



**AN BILLE UM FHOGRA IOSTA AGUS TEARMAI
FOSTAIOCHTA, 1972**

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT BILL,
1972**

*Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann*

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Commencement.
3. Non-application of Act.
4. Minimum period of notice.
5. Rights of employee during period of notice.
6. Right of employer to notice.
7. Right to waive notice.
8. Right to terminate contract of employment without notice.
9. Written statement of terms of employment.
10. Failure of employer to furnish statement.
11. Reference of disputes to Tribunal.
12. Rights of employee on default of employer.
13. Provisions relating to winding up and bankruptcy.
14. Regulations.
15. Laying of regulations and certain draft orders before Houses of Oireachtas.
16. Expenses of Minister.
17. Short title.

FIRST SCHEDULE

COMPUTATION OF CONTINUOUS SERVICE

SECOND SCHEDULE

RIGHTS OF EMPLOYEE IN PERIOD OF NOTICE



AN BILLE UM FHOGRA IOSTA AGUS TEARMAI
FOSTAIOCHTA, 1972
MINIMUM NOTICE AND TERMS OF EMPLOYMENT BILL,
1972

BILL

entitled

AN ACT TO REQUIRE A MINIMUM PERIOD OF NOTICE TO
TERMINATE THE EMPLOYMENT OF THOSE WHO
HAVE BEEN EMPLOYED FOR A QUALIFYING PERIOD,
TO PROVIDE FOR MATTERS CONNECTED WITH THE 10
GIVING OF NOTICE, AND TO REQUIRE EMPLOYERS
TO GIVE WRITTEN PARTICULARS OF THE TERMS OF
EMPLOYMENT, AND TO PROVIDE FOR OTHER MAT-
TERS CONNECTED WITH THE MATTERS AFORESAID.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS: 15

Interpretation.

1.—In this Act—

1967, No. 21.

“the Act of 1967” means the Redundancy Payments Act, 1967;

“employee” means an individual who has entered into or works
under a contract with an employer, whether the contract be for
manual labour, clerical work or otherwise, whether it be expressed 20
or implied, oral or in writing, and whether it be a contract of service
or of apprenticeship or otherwise, and cognate expressions shall be
construed accordingly;

“lay-off” has the meaning assigned to it by the Act of 1967;

“lock-out” has the meaning assigned to it by Part II of the Act of 25
1967;

“Minister” means the Minister for Labour;

“prescribed” means prescribed by regulations made by the Minister
under this Act;

“short time” has the meaning assigned to it by the Act of 1967; 30

“strike” has the meaning assigned to it by Part II of the Act of
1967;

“the Tribunal” means the Tribunal established under the Act of
1967; 35

“week” means any period of seven consecutive days;

“year” means any period of fifty-two weeks.

Commencement.

2.—This Act shall come into operation on such day as the Minister
appoints by order.

Non-application
of Act.

3.—(1) This Act shall not apply to—

(a) employment of an employee who is normally expected to 40
work for the same employer for less than twenty-one
hours in a week,

- 5 (b) employment by an employer of an employee who is the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, halfbrother or halvesister of the employer and who is a member of the employer's household and whose place of employment is a private dwellinghouse or a farm in or on which both the employee and the employer reside,
- 10 (c) employment in the Civil Service (other than in an unestablished position) within the meaning of the Civil Service Commissioners Act, 1956, 1956, No. 45.
- (d) employment as a member of the Permanent Defence Forces (other than a temporary member of the Army Nursing Service),
- 15 (e) employment as a member of the Garda Síochána, and
- (f) employment under an employment agreement pursuant to Part II or Part IV of the Merchant Shipping Act, 1894. 1894, c. 60.

20 (2) The Minister may by order declare that any provision of this Act shall not apply to a class or classes of employment specified in the order and from the commencement of the order this Act shall not apply to that class or those classes.

