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AN BILLE UM CHOSAINT OIBRITHE (SIOPAÍ) (UIMH. 2), 1997
PROTECTION OF WORKERS (SHOPS) (NO. 2) BILL, 1997

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Short title.
 2. Interpretation.
 3. Non-application of Act.
 4. Sunday work.
 5. Prohibition of discrimination.
 6. Entitlements for Sunday work.
 7. Notification of Sunday work.
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 9. Rights Commissioner.
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Acts Referred to

Industrial Relations Acts, 1946 to 1991

Terms of Employment (Information) Act, 1994

1994, No. 5

Workers Protection (Regular Part-Time Employees) Act, 1991

1991, No. 5



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BILL

entitled

5 AN ACT TO PROVIDE PROTECTION FOR PERSONS
EMPLOYED IN SHOPS WITH REGARD TO HOURS OF
WORK ON SUNDAY.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—This Act may be cited as the Protection of Workers (Shops) Short title.
10 Act, 1997.

2.—In this Act—

Interpretation.

“the Court” means the Labour Court;

15 “employee” means any person who works under a contract of
employment with an employer or is defined as a “regular part-time”
employee in section 1 of the Workers Protection (Regular Part-Time
Employees) Act, 1991 and for the purposes of this Act is a person
working in a shop;

“the Minister” means the Minister for Enterprise, Trade and
Employment;

20 “relative” when used in relation to the proprietor or owner of a shop
means a person who—

25 (a) is the wife, husband, father, mother, grandfather, grand-
mother, step-father, step-mother, of such proprietor or
owner, or is the son, daughter, grandson, grand-daughter,
step-son, step-daughter, brother, sister, half-brother, half-
sister of such proprietor or owner, and

(b) is maintained by and or dwells in the house of such pro-
prietor or owner;

“shop” means—

30 (a) any premises in which any retail trade or business is carried
on, excluding any part of such premises which is not used
for the purpose of such retail trade or business,

(b) any premises in which goods are received direct from cus-
tomers for cleaning, repairing, altering or laundering,

excluding any part of such premises which are not used for the purpose of such reception of such goods,

(c) any wholesale shop,

(d) any warehouse occupied—

(i) for the purpose of retail trade or business by the person carrying on such retail trade or business, or 5

(ii) by a wholesale dealer or merchant for the purposes of the business carried on by him in a wholesale shop,

but excludes any premises in which a business is being carried on under an intoxicating liquor licence; 10

“shop owner” means a proprietor or owner of a shop, their servants or agents;

“Sunday work” means for the purpose of this Act, any work carried out in a shop by an employee on a Sunday;

“the Tribunal” means the Employment Appeals Tribunal; 15

“working day” means for the purposes of this Act any day in the week not including a Sunday.

Non-application of Act.

3.—This Act shall not apply in respect of—

(a) a relative of the proprietor or owner of a shop,

(b) an employee who is normally expected to work for the employer for less than 8 hours in a week, or 20

(c) an employee who has been in the continuous service of the employer for less than one month.

Sunday work.

4.—(1) An employee shall not be obliged to work on a Sunday without his consent and it shall be unlawful for the proprietor or owner of a shop to require an employee to work on a Sunday without the consent of the employee. 25

(2) The consent referred to in *subsection (1)* shall not be a precondition of employment.

Prohibition of discrimination.

5.—An employee who is not available for Sunday work or who does not undertake Sunday work, when requested by the proprietor or owner of the shop, for religious, family or other reasons, shall not be discriminated against in terms of— 30

(a) salary or wages,

(b) rotation of overtime other than on a Sunday, 35

(c) promotion, or

(d) in any other conditions of employment,

and it shall be unlawful for the shop owner to so discriminate.

6.—(1) An employee who performs Sunday work shall be entitled to a whole holiday or half holiday within the week following, and—

Entitlements for
Sunday work.

(a) where the employee performs Sunday work for more than five hours, he shall be entitled to a whole holiday, or

5 (b) where the employee performs Sunday work either—

(i) for a period of not more than three hours ending after the hour of noon, or

(ii) for a period of more than three hours but not more than five hours,

10 he shall be entitled to a half holiday.

(2) An employee who engages in Sunday work shall be entitled to be paid overtime pay at a rate per hour which represents the normal weekly rate reckoned in terms of hours increased by not less than 50 per cent.

