

**Employment Legislation Guide**  
**For**  
**Small and Medium Businesses**

**Prepared by Arra HRD Ltd**

**February 2011**

<b>Foreword</b> .....	3
<b>Recruitment Process</b> .....	4/8
<b>The Employment Contract and general terms of employment</b> .....	9
Terms and conditions that must be included .....	9
Different types of contracts .....	10/16
National Minimum Wage .....	16/17
<b>Working Time Legislation</b> .....	18
Statutory rights for employees regarding working time and rest periods .....	18/21
<b>Employment Equality and The Law</b> .....	22
Equal Opportunities Policy Checklist .....	22
Bullying and Harassment .....	22
Employing people with a disability .....	23/24
<b>The Law and Grievance Procedures</b> .....	25
Policy and procedure to deal with grievance in the workplace .....	25
Implications of changes to Industrial Relations Acts .....	25
<b>The Law and Disciplinary Procedures</b> .....	26
Policy and procedure to deal with discipline in the workplace .....	26
Termination of employment .....	26/27
<b>Leave within employment</b> .....	28
Statutory Leave .....	28/32
Non-Statutory Leave .....	32/33
Table of Leave Entitlements.....	34
<b>Pensions</b> .....	35
Pension options for employers with employees .....	35/36
<b>Health and Safety</b> .....	37
Health and Safety requirements in employment .....	37/38
<b>Redundancy</b> .....	39/46
<b>Changing Terms and Conditions of Employment</b> .....	47/48
<b>Appendices</b> .....	
1. Template for employment contract .....	49/54
2. Template for Discipline Procedure .....	55/57
3. Template for Grievance Procedure .....	58
4. Template for Equal Opportunities Policy .....	59/60
5. Bullying and Harassment in the Workplace .....	61/65
6. Policy on use of Internet and E-Mail .....	66/69
7. Works Committee .....	70/71

## Foreword

This Employment Legislation Guide has been prepared by Arra HRD in February 2011. This booklet is available in electronic format. It is placed on the website of the company and is intended for reference and use by small and medium size business to assist them in being compliant with employment legislation and regulations. It covers the main areas that an employer needs to address in regard to the recruitment, employment and retention of employee's.

Arra HRD accepts no responsibility for the use to which this guide is applied and employers are recommended to obtain the recommendations of their own employment consultants on the interpretation and implementation of any aspects addressed within this booklet.

The booklet contains information on areas such as the contract of employment, working time legislation, the area of employment equality in the workplace, grievance and disciplinary procedures, leave entitlements that employees have under legislation, and information in regard to dealing with redundancies. In addition this guide provides a number of specific templates for contracts of employment and for a number of essential workplace procedures that an employer is required to have in place.

It is hoped that this guide can assist employers in regard to dealing with the matters it addresses, as and when they arise in the employment relationship between the employer and they employee's in a specific company situation. There is a very significant demand placed upon employers' with regard to insuring that all aspects of the employment relationship with each employee is properly regulated and proper and complete records are in place to demonstrate compliance. By following this guide and by adopting the templates in the guide, it should be possible for each employer to be compliant in regard to the various aspects of employment legislation that they are faced with implementing.

Should any employer wish to discuss further the contents of this guide or any aspects of employee and industrial relations then please contact Michael O'Sullivan at 044 92 24528. You may also contact ARRA HRD Ltd by e-mail:- [michael@arrahrd.ie](mailto:michael@arrahrd.ie) , Fax 044 92 24444 and website is [www.arrahrd.ie](http://www.arrahrd.ie)

Arra HRD Ltd  
February 2011

## **Recruitment into the business and internal promotions/career development**

### **Recruitment Process**

The first area to consider in employment law is recruitment and internal promotion. The objective for a business in recruitment and internal promotions is to ensure you get the best available person to do the job. In achieving this, the employer must ensure that there is no bias on the grounds of sex, marital status, family status, age, disability, religion, sexual orientation, race or membership of the Traveller Community. The Equality legislation in place is effectively stating that an employer cannot treat any person less favourably than another under the nine grounds stated above. There are many varied aspects associated with discrimination associated with recruitment and internal promotion. The appropriate manner to deal with this is for an employer to be systematic in approaching any vacancy in the business.

For all vacancies in the employment, an employer should prepare the following;

- Job Description
- Person Specification
- Terms and Conditions for the position

**The job description** should provide the employer with all the information to deal with what the responsibilities of the job are and the skills to carry out the role. It should be based on what the person will actually do and include the following details;

(1) Job title (2) Manager (3) Link to other positions in business (4) Purpose of the job (5) Duties and responsibilities of the job (6) Specific job skills required.

**The person specification** should set out the qualifications, personal skills and experience of the person that is required to fill the position. An employer should think carefully through the information on the job description in matching the person specification to the requirements of the job. Details to include in the person specification are;

(1) Education standard/Qualification (2) Work experience (3) Special aptitudes e.g. language skills for tour guide (4) Personal characteristics (5) Specific Requirements of Position e.g. travel to carry out job role.

**The terms and conditions of the job** need to be clearly set out for the successful candidate. These are dealt with under the employment contract section of this guide. It is important to point out that an employer should have these matters decided before offering a job or promotion so that they

can be agreed with the person before they start the job. Leaving such a matter until a person starts into a position is not helpful in creating a professional and positive approach to the work situation. Also an employer is obliged in law to give these terms in writing within two months of a person taking up employment.

The method by which an employer recruits is important to review. There are two routes that can be taken, internal or external. In regard to internal recruitment it is important to keep the same discipline of job descriptions and person specifications as many problems can arise if all areas are not considered. Sometimes it is assumed that internal people will know the job to be done, etc. However it is vital to study in full the employer requirements irrespective of an internal search or external approach to filling a vacancy. With regard to external sources for jobs an employer has a number of options to consider. One can take personal recommendations from friends or colleagues, local newspaper advertising, local employment services, use of recruitment agencies and application forms are sometimes filed away and can be a source to review when a vacancy arises.

Whichever approach an employer takes it is important to focus on the requirements of the job and the skills of the person needed to fill the vacancy. This will keep the employer's concentration on the job description and person specification. In this way the employer will be able to avoid the pitfalls of discriminating against any person under the nine grounds that was referred to earlier. It will greatly assist in keeping the process within the employment law framework. The **Interview Assessment Guidelines Template (Appendices 10.6)** sets out a framework in which an employer can outline selection criteria. Assessing both the person specifications and job description requirements of the position should be carried out in arriving at the criteria. No more than three criteria for the job description and three criteria for the person specification should be chosen. Then it is necessary to give each criteria a C for critical or D for desirable, so that you are assessing under the key criteria while also taking account of desirable skills or experience that can add further to the performance of the position.

### **1.2 Checklist for use within the interview process**

A number of methods are available for the selection of a person for a job. They include tests, assessments and interviewing. Interviewing is by far the most widely used method and this guide will concentrate on that aspect of selection. The points made in regard to interviewing can be adopted and applied to any other approach to selection that may subsequently be used.

The important point to make is that the interview needs to be properly structured around the job description and person specification so that the employer is seeking information that will guide them to a decision based on what they need. It is equally important to use a number of people on the interview panel. Two people should be the minimum in any situation and in particular jobs it can be appropriate to move that up to three people. Organisations should in addition try to have a gender balance on interview

panels. Many companies will have a number of interviews with a candidate sometimes varying the interviewers and this can assist in eliciting more information about the candidate and their 'fit' with the organisation and the job to be performed.

It is important to ask the same general questions of each candidate being interviewed. The following checklist gives an ideal basis for formulating a set of questions and for conducting the interview process.

- a) Direct or closed questions that require a short or yes/no answer. Good method for obtaining facts.
- b) Leading questions to get the candidate to give a view or opinion that you need to be aware of for the particular job. These type of questions should be avoided as you get the answer that you 'lead' into. E.g. 'You do like to work in a fast paced working situation?'
- c) Topic changing so that you can move the interview onto a new aspect that you require to deal with. Good technique will help to move you through each area that you wish to cover with the candidate.
- d) Probing and developing that enquire more fully into an area discussed. This will help to get evidence of understanding of issues and to determine the interviewee's knowledge, experience, feelings and attitudes.
- e) Open ended questions to encourage discussion. E.g. 'tell me about...'. This is very useful to get the interviewee talking and can give you an insight into their preferences and interests.
- f) Reflecting back to the person by restating what they said so as to get confirmation of your understanding of their viewpoint. This technique is vital both to determine if you fully understand the points being made by the interviewee and to show to them that you are actively listening to everything in the interview.

Questions to avoid in the interview include anything that is not relevant to assessing the ability of a candidate to perform the job vacancy. Matters of a personal or family nature are likely to be discriminatory and should never be asked. Also it is inappropriate to question a candidate on how they might travel to and from work or on how they would cope with balancing work and non-work commitments.

The employer is then left to make a selection from the candidates interviewed. The template in the appendices gives a format by which the employer can objectively mark each candidate during the interview process. This can then be used to make a decision on who should be promoted or appointed to the vacancy.

It is during the selection process that most problems arise concerning discrimination against the potential employee's. If the employer prepares fully, has criteria set against the job and person specifications and conducts the interview process in line with the checklist above then it will reduce

significantly any potential to be subjective or unfair to any person who has applied for the vacant position.

The purpose of recruitment is to select for the skills and experience required. Interviewing is a skill and therefore it is important that the employer gets training and instruction on questioning techniques and on how to fully prepare a template for a vacancy. This will help to get the interview and selection process right – getting the right fit between the job to be filled and the person to fill the post.

### **1.3 Sample Interview Questions**

The interview process is not a science and its value is very dependant on how well you as an employer prepare for the discussion with your potential employee. The following is a list of questions which can be adopted depending on the circumstances and criteria you are seeking to gain an insight of when conducting an interview. The questions have been grouped under specific headings which should help you to identify which area and which questions are most relevant in different interview situations.

#### **Achievements:**

Would you consider yourself an achiever? Can you give us some examples of what were your greatest achievements in your work over the past two years?

What motivates you to succeed in your present job?

What are the standards for success in your current job?

What would you consider to be your most significant professional accomplishment to date?

We all fail to hit targets from time to time. Tell us about an occasion when this happened to you and how you reacted?

#### **Ability to organise oneself:**

How did you prepare for this interview?

In your current job how do you schedule your time and set priorities?

How do you keep track of the things that require your attention in your job?

#### **Initiative:**

Do you consider yourself to be a self starter? Give us some evidence of this Have you ever been able to turn a problem into an opportunity?

How do you approach new tasks that you are confronted with, please give specific examples based on your experience to date?

#### **Customer Service:**

In your current job what effect does your personal style of working have upon those with whom you work?

Have you ever modified your personal style to achieve results with a difficult individual? Tell us about how you achieved the desired result  
Why do you believe the internal customer concept is relevant to working in organisations?  
How do you manage your customer's expectations? Give examples

### **Influencing Skills:**

Did you ever try to convince your boss of what you considered to be a good idea but he / she rejected it? How did you react?  
You will be required to convince people to accept your recommendations for change and how would you go about influencing someone to accept your recommendations?  
What particular attributes, in terms of your own strengths and weaknesses, do you think you will bring to the position if successful?

### **Managerial Skills:**

How have you identified the training and development needs of your subordinates in your present or previous job?  
What is your management style? Explain with examples?  
Have you ever disagreed with the collective decision of a team of which you were part? What did you do?  
Have you ever had to work as part of a team where you felt that others were lacking commitment or ability? What did you do?  
What qualities would you consider were the most important to look for if you were interviewing for this post?