25 (3) Notwithstanding subsection (1) or (2) of this section, the Minister may by order declare that any provision of this Act shall apply to a class or classes of employment specified in the order and from the commencement of the order this Act shall apply to that class or those classes.

(4) An order made by the Minister under this section may include such transitional and supplemental or other provisions as appear to the Minister to be necessary or expedient.

30 (5) The Minister may by order amend or revoke an order made under this section, including this subsection.

35 4.—(1) An employer shall, in order to terminate the contract of employment of an employee who has been in his continuous service for a period of thirteen weeks or more, give to that employee a minimum period of notice calculated in accordance with the provisions of subsection (2) of this section. Minimum period of notice.

(2) The minimum notice to be given by an employer to terminate the contract of employment of his employee shall be—

- 40 (a) if the employee has been in the continuous service of his employer for less than two years, one week,
- (b) if the employee has been in the continuous service of his employer for two years or more, but less than five years, two weeks,
- 45 (c) if the employee has been in the continuous service of his employer for five years or more, but less than ten years, four weeks,
- (d) if the employee has been in the continuous service of his employer for ten years or more, but less than fifteen years, six weeks,
- 50 (e) if the employee has been in the continuous service of his employer for fifteen years or more, eight weeks.

(3) The provisions of the First Schedule to this Act shall apply for the purposes of ascertaining the period of service of an employee and whether that service has been continuous.

(4) The Minister may by order vary the minimum period of notice specified in *subsection (2)* of this section.

(5) Any provision in a contract of employment, whether made before or after the commencement of this Act, which provides for a period of notice which is less than the period of notice specified in *subsection (2)* of this section, shall have effect as if that contract provided for a period of notice in accordance with this section.

(6) The Minister may by order amend or revoke an order under this section including this subsection.

Rights of
employee
during
period of
notice.

5.—(1) The provisions of the Second Schedule to this Act shall have effect in relation to the liability of an employer during the period of notice required by this Act to be given—

(a) by an employer to terminate the contract of employment of an employee who has been in his continuous service for thirteen weeks or more, and

(b) by an employee who has been in such continuous service to terminate his contract of employment with that employer.

(2) This section shall not apply in any case where an employee gives notice to terminate his contract of employment in response to a notice of lay-off or short-time given by his employer.

(3) Any provision in a contract which purports to exclude or limit the obligation imposed on an employer by this section shall be void.

Right of
employer
to notice.

6.—An employer shall, subject to the right of an employee to give counter-notice under section 10 of the Act of 1967 or to give notice of intention to claim redundancy payment in respect of lay-off or short-time under section 12 of that Act, be entitled to not less than one week's notice from an employee who has been in his continuous employment for thirteen weeks or more of that employee's intention to terminate his contract of employment.

Right to
waive
notice.

7.—(1) Nothing in this Act shall operate to prevent an employee or an employer from waiving his right to notice on any occasion or from accepting payment in lieu of notice.

(2) In any case where an employee accepts payment in lieu of notice, the date of termination of that person's employment shall, for the purposes of the Act of 1967, be deemed to be the date on which notice, if given, would have expired.

Right to
terminate
contract of
employment
without
notice.

8.—Nothing in this Act shall affect the right of any employer or employee to terminate a contract of employment without notice because of misconduct by the other party.

Written
statement of
terms of
employment.

9.—(1) An employee may, for the purposes of ascertaining or confirming any term of his employment (including the date of commencement of that employment), require his employer to furnish him with a written statement containing all or any of the following particulars in relation to the following matters, that is to say—

(a) the date of commencement of his employment,

(b) the rate or method of calculation of his remuneration,

(c) the length of the intervals between the times at which remuneration is paid, whether weekly, monthly or any other period,

(d) any terms or conditions relating to hours of work or over-time,

(e) any terms or conditions relating to—

(i) holidays and holiday pay,

5 (ii) incapacity for work due to sickness or injury and sick pay, and

(iii) pensions and pension schemes,

10 (f) the period of notice which the employee is obliged to give and entitled to receive to determine his contract of employment, or (if the contract of employment is for a fixed term) the date on which the contract expires.

