
MODULE 3: KNOW YOUR RIGHTS

INTRODUCTION

The primary aim of this module is to focus on the meaning of rights generally and workers' rights specifically. This is achieved by discussing and examining the concept of rights, identifying types of rights, highlighting their origins and exploring workers' entitlements.

AIMS:

This module aims to:

- ↘ examine the concept of rights whilst highlighting and identifying possible areas of exploitation;
- ↘ appraise students of their own workplace rights and entitlements by exploring labour law;
- ↘ outline the role of institutions and mechanisms to ensure lawful compliance, redress systems and complaints procedures;
- ↘ explore potential workplace problems, identify the appropriate solutions and outline steps to be taken; and
- ↘ provide space and encouragement for students to enhance and develop their own set of skills through participation in practical exercises.

MODULE LEARNING OBJECTIVES:

At the end of this module students will be able to:

- ↘ explain the concept of rights and the different types;
- ↘ list basic employment law provisions, describe options for redress and enforcement;
- ↘ list the rights and responsibilities of workers, working students and employers;
- ↘ identify workplace problems and provide solutions by sourcing advice and support;
- ↘ consider ways in which they can ensure their workplace rights are never compromised; and
- ↘ debate and discuss issues facing young workers and how they might be resolved.

RIGHTS AND RESPONSIBILITIES

An introduction

A right is a legal entitlement to act in a certain way or refrain from acting in a certain way. Rights are broadly related to the values and rules that societies live by. Different societies have different values and standards but many agree that at the most basic level there should be the right to freedom, justice and dignity as set out in international conventions, covenants and treaties.

Having rights means that you have certain entitlements, can expect proper treatment and are protected from exploitation and abuse. It means that all people should be afforded the same rights and treated with respect. Rights exist at a number of levels and include human and legal rights.

A responsibility is a duty or obligation to act in a certain way or to do something. When we talk about people who are responsible we mean someone who can take on and complete a task. When people have rights they also have a responsibility to ensure those rights are protected and not denied, breached or violated in any way for others.

We all have rights and we all have responsibilities to protect and deliver on our rights.

Natural or human rights

Since ancient times there have been many theories put forward about the nature of mankind and their rights by people such as Socrates, Plato and Aristotle. There have also been religious thinkers (St. Augustine and St. Thomas Aquinas) who had their own theories, in religious terms, on the nature and rights of mankind. As the world developed other eras brought forward thinkers such as Machiavelli in Italy, Hobbes and Locke in England and Rousseau in France. The revolutions in France and America also produced theorists with their own idea of mankind and their rights, some of which can be seen in the US Bill of Rights.

Although philosophers have debated the concept of rights for centuries, many believe that natural or human rights simply exist. These rights are derived from

nature and neither depend on nor should be modified by law. They are based on the principle that **all** people have an entitlement to rights as a human being, which should never be denied, violated or taken away.

Human rights entail principles, rights and obligations that apply to everyone. The scope of human rights is broad and can include definitions such as:

- the basic standards by which we can identify and measure inequality and fairness;
- recognising and respecting people's dignity;
- rights which are based on the principle of respect;
- a set of legal guidelines that promote and protect a recognition of our values, our identity and ability to ensure an adequate standard of living; and
- those rights enshrined in the UN Universal Declaration of Human Rights.

The struggle for rights has been a constant battle through history with many dying for the principles of freedom, justice and equality. The denial of rights has also created political struggles such as the civil rights movement in the US and Northern Ireland, women's suffrage and the feminist movements, and the struggle against apartheid in South Africa among others.

Some states infringe on such rights by either choosing not to recognise them or violate them, suggesting, as a defence, that other issues such as national and economic security, the need for law and order, political allegiances/alliances etc, trump human rights in importance.

Human rights are significant for everyone, not just in Ireland but around the world. Human rights are about the basic values of dignity, freedom and equality. Observing the rights of all people helps to promote an inclusive and respectful society. The denial of human rights is the denial to recognise fellow human beings and to treat them with the dignity and respect they are born with.

Each person is equally entitled to human rights without discrimination.

Every person, everywhere, always.

The UN Declaration of Human Rights

There are international agreements in which human rights are expressed and which lay down the obligations of national governments to observe those rights by either acting in a certain way or to refrain from certain acts. They outline what human rights are about and how they should be protected and promoted.

The following are some of the obligations to which the Irish state has signed up to:

- Universal Declaration of Human Rights
- EU Charter of Fundamental Rights
- European Convention on Human Rights
- International Labour Organisation Conventions to which Ireland is a party
- International Covenant on Economic, Social and Cultural Right,
- International Covenant on Civil and Political Rights
- Council of Europe's Social Charter

In the human rights framework, the obligation to meet the rights falls on anyone in the human society at large who might be in a position to help or hinder the fulfilment of rights. However, it is acknowledged that the primary obligation falls on the state (including the government, judiciary and all other parts of government), for the obvious reason that among all the actors it has the most power to appropriate and allocate resources and to design and execute policies and laws that affect the lives of people.

A popular way of specifying state obligation within the human rights framework is to adopt the following three fold classification 1) the obligation to respect, 2) the obligation to protect, and 3) the obligation to fulfil.

In 1948 the Universal Declaration of Human Rights was adopted and proclaimed by the United Nations Assembly. This is essentially a common set of standards to which all countries and peoples must live up to.

It promotes respect for people's rights and freedoms and ensures that rights are observed and recognised by both the state and the people within those states.

The Declaration includes such rights as set out below:

- To be born free and equal in dignity and rights.
- To life, liberty and the security of person.
- Not to be held in slavery or servitude.
- Not to be subjected to torture, or cruel, inhumane or degrading treatment.

The full list of rights contained in the Declaration is provided in **Handout 1** at the end of the lesson plans.

Legal rights and responsibilities

Rights imply a corresponding responsibility and people have responsibilities along with their rights. A responsibility is an obligation or duty to do something or behave in a certain way. For instance, the right to vote bestows a duty on people to exercise that right and actually cast their vote. There are protections by law for many aspects of life and therefore it is important and the responsibility of people to uphold the law (provided it doesn't infringe on a person's rights and freedoms). In a democratic society it is also a responsibility for people to become more engaged in political life and participate in their local communities to a greater extent.

