



DÁIL ÉIREANN

AN BILLE FOSTAÍOCHTA (FORÁLACHA ILGHNÉITHEACHA), 2017 EMPLOYMENT (MISCELLANEOUS PROVISIONS) BILL 2017

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE FOSTAÍOCHTA (FORÁLACHA ILGHNÉITHEACHA), 2017 —ROGHCHOISTE

EMPLOYMENT (MISCELLANEOUS PROVISIONS) BILL 2017 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 1

1. In page 5, line 22, after “provisions” to insert “but not later than 12 months after the passage of this legislation by both Houses of the Oireachtas”.

—Willie O'Dea.

SECTION 3

2. In page 5, after line 27, to insert the following:

“Repeals

3. The following are repealed:

- (a) paragraphs (a), (b), (f) and (g) of section 3(1) of the Act of 1994, and
- (b) section 16 of the National Minimum Wage Act 2000.”.

—An tAire Gnóthaí Fostaíochta agus Coimirce Sóisialaí.

[Acceptance of this amendment involves the deletion of section 3 of the Bill.]

3. In page 5, after line 27, to insert the following:

“Continuity of employment

3. (1) Subject to subsections (2) and (3), the First Schedule to the Minimum Notice and Terms of Employment Act 1973 applies for the purposes of determining the period of service of an employee, and whether that service has been continuous, in any case in which such a determination is to be made.
- (2) (a) For the purposes of such a determination, service as a casual employee shall be included if—
 - (i) the employee was employed as a casual employee on a regular and systematic basis, and
 - (ii) during the period of service, the employee had a reasonable expectation of

[SECTION 3]

ongoing employment by the employer on a regular and systematic basis;

and

- (b) In determining for the purposes of paragraph (a) whether a casual employee's employment was on a regular and systematic basis, regard shall be had to—
 - (i) whether the employee was offered work regularly,
 - (ii) whether the employee generally accepted work when it was offered, and
 - (iii) 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.

(3) Where—

- (a) an employee was engaged as a fixed-term employee (within the meaning of the Protection of Employees (Fixed-Term Work) Act 2003),
- (b) on the determination of the contract of employment the circumstances gave rise to a reasonable expectation on the employee's part that he or she would be re-engaged by the employer to do work of the same or a similar nature, and
- (c) he or she was subsequently employed by the same employer to do work of the same or a similar nature,

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

—Willie Penrose.

SECTION 4

4. In page 6, between lines 2 and 3, to insert the following:

“PART 2

AMENDMENT OF UNFAIR DISMISSALS ACT 1977

Amendment of Unfair Dismissals Act 1977

4. Section 8 (amended by the Workplace Relations Act 2015) of the Unfair Dismissals Act 1977 is amended, by the insertion of the following subsection after subsection (12):

“(13) (a) An adjudication officer may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice to give evidence in proceedings under this section or to produce to the adjudication officer any documents in his or her possession, custody or control that relate to any matter to which those proceedings relate.

(b) A person to whom a notice under paragraph (a) is given shall be entitled to the same immunities and privileges as those to which he or she would be entitled if he or she were a witness in proceedings

[SECTION 4]

before the High Court.

- (c) A person to whom a notice under paragraph (a) has been given who—
- (i) fails or refuses to comply with the notice, or
 - (ii) refuses to give evidence in proceedings to which the notice relates or fails or refuses to produce any document to which the notice relates,
- shall be guilty of an offence and shall be liable, on summary conviction, to a class E fine.”.”.

—An tAire Gnóthaí Fostaíochta agus Coimirce Sóisialaí.

SECTION 6

5. In page 6, lines 17 and 18, to delete “not later than 5 days after” and substitute “before”.

—David Cullinane, John Brady.

6. In page 6, line 22, after “employee” to insert “and the date on which employment is to commence”.

—David Cullinane, John Brady.

7. In page 7, line 1, to delete “week.”,” and substitute the following:

“week;

- (f) the hours of work (including overtime) shall not be less than 3 hours per week.”.”.

—Willie O'Dea.

8. In page 7, line 1, to delete “week.”,” and substitute the following:

“week;

- (f) the conditions relating to hours of work (including overtime) which shall not be less than three per week.”.”.

—David Cullinane, John Brady, Róisín Shortall.