(2) The Minister may by order provide that employees may require their employers to furnish such further or other particulars of their contracts of employment as may be specified in the order.

15 (3) Subject to *subsection (4)* of this section, an employer shall, within one month after he has been required so to do under *subsection (1)* of this section, furnish to his employee a written statement in accordance with that subsection.

20 (4) A statement furnished by an employer under *subsection (3)* of this section may, in lieu of specifying the particulars requested by the employee under this section, refer the employee to a document containing those particulars which the employee has reasonable opportunities of reading during the course of his employment, or which is reasonably accessible to him in some other way.

25 (5) An employer shall, within one month after an employee commences work with that employer, furnish to that employee the particulars specified in this section.

(6) The Minister may by order amend or revoke an order under this section, including this subsection.

30 **10.**—(1) An employer who fails to comply with the provisions of *section 9* of this Act shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding twenty-five pounds.

Failure of employer to furnish statement.

35 (2) An offence under this section may be prosecuted by the Minister.

11.—(1) Any dispute arising on any matter under this Act (other than a dispute arising on any matter under *section 9* of this Act) shall be referred in the prescribed manner to the Tribunal.

Reference of disputes to Tribunal.

40 (2) The decision of the Tribunal on any matter referred to it under this section shall be final and conclusive, save that any person dissatisfied with the decision may appeal therefrom to the High Court on a question of law.

(3) The Minister may, on the request of the Tribunal, refer any question of law for the decision of the High Court.

45 **12.**—(1) If an employer—

(a) fails to give to an employee the notice required by *section 4 (2)* of this Act, or

Rights of employee on default of employer.

50 (b) fails to comply with the provisions of *section 5* of this Act in relation to the rights of the employee during the period of notice,

the employee may refer the matter to the Tribunal for arbitration and the Tribunal may award to the employee compensation for any loss sustained by him by reason of the default of the employer.

(2) The amount of any compensation awarded by the Tribunal under *subsection (1)* of this section shall be recoverable by the employee from his employer as a simple contract debt in a court of competent jurisdiction.

(3) Proceedings for the recovery of any sum due by way of compensation awarded by the Tribunal under *subsection (1)* of this section may be instituted and maintained on behalf of the employee by the Minister or by that employee's trade union.

Provisions relating to winding up and bankruptcy.

1963, No. 33.

13.—(1) There shall be included among the debts which, under section 285 of the Companies Act, 1963, are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable under *section 12* of this Act by the Company to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules made under that Act.

1889, c. 60.

(2) There shall be included among the debts which, under section 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable under *section 12* of this Act by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by general orders made under the said Act.

Regulations.

14.—The Minister may make regulations in relation to any matter referred to in this Act as prescribed.

Laying of Regulations and certain draft orders before Houses of Oireachtas.

15.—(1) Whenever an order is proposed to be made under *sections 3, 4, or 9* of this Act, a draft of the proposed order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by both Houses of the Oireachtas.

(2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Expenses of Minister.

16.—Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title.

17.—This Act may be cited as the Minimum Notice and Terms of Employment Act, 1972.

FIRST SCHEDULE

COMPUTATION OF CONTINUOUS SERVICE.

Section 4

Continuity of Service

1. The service of an employee in his employment shall be deemed to be continuous unless that service is terminated by—

- (a) the dismissal of the employee by his employer, or
- (b) the employee voluntarily leaving his employment.

2. A lock-out shall not amount to a dismissal of the employee by his employer.
3. A lay-off shall not amount to the termination by an employer of his employee's service.
- 5 4. A strike by an employee shall not amount to that employee's voluntarily leaving his employment.
5. An employee who gives notice of intention to claim redundancy payment in respect of lay-off or short-time shall be deemed to have voluntarily left his employment.
- 10 6. The continuous service of an employee in his employment shall not be broken by the dismissal of the employee by his employer followed by the immediate re-employment of the employee.
- 15 7. If a trade or business is transferred from one person to another (whether or not such transfer took place before or after the commencement of this Act) the continuous service of an employee in that trade or business at the time of the transfer shall be reckoned as continuous service with the transferee and the transfer shall not operate to break the continuity of the service of the employee.