Legal rights which encompass many aspects of life, are underpinned by law and are passed as legislation by governments. In the Dáil, bills are enacted into law, detailing actions, prohibited actions and entitlements across a broad range of issues.

The legal rights of a state are enshrined in its laws. This set of codes or laws can be either written or unwritten and are referred to as the Constitution of the State, which is the highest set of laws by which a society abides.

It outlines a set of principles detailing the rights and entitlements of citizens and the principles to which all other laws should comply. There are many different types of constitutions around the world such as:

- In Ireland these rights are laid out in "Bunreacht na hEireann" (the Irish Constitution) drawn up in 1937.

- ✚ In France, the Constitution of the 5th French Republic has to comply with the principles as set out in the “Declaration of the Rights of Man and the Citizen” drawn up in 1789 during the French Revolution.
- ✚ In the United States of America the rights of citizens are set out in the US Constitution, signed in 1787, making it the oldest constitution in the western world.
- ✚ In the United Kingdom there is an unwritten constitution where it is assumed individuals have certain rights unless Parliament suggests a ruling contrary to this.

The Irish Constitution, Bunreacht na hEireann, can be downloaded from: www.taoiseach.gov.ie or www.constitution.ie

Bunreacht na hEireann and amendments

There are 50 articles contained in the Irish constitution. Over time constitutions are amended for a number of reasons, such as changing social attitudes, advancing the rights of individuals and the impact of political developments.

Article 46 of Bunreacht na hEireann outlines the procedure, of which there are a number of stages, of how the state should proceed when proposing amendments. Initially the amendment is proposed by government, which then needs to be agreed by both houses of the Oireachtas. On agreement it is required to be endorsed by the people, which is done by way of voting on the amendment in a referendum. A simple majority carries an amendment and there is no minimum turnout for validity of the referendum. If carried the President signs it into law. Although this is the final stage, it is a mere formality, as the President does not have powers of veto in this instance.

Since its enactment in 1937 there have been 30 proposed amendments to the Irish constitution. Twenty-eight of those have been put to the people with 21 approved by them. The first was proposed in 1937 and provided for a state of emergency and established Irish neutrality. An amendment was ratified in 2004 concerning

citizenship rights in Europe. The last amendment in Ireland ratified the Lisbon Treaty of the European Union in 2009.

The workplace and workers’ rights

All workers in Ireland have certain rights originating from either the constitution, contract law, employment law – individual or collective, EU directives or international labour standards. The following sections deal briefly with individual and collective employment law.

Individual labour law

Individual employment rights concern the rights to which each worker is entitled. All workers have an entitlement to a set of rights as enshrined in employment legislation and it is important that workers are aware of them when they start work. The law sets standards and protections for workers to which employers must comply and are often referred to as statutory rights. Laws are there to provide protection to workers from exploitation, abuse and sets minimum standards of entitlement. It also promotes fair and equal treatment, prohibits discrimination and provides a process that facilitates complaints if rights have been breached or denied.

Labour law not only addresses the legal entitlement of workers but also the responsibilities and obligations of organisations and employers, compliance issues and redress systems. It provides for absolute minimum standards. No worker should receive anything less than what is stated in law and it is illegal for employers to provide less than minimum conditions to their workers. However, the law does not preclude workers receiving better entitlements or more favourable conditions than those outlined in law. Workers who are trade union members usually enjoy better wage rates and conditions of employment than their non-union colleagues.

Collective labour law

Collective employment law covers industrial relations, which deals with the collective aspects of the employment relationship between employers, trade unions and government.

International law

There are also labour standards set by the International Labour Organisation (ILO) and recognised internationally as good practice standards in the workplace. These standards take the form of recommendations and conventions, many of which have been adopted by a number of countries, such as Ireland, and transposed into national law.

Individual labour law

Scope of the law

The scope of individual employment rights covers a broad range of issues and includes such things as:

- ↘ being given a written statement of employment outlining the terms and conditions of the job;
- ↘ an entitlement to be paid no less than the national minimum wage;
- ↘ protection for young people in the workplace; and
- ↘ an entitlement to certain rest periods during a working day.

The following laws have been enacted by the Dáil and apply to all workplaces.

Conditions of employment

- ↘ Terms of Employment (Information) Act 1994

Pay

- ↘ National Minimum Wage Act 2000
- ↘ Payment of Wages Act 1991

Working hours

- ↘ Organisation of Working Time Act 1997

Protection from unfair treatment and exploitation

- ↘ Protection of Young Persons in Employment Act 1996
- ↘ Employment Equality Acts 1998 & 2004

Leave from work

- ↘ Organisation of Working Time Act 1997
- ↘ Parental Leave Act 1997
- ↘ Maternity Protection Act (Amended 2004)
- ↘ Carer's Leave 2001

Employment Status

- ↘ Protection of Employees (Part-time Work) Act 2001
- ↘ Protection of Employees (Fixed-term Work) Act 2003

Working conditions

- ↘ Safety, Health & Welfare at Work Acts 1989 and 2005

Termination of employment

- ↘ Minimum Notice & Terms of Employment Act 1973
- ↘ Unfair Dismissals Acts 1977 to 2007
- ↘ Redundancy Payments Acts 1967 to 2007

What the law says

The following section briefly introduces some employment legislation and outlines the main provisions. It is not a legal interpretation of the acts. Additional information is available from a variety of sources such as www.youth-connect.ie, www.unionconnect.ie, www.ictu.ie, individual union websites (lists of which can be found on the Congress website) and the Department of Enterprise, Trade & Employment, which can be accessed through www.employmentrights.ie

TERMS OF EMPLOYMENT (INFORMATION) ACT 1994 AND 2001

Aim

The purpose of this act is to ensure employers provide a written statement to their employees outlining the terms and conditions of their employment.

Main provisions

Employers must provide a written statement detailing the particulars and conditions of the employee's employment to them either a) one month after starting their employment or b) one month after the employee has requested it.

