



An Bille um Chaomhnú Fostaíochta (Uaireanta Éiginnte), 2016
Protection of Employment (Uncertain Hours) Bill 2016

Mar a tionscnaíodh

As initiated



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ACTS REFERRED TO

Civil Service Regulation Act 1956 (No. 46)
Employment Agency Act 1971 (No. 27)
Local Government Act 2001 (No. 37)
Local Government Reform Act 2014 (No. 1)
Minimum Notice and Terms of Employment Acts 1973 to 2001
Organisation of Working Time Act 1997 (No. 20)
Protected Disclosures Act 2014 (No. 14)
Protection of Employees (Temporary Agency Work) Act 2012 (No. 13)
Taxes Consolidation Act 1997 (No. 39)
Unfair Dismissals Act 1977 (No. 10)
Unfair Dismissals Acts 1977 to 2015
Workplace Relations Act 2015 (No. 16)



AN BILLE UM CHAOMHNÚ FOSTAÍOCHTA (UAIREANTA ÉIGINNTE), 2016
PROTECTION OF EMPLOYMENT (UNCERTAIN HOURS) BILL 2016

Bill

entitled

An Act to provide greater protection for employees by more effectually regulating zero hours and related employment practices; and to provide for related matters. 5

Be it enacted by the Oireachtas as follows:

Short title

1. This Act may be cited as the Protection of Employment (Uncertain Hours) Act 2016.

Interpretation

2. In this Act—

“Act of 2015” means the Workplace Relations Act 2015;

“contract of employment” means—

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of either the Employment Agency Act 1971 or the Protection of Employees (Temporary Agency Work) Act 2012 and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract),

whether the contract is express or implied and if express, whether it is oral or in writing, and whether it was entered into before or after the passing of this Act;

“employee” means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant within the meaning of the Civil Service Regulation Act 1956 shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014), a harbour authority, a health board or an education and training board shall be deemed to be an employee employed by the authority or board, as the case may

be;

“employer”, in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment subject to the qualification that the person who under a contract of employment referred to in *paragraph (b)* of the definition of “contract of employment” is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer. 5

Construing contracts of employment generally

3. (1) In construing a contract of employment which was not negotiated with an employer— 10

- (a) by or on behalf of an employee individually, or
- (b) by or on behalf of employees collectively,

regard shall be had to whether, on an consideration of all relevant evidence, written terms signed by the employee and purporting to embody all or part of the contract reflect the true intentions and expectations of the parties, at the time the contract was entered into or at any later time. 15

(2) This section applies to the interpretation of contracts of employment both in the application of subsequent provisions of this Act and generally.

Amendment of Organisation of Working Time Act 1997

4. Section 18 of the Organisation of Working Time Act 1997 is amended by the substitution of the following for subsection (1): 20

“(1) This section applies to an employee whose contract of employment operates to require the employee to make himself or herself available to do work for the employer in a week—

- (a) a certain number of hours (“the contract hours”), or 25
- (b) as and when the employer requires him or her to do so, or
- (c) both a certain number of hours and otherwise as and when the employer requires him or her to do so.”.

Amendment of Protection of Employees (Fixed-Term Work) Act 2003

5. Section 9 of the Protection of Employees (Fixed-Term Work) Act 2003 is amended by the substitution of the following for subsection (5): 30

“(5) Subject to subsections (6) and (7), the First Schedule to the Minimum Notice and Terms of Employment Acts 1973 to 2001 shall apply for the purpose of ascertaining the period of service of an employee and whether that service has been continuous. 35

(6) Where—

- (a) an employee is employed on a fixed-term contract,

(b) on the determination of the contract the circumstances give rise to a reasonable expectation on the employee's part that he or she will be re-engaged by the employer to do work of the same or a similar nature, and

(c) he or she is subsequently employed by the same employer to do work of the same or a similar nature, 5

the period between the two periods of service may, for the purposes of the said First Schedule, be deemed to be a period of lay-off.

(7) Where an employer has registered an employee for deduction of income tax in accordance with Chapter 4 of Part 42 of the Taxes Consolidation Act 1997, the employee shall be regarded as continuing in the employment of that employer until the date specified in a notice— 10

(a) of the cessation of the employee's employment, or

(b) of the employee's death, 15

duly sent to the Revenue Commissioners.”.

Continuity of employment: casual work

6. (1) For the purposes of any enactment or rule of law to which computation of the period of continuous employment that an employee has completed with an employer is relevant, service as a casual employee shall be included if— 20

(a) the employee was employed as a casual employee on a regular and systematic basis, and

(b) during the period of service, the employee had a reasonable expectation of on-going employment by the employer on a regular and systematic basis.