15 **7.—(1)** An employer who requests an employee to perform Sunday work shall inform each employee and shall specify in a notice, which shall be displayed in a place in such a shop where it can be conveniently read by each employee, the hours to be worked on the Sunday following. Such a notice shall be posted not less than 4 working days before such Sunday work.

Notification of
Sunday work.

(2) An employee who is unavailable to perform Sunday work shall inform the employer of this not less than 3 working days before such Sunday work; otherwise, consent to perform Sunday work may be assumed by the employer.

25 (3) At the commencement of the employment the employer must notify the employee in writing of the duties that are incumbent on the employer by virtue of the provisions of this section and the duties that are incumbent on the employee by virtue of the provisions of this section.

30 **8.—**It shall be unlawful for an employer and/or an employee to contract out of the provisions of this Act, the terms of which are deemed to be implied terms of a contract of employment.

Contracts of
employment.

35 **9.—(1)** An employee may present a complaint to a Rights Commissioner that his employer has contravened *section 3, 4, 5 or 6* in relation to him within 6 weeks from the last preceding contravention. If he does so, the Rights Commissioner shall give the parties an opportunity to be heard by him and to present to him any evidence relevant to the complaint, and shall give a recommendation to the parties.

Rights
Commissioner.

40 (2) A recommendation of a Rights Commissioner shall be binding on both parties.

(3) A recommendation of a Rights Commissioner under *subsection (1)* shall do one or more of the following:

- (a) declare that the complaint was or was not well founded;
- (b) require the employer to furnish such particulars in accordance with section 7(2)(b) or (d) of the Terms of Employment (Information) Act, 1994;
- (c) order the employer to pay the employee compensation of not less than one week's salary per Sunday worked but not more than ten weeks' salary. 5

(4) A party concerned may appeal from the recommendation of the Rights Commissioner to the Tribunal within 6 weeks of the date on which the recommendation was communicated by him. 10

(5) A party to an appeal to the Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law and the decision of the High Court shall be final and conclusive.

(6) Where more than one employee wishes to present the same or similar complaint against an employer, the employees concerned, or their trade union may refer the dispute to the Court in which case the dispute shall be dealt with as if it had been referred under the provisions of the Industrial Relations Acts, 1946 to 1991, and not under any other provisions or statute. 15

Penalties.

10.—Where a contravention of *section 3, 4, 5 or 6* of this Act is committed by a body corporate and is proved to have been so committed with the consent or approval of any director, manager, secretary or other officer of such a body corporate, such a director, manager, secretary or officer shall be liable to the penalties in *section 9* of this Act. 20
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Regulations and orders.

11.—(1) The Minister may by order make regulations in relation to any section of this Act.

(2) The Minister may by order suspend the operation of the provisions, or any particular provision, of this Act in relation to a particular retailer or type of retailer or retailers within a defined geographical area to take account of seasonal variations affecting such regular retailer and any such Ministerial order shall expire not later than 4 months after the date of the making thereof. 30

Compliance with provisions of Act.

12.—(1) An employer shall keep such records of hours worked as are necessary to show whether the provisions of this Act are being complied with in relation to his employees and such records shall be retained by the Minister for the purpose who shall have the right to inspect such records. 35

(2) An employer who contravenes *subsection (1)* shall be subject to the proceedings set out in the redress as provided in *section 9* at the suit of the employees concerned. 40



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EXPLANATORY MEMORANDUM

The objective of this Bill is to provide protection for those employed in shops which trade on Sundays so that Sunday work is optional as opposed to obligatory for those employees.

The legislation is drafted with a view to balancing the rights of the employee whilst allowing the employer sufficient flexibility to run his business efficiently and without undue constraint. It should be noted that this legislation only relates to shop businesses.

The core provisions of the Bill are as follows:

- An employee shall not be obliged to work on a Sunday without his/her consent.
- If an employee does not wish to work on a Sunday he/she shall not be discriminated against.
- An employee who works on a Sunday shall be paid not less than time and a half.
- An employer shall give an employee notice of the option to work not less than 4 days before any *one* Sunday.
- An employee shall give an employer not less than 3 days notice of his non-availability to work the following Sunday otherwise the employer may assume consent is being freely given.
- An aggrieved employee may apply to the Rights Commissioner if he believes his rights under this Act have been breached and the Rights Commissioner may order the offending employer to pay the employee a maximum of 10 weeks' salary.

*Na Seanadóirí Pádraig Ó Gallchóir, Seosamh Mac Coistealbha,
Seán Ó Riain agus Caitlín Ní Mheára,
Nollaig, 1997.*