Employers are also obliged to notify their employees of any proposed changes to the particulars and conditions of their employment. This should not happen more than one month after the changes have taken place. In unionised employments, changes to the terms and conditions of employees are usually the subject of negotiation and collective agreements.

The written statement should contain at least the following:

- Full names of the employer and employee.
- Address of employer or principal place of business.
- Place of work or the requirement to work in various locations.
- Job title and/or nature of the work.
- Start date of employment (and end date if applicable).
- Rate of pay and pay reference period (see minimum wage for more information).
- Whether wages are paid on a weekly, fortnightly or monthly basis.
- Reference to times and durations of rest periods and breaks as per the Organisation of Working Time Act.
- Terms and conditions of hours of work including details on overtime.

- Terms and conditions of holidays and other paid leave (other than paid sick leave).
- Terms and conditions relating to incapacity for work due to illness or injury.
- Terms and conditions relating to pensions and pension schemes.
- Periods of notice to be received by the employee or given by the employee on termination of employment (if period not stated, the method for calculating such a period should be outlined).
- Reference to collective agreements that affect terms of employment.

The statement must also be signed by/on behalf of the employer and retained during the employment and one year after the employee's employment.

NATIONAL MINIMUM WAGE ACT 2000

Aim

The aim of the National Minimum Wage Act 2000 is to provide a minimum hourly rate below which workers cannot be paid.

Main provisions

Statement of rate of pay

All workers are entitled to a statement for a specific pay reference period(s) (see below), in the previous 12 months, detailing:

- ↘ reckonable pay;
- ↘ working hours;
- ↘ average hourly rate of pay; and
- ↘ statutory minimum hourly rate of pay.

The average minimum rates and conditions

The following rates were set in July 2007 and have remained unchanged to date (Winter 2009). However, it should be highlighted to students that the rate is subject to change and www.youth-connect.ie or www.employmentrights.ie should be consulted regularly.

The applicable rates are as follows:

- ↘ **€8.65** (July 07) set for **adult experienced workers**.
- ↘ **€6.06** set for workers who are **under 18**.
- ↘ **€6.92** for workers who are in their **first year** after the date of first employment and are **over 18**.
- ↘ **€7.79** for workers who are in their **second year** after the date of first employment and are **over 18**.

There are also minimum hourly rates set for workers, over 18, who are in training or study during working hours. The minimum hourly rate applies:

- ↘ **€6.49** for workers in the first one-third period.
- ↘ **€6.92** for workers in the second one-third period.
- ↘ **€7.79** for workers in the third one-third period.

The minimum rates of pay outlined above are gross rates of pay before PAYE and PRSI are taken out. It is a criminal offence for an employer to pay any worker below these rates, but they can pay in excess of them. Research carried out indicates that employees in unionised employments generally receive wage rates above the minimum allowable.

Calculating the average minimum rates

When calculating the average hourly rate of pay, three components are required:

- ↘ pay reference period;
- ↘ hours actually worked; and
- ↘ components of pay (reckonable pay).

Pay reference period

A pay reference period is the period of time for which a worker's wage is actually paid, for example it can be a week, fortnight or a month.

Hours actually worked

When calculating the number of hours worked, the following worked during the reference period is included:

- ↘ overtime;
- ↘ time on standby in the workplace; and
- ↘ training during working hours.

The following time **IS NOT** included:

- ↘ annual leave;
- ↘ sick leave;
- ↘ protective leave;
- ↘ adoptive leave;
- ↘ parental leave;
- ↘ laid-off or on strike; and
- ↘ time for which employee is paid in lieu.

Components of pay/reckonable pay

Reckonable pay is pay that is included when calculating the average hourly rate of a worker in a specific reference period. The following components are taken into account when calculating the average hourly rate of pay:

- ↘ Basic pay.
- ↘ Shift premium.
- ↘ Piece and incentive rates, commission and bonuses, which are productivity related.
- ↘ If an employee receives board and lodgings, board only or lodgings only from an employer, then the following amounts are reckonable:
 - €54.13 for full board and lodgings per week, or €7.73 per day;
 - €32.14 for full board only per week, or €4.60 per day; and
 - €21.85 for lodgings only per week, or €3.14 per day.
- ↘ The amount of any service charge distributed to the employee through the payroll.
- ↘ Any payments under section 18 of the Organisation of Working Time Act 1997 (zero hour protection).
- ↘ Any payment in respect of any of the above items advanced in a previous pay reference period that relates to the specific pay reference period**.
- ↘ Any amount in respect of any of the above items earned in the specific pay reference period and paid no later than the next following pay reference period.
- ↘ In the case of an employee whose hours of work are not controlled by the employer, any amount in respect of any of the above items earned in the specific pay reference period and paid no later than the pay reference period in which the record of working hours is received or due to be received by the employer, or the pay reference period immediately after that.
- ↘ Any amount distributed to the employee of tips or gratuities paid into a central fund managed by the employer and paid through the payroll.
- ↘ Public holiday premium, Saturday premium and Sunday premium, where any such holidays or days are worked.
- ↘ Allowances for special or additional duties including those of a post of responsibility.
- ↘ Any payment of expenses incurred by the employee in carrying out his or her employment, including travel allowance, subsistence allowance, tool allowance and clothing allowance.
- ↘ On-call or standby allowance.
- ↘ Any payments for or in relation to a period of absence of the employee from the workplace, such as sick pay, holiday pay, payment for health and safety leave under the Maternity Protection Act 1994, or pay in lieu of notice, but not including a payment made under section 18 of the Organisation of Working Time Act 1997 (zero hour protection).
- ↘ Any payment by way of an allowance or gratuity in connection with the retirement or resignation of the employee or as compensation for loss of office.
- ↘ Pension contributions paid by the employer on behalf of the employee.
- ↘ Any payment referable to the employee's redundancy.
- ↘ Any advance of a "reckonable pay" payment (as outlined earlier) in the specific reference period relating to a subsequent pay reference period.
- ↘ Any payment-in-kind or benefit-in-kind, except board with lodgings, lodgings only or board only.
- ↘ Any payment to the employee otherwise than in his or her capacity as an employee.
- ↘ Any payment representing compensation for the employee, such as for injury or loss of tools and equipment.
- ↘ An amount of any award under a staff suggestion scheme.
- ↘ Any loan by the employer to the employee, other than an advance payment referred to at ** above.