### **Interpersonal Skills:**

Have you ever lost your temper at work? Describe an occasion and how you dealt with the situation subsequently?  
Can you give me examples of changes at work that have affected your job?  
How have you coped with these?  
Can you give me example of a situation where it has been difficult to maintain your own effectiveness due to external change?  
Describe a situation where you used listening skills to fully understand a problem that a work colleague had. How did these skills assist you in resolving the matter?

### **General Questions:**

Where do you see yourself in five years?  
What are your interests outside of work?  
What are your general observations about our company from what you have seen today and read/heard about us prior to this interview?

## **The Employment Contract and general terms of employment**

It is vital that each employee who works in a business is provided with a contract. While it is a legal requirement to do so, even more important for the employer is to recognise the need to have each employee understand their terms and conditions and doing this in writing is a practice that is now widely used.

### **Terms and conditions that must be included in a contract of employment**

The template for the employment contract outlines a basic contract and key terms. Here we look at the terms and conditions that must be included in the employment contract.

- The full name of the employer and the employee
- The address of the employer, which normally is given as the registered office of the company
- The place of work of the employee
- The title of the job or the nature of the work for which the employee is employed
- The date of commencement of the employee's contract of employment
- For temporary contracts, the expected duration of the contract
- For Fixed-term contracts the date on which the contract expires
- The rate of remuneration or method of calculating remuneration
- The pay intervals for the employee
- Any terms and conditions relating to hours of work
- Any terms and conditions relating to paid leave
- Any terms and conditions relating to incapacity for work due to sickness or injury and relating to paid sick leave
- Any terms and conditions relating to pensions and pension schemes
- The period of notice, which the employee is required to give and entitled to receive
- Reference to any collective agreements that directly affect the employee's terms and conditions

Each employer is required by law to provide the above information in written form within two months of an employee taking up employment. Where an existing employee requests such information, it must be provided to the employee within two months of making such a request. It is important for an employer to provide a copy of the contract for the employee's own records as well as retaining one copy in the employment for each employee.

## **Different types of contracts of employment**

### **Full time contract/Permanent Contract**

With this type of contract there is no end date and the contract remains in place indefinitely until the retirement of the employee. The termination of such a contract can only be done by giving the required contractual notice and even then only if reasonable and justifiable cause can be given as to the need to terminate such a contract.

### **Temporary Contract**

A temporary contract can be for a fixed period of time, for a specific purpose or it can be open-ended.

A fixed-term contract contains a date of commencement and a date of expiry of the contract. It usually also includes a clause to allow either party to terminate employment before the expiry date on giving specified notice.

A specific purpose contract contains a commencement date. It does not state when the contract will expire but will state the purpose of it such as to design a new prototype of an item and that the contract will end when this task or piece of work is completed.

Fixed-term or specific purpose contracts cannot be used to avoid liability under Unfair Dismissals legislation. Use of successive fixed-term or specific purpose contracts need to be reviewed with a view to consideration of full time/permanent contracts if the work is there for the particular area of activity in the medium to long run.

An employer who has given two or more continuous fixed-term contracts must not exceed 4 years duration of such contracts with an employee. Further conditions on fixed-term work can be obtained from the Protection of Employees fixed-term work Act 2003.

### **Fixed-term Contract**

#### **Protection of Employees (Fixed-Term Work) Act 2003**

The Protection of Employees (Fixed-Term Work) Act 2003 was enacted on 14 July 2003. The Act gave effect to Council Directive 1999/70/EC.

The Act has two main objectives:-

- To improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;

- To establish a framework to prevent abuses arising from the use of successive fixed-term employment contracts or relationships.

### **What this Act covers**

The Act covers all fixed-term workers who have a contract of employment directly with an employer, where the end of the contract of employment is determined by an objective condition such as:-

- The arrival of a specific date;
- The completion of a specific task;
- The occurrence of a specific event

### **The Act excludes:**

The act excludes employees in initial vocational training relationships or apprentices' schemes, and employees with a contract of employment that has been concluded within the framework of a specific public or publicly supported training, integration or vocational retraining programme. Also excluded are:

- Members of the Defence Forces;
- Trainees within the meaning of the Garda Síochána Regulations 1988;
- Nurses in training within the meaning of Parts III and IV of the Nurses Act 1985;
- Temporary agency workers
- A contract entered into under the Employment Agency Act 1971; therefore agency workers are excluded

### **Definition of conditions of employment**

Conditions of employment include:

- Conditions in respect of remuneration (such as health insurance and sick pay); and
- Matters relating to any pension scheme or arrangement, including conditions for membership or the scheme, entitlement to rights and conditions related to the making of contributions to the scheme.

### **Definition of what remuneration means in the act:**

- Any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment, and

- Any amounts the employee will be entitled to receive on foot of any pension scheme or arrangement
- **Renewal** includes extension of an existing fixed-term contract

### **Comparable Permanent Employee**

Comparable permanent employee is an employee who:-

- Works for the same employer or associated employer and fulfils one of the following conditions:-
- Both of the employees perform the same work under the same or similar conditions, or each are interchangeable in terms of work;
- The work performed by the two employees is of a similar nature with minimal differences between the work or conditions
- The work performed by the fixed-term employee is equal or greater in value due to skill, physical or mental requirements, responsibility or working conditions

Where neither of the above criteria apply a comparable worker is one who works in the same industry or sector of employment and fulfils one of the conditions mentioned above as if they worked for the same employer.

### **Conditions of Employment**

The Act states that fixed – term employees cannot, in respect of their conditions of employment, be treated in a less favourable manner than comparable permanent employees. However, fixed-term employees can be treated in a less favourable manner if this can be justified on objective grounds (see below).

Period of service qualification in respect of a particular condition of employment should be the same for a fixed-term employee as for a comparable permanent employee, except where a different service qualification is justified on objective grounds.

Fixed-term employees can legitimately be excluded from pension schemes. If their normal hours of work constitute less than 20% of the normal hours of comparable permanent employees.

Where a condition of employment is dependent on the number of hours worked, the extent to which it is provided to a fixed-term employee is related to the proportion of normal hours worked vis-à-vis a comparable permanent employee.

### **Objective Grounds for less favourable treatment**

A ground may be considered as an objective ground for treatment in a less favourable manner (including the renewal of a fixed-term employee's contract for a further term), if it is based on considerations other than the fixed-term status of the employee; and the less favourable treatment is for purpose of a legitimate objective of the employer. If the treatment of the fixed-term employee is based on his or her fixed-term status, then it is not an objective ground for less favourable treatment.

Employees engaged on a fixed-term contract may be treated less favourably in respect of a particular condition of employment as long as their conditions of employment, taken as a whole are at least as favourable as the terms enjoyed by comparable permanent employees.

### **Successive Fixed-Term Contracts**

In order for an employee to be employed on a fixed-term contract, the employee should be informed in writing (as soon as practicable) of the objective condition determining the end of the contract; the arrival of a specific date the completion of a specific task, or the occurrence of a specific event.

If an employer proposed to renew a fixed-term contract, the employee should be informed in writing of the objective grounds:

- Justifying the renewal; and
- Explaining why a contract of indefinite duration is not being offered

This needs to be done, at the latest, by the date of the renewal.

The legislation regulates the use of successive fixed-term contracts

Once fixed-term employees have completed the third year of continuous employment, their fixed-term contracts may only be renewed on one further occasion, and for a maximum of one year.

For employees engaged on fixed-term contracts after 14 July 2003 – once an employee had been engaged on two or more fixed-term contracts, the aggregate duration of these contracts may not exceed four years.

Where either limit had been reached, the next contract must be one of indefinite duration.

Any breach of this section of the Act effectively renders the fixed-term contract a contract of indefinite duration.

The Minimum Notice and Terms of Employment Act 1973 to 2005 will apply for the purpose of ascertaining the period of service of an employee and whether that service has been continuous

## **Fixed-Term Employees and Unfair Dismissals**

When an employee is engaged on successive fixed-term contracts it is important to bear in mind that the unfair dismissals legislation will apply in addition to the fixed-term work legislation. The clause that excludes the application of the unfair dismissals legislation upon the natural expiry of the contract may only be relied upon in the first contract in a succession of fixed-term contracts. It is important to note that in a situation where an employee has two or more successive fixed-term contracts and has over 12 months continuous service, the provisions of the unfair dismissals legislation will give protection to a fixed-term worker upon termination of the fixed-term worker's contract. If the termination is not a result of a resignation or redundancy i.e. the position no longer exists, the employer may be exposed to a claim under the Unfair Dismissals Acts 1977 to 2007 if it cannot be shown that the dismissal was not unfair.

## **Information on Employment and Training for Fixed Term Contract Workers**

In order for fixed-term employees to have the same access to permanent posts, an employer is required to inform them about relevant vacancies that arise. This information can be provided by means of a general announcement in the employee's place of work. The Act also provides that as far as reasonably practicable, access to appropriate training opportunities shall be facilitated by the employer.

## **Information and Consultation**

Fixed-term employees shall be taken into account when calculating the employee threshold above which employee representative bodies may be constituted under the Employees (Provision of Information and Consultation) Act 2006. As far as possible, employers should provide information to employees' representatives about fixed-term work in the undertaking.

## **Prohibition of Penalisation**

An employer may not penalise an employee for acting in accordance with the Act. Employees will be considered to have been penalised if they have been dismissed, suffered any changes in their conditions of employment or any unfair treatment (including selection for redundancy), or have been the subject of any other action prejudicial to their employment.

## **Dispute Procedures**

Fixed-term employees, or their trade union, may refer a dispute in relation to an entitlement under the Act in writing to a Rights Commissioner. Disputes concerning the dismissal of an employee can be dealt with under the Unfair Dismissals Acts 1977 to 2007 or under the Protection of Employees (Fixed-Term Work) Act 2003. Redress will be granted under one of the two pieces

of legislation, meaning an employee who is employed on a fixed-term contract and who works part-time hours can obtain relief under the Protection of Employees (Fixed-Term Work) Act 2003, or the Protection of Employees (Part-time Work) Act 2001, but not under both.

Disputes must be referred to the Rights Commissioner within six months of the occurrence of the dispute (this can be extended to 12 months due to reasonable cause).

The Rights Commissioner may decide one of the following:-

- Declare that the complaint or the case was not well founded
- Require the employer to comply with the relevant provision;
- Require the employer to reinstate or re-engage the employee (including on a contract of indefinite duration)
- Require the employer to pay the employee compensation up to a maximum of two years remuneration

Either party may appeal a decision of the Rights Commissioner to the Labour Court. Appeals must be made in writing within six weeks of the decision. In the case where a Commissioner's decision has not been appealed and has not been adhered to, the employee concerned may bring a complaint to the Labour Court not later than six weeks from the date when it could have been appealed. If an employer fails to comply with the decision of the Labour Court within six weeks of the determination, the employee his or her trade union or the Minister may apply to the Circuit Court for an order directing compliance. Either party to proceedings in the Labour Court may appeal the decision to the High Court on a point of law only.

### **Seasonal Contract**

Many organisations have requirements of a seasonal nature. Seasonal contracts can be used and it is advisable to apply a fixed-term to the work and to give no guarantee beyond the expiry date. If the employee is re-hired each season, then such a contract will be seen as of an indeterminate duration and the periods of lay off between seasons will be viewed as lay off. This will result in bringing the employee under legislation such as Unfair Dismissals.

