 48 | 46 | 285,112 |
| Construction | 395 | 45 | 252,357 |
| Electrical REA | 15 | 27 | 28,004 |
| Other | 101 | 88 | 60,242 |

Summary of Inspections and Compliance Rate by Employment Legislation – 2009

| Sector | No of Inspections | Compliance Rate (%) | Unpaid Wages Recovered (€) |
|------------------------------|-------------------|---------------------|----------------------------|
| National Minimum Wage | 2,981 | 93 | 197,767 |
| Payment of Wages | 4,210 | 87 | 0 |
| Organisation of Working Time | 4,229 | 53 | 198,752 |
| Protection of Young Persons | 8,232 | 99 | 0 |
| Employment Permits | 1,115 | 60 | 0 |
| Other | 12 | 83 | 0 |

CONTACT DETAILS

National Employment Rights Authority

O'Brien Road
Carlow
Ireland
Telephone: (059) 917 8800
Fax: (059) 917 8912
www.employmentrights.ie

NERA Information Service

Telephone: (059) 917 8990
Lo-Call 1890 80 80 90
Fax: (059) 917 8909

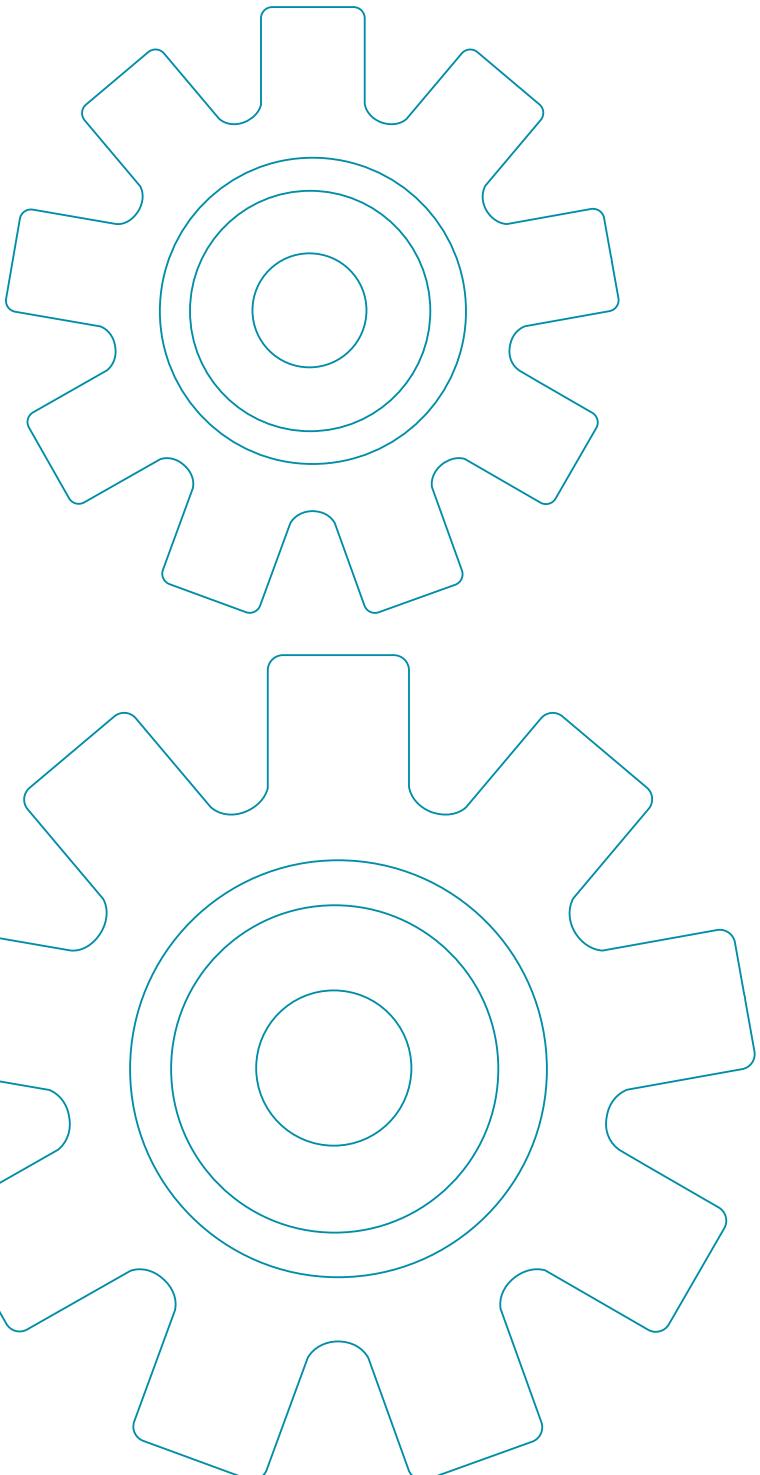
NERA Inspection Service

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.



An Roinn Fiontar, Trádála agus Fostaíochta
Department of Enterprise, Trade and Employment

 **NERA**
National Employment Rights Authority