The following **IS NOT** included:

- ↘ Overtime premium.
- ↘ Call-out premium.
- ↘ Service pay.
- ↘ Unsocial hours premium.

The calculation

The gross (reckonable) pay earned during the pay reference period is divided by hours actually worked in the period to arrive the average hourly rate of pay. If it is below the amounts listed above, then the employer is in breach of the legislation, which is illegal.

Training and training rates

The following conditions must be met for workers to receive the training rate as outlined above:

- ✔ The employee's participation in the course is directed or approved by the employer.
- ✔ The duration of the course is for a minimum period of three calendar months.
- ✔ Subject to the following point, the course takes place during the normal working hours of the employee.
- ✔ The course includes workplace training and also must involve at least 10 per cent of directed training or study, that is, away from ordinary operational work, which may be within or outside of normal working hours.
- ✔ The employer pays any fees concerned with the employee's participation in the course that is directed by the employer.
- ✔ The course enables the acquisition of skills and/or knowledge expected to enhance the work performance of the employee at the end of the course.
- ✔ The course involves supervision of the employee during workplace training.
- ✔ The course includes a system of recording the progress and results of the employee. The employer must retain such records for three years after the end of the employee's participation in the course.
- ✔ The course includes an assessment and certification procedure, or written confirmation of the employee's completion of the course, identifying the level of employee attainment against the objectives, which must include the employee's signature.
- ✔ The course is the subject of a pre-existing written document or documents detailing the following information:
 - its title and purpose;
 - its objectives;

- an outline plan of duration and approach;
- the record system to apply;
- the assessment and certification procedure; and
- advice by the employer of any facilities, including any time off, to be given to the employee during the period of the employee's participation in the course, to enable the employee to successfully complete the course, and any changes to the employee's working arrangements during the period of the employee's participation in the course.

The one-third period

To calculate the one-third period, the starting and finishing dates of the training must be established. This period is then divided by three to give each one-third period. However, each one-third period must be for a minimum of one month to a maximum of 12 months. Employees over 18 are only entitled to the appropriate trainee rate.

PAYMENT OF WAGES ACT 1991

Aim

This act establishes a set of rights for workers relating to the payment of their wages. It also seeks to protect workers from unlawful deductions being made from their wages.

Main provisions

- ↘ The right to a written statement of wages and deductions (payslip).
- ↘ The right to how wages are paid (such as cheque, direct to bank).
- ↘ The right not to have unlawful deductions made from wages.

Defining wages

The following is included in wages:

- ↘ Normal basic pay.
- ↘ Overtime worked.
- ↘ Bonuses or commission earned.
- ↘ Holiday and sick pay.
- ↘ Maternity pay.
- ↘ Any other payments for work.
- ↘ Payments made in lieu of notice or termination of employment.

Methods of payment

The act recognises the following payment arrangements, which are legally acceptable:

- ↘ Cheque or draft from any commercial bank.
- ↘ Postal order or money order drawn or issued by An Post.
- ↘ Credit transfer to an account nominated by the employee.
- ↘ Cash.

Deduction allowed from wages

No employer is allowed to make any deductions from wages without the consent of the employee, except for tax and PRSI purposes.

Deductions that can legally be made include the following:

Income tax (PAYE)

- ↘ PAYE (Pay As You Earn) is an income tax paid by workers. Income tax is one form of tax collected by governments. Other forms include capital gains tax, corporate tax and value-added tax (VAT).
- ↘ The PAYE amount is deducted by employers from the earnings of their employees and paid to government to assist in building infrastructure, providing transport, education, health and social welfare services.
- ↘ The amount of tax paid by individuals is related to their earnings and so is proportional to their income.

PRSI (Pay related social insurance)

Most employers and employees pay a social insurance contribution (PRSI) into the National Social Insurance Fund. Like tax, the amount of PRSI paid is dependent on earnings. In the case of employees, the contribution is deducted by the employer and paid to the government.

There are a number of benefits available to PRSI contributors (depending on certain other qualifying conditions), such as:

- ↘ job seekers allowance;
- ↘ maternity benefit; and
- ↘ injury benefit.

Other deductions

Other deductions that are considered lawful are those that are outlined in an employee's contract of employment. The contract should outline the procedure for making deductions in the event that there is a:

- ↘ breakage;
- ↘ imbalance in a cash float or till;
- ↘ uniform; or
- ↘ breach of discipline.

The deduction must be fair, reasonable and take into account the employee's ability to pay. If a deduction is required to be made from wages, the employer must inform the employee in writing of the circumstances before the deduction is made.

ORGANISATION OF WORKING TIME ACT 1997

Aim

The scope of this act covers a wide range of conditions such as working time, rest periods, and entitlements to holidays and public holidays.

Main provisions

Working hours

The maximum allowable working hours for workers who are over 18 years of age are:

- ↘ 48 hours per week.
- ↘ 8 hours per night.

(For those under 18 refer to the Protection of Young Persons in Employment Act 1996 for information on working hours and other conditions.)

Rest periods

- ↘ 11 hours rest from work in every 24-hour period.
- ↘ 15 minutes rest break after 4.5 hours.
- ↘ 30 minutes rest break after six hours (which includes 15 minutes above).

Holiday entitlements

All workers accrue a holiday entitlement as soon as they start work. All time worked qualifies for paid holidays or annual leave. The minimum holiday entitlement for workers is four working weeks. Entitlements above the minimum are allowable and are usually negotiated by unions.

Holiday entitlements are worked out in the following ways:

- ↘ Four working weeks where an employee has worked 1,365 hours in a leave year.
- ↘ One-third of a working week for every calendar month where an employee works 117 hours in the month.
- ↘ Eight per cent of the hours an employee works in a leave year subject to a maximum of four working weeks.

If more than one calculation is applicable to an employee, the one that provides the most favourable outcome should be applied.