### **Part-Time Contract**

A part time contract covers fewer hours work in a period and or fewer days worked in a period. It is important to look at the terms and conditions of people on part time work in line with full time employees as generally speaking they are to be afforded pro-rata terms. This matter is addressed in this section under fixed term contracts.

## **Job sharing contract**

In these situations a job is split normally between two employees. The rights and obligations to fulfil the job is divided between the two people involved in the job share. It is important for an employer to ensure that there is no discrimination between job sharers and full time employees performing like work.

## **Apprenticeship**

In these cases the employer undertakes to employ the apprentice on the basis that formal training will be given under suitable trained supervision and/or off the job FAS approved courses.

## **General terms of employment**

In addition to the contract of employment, many employers will produce an employee handbook. A crèche handbook can be a means of communication and a source of reference for employees. It would be particularly useful in the training and induction period for a new employee as well as an on going source of information on general terms of employment not covered in the contract of employment. Where employee handbooks are produced in addition to a contract, they should contain information on policies and procedures in the crèche, general requirements in regard to safety at work and how the crèche deals with training and development of staff.

## **National Minimum Wage**

A national minimum wage has been enforced through legislation since 1<sup>st</sup> April 2000. The actual rate is set from time to time by ministerial order. The current rate as of February 2011 is €7.65. There are three sub minimum rates that allow for the relatively lower level of productivity of inexperienced employees. These are:

### **(i) Under 18 Rate**

An employee who has not attained the age of 18 is entitled to an hourly rate of pay not less than 70% of the national minimum hourly rate of pay

### **(ii) Job Entrant Rate**

An employee that is 18 years or over who enters employment for the first time is entitled to a rate not less than 80% of the national minimum hourly rate of Pay in their first year after having commenced employment and a rate of not less than 90% of the national minimum hourly rate of pay in their second year after having commenced employment.

### **(iii) Trainee Rate**

The following percentages of the national minimum hourly rate of pay apply where an employee who has attained the age of 18 years undergoes a prescribed course of study within the workforce or elsewhere during normal working hours:

- (a) in respect of the first one-third period (but not exceeding twelve months) of the total study or training period, 75%
- (b) second one-third period, 80%
- (c) third one-third period, 90%

The national minimum rate of pay shall continue to be revised from time to time by ministerial order and advertisements are placed in the public press at such times to notify employers and employees of any such changes.

## **Working Time Legislation**

The introduction of legislation dealing with working time in the late 1990's has created significant changes to how such matters are regulated. In addition it has also proved to be an opportunity for employers to work with employees in finding more flexible arrangements for ensuring that the work programme of the business is completed while also providing for appropriate rest and leisure time for employees. While ensuring that working time legislation requirements are met, many employers have also introduced innovative flexible arrangements to cater for their employees family and work-life balance concerns. We set out below the main statutory rights that exist for employees under working time legislation and give some examples of where flexible arrangements are available to employers to cater for the wider work-life balance issues of employees.

### **Statutory rights for employees regarding working time and rest periods**

A number of groups are excluded from the provisions of working time legislation where it relates to rest time and maximum working time rules. These groups are:

- Persons engaged in sea fishing or other work at sea
- Doctors in training but a phase in period has been agreed with the relevant authorities
- Person's employed by a relative, who are members of that relative's household and whose place of employment is a private house or farm, where they and the relative reside
- Person's who determine their own working time (with the exception of any core period stipulated by the employer)

The following categories of employees are also excluded by Ministerial Regulations from the provisions regulating daily rest, rest breaks at work, weekly rest, maximum working time and night working:

- Persons employed in the civil protection services
- Persons involved or connected with the transport by whatever means, of goods or persons. The activity of the person concerned must be directly related to the operation, scheduling or safety of a means of transportation.

EU Commission proposals to cover these categories are under discussion.

Working time is defined as any time that the employee is (a) at his /her place of work or at his/her employer's disposal and (b) carrying on or performing the activities or duties of his/her work.

There are a number of exemptions relating to daily rest, rest breaks at work, weekly rest and night working subject to an employer granting compensatory rest. These relate to specific activities and circumstances, namely:

- Shift changeovers
- Split shift arrangements
- Unforeseeable circumstances beyond the employer's control

Also by Ministerial regulation there are similar exemptions where the employer has consulted with employee representatives for the following circumstances and activities:

- An activity in which the employee is regularly required by the employer to travel distances of significant length to and from workplaces
- Persons involved in security and surveillance activities requiring a permanent presence in order to protect property and persons
- Activities of a seasonal nature or where there is a surge in activity. This would also include employees directly involved in ensuring the continuity of production or provision of services in hospitals, residential institutions and prisons, dock or airport workers, press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services, gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants, industries which cannot be interrupted on technical grounds, R&D activities, agriculture and tourism.

All of the foregoing exemptions are subject to equivalent compensatory rest being made available to the employee. This provides an opportunity for the employer to look with the employee at flexible arrangements that will accommodate both of their requirements and leads to a very favourable and motivating relationship between employer and employee.

Employers who are in a position to consider compensatory rest arrangements are referred to the Labour Relations Commission Code of Practice on Compensatory Rest, which can be downloaded from their web site at [www.lrc.ie](http://www.lrc.ie).

### **Maximum Weekly Working Time**

The maximum weekly working week is 48 hours. This is averaged over a 4, 6 or 12 month period in accordance with the following rules:

- For employees generally – 4 months
- For employees where work is subject to seasonality, a foreseeable surge in activity or where employees are directly involved in ensuring continuity of service or production – 6 months
- For employees who enter into a collective agreement with their employers which is approved by the Labour Court – 12 months

## Rest Periods

Each employee has a general entitlement to:

- 11 hours daily rest in each 24 hour period
- One period of 24 hours of rest per week preceded by a daily rest period (11 hours)
- Rest breaks – 15 minutes where up to 4.5 hours have been worked; 30 minutes where up to 6 hours have been worked which may include the first break
- Retail shop employees whose hours of work include the hours 11.30am-2.30pm and who works more than 6 hours must be allowed a break of one hour and that break must commence between the hours 11.30am-2.30pm

## Night Workers

Night time is defined as the period between midnight and 7am the following morning.

Night workers are employees who normally work at least 3 hours of their daily working time during night time and the annual number of hours worked at night equals or exceeds 50% of annual working time.

Maximum night working time is allowed as follows:

- For night workers generally 48 hours per week averaged over 2 months or a longer period specified in a collective agreement which must be approved by the Labour Court
- For night workers whose work involves special hazards or heavy physical or mental strain an absolute limit of 8 hours in a 24-hour period during which they perform night work.

## Conditions of employment, hours of work and rest periods for Under 18's

The maximum weekly hours of work for 14 and 15 year olds is as follows:

	14 year olds	15 year olds
Term-time	Nil	8 hours
Work experience	40 hours	40 hours

Where the maximum week is 35 hours, the maximum day is 7 hours. A maximum 40 hours a week means a maximum 8 hour day.

During the summer holidays, under 16s must have at least 21 days free from work.

Time off and rest breaks for under 16's is as follows:

Half hour rest break after	4 hours work
Daily rest break	14 consecutive hours off
Weekly rest break	2 days off and consecutive in as far as is practicable

The working hours, time off and rest breaks for 16 and 17 year olds is as follows:

Maximum working day	8 hours
Maximum working week	40 hours
Half hour rest break after	4.5 hours of work
Daily rest break	12 consecutive hours off
Weekly rest break	2 days off and consecutive in as far as is practicable

In regard to night work and early morning work, under 16's may not be required to work before 8am or after 8pm. In general, 16 and 17 year olds may not be employed before 6am or after 10pm.

During school holidays and on weekend nights where the young person has no school the next day, 16 and 17 year olds may work up to 11pm at night. The ban on early morning work then moves forward to 7am.

Where someone under 18 works for more than one employer, the combined daily or weekly hours of work may not exceed the maximum hours set out above.

Persons aged 15 may be employed as part of an approved training programme and an employer may employ a 14 or 15 year old who is a full-time second level student as part of a work experience or educational programme. These placements are for a maximum 8 hours a day or 40 hours a week.

Children under 16 can be employed in cultural, artistic, sports or advertising work which is not harmful to the safety, health or development of the child and does not interfere with the child's attendance at school where permission by licence has been received from the Minister for Enterprise Trade and Employment.

## **Employment Equality and The Law**

Legislation in the area of equality has advanced significantly over the past decade. Equality legislation impacts across all areas dealt with in this guide and in this section we look at the specific areas of equal opportunities, bullying and harassment procedures and employing people with a disability.

It is important for employer's to operate in a manner consistent with the need to provide equal opportunities to their employee's and to work with people on the basis of individual merit and without regard to, gender, marital status, family status, sexual orientation, religious beliefs, age, disability, race or membership of the Traveller Community.

### **Equal Opportunities Policy Checklist**

Each employer should develop and implement an Equal Opportunities Policy to ensure that an employee, prospective employee or agency worker is not discriminated against with regard to access to employment, conditions of employment, training and work experience and promotion. This is best achieved by putting in place an equal opportunities policy and ensuring that it is understood and implemented by the managers and supervisors in the business.

The equal opportunities policy should cover a number of areas, namely;

- recruitment into and promotion in the business
- training and development of employees
- balancing work and family responsibilities and work/life balance
- procedures to deal with bullying and harassment including sexual harassment
- monitoring procedure by the employer which reviews the employer's compliance with equality legislation

An Equal Opportunities Policy template outlines a policy to cover the above areas.

### **Bullying and Harassment**

As part of the employer's approach to equality it is imperative to put in place a procedure to deal with any incidents of bullying and harassment, including sexual harassment in the workplace. There is very clear requirements set down in legislation, which places liability on an employer in regard to these areas, and it is imperative that the employer has procedures in place to deal with any incident that may arise in the course of employment.

The core elements of a procedure on harassment and bullying should include a number of steps as set out below.

- Define harassment and sexual harassment.
- Define bullying.

- Set out a policy statement on the matter.
- Set out procedure to be followed in the event of a complaint. This should have both an informal and formal procedure as it is important to always try to resolve matters informally, if possible, in the first instance.

A detailed procedure, covering the above points, is set out under the heading 'Dignity and Respect at Work'.

### **Employing people with a disability**

When employing a person with a disability, an employer is obliged to do all that is reasonable to accommodate the needs of that person. The relevant legislation does not require an employer to recruit, retrain, train or promote a person who will not or is unavailable to carry out the duties of a position. The approach of an employer in this area should be from the viewpoint that a person with a disability is to be considered fully competent and capable to carry out the duties attaching to a position with the assistance of special treatment and facilities. If the costs of providing these treatments and or facilities are a 'disproportionate burden', then the employer will not be required to recruit, retain, train or promote the person concerned. It is important to point out that the term 'disproportionate burden' is a legal term and common sense and best practice would suggest that each case be determined by the employer rather than having a set policy on the matter of employing a person with a disability.

It is important that an employer considers the options in regard to retaining or recruiting a person with a disability. In the labour market the availability of skilled and competent people for organisation specific duties is a constant challenge and often small changes would facilitate access to employment for a person with a disability. Employers should operate on the basis that they want to recruit and retain the best person for each job in the crèche. In relation to persons with a disability the approach should be to develop and sustain positive measures to encourage the recruitment, retention and development of disabled people and to make every effort to retain in employment any employee who becomes disabled.