(2) In determining whether a casual employee's employment was on a regular and systematic basis, regard shall be had to— 25

(a) whether the employee was offered work regularly,

(b) whether the employee generally accepted work when it was offered, and

(c) whether, although the amount of work offered might vary, there was a pattern or system to the work that the employee was offered each week. 30

Entitlement to corrected written statement of hours of work

7. (1) This section applies to employees—

(a) (i) whose period of employment with an employer is deemed continuous by virtue of—

(I) *section 6*, or 35

(II) *section 9(6) or (7) of the Protection of Employees (Fixed-Term Work) Act 2003*, or

- (ii) to whose contract of employment section 18 of the Organisation of Working Time Act 1997 otherwise applies,
 - (b) who have worked continuously for a period of 6 months in an employment, and
 - (c) who, by reference to work done in the previous 6 months (“the reference period”), have been required to work a normal number of hours per week that is greater than the number if any specified in their contract of employment as the number of required hours of work. 5
- (2) An employee to whom this section applies may request his or her employer in writing to correct his or her contract of employment so that the particulars of the hours which the employee is required to work in a week accurately reflect the pattern of work done in the reference period. 10
 - (3) An employer who agrees to a request under *subsection (2)* shall amend the employee’s written terms of employment by altering or adding a requirement that the employee shall work in a week—
 - (a) a specified number of hours, or 15
 - (b) both a specified number of hours and, as and when the employer requires him or her to do so, an additional number of hours not exceeding five.
 - (4) An employer may refuse to agree to a request under *subsection (2)* if—
 - (a) the fact that there was a particular pattern or system to the hours that the employee was required to work in the reference period, or a substantial portion of that period, was due to the seasonal nature of the work or an emergency or other exceptional circumstances, or 20
 - (b) the request is otherwise not factually well founded.
 - (5) In this section, reference to hours of work does not include overtime.

Prohibition on penalisation 25

8. (1) An employer shall not penalise or threaten penalisation of an employee for—
 - (a) invoking a right conferred on him or her by this Act,
 - (b) making a complaint to the Workplace Relations Commission that *section 7* has been contravened, or
 - (c) giving notice of his or her intention to do either of the matters referred to in *paragraph (a)* or *(b)*. 30
- (2) *Subsection (1)* does not apply to the making of a complaint that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.
- (3) In proceedings under Part 4 of the Act of 2015 in relation to a complaint that *subsection (1)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned has acted reasonably and in good faith in forming the opinion and making the communication concerned. 35
- (4) If a penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to

2015, relief may not be granted to the employee in respect of that penalisation both under *section 9* and under those Acts.

- (5) In this section “penalisation” means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes— 5
- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal,
 - (b) demotion or loss of opportunity for promotion, 10
 - (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), and
 - (e) coercion or intimidation. 15

Complaints in relation to contraventions

9. (1) The Act of 2015 is amended in Part 1 of Schedule 5 by the insertion of the following paragraph after paragraph 30:

“31. Sections 7 and 8 of the *Protection of Employment (Uncertain Hours) Act 2016*”.

- (2) For the purposes of a complaint by an employee under Part 4 of the Act of 2015 that the employee’s employer has contravened *section 7* or *8*, the reference in section 41 of that Act to a specified person shall be read as if it were a reference to a trade union of which the employee is a member.

Decision of adjudication officer 25

10. (1) A decision of an adjudication officer under section 41 of the Act of 2015, in relation to a complaint of a contravention of *section 7* or *8*, shall do one or more of the following, namely—

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with the provision in respect of which the complaint concerned relates and, for that purpose, require the employer to take a specified course of action, or 30
- (c) require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all the circumstances, but not exceeding 104 weeks’ remuneration in respect of the employee’s employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977, 35

and the references in the foregoing paragraphs to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention

to which the complaint relates occurs, as references to the person who, by virtue of the change, becomes entitled to such ownership.

- (2) A decision of the Court under section 44 of the Act of 2015, on appeal from a decision of an adjudication officer to which *subsection (1)* applies, shall affirm, vary or set aside the decision of the adjudication officer. 5

Voidance of certain provisions

- 11. (1) Save as provided by *subsection (2)*, a provision in an agreement (whether a contract of employment or not and whether made before or after the passing of this Act) is void in so far as it purports to exclude or limit the application of, or is inconsistent with, any provision of this Act. 10

- (2) If a registered employment agreement, an employment regulation order or a sectoral employment order provides that *section 6, 7 or 8* does not apply in relation to the employees to whom the agreement or order for the time being has effect, or to a specified class of those employees, the provision concerned shall not apply in relation to those employees, or to the specified class. 15

An Bille um Chaomhnú Fostaíochta
(Uaireanta Éiginnte), 2016

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht chun cosaint níos fearr a sholáthar d'fhostaithe trí rialáil níos éifeachtaí a dhéanamh ar chleachtais fostaíochta uaireanta nialais agus ar chleachtais fostaíochta ghaolmhara; agus do dhéanamh socrú i dtaobh nithe gaolmhara

*Na Seanadóirí Gearailt de Nais, Caoimhín Mac Unfraidh agus Aodhán Ó Riordáin a thug isteach,
29 Meán Fómhair, 2016*

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*Introduced by Senators Gerald Nash, Kevin Humphreys and Aodhán Ó Riordáin
29th September, 2016*

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