Public holiday entitlements

The act also provides for nine public holidays per year, which are:

- ↘ New Year's Day (1st January)
- ↘ St. Patrick's Day
- ↘ Easter Monday
- ↘ First Monday of May (Mayday)
- ↘ First Monday of June
- ↘ First Monday of August
- ↘ Last Monday of October
- ↘ Christmas Day (25th December)
- ↘ St. Stephen's Day (26th December)

An employee is entitled to one of the following in respect of each public holiday listed above:

- ↘ a paid day off on the holiday OR
- ↘ a paid day off within one month OR
- ↘ an extra day of annual leave OR
- ↘ an extra day of pay OR
- ↘ If the holiday falls on a day that the employee normally works, then they are entitled to a paid day off for that day. If the holiday falls on a day in which the employee doesn't normally work, then they are entitled to either:
 - 1/5 of the normal weekly wage for the day OR
 - a paid day off within the month OR
 - an extra day of annual leave.
- ↘ If the employee is asked to work on a public holiday they are entitled to either:
 - a paid day off within the month OR
 - an extra day of annual leave OR
 - an extra day of pay.

Service requirements

There is no service requirement for full-time employees to an entitlement to public holidays.

If an employee works part time they qualify for public holiday entitlement provided they have worked 40 hours in the preceding five weeks up to the day before the holiday occurs.

PROTECTION OF YOUNG PERSONS IN EMPLOYMENT ACT 1996

Aim

This legislation was enacted to ensure that young people are not exploited in employment and, most importantly for those who take up work, that it does not adversely impact on schooling.

Main provisions

It states age-related rules and regulations for the employment of young people from 14 to 18.

Hours of work

In general the employment of children under 16 is prohibited by the act. However, a child over 14 may be allowed to perform light duties during school holidays provided it is not harmful to their health, development or schooling.

- ↘ **14 year olds** cannot work during term-time. During school holidays they are allowed to work a maximum of 35 hours per week or 40 hours work experience or training.
- ↘ **15 year olds** can work a maximum of eight hours per week during term-time, 35 hours during holidays and 40 hours of work experience. Starting time must not be before 8am with finishing time no later than 8pm.
- ↘ **16-17 year olds** are allowed to work from 6am up to 10pm on a school night. If finishing time is 10pm, the starting time the next day must not be before 7am. During holidays or weekend nights, work can continue until 11pm but cannot recommence before 7am the following day.

Additional regulations on night work

- ↘ Young persons may be permitted to work beyond 10pm in certain limited circumstances. Where 16-17 year olds are employed for general duties in licensed premises either during summer, other holidays or on a part-time basis, they are prohibited from supplying intoxicating liquor from behind the bar counter or supplying it for consumption off those premises (Protection of Young Persons Act 1996 (Employment in Licensed Premises) Regulations, 2001).
 - ↘ The young person may be required to work until 11pm, not preceding a school day during term, and cannot recommence work before 7am on the following day.
 - ↘ If a young person is employed as a full-time apprentice in a licensed premises they may be required to work until 12 midnight on any day but cannot recommence before 8am the following day provided there is adult supervision (Protection of Young Persons Act 1996 (Bar Apprentices) Regulations 2001).
- ### Rest periods
- ↘ Under 16s are entitled to a 30-minute break after working four hours and 14 hours off in every 24 hours. During summer holidays there is an entitlement to two days off in every seven days, which, as far as practicable, is consecutive.
 - ↘ Between the ages of 16 and 17 there is an entitlement to a 30-minute break after 4.5 hours of work. There is also a requirement for 12 hours off in every 24 hours and two days off in every seven days.

Additional provisions

- Light work is described as non-industrial work where there is no risk to the health and safety of the child and which is not harmful to their attendance at school.
- Work experience or training has to be part of an approved (by the Minister for Enterprise, Trade & Employment or FAS) programme.
- During summer holidays there has to be a minimum three week break from work.

Exceptions to this act

In certain circumstances the full provisions of this act do not apply, such as where a young person is employed by a close relative in the fishing or shipping sectors, and the defence forces. Full details of these exemptions can be downloaded from www.employmentrights.ie

Employers' obligations and responsibilities

Employers are obliged to assess any risk to the safety, health and welfare of a child or young person at the place of work and to take preventive measures as necessary.

Before employing a young person, employers must get evidence of their age, such as a birth certificate and, for those under 16, they must also obtain written permission of a parent or guardian. Records must be kept of workers under 18.

A summary of this act must be given to all workers under 18 and displayed where it can easily be read.

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 TO 2001

Aim

Provide employees with an entitlement to minimum periods of notice before their employer can dismiss them. The notice periods are based on how long they have worked in that employment.

Main provisions

The period of notice to which an employee is entitled is as follows:

Minimum length of service	Notice period
13 weeks to less than 2 years	1 week
2 years to less than 5 years	2 weeks
5 years to less than 10 years	4 weeks
10 years to less than 15 years	6 weeks
More than 15 years	8 weeks

Employers are also entitled to one week's notice from employees who have been employed by them for 13 weeks or more.

The above notice periods are the absolute minimum set in law. Longer notice periods than above are permitted under the law, however, periods of less than the legal minimum provided within an employment contract will have no effect and the statutory entitlement comes into effect.

PROTECTION OF EMPLOYEES (PART-TIME WORK) ACT 2001

Aim

This act is in place to ensure part-time workers are not treated less favourably than comparable full-time workers in relation to their terms and conditions. It also strives to improve the quality of part-time working.

Main provisions

All protections extended by employment legislation apply in the same way to part-time workers as to full-time workers.

Making a comparison

A comparison with a full-time worker occurs where:

- ↘ both workers perform the same or similar work under the same or similar conditions;
- ↘ both workers carry out work of the same or similar nature; and
- ↘ the work of the part-time worker is of equal or greater value than the full-time worker.

Overtime payments

The same rate and conditions for overtime apply to part-time workers as to comparable full-time workers.

Holidays

The entitlement to holidays is related to that of a comparable full-time worker subject to the minimum entitlement contained in the Organisation of Working Time Act 1997 (see holiday entitlements).