A number of practical steps to take in this area include;

- having an equal opportunities policy in place
- ensuring that job descriptions, person specifications and recruitment and selection procedures do not unintentionally discriminate against people with disabilities
- ensure that any special arrangements for interviews that are reasonable and of nominal cost are made available
- conduct interviews in a manner that emphasises abilities, achievements and individual qualities relevant to the job to be filled
- make every effort to retain any employee who becomes disabled
- review accessibility to your premises

Employers should consult with their industry body to investigate positive action measures that could be undertaken with regard to employment of

persons with a disability. In addition employers should also consult FAS who operate an Employee Retention Grant Scheme and a Workplace Equipment/Adaptation Grant Scheme, which assists with training and other areas in assisting an employee to acquire the abilities to perform the duties of their job position. These schemes also assist employers in the recruitment of a person with a disability. Further to this organisations such as **The Equality Authority** will give advice to employers on some positive action measures, which can be put in place.

## **The Law and Grievance Procedures**

It is inevitable in an organisation that employees will have some issue or grievance from time to time. While an employer is not obliged in law to have a formal grievance procedure, it does make good business sense to develop and maintain a good working environment. The employer gets the best from a happy and contented employee and will benefit from having a process in place where the employee can raise concerns or complaints. On a wider and related matter, employers that ignore grievances could end up defending themselves against complaints for constructive dismissal where an employee leaves the organisation because of real or perceived difficulties with the employment relationship.

### **Policy and procedures to deal with grievances in the workplace**

**Appendix 3** sets out a grievance procedure, which can be adopted for the employment situation. It is important to brief all people in the organisation on the procedure and to train supervisors and managers on how to handle grievance matters in a proactive manner. This will assist in creating and maintaining a good and harmonious work environment that will benefit both the employee and the employer.

The crèche should have a policy of dealing with any issue or complaint speedily and it should always encourage employees to discuss any concerns with their immediate supervisor. All grievances should be dealt with in a consistent manner and must take account of crèche policy and custom and practice in the business. The procedure should include the following:

- method of raising the grievance
- need to include the right of an employee to be accompanied at the grievance meeting
- the need for written records
- the different stages in the procedure, starting with the informal aspect and proceeding to a third party if matter is not resolved within the crèche

### **Implication of Changes to Industrial Relations Acts**

The provisions of the Industrial Relations (Amendment) Act, 2001 as amended by the Industrial Relations (Miscellaneous Provision) Act, 2004 places strict requirements on employers regarding consultation with employees regarding grievance and disciplinary matters and regarding collective bargaining procedures. Please consult your H.R. Advisor on how to proceed in regarding to these matters concerning Dispute Resolution Procedures and Works Committee.

## **The Law and Disciplinary Procedures**

There is a significant amount of legislation dealing with the area of dismissals in employment. It also covers the area of discipline in the workplace. Employers need to be familiar with the requirements of the law in these areas and should have a procedure in place to handle disciplinary matters. A sample procedure is set out in

### **Policy and procedure to deal with discipline in the workplace**

In the attached appendices we outline a procedure to deal with discipline in the workplace. It is important that an employer considers a number of matters in dealing with discipline. An initial step is to outline crèche rules and standards and the form of disciplinary action associated with breaches of these rules and standards. This helps to ensure consistency in the treatment of employees.

The burden of proof under Unfair Dismissals legislation is placed on the employer. It is therefore vital to maintain adequate documentary evidence so that you can defend whatever actions deemed necessary for breaches of the crèche rules and standards. The overall approach of management in regard to discipline should be to change the employee behaviour towards what is expected and demanded in the workplace and not to see it as a means of punishment. The application of an informal counselling approach at the early stage of a discipline matter is essential. Employers should also have an appraisal system in operation and should use this to counsel and support the employee in adopting high standards of work and behaviour and for pointing out areas for improvement. When this approach is taken it will assist in creating and maintaining a positive employee relations environment.

### **Termination of employment**

Employment can be terminated, by either the employer or employee giving the required notice as laid down in the contract of employment. The minimum notice that must be given by an employer is set out in the Minimum Notice and Terms of Employment Acts, 1973-2001 as follows;

<b>Length of Service</b>	<b>Minimum Notice Entitlement</b>
13 weeks to 2 years	1 week
2 years to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years to 15 years	6 weeks
15 years +	8 weeks

**NB: The contract of employment may increase but cannot reduce this notice entitlement**

In addition to this employment can be terminated in a number of different circumstances. These include;

- Incapability where the employee is no longer able to continue performing their job role
- Competence where the employee is unable to do the job through lack of skill or expertise
- Qualifications where the employee does not have the required qualifications for the particular job being performed
- Conduct where the employee breaches agreed rules and standards of the crèche
- Redundancy where there is a closure or downturn of activities associated with the business

In all cases where termination occurs it is imperative of the employer to be able to give clear and justifiable reasons for the ending of the employment relationship. The rules of natural justice must have been followed which allow for a person to be fully informed of any allegations against them, have a right to representation, to a full and impartial hearing of their case and for due consideration of their position prior to any decision to dismiss the employee.

## **Leave within employment**

There are many different areas of leave that apply in the workplace. Some of the leave is a statutory entitlement while other areas are discretionary and will vary from employer to employer. Below we set out the different types of leave under the different headings of statutory and non-statutory.

### **Statutory leave**

The following leave is a statutory entitlement for all employees.

- Annual Leave
- Public Holidays
- Parental Leave
- Force Majeure Leave
- Maternity Leave
- Adoptive leave
- Jury Leave
- Carer's leave

We will deal with each of them individually.

### **Annual Leave**

Each employee in a business is entitled to 4 working weeks of leave each year provided they have worked at least 1,365 hours in the year. Employees are entitled to one third of a working week per month where they have worked at least 117 hours. Alternatively to these two methods of calculation an employee can be provided with 8% of hours worked in the year subject to a maximum of four working weeks. Employees are entitled to have two unbroken weeks of leave during the year but the timing of all leave is at the discretion of the employer.

Payment to an employee on annual leave must be at the normal weekly rate of pay for the employee. Where the rate of pay varies, then payment on leave is to be calculated at the average of the 13 weeks ending on the day before the leave commences. This average is calculated after excluding overtime payments.

### **Pay for annual leave**

Pay for annual leave must be at the normal weekly rate, or as the case may be, at a rate which is proportionate to the normal weekly rate and must be given in advance if the employee requests it, or if this is established practice. Where board and/or lodging form part of an employee's remuneration, pay for annual leave must include compensation calculated at the prescribed rate.

### Calculation of normal weekly rate

#### **Fixed rate of pay**

Where normal remuneration does not vary, i.e. where it is calculated wholly by reference to time, or by a fixed salary, the 'normal weekly rate' is the amount (including any regular bonus or allowance, which does not vary with the work done by the employee but excluding overtime pay) paid for the

normal weekly hours last worked by the employee before the commencement of the leave or the termination of the employment.

### **Varying rate of pay**

Where pay is not by fixed rate, the 'normal weekly rate' is the average weekly pay (excluding any overtime pay), calculated over the 13 weeks ending immediately before the annual leave period starts or the employment ceases. If no time was worked in those weeks, the 13 weeks ending on the day on which time was worked before the annual leave starts or the employment terminates, is used.

### **Public Holidays**

There are currently 9 public holidays, which are as follows; Christmas Day, St. Stephen's Day, St. Patrick's Day, Easter Monday, First Monday in May, in June and in August, Last Monday in October and the 1<sup>st</sup> January.

Employees, other than part-time, have an immediate entitlement to public holiday benefits. Part-time employees must have worked at least 40 hours in the 5 weeks ending on the day before the public holiday to qualify for public holiday benefit. The entitlement of an employee regarding the 9 statutory Public Holidays are to one of the following;

- A paid day off on the day
- A paid day off within a month of that day
- An additional day of annual leave
- An additional day's pay

In regard to payment for a public holiday, there are a number of issues to be considered. An employee who works or is normally rostered to work on the day gets a day's pay. On the other hand an employee not rostered to work is entitled to one fifth of the normal weekly rate. Job sharers who do not work on the public holiday receive one tenth of the previous two weeks pay i.e. 4 hours pay if working 20 hours per week.

### **Pay for public holidays**

Employees who work or are normally rostered to work on a public holiday are entitled to a day's pay for the public holiday. Employees who are not normally rostered to work on a public holiday are entitled to one-fifth of the normal weekly rate of pay for the public holiday.

### **Definition of a day's pay**

Where the rate of pay does not vary in relation to the work done, then pay for a public holiday is the rate payable for daily working hours in the last week before the public holiday (including any regular bonus or allowance which does not vary, but excluding any pay for overtime).

Where the rate of pay does vary in relation to the work done (i.e. where employees do not have normal weekly pay such as employees paid on a commission basis or flexible bonus payments or where there are irregular working hours), then pay for a public holiday is equivalent to the average daily earnings (excluding overtime pay) for normal working hours calculated by reference to the earnings over the 13 week period ending on the day

before the public holiday. Where notice was worked during these weeks, the reference period should be taken to be 13 weeks ending on the day when the time was last worked before the public holiday.

### **Maternity Leave**

All employees covered by the Act are entitled to a minimum period of 26 weeks maternity leave, subject to certain conditions. The employer is not obliged to pay an employee during this period. An employee may claim social welfare maternity benefit for the duration of her maternity leave, provided that she has the necessary PRSI contributions. Of the 26 weeks, an employee must take at least two weeks before the end of the week in which her baby is due (as medically certified) and four weeks after that week. The remaining 20 weeks may be taken before or after the birth as the employee wishes.

### **Additional Maternity Leave**

An additional period of sixteen weeks leave may be taken immediately following the maternity leave period. This is referred to as 'additional maternity leave'. No social welfare benefits is payable during this period.

### **Time-off to attend Ante-Natal Classes**

A pregnant employee will be entitled to time off from work without loss of pay to attend one set of ante-natal classes (other than the last three classes). An expectant father will be entitled on a once-off basis to time off from work without loss of pay to attend the last two ante-natal classes before the birth.

### **Breastfeeding**

A breastfeeding mother is entitled, at the option of her employer, to either breastfeeding breaks in the workplace where suitable facilities are provided or a reduction of working hours, without loss of pay. Breaks may be taken in the form of one 60 minute break, two 30 minute breaks, three 20 minute breaks, or as agreed between employer and employee.

### **Maintenance of Employment Rights while on Maternity Leave**

During maternity leave an employee's continuity of employment in respect of any right (whether statutory, contractual or otherwise) with the exception of remuneration are preserved, as if she were present at work. Absences on additional maternity leave count as reckonable for the purpose of annual leave calculation.

Employees retain an entitlement to public holidays occurring during maternity leave, additional maternity leave and leave for fathers. Absences during additional maternity leave, ante-natal classes or breastfeeding do not count as reckonable service for the purpose of redundancy.

## **Parental Leave**

The main provisions of the Act are as follows:-

- Raising the maximum age of the eligible child from 5 to 8 years
- An increase in the maximum age of the eligible child to 16 years in the case of children with disabilities
- Extension of parental leave entitlements to persons acting in loco parentis in respect of an eligible child
- A statutory entitlement to take the 14 weeks parental leave in separate blocks of a minimum of 6 continuous weeks, subject to the employer's agreement
- That an employee who falls ill while on parental leave and as a result is unable to care for the child may suspend the parental leave for the duration of the illness following which period the parental leave recommences
- Transfer of parental leave entitlements from one parent to another if both parents are employed by the same employer, subject to the employer's agreement
- Provision for statutory codes of practice on the manner in which parental leave and force majeure leave might be taken and the manner in which an employer can terminate parental leave.