Computable Service

- 20 8. Any week in which an employee is not normally expected to work for at least twenty-one hours or more will not count in computing a period of service.
- 25 9. If an employee is absent from his employment by reason of service in the Reserve Defence Force, such period of absence shall count as a period of service.
10. If an employee is absent from his employment for not more than twenty-six weeks between consecutive periods of employment because of—
- (a) a lay-off,
- 30 (b) sickness or injury, or
- (c) by agreement with his employer,
- such period shall count as a period of service.
11. If, in any week or part of a week, an employee is absent from his employment because he was taking part in a strike in relation to
- 35 the trade or business in which he is employed, that week shall not count as a period of service.
12. If, in any week or part of a week, an employee was, for the whole or any part of the week, absent from work because of a lock-out by his employer, that week shall count as a period of service.
- 40 13. If, in any week or part of a week, an employee is absent from his employment by reason of a strike or lock-out in a trade or business other than that in which he is employed, that week shall count as a period of service.

SECOND SCHEDULE

Section 5

45 RIGHTS OF EMPLOYEE DURING PERIOD OF NOTICE.

1. Subject to the provisions of this Schedule, an employee shall, during the period of notice, be paid by his employer in accordance with the terms of his contract of employment and shall have the same rights to sick pay or holidays with pay as he would have if notice of
- 50 termination of his contract of employment had not been given.

Employments for which there are normal working hours

2. (a) (i) An employee shall be paid by his employer in respect of any time during his normal working hours when he is ready and willing to work but no work is provided for him by his employer. 5

(ii) In this subparagraph "normal working hours" in the case of an employee who is normally expected to work overtime, include the hours during which such overtime is usually worked.

(b) In any case where an employee's pay is not wholly calculated by reference to time, the pay which his employer is bound to pay him under subparagraph (a) shall be calculated by reference to the average rate of pay earned by the employee in respect of any time worked during the thirteen weeks next preceding the giving of notice. 10 15

Employments for which there are no normal working hours

3. Subject to paragraph 4 of this Schedule, an employer shall pay to an employee, if there are no normal working hours for that employee under the contract of employment in force in the period of notice, in respect of each week in the period of notice, a sum not less than the average weekly earnings of the employee in the thirteen weeks next preceding the giving of notice. 20

4. An employer shall not be liable to pay to his employee any sum under paragraph 3 of this Schedule unless the employee is ready and willing to do work of a reasonable nature and amount to earn remuneration at the rate mentioned in the said paragraph 3. 25

BILLE

dá ngairtear

Acht á cheangal tréimhse íosta fógra a thabhairt le fostaíocht daoine a bheidh fostaithe ar feadh tréimhse cáilithí a fhorceannadh, do dhéanamh socrú i dtaobh nithe a bhaineann leis an bhfógra a thabhairt, agus á cheangal ar fhostóirí sonraí i scríbhinn ar na téarmaí fostaíochta a thabhairt, agus do dhéanamh socrú i dtaobh nithe eile a bhaineann leis na nithe réamhraithe.

An tAire Saothair a thug isteach

Rite ag Dáil Éireann, 12 Nollaig, 1972

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Díolta Foilseachán Rialtais An Stuara, Árd Oifig an Phoist, Baile Átha Cliath, nó trí aon díoltóir leabhar.

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entitled

An Act to require a minimum period of notice to terminate the employment of those who have been employed for a qualifying period, to provide for matters connected with the giving of notice, and to require employers to give written particulars of the terms of employment, and to provide for other matters connected with the matters aforesaid.

Introduced by the Minister for Labour

Passed by Dáil Éireann, 12th December, 1972

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