PROTECTION OF EMPLOYEES (FIXED-TERM WORK) ACT 2003

Aim

This was enacted to provide comprehensive protection to all fixed-term or temporary workers and to ensure they are not treated less favourably than comparable workers in relation to terms and conditions. It seeks to prevent workers being subjected to discrimination and from abuse arising from the use of successive fixed-term contracts. It also strives to improve the quality and conditions of fixed-term working.

Main provisions

All protections extended by employment legislation apply in the same way to fixed-term workers as to full-time workers, provided they have entered a contract directly with their employer. This excludes agency workers.

Definition

A fixed-term worker is described as someone who has a contract of employment directly with an employer where the end date is determined by an objective condition such as:

- ↘ arriving at a specific date (the date the contract expires);
- ↘ completing a specific task (when a project has been completed); or
- ↘ the occurrence of a specific event (may be covering for someone on leave such as maternity or extended sick leave).

Making a comparison

A fixed-term worker must find a suitable worker to make comparisons with and, in this case, the worker must be a permanent worker where one of the following is met:

- ✔ employed by the same or associated employer and either:
 - both employees perform the same work under the same or similar conditions OR
 - work is the same or of similar nature to that performed by the other or differences are insignificant OR
 - the work performed by the fixed-term employee is equal or greater in value to the work performed by the other employee concerned, such as in skill, physical or mental requirements, responsibility and working conditions OR
- ✔ mentioned in a collective agreement as comparable OR
- ✔ employed in the same industry or sector of employment.

If a working condition depends on hours worked, then that condition applies on a proportional basis to the fixed-term employee when comparing hours worked by a permanent employee.

UNFAIR DISMISSALS ACTS 1977 TO 2007

Aim

To provide protection to employees from being dismissed unfairly from their jobs by laying down specific criteria by which dismissals are judged to be fair.

Main provisions

The act applies to employees with one year's continuous service, except in certain circumstances (see below).

- ✔ It provides a procedure whereby employees can appeal the dismissal decision of their employer.
- ✔ It places obligations on the employer to show the dismissal was justified and that they acted reasonably in all the circumstances of the dismissal.
- ✔ It also provides that every dismissal of an employee will be presumed to have been unfair unless the employer can show substantial grounds justifying the dismissal.
- ✔ It outlines justifiable criteria for dismissal. For it to be considered fair it must be shown that it resulted (entirely or partly) from:
 - a lack of capability, incompetence or the employee is under qualified;
 - the employee's conduct;
 - the redundancy of the employee;
 - continuation of employment would contravene another statutory requirement; or
 - other substantial grounds for dismissal.

The one-year's continuous service requirement does not apply where the dismissal results from:

- ✔ An employee's pregnancy, giving birth or breastfeeding or any connected matters.
- ✔ Exercise of rights under the Maternity Protection, Adoptive Leave, Parental Leave and/or Carer's Leave Acts.
- ✔ Entitlements, future entitlements, exercise or proposed exercise of rights under the National Minimum Wage Act 2000.
- ✔ An employee's trade union membership or activity.

It provides for constructive dismissal, which is where a person's conditions of employment were made so difficult that they feel obliged or forced to leave.

ADDITIONAL EMPLOYMENT LEGISLATION

There are a number of other acts that are relevant to the workplace. These range from providing leave for workers who become parents or who take on a caring role, to providing protection from discrimination, dangerous working conditions or sexual harassment.

- Parental Leave Act 1997 & Parental Leave (Amendment Act) 2006
- Maternity Protection Act (Amended 2004)
- Carer's Leave 2001
- Employment Equality Acts 1998 & 2004
- Safety, Health & Welfare at Work Acts 1989 and 2005

This legislation is provided to offer new opportunities and a better and safer working environment for all workers. It is therefore important that they are aware of their rights and responsibilities in the workplace.

Further information on these and other employment rights can be found at:

www.youth-connect.ie

www.unionconnect.ie

www.ictu.ie

www.equality.ie

www.employmentrights.ie

www.hsa.ie

COLLECTIVE LABOUR LAW

Industrial relations

Industrial relations simply describe the relationship between employers and workers and the environment in which groups conduct that relationship. Although the relationships themselves can be quite complex, as we have seen, labour law relates to individual workers' rights. Industrial relations cover how groups of workers and unions manage the relationship with employers and, whilst there is legislation covering aspects of industrial relations, it operates on a "voluntary" basis.

This means that neither side is specifically constrained by legislation to make agreements, except in situations where agreements are registered with the Labour Court.

The state has no direct influence in industrial relations and parties pursue their differences in a voluntary way. However, through industrial relations legislation there is provision for third party facilitation to assist the parties in reaching a settlement. The parties are free to use the services of these institutions or not, and can accept or reject subsequent recommendations made by them.

Legislation established IR institutions and their mechanisms govern the operation of the industrial relations environment. This ensures that trade unions operate in a certain fashion, such as how they are established, their operating rules and specifies how ballots and strikes should be conducted.

The rights of individuals to join a trade union is enshrined in Article 40.6.1 (iii) of the Irish Constitution, which provides that the State guarantees "liberty for the exercise, subject to public order and morality, of the right of the citizens to form associations and unions". However, at present the Courts do not accept that the guarantee includes a right of recognition.

Workers are protected, in general, by employment legislation, ensuring they are given an entitlement to a minimum standard of rights and entitlements regardless of their trade union membership. However, trade unions fight for better pay and conditions through collective bargaining with employers culminating in collective agreements, at both local and national level.

Scope of the law

The main legislation that regulates the industrial relations environment is the Industrial Relations Acts, the first of which was enacted in the 1940s. The Industrial Relations Acts also gave effect to the IR institutions and mechanisms which we still use today. What follows is a brief synopsis of each institution. Please refer to their respective websites for more detail.

Institutions and mechanisms

The state provides a number of institutions and mechanisms to facilitate resolution of disputes and redress for non-compliance.

- Labour Relations Commission
- Labour Court
- Rights Commissioners
- Employment Appeals Tribunal
- Equality Tribunal

Labour Relations Commission

Established under the Industrial Relations Act 1990 it is a tripartite body with trade union, employer and independent representation. One of its primary functions is to promote good industrial relations. It provides a range of services to help prevent and resolve disputes.