## **Force Majeure Leave**

An employee is entitled to leave with pay where urgent family reasons, owing to the injury/illness of certain family members, make his/her immediate presence, at the place where the family member is indispensable. The family are defined as:

- A child/adoptive child
- The spouse of the employee, or a person with whom the employee is living as husband or wife
- A person to whom the employee is in loco parentis
- A brother or sister
- A parent or grandparent
- An extension of the force majeure provisions to include persons in a relationship of domestic dependency, including same-sex partners

An employee may not be absent on force majeure leave for more than three days in any 12 consecutive months or five days in any 36 consecutive months.

During an absence on force majeure leave an employee is regarded as being in the employment of the employer and retains all of his or her employment rights. Force Majeure leave cannot be treated as part of any other leave to which the employee is entitled. Employees must notify their employer on returning to work after an absence on force majeure leave of

their reason for being absent from work and give details of the ill/injured family member and their relationship to that person

### **Adoptive Leave**

Adoptive leave entitlement is 24 consecutive weeks unpaid subject to certain notification requirements and to evidence of placement of the child. An employee may also avail of an additional 16 consecutive weeks leave following on from the initial 20 weeks of leave. In the case of foreign adoption, some or all of the twelve weeks additional leave may be taken before the date of placement.

The above entitlement is for employed adopting mothers and sole male adopters.

### **Jury Leave**

Each citizen aged between 18 and 70 years who are entered on the register of Dail Electors is eligible for jury service. Each employee is entitled to normal pay from their employer for the period required to fulfil jury obligations.

### **Carer's Leave**

Employees with at least one year's continuous service with an employer may be entitled to carer's leave of up to 104 weeks unpaid to provide care for a 'relevant person'. A 'relevant person' is a person requiring continual supervision and frequent assistance throughout the day. An employee wishing to take carer's leave must satisfy certain requirements including that they provide full-time care and attention to the 'relevant person' and in general will live with the 'relevant person'. The relevant person must be deemed to be in need of full-time care and attention by a deciding officer of the Department of Social, Community and Family Affairs.

The employee must intend to take Carer's Leave for the purpose of personally providing full-time care and attention to a person who is in need of such and must actually do so for the duration of the leave. The employee may during the leave attend an educational or training course or take up voluntary or community work for up to 10 hours per week or engage in limited self-employment in his/her own home or engage in employment outside the home for up to 10 hours per week. Regulations of the Department of Social, Community and Family Affairs provide that a person being cared for must be disabled so as to require continuous supervision and frequent assistance throughout the day in connection with his/her normal needs.

### **Non-Statutory Leave**

There are several examples of non-statutory leave in employment situations. The most common that arise are as follows;

- Sick Leave
- Career Breaks
- Exam and Study Leave
- Bereavement Leave
- Paternity Leave

## **Sick Leave**

While there is no obligation on an employer to pay sick leave, many do have some level of payment to employees who encounter illness and are unfit to work. It is good human resources management practice to assist employees at such times as illness and support through paid sick leave is the most practical means by which the employer can accommodate the employee.

The main concern of the employer will be to ensure that there is no abuse of sick leave. Ensuring that medical certification is required for all absence and that attendance is monitored for all employees can overcome this issue. Most companies who have been successful in the area of absence management have introduced a return to work procedure where the returning employee must complete a fitness to work form and discuss their return with a representative of management. This ensures that even ad hoc absence is monitored and reviewed on each occasion and will cater for close management of attendance. It is also seen as both good practice and creating a good employee relationship when an employer assists the employee who encounters genuine illness of short or long duration.

## **Career Breaks**

Career breaks are periods of unpaid leave agreed between an employer and employee for a specific duration. Service is regarded as continuous and the contract of employment is suspended for the period of the leave. Most organisations that provide for career breaks provide for a position at the equivalent salary and status level for the returning employee at the end of the career break which is usually for a period of 1 to 5 years.

## **Exam and Study Leave**

In organisations where an employee is pursuing studies to gain a relevant qualification, sometimes paid leave is provided to allow the person to study for examinations and to sit the relevant exams. In addition to this, tuition fees are sometimes reimbursed to an employee who is successful in gaining a qualification relevant to their job in the organisation.

## **Bereavement Leave**

It is very common for organisations to provide bereavement leave to employees where there is a death of a close family member. This is mainly given by way of paid time off and the length of time usually depends on the relationship concerned of the deceased.

## **Paternity Leave**

Paternity leave may be given to male employees around the time of the birth of their child. There is no legal entitlement to such leave and it is not common at present in Ireland for such leave to be granted. Where such leave is given it has usually been for periods of 1 to 3 days. While payment is at the discretion of the employer, where such instances have occurred the employee has tended to be paid.

**Note:** Booklets covering the above areas of leave can be obtained by visiting the Department of Enterprise, Trade and Innovation web site and downloading the relevant document. Site address is [www.entemp.ie](http://www.entemp.ie).

The attached table gives an overview of leave entitlements:

**LEAVE MATTERS – BASIC LEAVE ENTITLEMENTS – August 2010**

	<b>Female Employees</b>	<b>Male Employees</b>
<b>Annual Leave</b> <i>Organisation of Working Time Act, 1997</i>	20 days ( if work 1,365+hours) Part time employee: 8% of the hours worked in a leave year OR 1/3 of a working week for each month in which employee worked 117+hours	20 days (if worked 1,365+hours) Part time employee: 8% of the hours worked in a leave year OR 1/3 of a working week for each month in which employee worked 117+hours
<b>Public Holidays</b> <i>Organisation of Working Time Act, 1997</i>	9 public holidays: - paid day off on the holiday - paid day off that month - extra day's annual leave or - Extra day's pay provided they have worked 40 hours in previous 5 weeks.	9 public holidays: - paid day off on the holiday - paid day off that month - extra day's annual leave - extra day's pay provided they have worked 40 hours in previous 5 weeks
<b>Maternity Leave</b> <i>Maternity Leave Act, 1994 and Maternity Protection (Amendment) Act, 2004</i>	26 weeks statutory (2 weeks to be taken before birth) and 16 weeks additional unpaid leave. Also entitled to reasonable time off for medical visits connected with pregnancy	No entitlement to leave bar once-off right to paid time off work to attend the two antenatal classes immediately prior to the birth. In event of mother's death, entitle to the following:  _ If she dies before the 24 <sup>th</sup> week of confinement may take leave until expiry of that 24 <sup>th</sup> week. Also entitled to 16 additional weeks. If she dies after 24 <sup>th</sup> week, may take leave until expiry of 40 <sup>th</sup> week.
<b>Adoptive Leave</b> <i>Adoptive Leave Act, 1995</i>	24 consecutive weeks statutory paid leave with 16 weeks additional unpaid adoptive leave also available.	Sole male adopter: 24 consecutive week's statutory and additional adoptive leave of 16 consecutive weeks unpaid.  Leave only available to father in event of mother's death for entire period if mothers dies on or after the date of placement. Father also entitled to entire period of additional adoptive leave or balance of period if mother dies on or after the commencement of additional adoptive leave.
<b>Carer's Leave</b> <i>Carer's Leave Act, 2001</i>	Up to 104 weeks if continuously employed by that employer for 12 months	Up to 104 weeks if continuously employed by that employer for 12 months
<b>Parental Leave</b> <i>Parental Leave Act, 1998</i>	14 weeks per child under 8 if continuously employed by that employer for 12 months.	14 weeks per child under 8 if continuously employed by that employer for 12 months.
<b>Force Majeure Leave</b> <i>Parental Leave Act, 1998</i>	3 days in any 12 month period or 5 days in 36 month period	3 days in any 12 month period or 5 days in 36 month period

## Pensions

The area of occupational pension schemes is very complex. This section of the guide attempts to give a summary of the main issues associated with both occupational pension schemes and with the recently introduced Personal Retirement Savings Accounts (PRSAs).

### **Pension options for employers with employees**

The Pensions Act, 1990 does not compel employers to provide their employees with an occupational pension scheme but does set down regulations in regard to Occupational Pension Schemes. In addition, the 2002 Amendment to the Act obliges employers who do not provide an occupational pension scheme to provide access for their employees to Personal Retirement Savings Accounts. Among the main provisions of the Pension Acts are;

- Provision for the compulsory preservation of pension entitlements for employees who leave employment.
- Minimum funding standards for certain funded schemes.
- Provision on disclosure of information to scheme members.
- Implementation of equal treatment for men and women in occupational benefit schemes.
- Provides for the establishment of PRSAs.

Key requirements in regard to occupational pension schemes that employers need to be aware of are as follows;

- From 1<sup>st</sup> June 2002 a person with two years membership of a pension scheme who leaves employment (other than arising from their death) before normal retirement age is entitled to have his/her pension rights preserved.
- Members of a Pension Scheme can opt to transfer the actuarial value of the preserved value to their new employer's scheme; can opt for an approved buy out bond or other approved arrangements such as transfer to a PRSA.
- Trustees are required to produce annual reports for each occupational pension scheme in operation in a crèche.
- Retirement age should be the same for male and female employees with certain concessions on this relating to benefits earned for service before 17/05/90 for members retiring up to 31/12/2017.

In regard to PRSAs a provider contracts directly with a contributor. The employer role is purely to transfer funds to the agreed provider from the employee. In overall terms the employer must provide access which includes;

- Notifying relevant employees of their right to contribute to a PRSA.

- Allow PRSA providers reasonable access to the workplace and to employees for the purpose of concluding PRSA contracts with individual employees.
- Provide employees with reasonable amounts of paid absence to allow them make arrangements for the establishment of a PRSA.
- Make the necessary payroll deductions and transfer funds to the approved PRSA.

There are significant issues in the sale or transfer of a business in regard to the pension rights of employees. Employers should seek expert opinion in regard to all employment matters in such cases before completing any sale, purchase or transfer of a business where employee's rights and entitlements are involved.

Part time employees have entitlements in law to access to pension schemes where such exist for full time staff. In general part time employees should have conditions of employment, which are pro rata that of a comparable full time employee. There are also certain obligations on employers in the event of a separation or divorce involving an individual employee and their spouse.

## **Health and Safety**

Health and safety regulations place specific duties on both employers and employees. This section gives an overview of the demands placed on employers in particular with regard to this area of employment law.

### **Health and safety requirements in employment**

The general duties of employers in regard to health and safety at work, is;

- To provide and maintain a place of work which is safe and without risk to health
- To provide safe means of access and egress at each place of work
- To provide and maintain plant and equipment which is safe and without risk to safety and health
- To provide information, instruction, training and supervision necessary for safe and healthy working
- Where hazards cannot otherwise be controlled, to provide and maintain suitable protective clothing or equipment
- To prepare adequate emergency plans
- To prevent risks to health and safety in relation to the use of articles or substances
- To provide welfare facilities such as a supply of drinking water, first aid, etc
- To acquire where necessary the services of competent persons to ensure the safety and health at work of employees

Employers must also conduct their operations in a manner that does not expose people who may be affected by the operation to risks to their health and safety. Obligations also exist in regard to the employees of any contractors. These include duties to provide for safety and health in relation to means of access and egress, articles or substances used or provided for use at the workplace.

The law in regard to health and safety also places obligations on employees which includes;

- To take reasonable care for their own safety, health and welfare and that of others who may be affected by their actions or omissions
- Co-operate with their employer in relation to compliance with statutory requirements
- Use protective equipment when required
- Report any defects in the workplace which may lead to danger to their employer

A Safety Statement must be prepared by the employer and this must be brought to the attention of people affected by its terms which will include employees and contractors. There are clear guidelines set out in the act requiring that an employer specify the safety, health and welfare arrangements, resources in place, co-operation required of employees and names and job titles of persons responsible for the tasks set out in the statement.

