



An Bille um Thoirmeasc ar Fhéinfhostaíocht Bhréige, 2019
Prohibition of Bogus Self Employment Bill 2019

Mar a tionscnaíodh

As initiated



AN BILLE UM THOIRMEASC AR FHÉINFHOSTAÍOCHT BHRÉIGE, 2019
PROHIBITION OF BOGUS SELF EMPLOYMENT BILL 2019

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ACT REFERRED TO

Petty Sessions (Ireland) Act 1851 (Chapter XCIII) (No. 93)



AN BILLE UM THOIRMEASC AR FHÉINFHOSTAÍOCHT BHRÉIGE, 2019
PROHIBITION OF BOGUS SELF EMPLOYMENT BILL 2019

Bill

entitled

An Act to prohibit employers deliberately designating an employee as self-employed. 5

Be it enacted by the Oireachtas as follows:

Offences designated by employer

1. It shall be an offence for an employer to incorrectly designate an employee as self-employed.

Offences liable to conviction

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2. A person guilty of an offence under this section shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or to both.

Offences of body corporate

3. Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 15

Role of Workplace Relations Commission

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4. Summary proceedings for an offence under this section may be brought and prosecuted by the Workplace Relations Commission.

Convictions under this section

5. Where a person is convicted of an offence under this section the court shall order the person to pay to the Workplace Relations Commission the costs and expenses, measured by the court, incurred by the Workplace Relations Commission in relation to the investigation, detection and prosecution of the offence unless the court is satisfied that there are special and substantial reasons for not so doing. 25

Defences

6. In proceedings for an offence under this section, it shall be a defence for the accused to prove that he or she exercised due diligence and took reasonable precautions or any person under the control of the accused to ensure that this designation was correct.

Timeframe for bringing proceedings

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7. Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

Determination of a person as an employee

8. An employee is a person who in performing his or her duties does so as a person not in business on their own account and who is not a free agent or economically independent of the person engaging his or her service. While all of the following factors may not apply, an individual would normally be an employee if he or she—
- (a) is under the control of another person who directs as to how, when and where the work is to be carried out, 15
 - (b) supplies labour only,
 - (c) receives a fixed hourly/weekly/monthly wage,
 - (d) cannot subcontract the work, if the work can be subcontracted and paid on by the person subcontracting the work, the employer/employee relationship may simply be transferred on, 20
 - (e) does not supply materials for the job,
 - (f) does not provide equipment other than the small tools of the trade, the provision of tools or equipment might not have a significant bearing on coming to a conclusion that employment status may be appropriate having regard to all the circumstances of a particular case, 25
 - (g) is not exposed to personal financial risk in carrying out the work,
 - (h) does not assume any responsibility for investment and management in the business,
 - (i) does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements, 30
 - (j) works set hours or a given number of hours per week or month,
 - (k) works for one person or for one business,
 - (l) receives expense payments to cover subsistence and/or travel expenses, and
 - (m) is entitled to extra pay or time off for overtime.

Determination of a person as self-employed

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9. While all of the following factors may not apply to the job, an individual would normally be self-employed if he or she—

- (a) owns his or her own business,
- (b) is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract,
- (c) assumes responsibility for investment and management in the enterprise,
- (d) has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks, 5
- (e) has control over what is done, how it is done, when and where it is done and whether he or she does it personally,
- (f) is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken, 10
- (g) can provide the same services to more than one person or business at the same time,
- (h) provides the materials for the job,
- (i) provides equipment and machinery necessary for the job, other than the small tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account, 15
- (j) has a fixed place of business where materials, equipment etc. can be stored,
- (k) costs and agrees a price for the job,
- (l) provides his or her own insurance cover e.g. public liability cover, etc., and
- (m) controls the hours of work in fulfilling the job obligations. 20

Short title

10. This Act may be cited as the Prohibition of Bogus Self Employment Act 2019.

An Bille um Thoirmeasc ar Fhéinfhostaíocht
Bhréige, 2019

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht dá thoirmeasc ar fhostóirí fostaí a shainainmniú
d'aon turas mar dhuine féinfhostaithe.

*An Teachta Liam Ó Deághaidh a thug isteach,
27 Márta, 2019*

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2019

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(as initiated)

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An Act to prohibit employers deliberately
designating an employee as self-employed.

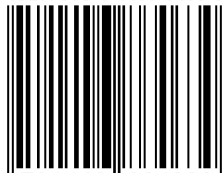
*Introduced by Deputy Willie O'Dea,
27th March, 2019*

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