The main functions are listed below:

- Promote good industrial relations.
- Provide conciliation and advisory services.
- Prepare and offer guidance on codes of practice.
- Conduct or commission research on industrial relations.
- Review and monitor industrial relations developments.
- Provide a Rights Commissioner service.
- Assist Joint Labour Committees and Joint Industrial Councils.

For more information on the Labour Relations Commission please visit www.lrc.ie

The Labour Court

The Labour Court was established under the Industrial Relations Act 1946 to provide a service for the resolution of industrial relations disputes. It also deals with matters of equality, organisation of working time, national minimum wage, part-time work and fixed-term work matters.

Its mission is: "To find a basis for real and substantial agreement through the provision of fast, fair informal and inexpensive arrangements for the adjudication and resolution of trade disputes".

It is not a court of law but operates as an industrial tribunal. When a case comes before the Labour Court it hears both sides of it and then issues its view. This view can take a number of forms, depending on what type of case is being heard, and sets out the opinion on the dispute and the terms on which they recommend it should be resolved. The Labour Court's view can include a:

Recommendation: These are not binding on the parties involved but both sides are expected to give serious consideration to the Court's recommendation. However, final responsibility for the settlement of a dispute rests with the parties.

Determination: If the court issues a recommendation and the dispute remains unresolved, a Union may apply for a court determination. A determination will only be made after a review hearing has been held. If an employer fails to comply with the terms of the courts determination, the Union may apply to the Circuit Court for an order directing the employer to carry out its terms.

The Court's determinations under the Employment Equality, Pensions and Organisation of Working Time, National Minimum Wage, Industrial Relations (Amendment), Protection of Employees (Part-Time Work) and Protection of Employees (Fixed-Term Work) Acts are legally binding.

Order: These are made when the dispute involves a breach of a registered employment agreement and, due to this fact, these orders are legally binding.

The Labour Court is a court of last resort which means that cases should only be referred to the Court when all other efforts to resolve a dispute have failed.

For more detail on the Labour Court please visit www.labourcourt.ie

Rights Commissioners

This is an independent service of the Labour Relations Commission (LRC). Each Rights Commissioner is appointed by the Minister for Enterprise, Trade and Employment on the recommendation of the Labour Relations Commission. The role of the Rights Commissioners is to investigate disputes, grievances and claims that individuals or small groups of workers refer under certain acts of employment legislation. For a full list of these acts and more details on their role please visit either www.youth-connect.ie or www.lrc.ie

Employment Appeals Tribunal (EAT)

The EAT consists of a chairperson (practicing barrister or solicitor), seven vice-chairpersons and a panel of ordinary members from the Irish Congress of Trade Unions and employer organisations.

It consists of divisions with a chairperson or vice-chairperson and one member from the trade union and employer sides.

The EAT adjudicates on and interprets a number of Acts.

Hearings in the EAT are conducted in public and anyone can sit in the gallery during a hearing.

For more information on this tribunal please visit www.eat.ie

Equality Tribunal

The Equality Tribunal was established under the 1998 Employment Equality Act and its mission is: "To contribute to a fairer society through providing a fair, accessible and impartial forum to remedy unlawful discrimination".

Their role is to mediate or investigate complaints of discrimination under the Employment Equality Acts. In the case of mediation a Mediation Officer is appointed to help both sides in the case to reach a confidential agreement that is acceptable to both.

In the case of investigation a formal examination of the complaint is carried out by an Equality Officer. Each side will then forward a submission (written statement) and other relevant information for consideration by the Equality Officer who will then hear the evidence in private. This will allow them to reach a decision which is legally binding and made public through their website.

For more information about the tribunal please visit www.equalitytribunal.ie.

International Labour Standards

There are a number of organisations operating internationally which seek to secure improvements in working conditions worldwide. One of the oldest and most well-known organisations which deals with labour in the international arena is the International Labour Organisation (ILO).

The ILO has been in existence since 1919 when it was established to develop international labour standards and ensure their application around the world. One of its main aims is: "To promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity;" Juan Somavia, ILO Director-General. It also seeks to improve working conditions worldwide and ensure decent work for all.

It is a unique organisation in that it has a tripartite structure which is composed of governments, employer and worker organisations (unions). It is the organisation which is responsible for drawing up and overseeing international labour standards and works with member countries to ensure the standards are upheld not only in principle but also in practice.

Currently there are 192 countries in membership of the ILO of which Ireland is one.

A short history

The following timeline charts the development of the ILO and social history.