9. In page 7, to delete line 1 and substitute the following:

“week,

which number of hours shall not be less than 3 per normal working week.”.”.

—Willie Penrose.

SECTION 9

10. In page 7, between lines 28 and 29, to insert the following:

“**6B.**(1)The Minister may, draw up, amend or revoke, in relation to determining the employment or self-employment status of an

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individual, one or more than one, codes of practice for determining said status.

- (2) The Minister shall, within six months of the commencement of the Employment (Miscellaneous Provisions) Act 2017, publish a code of practice for determining the employment or self-employment of an individual.
- (3) The code referred to in subsection (2) may be based on the “Code of Practice for Determining Employment or Self-Employment Status of Individuals 2007”, and shall be drawn up in conjunction with the following bodies—
 - (a) Department of Business, Enterprise and Innovation;
 - (b) National Employment Rights Authority;
 - (c) Department of Employment Affairs and Social Protection;
 - (d) Department of Finance;
 - (e) Irish Congress of Trade Unions;
 - (f) Irish Business and Employers Confederation;
 - (g) Small Firms Association;
 - (h) Construction Industry Federation; and
 - (i) Revenue Commissioners.
- (4) It shall be an offence for an employer to fail to comply with a code of practice published under this section.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a class A fine.”.”.

—Willie O'Dea.

11. In page 7, line 34, after “employee,” to insert “or who is reckless as to whether or not false or misleading information is provided.”.

—An tAire Gnóthaí Fostaíochta agus Coimirce Sóisialaí.

Section opposed.

—Willie O'Dea, Willie Penrose, David Cullinane, John Brady, Joan Collins, Róisín Shortall.

SECTION 10

12. In page 9, lines 6 to 9, to delete all words from and including “any” in line 6 down to and including “employment” in line 9 and substitute “any adverse treatment of an employee by his or her employer”.

—David Cullinane, John Brady.

13. In page 9, line 19, to delete “intimidation.”.” and substitute the following:

“intimidation.

[SECTION 10]

- (6) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that this section has been contravened the onus shall be on the respondent to prove the contrary.”.”.

—Willie O'Dea.

14. In page 9, line 19, to delete “intimidation.”.” and substitute the following:

“intimidation.

- (6) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that this section has been contravened in relation to him or her, it is for the respondent to prove the contrary.”.”.

—David Cullinane, John Brady, Joan Collins, Róisín Shortall.

SECTION 11

15. In page 9, to delete lines 25 to 29 and substitute the following:

“section 3(1A) unless the employee has been in the continuous service of the employer for more than 1 month.”.”.

—Willie O'Dea.

16. In page 9, between lines 35 and 36, to insert the following:

“(iii) in paragraph (d), by the substitution of “4 weeks’ remuneration” for “104 weeks’ remuneration”.”.

—David Cullinane, John Brady, Willie Penrose, Joan Collins.

17. In page 10, lines 3 and 4, to delete “4 weeks’ remuneration” and substitute “104 weeks’ remuneration”.

—Willie O'Dea, David Cullinane, John Brady, Willie Penrose, Joan Collins, Róisín Shortall.

SECTION 14

18. In page 10, line 29, after “hours’),” to insert “or”.

—Joan Collins, Róisín Shortall.

19. In page 10, lines 30 and 31, to delete line 30 down to and including “(c) both” on line 31 and substitute “(b) both”.

—Joan Collins, Róisín Shortall.

20. In page 10, to delete “so,” in line 32 down to and including line 37, and in page 11, to delete lines 1 to 3 and substitute “so.”.

—Willie Penrose.

21. In page 11, line 5, to delete “paragraphs (a) and (c)” and substitute “paragraphs (a) and (b)”.

—Joan Collins.

[SECTION 14]

22. In page 11, line 6, to delete “greater than zero” and substitute “not less than 3 hours per week”.
—Willie O'Dea.
23. In page 11, line 6, to delete “greater than zero” and substitute “greater than 3 hours”.
—Joan Collins.
24. In page 11, line 6, to delete “greater than zero” and substitute “greater than 2 hours”.
—Clare Daly.
25. In page 11, to delete lines 7 to 9.
— Joan Collins, Clare Daly.
26. In page 11, lines 35 to 39, to delete all words from and including “the” where it secondly occurs in line 35 down to and including “force” in line 39 and substitute the following:
“the normal hourly rate of remuneration and are at the relevant overtime rate if that had applied to those hours”.
—David Cullinane, John Brady.
27. In page 11, line 38, to delete “order,” and substitute “order or sectoral employment order that applies to the employment concerned and is”.
—Willie Penrose.
28. In page 11, line 38, after “order” to insert “or sectorial employment order”.
—Róisín Shortall.