Employers must consult with employees on promoting and developing health, safety and welfare at work. Employees may select a Safety Representative who has specific rights under the Act which include;

- To carry out inspections of the workplace and investigate potential hazards and complaints
- To investigate accidents
- To receive information from the employer which is necessary to ensure the safety and health of employees
- To receive advice and information and make representations to a Health and Safety Inspector

Under the Act, the Health and Safety Authority (HAS) has functions which allows it to enforce legislation and give advice and information on health and safety matters.

There are many different regulations covering health and safety at work and employers while meeting statutory requirements should also ensure that they operate to the established norms as a minimum within their industry. Apart from having a safety statement in place it is important for an employer to have a clear policy and approach on Health and Safety which covers;

- Accidents including reporting and reduction of risks for subsequent re-occurrence
- Access and egress measures for the workplace
- Plant and equipment kept at highest possible standards of safety
- Health and safety training for all employees
- Provisions where necessary for dealing with and handling agents and substances
- Policy on the provision of Personal Protective Equipment for employees
- Consultation measures with employees on health and Safety and the role of a Safety Representative

## **Redundancy**

Redundancy payments compensate a former employee whose position has become redundant for loss of employment and benefits built up in employment. The Legislation covering redundancy also provides for certain lay off and short-time situations.

To come within the scope of the Redundancy Payments Acts, an employee must:-

- work or have worked under a contract of service or apprenticeship, persons working under a contract for service (independent contractors) are not covered by the Act.
- Agency workers; the employer being the person who is liable to pay the wages of the individual concerned;
- Be over 16 years of age and in employment that is insurable for all benefits under the Social Welfare (Consolidation) Act 2005;
- Have been in such employment in the period of that four year ending on the date of termination;
- Have been continuously employed for 104 weeks, being the 'requisite period' (after attaining the age of 16 years)

### **Continuous Employment for redundancy purposes**

Employment is presumed to be continuous unless proved otherwise. Employment is continuous unless it is terminated by:

- Dismissal (not including an unfair dismissal under the unfair dismissals legislation for which redress was made);
- Voluntary resignation

### **Continuity of employment is not broken by:**

- An employee voluntarily transferring from one employer to another and both employers and the employee agreeing that all the services will be regarded as continuous;
- Periods of absence due to sickness or injury;
- Lay off, holidays, or any other absence authorised by the employer;
- Service in the Reserve Defence Forces;
- Absence from work because of a lockout by the employer or for participation in a strike;

- Dismissal due to redundancy before attaining 104 weeks continuous service and resumption of employment with the same employer within 26 weeks of dismissal;
- Leave under the Maternity Protection, Adoptive Leave, Carer's Leave or Parental Leave Acts;
- Reinstatement or re-engagement under the Unfair Dismissals Acts

### **Reckonable Service to calculate redundancy payments**

An employee's reckonable service must be computed to calculate the redundancy lump sum. It includes a week falling within a period of continuous employment during any part of which an employee is:-

- At work, or
- Absent from work because of sickness, lay off (see below) holidays, or with the employer's permission;
- On leave or absent under the maternity protection, adoptive leave, parental leave (which includes force majeure) or carer's leave
- Absent from work because of a lockout by the employer;
- Periods of service where continuity is preserved in any case of redress by way of reinstatement or re-engagement under the Unfair Dismissals Acts

Reckonable service excludes absences during the three-year period, ending with the date of termination of employment;

- In excess of 52 consecutive weeks due to an occupational accident or disease as defined by the Social Welfare (Occupational Injuries) Act 1966;
- In excess of 26 consecutive weeks because of any other illness, including injury;
- Due to lay off;
- Due to a strike in the business or industry in which the employee is employed

### **Apprentices and redundancy**

If an apprentice is dismissed within six months after the commencement of the apprenticeship or within one month following completion of the apprenticeship, he or she is not entitled to a redundancy payment. However if he or she is dismissed during the apprenticeship, he or she is so entitled provided the service and other requirements have been fulfilled. Employers should ensure that the requisite notice expires during the one-month period after the completion of the apprenticeship, otherwise the former apprentice

will entitled to redundancy. 'Apprentice', within the meaning of these Acts is an apprentice employed under a contract of apprenticeship.

### **Definition of Redundancy**

An employee is dismissed by reason of redundancy if the dismissal is wholly or mainly due to any of the following circumstances having occurred or being expected to occur:

- The employer has ceased or intends to cease, to carry out the business for the purposes of which the employee was employed, or had ceased or intends to cease doing business in the place where the employee was employed; or
- The requirements of that business for the employee to carry out work of a particular kind in the place where he or she was so employed has ceased, diminished or is expected to do so; or
- The employer has decided to carry out the business with fewer or no employees, whether by requiring the work for which the employee had been employed to be done by other employees or in some other manner; or
- The employer has decided that the work by the employee should be done in a different manner for which the employee is not sufficiently qualified or trained; or
- The employer has decided that the work for which the employee had been employed should henceforward be done by a person who is also capable of doing other work, for which the employee is not sufficiently qualified or trained

In determining whether an employer has decided to carry out a business with fewer or no employees, account is not taken of certain members of the employer's family.

### **Dismissal by an Employer**

Redundancy involves dismissal of the employee. The Act provides that an employee is dismissed if:-

- The contract of employment is terminated by the employer; or
- The employer fails to renew a fixed-term contract; or
- The employee terminates the contract by reason of the employer's conduct, i.e. constructive dismissal.

An employee will not be taken to be dismissed by an employer if the contract of employment is renewed, or he or she is re-engaged by the same employer under a new contract of employment and:-

- The renewed contract or the new contract is exactly the same as the previous contract and takes effect immediately (e.g. on the Monday with the previous contract ending on the Friday, Saturday or Sunday), or
- The renewal or re-engagement follows an offer made by the employer before the ending of his or her employment under the previous contract; this offer should take effect immediately (as above), or after not more than four weeks, i.e. as if the (original) employment ended on a Monday; continuity is maintained during this period

In the above circumstances an employee is not entitled to a redundancy payment.

### **Re-Engagement by another Employer**

An employee is not deemed to be dismissed and thus is not entitled to a redundancy payment if:-

- He or she is re-engaged by a new employer immediately on the termination of the previous employment; and
- The re-engagement takes place with the agreement of the employee, the previous employer and the new employer; and
- Before commencement of the period of employment with the new employer, the employee receives a statement in writing on behalf of the previous employer which sets out the terms and conditions of the employee's contract of employment with the new employer;
- Specifies that the previous service is continuous;
- Contains particulars of the previous service, e.g. dates and
- The employee notifies the employer in writing that he or she accepts

### **Refusal of an employee to accept alternative employment**

An employee is not entitled to a redundancy payment if:

- The employer has offered to renew the contract, or offered re-engagement under a new contract under the same terms and conditions; and

- The renewal or re-engagement takes effect on or before the termination of the old contract; and
- He or she had unreasonably refused the offer; or
- The employer has offered in writing to renew the contract or re-engagement under a new contract under different terms and conditions; and
- The offer constitutes a suitable offer of employment and would take effect within four weeks of the date of termination of the old contract; and
- He or she has unreasonably refused the offer

### **Lay Off and Short-Time within employment**

In certain limited circumstances, employees who have been laid off or who are working short-time may be entitled to claim a redundancy payment.

Lay off is the cessation of employment because the employer is unable to provide work for which the employee was recruited, and the employer reasonably believes it will not be permanent and gives notice to that effect prior to the cessation.

Short-time is the reduction in the work provided, so that the employee's remuneration for any week is less than half of normal weekly remuneration, or the employee's hours of work are less than half of normal weekly hours.

Employers have no right in law to lay off employees, unless this is provided for in the contract of employment. The template on employment contracts in **Appendix 1** includes such a clause. However in the absence of such a provision an employer could introduce lay off by prior agreement. The majority of trade unions and employees accept lay off in preference to immediate redundancy, in the hope that the work requirement will build up again and the employment can continue.

### **Redundancy arising from Lay Off and Short-Time as covered by acts**

An employee who has been laid off for a period of at least four consecutive weeks or for a series of six or more weeks of which not more than three were consecutive within a period of 13 consecutive weeks, may claim redundancy if he or she gives written notice of termination of his or her contract of employment to the employer. A form RP9 is used for this purpose. The employer may however serve a counter-notice within seven days. The RP9 form is reproduced in Sample documents.

To contest a claim, the employer must be in a position to re-employ for a period of not fewer than 13 consecutive weeks, to commence not later than four weeks from the date on which the employee's notice is received. The

employee's claim to redundancy would succeed, however, should the employer fail to meet his commitment. Advice should always be sought in relation to lay off and short-time.

## **Redundancy Procedures**

An employer who proposed to dismiss an employee who is covered by the Redundancy Payments Acts must give the employee not less than two weeks before the date of dismissal, notice in writing of the proposed dismissal.

The two weeks notice under the Redundancy Payments Acts is the minimum period of notice due to an employee who has two years (104 weeks) of service. However an employee may be entitled to longer notice under the Minimum Notice and Terms of Employment Acts or under his or her contract of employment. Care should also be taken to comply with any notice provisions in the employee's contract of employment, if the notice period is greater than the statutory redundancy and/or minimum notice. A copy of the certificate of redundancy form RP50 or other specific written notice of the proposed redundancy, must however be given to the employee at least two weeks before the date on which the redundancy is due to take effect. The original copy of this form must be sent to the Minister of Enterprise, Trade and Innovation.

An employer which fails to give adequate notice or which furnishes false information will be liable to a fine of up to €5,000. The failure of an employer to give adequate notice will also affect that employer's redundancy rebate.

## **Statutory Redundancy Payments**

When a qualified employee is dismissed for redundancy purposes (or has terminated his or her contract as a result of lay off or short-time) he or she is entitled to a statutory lump sum payment equal to:-

- Two weeks normal weekly remuneration (gross) for each year of continuous and reckonable service; and
- The equivalent of one weeks' normal weekly remuneration

In calculating a weeks' pay an upper limit of €600 per week (€31,200 per annum) is placed on earnings for statutory redundancy purposes.

The Acts contain complex rules for the calculation of the statutory redundancy payment, which is based on normal weekly remuneration, to take into account average overtime, commission and other variable payments (for further information on calculating statutory redundancies see Implementation guidelines). Statutory redundancy payments are tax-free. Redundancy payments in excess of statutory may qualify for certain tax exemptions. The Department of Enterprise, Trade and Innovation has a helpful redundancy calculator on its website, [www.entemp.ie](http://www.entemp.ie)

## **Certificate of Redundancy RP50**

Qualified employees being made redundant should be given a copy of a certificate of redundancy; form RP50, by the employer on the date of the dismissal. This should be accompanied by the statutory redundancy payment (and any other payment due at the same time e.g. pay in lieu of notice, pay for the final week(s) of employment etc). The RP50 should refer only to the amount of the statutory redundancy payment but an accompanying statement should itemise all the payments being made at the time of dismissal. The employee should sign the RP50 as a receipt for the statutory redundancy payment, which is needed in order to claim a redundancy rebate. An employer which fails to give a redundancy certificate, or which furnishes false information in the certificate, is guilty of an offence and liable, on summary conviction, to a fine of up to €5,000. The RP 50 form can be downloaded from [www.entemp.ie](http://www.entemp.ie)

## **60% Employer Rebate on Statutory Redundancy**

The Minister for Enterprise, Trade and Innovation may make a payment to an employer from the Social Insurance Fund, amounting to 60% of the statutory lump sum paid to each qualified employee. A completed and signed form RP50 should be sent to the Minister within six months of the date of payment of the redundancy lump sum. The Minister may require evidence of the employee's continuous service, normal weekly remuneration etc. The Minister has discretion to reduce the rebate to not less than 40% of the statutory redundancy payment, if the employer failed to comply with any requirements imposed by Section 17 of the Act, i.e. notice, particulars etc that are required for the completion of the RP50 form.