- | | | | |
|----------------|--|-------------|--|
| 1818 | The English industrialist Robert Owen requests protective measures for working people and the formation of a social commission during the Congress of the Holy Alliance in Aachen, Germany. | 1944 | Declaration of Philadelphia reaffirms the fundamental objectives of the Organisation. |
| 1831-34 | Two successive “canut” revolts at the Lyon silk mills are bloodily suppressed. | 1946 | The ILO becomes the first specialised agency to be associated with the United Nations. |
| 1838-59 | The French industrialist Daniel Le Grand takes up Owen’s ideas. | 1948 | Election of David Morse as Director-General of the ILO, adoption of Convention No. 87 on freedom of association, emergency manpower programme for Europe, Asia and Latin America. |
| 1864 | Founding of the first Workers’ International in London. | 1950 | The United Nations Enlarged Programme of Technical Assistance gives new impetus to cooperation with developing countries. |
| 1866 | The first International Workers’ Congress demands international labour legislation. | 1951 | Convention No. 100 provides for equality of pay for men and women for work of equal value. The Governing Body, acting with ECOSOC, creates a commission and a committee to examine complaints of violations of freedom of association. |
| 1867 | Publication of the first volume of Karl Marx’s “Das Kapital”. | 1957 | Convention No. 105 prescribes the abolition of forced labour in all its forms. |
| 1883-91 | Adoption in Germany of the first social legislation in Europe. | 1960 | The ILO creates the International Institute for Labour Studies. |
| 1886 | 350,000 workers go on strike in Chicago demanding an 8-hour workday – the movement is brutally repressed (“Haymarket Riot”). | 1966 | Inauguration of the International Training Centre of the ILO in Turin. |
| 1889 | Founding of the Second International in Paris. | 1969 | ILO receives Nobel Peace Prize. |
| 1890 | Representatives of 14 countries meet in Berlin and formulate suggestions that will influence national legislation in matters of work. | 1989 | Representatives of the Solidarnosc union utilise the recommendations of an ILO commission in their negotiations with the Polish government. Michel Hansenne becomes Director-General of the ILO. |
| 1900 | The Paris Conference creates an international association for the protection of workers. | 1991 | The ILO adopts a new strategy in the struggle against child labour (ILO-IPEC programme). |
| 1906 | The Bern conference adopts two international Conventions reducing the usage of toxic white phosphorous in the fabrication of matches and forbidding night work by women. | 1992 | The International Labour Conference approves the new policy of active partnership – the first multidisciplinary team is established in Budapest. |
| 1914 | War breaks out in Europe, preventing the adoption of further Conventions. | 1998 | The Conference adopts the ILO Declaration of Fundamental Rights at Work; Freedom of Association; Abolition of Child Labour; elimination of forced labour and discrimination. |
| 1919 | Birth of the ILO, the first International Labour Conference, which adopts six conventions, the first of them limits working hours to eight per day and 48 per week. Albert Thomas becomes the first Director of the ILO. | 1999 | Juan Somavia from Chile becomes the first ILO Director-General from the southern hemisphere. The Conference adopts a new convention concerning the prohibition and immediate elimination of the worst forms of child labour. |
| 1925 | Adoption of several Conventions and Recommendations on social security. | | |
| 1927 | First session of the Committee of Experts on the Application of Conventions. | | |
| 1930 | A new convention aims at the progressive abolition of forced and compulsory labour. | | |

Standards, conventions and recommendations

The ILO has developed a system of international labour standards to promote better working conditions and ensure workers enjoy an environment of freedom, equity, security and dignity. The standards cover a wide range of subjects, such as the elimination of child labour and forced labour, recognising freedom of association and collective bargaining, employment security, protection of migrant workers, wages, hours of work and maternity protection. For a full list of the standards and subjects covered go to www.ilo.org

These standards are legal instruments drawn up by their constituents (governments, employers and workers), which set out basic principles and rights at work. They are either conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines.

In a lot of cases a convention lays down the basic principles to be implemented by the countries that ratify it. A related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also stand-alone in that it need not be linked to any convention.

Adoption process

- ✚ Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's Annual International Labour Conference.
- ✚ When a standard is adopted, member states are required under the ILO Constitution to submit them to their competent authority (normally the parliament) for consideration.
- ✚ For conventions, this means consideration for ratification. If it is ratified, a convention generally comes into force for that country one year after the date of ratification.
- ✚ Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals.
- ✚ The ILO provides technical assistance if necessary.
- ✚ Representation and complaint procedures can be initiated against countries for violations of a convention they have ratified.

Fundamental conventions

The Governing Body of the ILO has identified eight conventions as "fundamental" or core conventions, which cover subjects that are considered fundamental principles and rights at work:

- ✚ freedom of association and the effective recognition of the right to collective bargaining;
- ✚ the elimination of all forms of forced or compulsory labour;
- ✚ the effective abolition of child labour; and
- ✚ the elimination of discrimination in respect of employment and occupation.

These principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998). In 1995, the ILO launched a campaign to achieve universal ratification of these eight conventions. There are currently over 1,200 ratifications of these conventions, representing 86 per cent of the possible number of ratifications.

ILO Declaration of Fundamental Principles and Rights at Work

The Declaration, which was adopted in 1998, is an expression of the commitment of governments, employers and workers' organisations (trade unions) to uphold basic human values. It commits and reaffirms the member states to respect, promote and realise in good faith the principles and rights in four separate categories (see above), regardless of whether that state has ratified the relevant convention or not.

The Declaration makes it clear that these rights are universal, and that they apply to all people in all States, regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers, and recognises that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty.

THE WORKPLACE

Whilst the law provides the standards that operate in the workplace, both employers and employees have specific responsibilities in the workplace.

Employers' responsibilities

Employers have duties and responsibilities towards their workers, some of which they are legally obliged to carry out.

Employers have a responsibility to:

- ✔ provide a safe working environment free from:
 - discrimination and harassment; and
 - dangerous working conditions and hazards; including stress and bullying
- ✔ treat workers with dignity and respect;
- ✔ ensure workers are not discriminated against on any basis but particularly on any of the protected grounds within the law;
- ✔ pay a decent wage at no less than the applicable minimum wage rate;
- ✔ adequate training, both induction and upskilling, in order to perform their job correctly on an ongoing basis; and
- ✔ ensure workers are aware of company policies, rules and guidelines in terms of their behaviour, performance and management expectations.

Employee responsibilities

Workers, as employees, also have responsibilities in the workplace in terms of performance and their behaviour towards fellow workers and their employer.

Workers have a responsibility to:

- ✔ perform their job to the best of their ability;
- ✔ adhere to company rules, policies and procedures as set out;
- ✔ treat their work colleagues with dignity and respect;
- ✔ ensure that they do not discriminate on any basis against fellow colleagues or any individual with whom they come into contact at the workplace;
- ✔ behave in a responsible manner;
- ✔ ensure they know how to use properly any workplace equipment they are required to use;
- ✔ alert their union to any workplace issue which may arise, in line with appropriate grievance procedures;
- ✔ not undertake tasks that they are not properly trained in; and
- ✔ report potentially dangerous or hazardous situations.

For further information on these and related topics go to www.youth-connect.ie

IN SCHOOL

European School Student Rights

The Declaration of School Student's Rights is a set of school student's rights which were drafted by the Organising Bureau of School Students Unions (OBESSU). OBESSU is an umbrella body of school students unions in Europe. The Irish Second-Level Students Union (ISSU) is affiliated to OBESSU and worked on the declaration. The ISSU have responsibility for promoting the declaration in Ireland.