SECTION 15

29. In page 13, line 5, to delete “2 months” and substitute “4 weeks”.
—David Cullinane, John Brady.
30. In page 13, to delete lines 24 to 26 and substitute the following:
“(7) An employee placed on a band of working hours shall work hours which are not less than 3 hours per week the average of which shall fall within that band for a period of 13 months or until such time, if later, as a further review of hours determines that the employee concerned should be placed on a different band of working hours. An employee who is placed on a higher band of working hours shall be entitled to compensation from the time he or she applied to be placed on that higher band. Such compensation shall be whatever is agreed between the employer and employee, or, in the absence of such an agreement is determined by the WRC or on appeal by the Labour Court.”.
—Willie O'Dea.

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31. In page 13, to delete lines 24 to 26 and substitute the following:

“(7) An employee placed on a weekly band of working hours shall work hours the average of which shall fall within that band until such time as a further review of hours determines that the employee concerned should be placed on a different band of working hours.”.

—Willie Penrose, Róisín Shortall.

32. In page 13, line 26, to delete “18 month” and substitute “12 months”.

—An tAire Gnóthaí Fostaíochta agus Coimirce Sóisialaí, David Cullinane, John Brady, Joan Collins, Clare Daly.

33. In page 13, line 26, to delete “18 months” and substitute “13 months”.

—Willie O'Dea, Róisín Shortall

34. In page 14, line 15, to delete “18 months” and substitute “12 months”.

—An tAire Gnóthaí Fostaíochta agus Coimirce Sóisialaí, David Cullinane, John Brady, Joan Collins, Clare Daly.

35. In page 14, line 15, to delete “18 months” and substitute “13 months”.

—Willie O'Dea, Willie Penrose.

36. In page 14, between lines 20 and 21, to insert the following:

“(15) In the event of hours becoming available an employer shall be required to offer any surplus hours to existing part-time employees first.”.

— Joan Collins, Clare Daly.

37. In page 14, to delete lines 24 to 27 and substitute the following:

“

A	1 hour	7 hours
B	8 hours	15 hours
C	16 hours	24 hours
D	25 hours	34 hours
E	35 hours and over	

”.

—An tAire Gnóthaí Fostaíochta agus Coimirce Sóisialaí.

38. In page 14, to delete lines 24 to 27 and substitute the following:

“

A	6 hours	10 hours
B	11 hours	15 hours
C	16 hours	20 hours
D	21 hours	25 hours
E	26 hours	30 hours
F	31 hours	35 hours
G	36 hours and over	

”.

”
—Willie O’Dea.

39. In page 14, to delete lines 24 to 27 and substitute the following:

“

A	3 hours or more	less than 6 hours
B	6 hours or more	less than 11 hours
C	11 hours or more	less than 16 hours
D	16 hours or more	less than 21 hours
E	21 hours or more	less than 26 hours
F	26 hours or more	less than 31 hours
G	31 hours or more	less than 36 hours
H	36 hours and over	

”
—David Cullinane, John Brady.

40. In page 14, to delete lines 24 to 27 and substitute the following:

“

A	1 hour	5 hours
B	6 hours	10 hours
C	11 hours	15 hours
D	16 hours	20 hours
E	21 hours	25 hours
F	26 hours	30 hours
G	31 hours	35 hours
H	36 hours and over	

”
—Willie Penrose.

41. In page 14, to delete lines 24 to 27 and substitute the following:

“

A	3 hours or more	less than 11.5 hours
B	11.5 hours or more	less than 15 hours
C	15 hours or more	less than 20 hours
D	20 hours or more	less than 25 hours
E	25 hours or more	less than 30 hours
F	30 hours or more	less than 35 hours
G	35 hours or more	less than 37 hours
H	37 hours or more	

”
—Joan Collins.