## **Enforcement Procedures**

If an employer has not paid the lump sum due or the employee is of the opinion that the payment is incorrectly calculated, the employee may make an application for statutory redundancy in the first instance to a Deciding Officer. If unsatisfied with the decision, an appeal to the EAT can be made. The Tribunal will hear the appeal and subsequently issue a written determination.

In such proceedings, the Tribunal will, unless the contrary is proved, presume that:-

- A person's employment during any period is continuous, and
- Dismissal was by reason of redundancy

## **Redundancy and Transfer of Undertakings**

The purpose of the European Communities (Protection of Employee on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) is to

protect the individual contractual rights of employees on the transfer of a business. The Regulations protect conditions of employment and the contract of employment of individuals. They are dealt with in section B Contract of Employment.

The Redundancy Payments Acts already preserved continuity of employment over a transfer of employment. These Regulations go further by requiring the transferee to take on the transferor's employees, except in certain circumstances. Dismissal of employees by either the transferor or the transferee is prohibited on the sole grounds of the transfer. The Regulations do permit dismissal for economic, technical or organisational reasons, entailing changes to the workforce. Such redundancies will normally involve changes in numbers and functions of employees and not simply one position. Where dismissals are challenged before the EAT, it is important that evidence is brought to support the grounds of economic, technical or organisational reasons.

Termination of employment arising out of changes to working conditions that are to the detriment of the employee is regarded as the responsibility of the employer imposing the changes and would be considered to be a possible constructive dismissal. Any substantial changes to the employee's terms and conditions of employment can only occur where his or her agreement has been obtained by the employer concerned.

Where a transferred employee is subsequently dismissed by the transferee, the employee's right to minimum notice is based on his or her contract of employment and/or the statutory minimum period of notice calculated on the whole of his or her continuous service with both the transferor and the transferee. If a transferred employee, with statutory minimum rights only, has had 18 months service with the transferor and, after a further four months service with the transferee, is dismissed, he or she is entitled to two weeks minimum notice, based on the continuous service with both transferor and transferee.

Similarly both periods of employment are continuous for the purposes of assessing whether or not the employee has rights under the Unfair Dismissals Act. Thus if an employee has been employed for ten months by the transferor and, after four months with the transferee, is dismissed he or she will have unfair dismissal rights based on 14 months continuous employment.

**Note:**

Regulations exist to cover Collective Redundancies (5 employees in an employment of between 21 and 49 employees), Employer Insolvency and Exceptional Collective Redundancies where there is planned replacement of staff by the employer on materially reduced terms and conditions. Employers should consult their HR Advisor if such situations arise.

## **Changing Terms and Conditions of Employment**

Communications and involvement practices are important mechanism for promoting good employee relations raising employee engagement, creating a positive workplace and enhancing the service that you provide to your customers. During the course of the provision of your services it will become necessary from time to time to negotiate with individual staff members changes to their terms and conditions of employment.

It is important in making these changes to recognise that the existing contract of employment can only be changed by consultation and agreement with the relevant employee. It is also important to have a grievance procedure and to facilitate the use of that procedure by the employee where they have difficulties with any of the changes proposed.

When deciding to renew a contract it is important to review and access all elements of the work of the particular staff member and to determine what if any particular changes to terms and conditions are appropriate for your service. You should then set out the different aspects of the job that require modification or change and prepare yourself for a one to one meeting with the staff member. These meetings should be held ideally at the end of the working day, in a quite private environment and you should set out in writing both the changes that you require and the reasons for such changes. It is also important that the staff member be given a period of time in which to consider the changes proposed. It is recommended that a period of at least two days should be given to the staff member to bring away the written proposed changes and to consult with his/her representative in regard to these matters. A further meeting should be held with the staff member and that should take place not later than one week after the initial meeting where any particular concerns or issues of the staff member in regard to the changes can be discussed.

Ideally if all changes are agreed, a new contract should then issue and this should apply from the time of issuing to the staff member. Where difficulties arise and agreement cannot be reached on the changes then the employer is advised to consult with a HR Specialist in regard to any potential difficulties and problems. In this regard it will be important that the Employer informs the staff member that they have a right to pursue their concerns through the grievance procedure.

Where grievance procedures are invoked it is important that they are followed up both in a timely and professional manner and also that the Employer has consultations with their own HR Advisor in regard to how the matter can be resolved both speedily and amicably. In the event of changes not been agreed locally there is access to various dispute resolution bodies but Employers are advised that they should not allow matters to remain unresolved and should discuss the options with their own HR Advisor in advance of any matters been disputed and referred by the relevant Staff member to such dispute resolution bodies.

Information and Consultations Practices encourage both involvement and teamwork among your staff. The importance of communication and employee engagement cannot be emphasise enough which will result in a much greater likelihood that individuals see the need for changes and will co-operate with such changes fully. This will be of significant assistance to you as an Employer in ensuring that you have a dedicated and committed workforce assisting you and giving the highest standard of performance in the delivery of the organisations products and or services.

(Appendix 1) Contract of Employment

**TERMS and CONDITIONS OF EMPLOYMENT**

\*\*\*\*\*

**Employer:** ABC Ltd, Mullingar, Co Westmeath

**Position:** \*\*\*\*\*.

**Place of Work:** ABC Ltd or any other location that you may be requested to report to in order to perform your job role from time to time.

**Reporting To:** \*\*\*\*\*

**Rate of Pay:** Your salary will be €\*\*\*\*\* per annum. You will be paid weekly on the last working day of each calendar week by cheque. Alterations to your rate of pay will be discussed with you should business needs arise to require changes to current terms.

**Start Date:** \*\*\*\*\* 200\*.

**Hours of Work**

Your working hours will be:

Lunch : 1pm to 2pm (Unpaid)

Breaks : 15 minutes am and 15 minutes pm  
(unpaid)

These hours may vary occasionally, and it is a Condition of Employment that you accept any changes that occur from time to time.

**Overtime:**

On occasion, you may be requested to work overtime which may include weekends. It is a Condition of Employment that you are available to do so as and when required by management. Arrangements concerning payment for overtime are as follows:

Saturday: 1.5 times basic hourly rate for first 4 working hours and 2.0 times basic hourly rate for any further hours in excess of 4 working hours. Sunday working will be at 2.0 times basic hourly rate for all working hours. Alterations to your overtime arrangements shall be discussed with you should business needs arise requiring changes.

## **Deductions for overpayment**

ABC Ltd will endeavour at all times to ensure correct payments to employees. However, in the event of an overpayment, the company reserve the right to deduct that overpayment from subsequent pay, following consultation with you on any such matter.

## **Deductions for omissions of the employee**

ABC Ltd reserves the right to make a deduction from wages for any act or omission of an employee where such is justified and is communicated in writing to the employee at least one week prior to the deduction. The employee shall have the right to appeal in writing any such decision communicated to them. Any such appeal shall be given to the company within 2 days of receipt of the company communication on the deduction.

## **Sick Pay:**

ABC Ltd does not as a policy provide paid sick leave. However you will be entitled to claim payment for sickness to social welfare amounts through the Department of Social Welfare, details of which are to be found through their relevant offices.

Any absence from work must be reported to the ABC Ltd office not later than 10.30am on the morning of each such occurrence and any sickness greater than 2 days must involve the production of Doctor's certificates to the company. ABC Ltd reserves the right to request an employee to submit doctor's certificates for every day of absence from work. All sickness will be dealt with on a case by case basis and the employee concerned are required to keep their immediate Manager informed on a regular basis of their expected return to work.

## **Expenses**

All expenses associated with the performance of your duties are refundable, on a vouched basis, monthly, by submission of a claim on the appropriate expense's form to your Manager.

## **Probation**

There is a probationary period of six- (6) month's duration. During this probationary period your performance will be assessed by management with regard to your general suitability for the position. Absences during the period of probation will extend your probationary period on a pro rata basis by the number of days you were absent from work.

## **Annual Leave**

The holiday year runs from 1 January to 31 December. You will be entitled to twenty (20) days annual leave per year (proportionately less for less than 12 months service), plus nine (9) statutory public holidays, subject to the normal qualifying standards as laid down by the Organisation of Working Time Act, 1997.

All holidays must be booked in advance and taken on dates agreed with and approved by your manager.

## **Termination**

Except, in cases warranting instant dismissal, or where mutually agreed, the Terms of the Minimum Notice and Terms of Employment Act, 1973-1991 will apply to your employment with us and both employee and employer are required to give notice as outlined below.

13 weeks to 2 years service = 1 week

2 years to 5 years service = 2 weeks

5 years to 10 years service = 4 weeks

10 years to 15 years service = 6 weeks

15 years and greater service = 8 weeks

However, by mutual agreement, payment in lieu of notice may be effected.

In the event of you leaving the company within one year from completion of approved development programmes funded by the employer, then you will be required to reimburse the company for any training investment by ABC Ltd to the amount of 50% of such costs which shall be determined by the Directors.

## **Responsibilities**

You are being employed as a \*\*\*\*\* for ABC Ltd and as such you will be responsible for \*\*\*\*\* and other related duties for the business as outlined to you by management.

## **Short time working and Lay Off**

It is the objective of ABC Ltd to grow and develop its business and this it is hoped will have positive implications for all employees in terms of their development and opportunities to progress within the company. However in the event of market variations, the company reserves the right to discuss and implement short time working or lay off without pay to address cost issues. Any such decision will only occur in absolute necessity and after due consultation with all employees.

Should it be necessary to make employees redundant due to market issues, such measures will only be taken after due consultation with employees.

## **Flexibility**

You will be fully flexible and interchangeable relative to the various duties as advised to you by management. Whereas, you are being employed to carry out \*\*\*\*\* duties, it is a Condition of Employment that you agree to be totally flexible regarding where you work, and are available to work in any position in the Company from time to time as requested by management.

## **Medical**

It is a Condition of Employment that you undergo a complete medical examination (at the Company's expense) and in the event of you not meeting the required health standard this offer of employment is automatically withdrawn. Please arrange to see our nominated doctor at your earliest convenience and have him/her complete a fitness to work report for the attention of the Human Resources Manager, ABC Ltd and returned to this office as soon as possible.

The Managing Director of ABC Ltd reserves the right to refer an employee for a medical during the course of employment with the company. Any such referrals will be discussed with you in advance.

Should you feel that any issue arises during the course of your employment with the company of a medical nature, you are required to inform the Managing Director of such an issue or concern. All such issues will be treated in strictest confidence between yourself and the Managing Director.

## **Technology/Work Systems**

The Company will introduce new technology/work systems on an ongoing basis to ensure its competitive position in the market place is maintained. It is a Condition of this Contract of Employment that you accept and co-operate with the introduction of such technology/work systems and ensure it's timely and effective introduction within your areas of responsibility. As a consequence you may be required on an ongoing basis to attend training courses to update skills etc.

