



An Bille Fostaíochta (Forálacha Ilghnéitheacha), 2017
Employment (Miscellaneous Provisions) Bill 2017

Meabhrán Mínitheach
Explanatory Memorandum



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

EXPLANATORY MEMORANDUM

Introduction

The purpose of the Bill is to:

- (a) Ensure that employees are better informed about the nature of their employment arrangements and, in particular, their core terms at an early stage of their employment – a new offence is being created for non-provision of core terms within a specified period.
- (b) Prohibit zero hours contracts in most circumstances.
- (c) Strengthen the provisions around minimum payments to low-paid employees who may be called in to work for a period but not provided with that work – an enhanced minimum payment is being introduced.
- (d) Introduce a “banded hours” provision so that employees on low-hour contracts who consistently work more hours each week than provided for in their contracts of employment, are entitled to be placed in a band of hours that better reflects the reality of the hours they have worked over a reference period.
- (e) Strengthen the anti-penalisation provisions for employees who invoke a right under the Terms of Employment (Information) Act 1994 and the Organisation of Working Time Act 1997.

PART 1

Preliminary and General

Main Provisions of Bill

***Section 1* — Short title and commencement**

Section 1 is a standard provision. It contains the short title and commencement provisions.

***Section 2* — Interpretation**

Section 2 is a standard provision setting out definitions.

***Section 3* — Repeals**

This section repeals certain terms of employment listed in section 3(1) of the Terms of Employment (Information) Act 1994 and inserts them into section 3(1A) of the same Act so that they are required to be provided within five days of commencement of employment (see section 7 of the

Bill). Currently, section 3(1) of the Act of 1994 requires employers to provide 15 terms of employment within two months of commencement of employment. Employers will still be required to provide the terms of employment listed in section 3(1) of the 1994 Act (i.e. the terms not repealed by this section) to the employee in writing within two months.

PART 2

Amendment of Act of 1994

Section 4 — Amendment of section 1 of Act of 1994

Section 4 defines the “Commission” as the “Workplace Relations Commission” for the purposes of the Terms of Employment (Information) Act 1994.

Section 5 — Amendment of section 2 of Act of 1994

Section 5 removes the exclusion of employees that normally work less than eight hours per week so that such employees will be entitled to receive the written statements of their terms of employment that will be required under the amended Terms of Employment (Information) Act 1994.

Section 6 — Amendment of section 3 of Act of 1994

Section 6 amends section 3 of the Terms of Employment (Information) Act 1994 to require that an employer must provide employees with a written statement containing five core terms of employment within five days of commencement of the employment.

Section 7 — Amendment of section 4 of Act of 1994

Section 7 amends section 4 of the 1994 Act to require employers to provide employees, who are required to work outside the State for longer than one month, with a written statement containing the five core terms of employment prior to their departure.

Section 8 — Amendment of section 6 of Act of 1994

Section 8 sets out matters in relation to existing contracts of employment. The section amends section 6 of the Terms of Employment (Information) Act 1994 to provide that where an existing employee requests an employer to provide a written statement of the five core terms of employment required under section 7 of the Bill, the employer must provide same within two months.

Section 9 — Offences

Section 9 inserts a new Section 6B in the Terms of Employment (Information) Act 1994. It introduces an offence for an employer who fails to provide the statement of core terms of employment required under section 7 of the Bill within one month of commencement of employment. This section also makes it an offence for an employer who deliberately provides false or misleading information to an employee as part of the statement of core terms of employment. This section also provides for appropriate defences for employers.

Section 10 — Protection against penalisation

Section 10 introduces an anti-penalisation provision in the Terms of Employment (Information) Act 1994. The purpose of this section is to protect against penalisation of employees who wish to invoke their rights under the Act.

Section 11 — Amendment of section 7 of Act of 1994

Section 11 provides that an employee cannot present a complaint to the Workplace Relations Commission under the Terms of Employment (Information) Act 1994 unless the employee has been in continuous service with his or her employer for more than one month. Neither can an employee seek redress if an employer has been prosecuted for an offence for the same contravention. It also provides for redress for penalisation under the 1994 Act.

PART 3

Amendment of Act of 1997

Section 12 — Amendment of section 2 of Act of 1997

Section 12 amends the Organisation of Working Time Act 1997 to provide for the insertion of a number of relevant definitions in this Part.

Section 13 — Amendment of section 5 of Act of 1997

Section 13 relieves an employer from complying with the new “banded hours” provisions (see section 15) in exceptional circumstances e.g. emergency or unusual and unforeseeable situations beyond the employer’s control.

Section 14 — Amendment of section 18 of Act of 1997

Section 14 replaces the existing section 18 in the Organisation of Working Time Act with a new section 18, which further provides as follows:

- (i) It prohibits zero hours practices in most circumstances. It provides that zero hour practices are allowed in limited circumstances e.g. emergencies or short-term relief work to cover routine absences.
- (ii) In situations where employees are called into work but sent home without work, there will be a new minimum payment of three times the National Minimum Wage (hourly rate) or three times the minimum hourly rate in an Employment Regulation Order. Employees that are ‘on call’ will continue to be excluded from this minimum payment.

Section 15 — Banded hours

Section 15 inserts a new Section 18A in the Organisation of Working Time Act 1997. It introduces a right whereby employees, whose contract of employment does not reflect the number of hours habitually worked per week over a reference period, may be placed on a band of working hours that is a more accurate reflection of hours worked. The reference period provided is 18 months. If an employee believes that his or her contract does not accurately reflect the hours worked, an employee requests to be placed on the band of weekly working hours. The employer will have two months to consider the request and to place the employee in the relevant band of hours. The employer may refuse the request in the following circumstances:

- Where there is no evidence to support the claim,
- Where there has been significant adverse changes to the business,
- In emergency or unusual or unforeseeable circumstances (to which section 5 of the Act applies),
- Where the employee worked extra hours due to a temporary situation that no longer exists.

This section is not intended to interfere with banded hours arrangements in employments where they have been agreed by collective bargaining.

Provision is also made for disputes between the employer and employee under this section to be referred to the Workplace Relations Commission (and to the Labour Court, on appeal). A table of the bands of weekly working hours is also included in this section.

Section 16 — Protection against penalisation

Section 16 replaces the existing section 26 of the Organisation of Working Time Act 1997 to strengthen the protection against penalisation of employees who wish to invoke their rights under the 1997 Act.

PART 4

Amendment of Workplace Relations Act 2015

Section 17 — Amendment of Workplace Relations Act 2015

Section 17 amends the definition of “relevant offence” in section 36(5) of the Workplace Relations Act 2015 to include an offence under the new section 6B in the Terms of Employment (Information) Act 1994. This will allow an inspector of the WRC to issue a fixed payment notice where the inspector has reasonable grounds for believing that a person has committed an offence, i.e. by not providing the written statement of core terms of employment within the prescribed time or by deliberately providing false or misleading information as part of the statement.

*An Roinn Gnóthai Fostaíochta agus Coimirce Sóisiláí,
Nollaig, 2017.*