[SECTION 15]

42. In page 14, to delete lines 24 to 27 and substitute the following:

“

A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
G	31 hours	36 hours
H	36 hours and over	

”

—Clare Daly.

43. In page 14, to delete lines 24 to 27 and substitute the following:

“

A	3 hours	5 hours
B	6 hours	10 hours
C	11 hours	15 hours
D	16 hours	20 hours
E	21 hours	25 hours
F	26 hours	30 hours
G	31 hours	35 hours
H	36 hours and over	

”

—Róisín Shortall.

SECTION 16

44. In page 14, line 30, to delete “following section” and substitute “following sections”.

—David Cullinane, John Brady, Joan Collins, Róisín Shortall.

45. In page 15, line 21, to delete “or change in working hours”.

—David Cullinane, John Brady, Joan Collins, Róisín Shortall.

46. In page 15, line 24, to delete “intimidation.” and substitute the following:

“intimidation.

- (6) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that this section has been contravened in relation to him or her, it is for the respondent to prove contrary.”.

—David Cullinane, John Brady, Joan Collins, Róisín Shortall.

47. In page 15, line 24 to delete “intimidation.” and substitute the following:

“intimidation.

- (6) Without prejudice to the generality of subsection (5), where—

- (a) an employee has made a complaint under the Workplace Relations

[SECTION 16]

Act 2015 of a failure to comply with section 18A, and

- (b) the hours of work of the employee are subsequently reduced by the employer,

it shall be presumed until the contrary is proved that that the employer has penalised the employee and it shall be for the employer to show that the reduction in hours is justified by an objective factor unrelated to the making of the complaint.”.

—Willie Penrose.

48. In page 15, line 24, to delete “intimidation.”” and substitute the following:

“intimidation.

- 26A. Without prejudice to the generality of section 26 penalisation shall be taken to have occurred where the hours of work of an employee who had made a complaint under the Workplace Relations Act 2015 in respect to a matter referred to at section 18A are reduced unless the reduction is justified by an objective factor unrelated to that employee having made the complaint and it shall be for the employer to show that such justification existed.”.”.

—David Cullinane, John Brady, Joan Collins, Róisín Shortall.

SECTION 17

49. In page 15, between lines 24 and 25, to insert the following:

“PART 4

AMENDMENT OF NATIONAL MINIMUM WAGE ACT 2000

Amendment of National Minimum Wage Act 2000

17. The National Minimum Wage Act 2000 is amended—

- (a) by the substitution of the following section for section 14:

“14. Subject to sections 15, 17, 18 and 41, an employee shall be remunerated by his or her employer in respect of the employee’s working hours in any pay reference period, at an hourly rate of pay that on average is not less than the national minimum hourly rate of pay.”,

- (b) by the substitution of the following section for section 15:

“Prescription of percentages of hourly rates of pay

15. (1) The Minister shall prescribe a percentage of the national minimum hourly rate of pay in relation to employees—

- (a) who have not attained the age of 18 years,
(b) who are 18 years of age, and

[SECTION 17]

- (c) who are 19 years of age.
- (2) Subject to sections 17, 18 and 41, an employee to whom subsection (1) relates shall be remunerated by his or her employer in respect of the employee's working hours in any pay reference period at an hourly rate of pay that on average is not less than the percentage of the national minimum hourly rate of pay prescribed under that subsection in relation to that employee.
- (3) In prescribing percentages under subsection (1), the Minister shall have regard to the condition of the labour market, the costs of employment, levels of youth employment and levels of youth unemployment.
- (4) In prescribing percentages under subsection (1), the Minister shall not prescribe a percentage that is—
 - (a) in the case of employees who have not attained the age of 18 years, less than 70 per cent,
 - (b) in the case of employees who are 18 years of age, less than 80 per cent, and
 - (c) in the case of employees who are 19 years of age, less than 90 per cent,of the national minimum hourly rate of pay.”.”.

—An tAire Gnóthaí Fostaíochta agus Coimirce Sóisialaí.

TITLE

- 50.** In page 5, line 12, after “Organisation of Working Time Act 1997;” to insert “to amend the Unfair Dismissals Act 1977; to amend the National Minimum Wage Act 2000;”.

—An tAire Gnóthaí Fostaíochta agus Coimirce Sóisialaí.