## **Disciplinary/Grievance Procedures:**

A copy of procedures utilised for discipline and grievance issues are attached to this contract. These procedures are in place to ensure fair and just treatment of all employees in line with the natural rules of justice and include the procedures for instant dismissal in the event of serious misconduct. It is a condition of employment that you make yourself fully aware of these procedures and agree to be bound by them and all Company rules (including the procedure on Harassment at Work which is also attached and all those rules established by custom and practice specific to the location of your employment) for the duration of your employment with ABC Ltd.

## **Confidentiality**

You may in the course of your employment be furnished with or obtain by one means or another information which is of a confidential nature and which is not already in the public domain, or which was obtained by ABC Ltd in the first instance on the basis that it be treated as confidential.

This confidential information may include but not be limited to customer lists, client information, pricing, etc. It is an express term of your employment with us that you do treat all such information as confidential, that you do not disclose it to any third party what so-ever and that you do not use that information for the benefit of anybody other than ABC Ltd. When such information is in written or electronic form that particular document must not be copied or given to any third party without the prior written consent of ABC Ltd. In the event of your employment with ABC Ltd terminating for any reason you must return those documents and all copies in hard copy or electronically thereof to ABC Ltd.

## **Pension**

The company shall provide access to a PRSA in line with legislation. Please discuss your requirements with your Manager who will then arrange a meeting with our PRSA provider.

## **Retirement**

Normal Retirement age occurs on your 65<sup>th</sup> Birthday

## **Restriction on outside employment**

You are required to devote your energies to the work for which you are employed at ABC Ltd. You are required to obtain prior written permission to engage in any other employment from the Managing Director of ABC Ltd.

## **Safety**

Your attention is particularly drawn to safety regulations applying in the different locations in which we will operate and to the Company Safety Statement of ABC Ltd, which is available to you at our office. The company aim is to eliminate industrial accidents and you are obliged to familiarise yourself with the safety regulations in each location where you happen to be located from time to time during this contract.

## **Changes to this contract**

Should it be necessary to change the terms and conditions of this contract, such changes will be discussed with you and a new contract then issued covering any such changes.

## Acceptance of Terms and Conditions.

\*\*\*\*\*

I, \*\*\*\* \*\*\*, have read and understand the general Terms and Conditions pertaining to my position and I accept these Terms and Conditions and agree to be bound by them for the period of my employment with ABC Ltd.

Signed : \_\_\_\_\_

Witness : \_\_\_\_\_

Date : \_\_\_\_\_

Signed : \_\_\_\_\_ (on behalf of the  
company)

## **Appendix 2**

### **Disciplinary Procedure**

It is the company's policy to provide the best possible standards of pay, benefits and conditions of employment. In return, the employee is expected to contribute high standards of workmanship, attendance, co-operation and acceptable levels of productivity. While the aim of the disciplinary procedure is to help individuals whose performance, attitude or conduct falls below the company's standards, a disciplinary record may affect an employee's advancement prospects.

Should informal counselling fail to resolve the problem, the following will apply:

#### **Step 1 - Verbal Warning**

In cases of minor infringements, the supervisor/manager of the employee concerned will warn the employee verbally of the aspects of work or conduct which are below standard, stating clearly that this is a warning, advising on the improvements which must be made and that if the required improvements are not made then the next step in the procedure is a written warning.

The employee will be given a memo confirming the warning and a copy will be placed on his/her personnel file. If the conduct/performance is satisfactory for 6 months, then this warning lapses for the purpose of this procedure.

#### **Step 2 - Written Warning**

Where the employee's performance does not improve to the required standard, within a reasonable time, then the immediate supervisor/manager will issue the employee with a written warning. This warning will inform the employee of the aspects of conduct or performance which are below standard, stating clearly that this is a written warning, advising on the improvements which must be made and that if the required improvements are not made then the next step in the procedure is a final written warning. The employee will be given a copy of the warning and a copy will be placed on his/her personnel file. If the conduct/performance is satisfactory for 6 months, then this warning lapses for the purpose of this procedure.

#### **Step 3 - Final Written Warning**

Where the employee's performance does not improve to the required standard within a reasonable time, then the General Manager/Director will issue the employee with a final written warning. This warning will inform the employee of the aspects of conduct or performance which are below standard, stating clearly that this is a final written warning, advising on the improvements which must be made and that if the required improvements are not made then the next stage in the procedure is dismissal. The employee will be given a copy of the warning and a copy will be placed on his/her personnel file. If the conduct/performance is satisfactory for 12

months, then the employee shall revert back to Step 2 of the Disciplinary Procedure.

Consideration will be given to imposing a penalty of a disciplinary suspension with or without pay for a period of time as an alternative to a final written warning.

#### **Step 4 - Dismissal**

If, despite the warnings/action taken in accordance with Steps 1, 2 and 3 of this Procedure, the employee's conduct/performance is still not acceptable to the company then he/she will be dismissed. The General Manager/Director will make this decision.

Consideration will be given to imposing a penalty of a disciplinary suspension with or without pay for a period of time or demotion or redeployment, as an alternative to dismissal in appropriate cases.

#### **Right of Appeal**

An employee has the right of appeal. An appeal will normally be made to the next management level above that at which the disciplinary decision was taken or to an agreed independent 3<sup>rd</sup> party in the event that the most senior Manager or Director in the business has dealt with the matter. Appeals must be made in writing within 5 working days of the disciplinary decision being communicated to the employee.

#### **Right to representation**

An employee who is called to a disciplinary meeting has the right to representation. Representation can be by a fellow employee, a Trade Union official but not any other person unconnected with the organization

#### **Examples of offences**

The following are examples of offences, which will result in disciplinary action being taken against an employee up to and including dismissal:

- Consistent lateness
- Breach of contract of employment terms
- Failure to carry out reasonable instructions
- Failure to perform the job function to a competent level

The above points are examples only and are not exclusive. In the event of any disciplinary action been taken against an employee, Management undertake to outline clearly the offence for which the employee is being accused of and to operate these procedures under the laws of natural justice.

In the event of misconduct warranting summary dismissal, the following procedures apply;

## **Misconduct**

- In cases of misconduct such as bullying and harassment, fighting, theft, willful damage to company property, reporting for work under the influence of alcohol, breaches of trust, etc., the company may summarily dismiss an employee without recourse to the procedure contained in Steps 1 to 4 above. In cases where the company considers that summary dismissal is warranted, it may suspend an employee with pay in order to facilitate investigation of the particular case. In all such cases, the Company will clearly outline why the misconduct warrants summary dismissal.

Following investigation of any matter under this clause, the company may decide either to impose another form of discipline, such as suspension without pay and or final written warning without recourse to the procedure in 1 to 4 above

## **Appendix 3 Grievance Procedure**

### **Grievance Procedure**

ABC Ltd places great importance on creating and maintaining good relations between management and all employees. It is in the interest of everyone that where problems arise they are resolved quickly and effectively.

In the event of work assignments being in dispute then the employee is required to carry out the assigned work while the grievance is being processed through this procedure.

The following procedure is designed to ensure that problems are brought to the attention of management at the earliest possible stage and to ensure that they are dealt with without undue delay.

#### **Step 1**

An employee with a problem or complaint should raise the issue first with the immediate supervisor/manager, who will make every effort to solve the problem as quickly as possible. The employee will be informed of the resolution or progress on the issue within three working days.

#### **Step 2**

If the matter is not resolved at Step 1 then the employee is entitled to refer it to the next management level. A decision will be made on the issue by the manager within 10 working days. The employee may be accompanied by another employee at this meeting if he/she so chooses.

#### **Step 3**

If all the supervisor/management levels below General Manager/Director have failed to resolve the issue then it can be referred to the General Manager/Director. A decision will be made on the issue by the General Manager/Director within 10 working days. The employee may be accompanied by another employee at these meeting(s) if he/she so chooses.

More than one meeting may be required at any of the stages of the grievance procedure.

Written records will be kept of each of the meetings, apart from the first informal meeting.

An employee has the right to appeal a decision to the next management level. This appeal must be made in writing within 5 working days of the decision being communicated to the employee. In the event that the grievance is not resolved within the company then an agreed independent 3<sup>rd</sup> party will be appointed to resolve the matter.

## **Appendix 4**

### **Equal Opportunities Policy**

ABC Ltd is committed to the principles of equal opportunities in all its employment policies and procedures. The company will operate in an environment without discrimination on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, ethnic origin, race, colour, nationality or membership of the Traveller Community. The company will ensure that the principles of employment equality are applied in recruitment, promotion, training and work experience. All terms and conditions of employment at ABC Ltd and all activities of the business shall be conducted in a manner consistent with this policy of equal opportunity.

We want to develop a management style that allows everyone to use his or her talents fully. We have the right to be treated with dignity and respect, in an environment free from abuse, offensive behaviour, harassment, bullying or prejudice. Because your work contribution is our major concern, we recognize the benefits of helping you to balance the responsibilities of work and private life.

We provide equality of opportunity for all applicants and employees in recruitment, selection, development and promotion. The aim of our employment policies is to make sure everyone receives treatment that is fair, equitable and consistent with their skills and abilities. We all have a responsibility to ensure that this policy is lived: every day, the way we choose to think and act makes a difference.

This policy will be regularly reviewed by the Directors of the business along with the terms and conditions and policies and procedures contained in our company handbook to ensure compliance with best practice and to maintain a working environment that treats all employees in a manner consistent with equal opportunities.

Specifically the following actions will be implemented at ABC Ltd to promote equality of opportunity in our employment:

- The company will appoint one of its Senior managers to the position of Equality Officer and this person will be responsible for the operation of the Equal Opportunities Policy
- The company will prepare an annual statement on equality practices in this employment
- The company will prepare and operate a 'Dignity and Respect at Work' policy and procedure and promote a harassment free workplace through training of all managers and employees on how to prevent bullying, harassment and sexual harassment
- The company will operate a recruitment and selection policy that provides equal access to employment and promotional opportunities by selecting on the basis of ability to do the job

- The company will review with its employees how best to promote work life balance while maintaining our competitive operations and will include progress on these matters as part of the annual review of equality measures in this employment

## **Appendix 5**

### **Policy on Bullying/Harassment in the Workplace**

#### **Purpose of the Policy:**

ABC Ltd is committed to creating and maintaining a work environment where employees are valued and consider themselves free to perform work in an environment that is free from all forms of bullying, harassment and sexual harassment. In accordance with our company values, ABC Ltd expects that all employees will conduct themselves with normal standards of courtesy and consideration in the workplace, at work related events, and when doing business on behalf of the company.

Bullying, harassment and sexual harassment are behaviours that contravene this expectation and they will not be tolerated at any level of this organization. It is the responsibility of all employees and the employer to ensure that the workplace is free from any such incidents and to ensure to report any related behaviours.

ABC Ltd undertakes that any allegations of bullying and harassment will be dealt with seriously and that the Company will do its utmost to ensure that employees will be protected against victimization for making or being involved in a complaint. ABC Ltd is committed to ensuring that all employees are aware of the procedures for bringing complaints under this policy and that no employee should feel threatened or fearful of raising such issues.

#### **2. Scope:**

This policy applies to employees both in the workplace and at work associated events such as meetings, conferences and work related social events, whether on the premises or off site.

The policy applies to bullying/harassment not only by fellow employees but also by a client, customer or other business contact with whom an employee might reasonably expect to come into contact with in the course of their employment.

#### **Bullying**

“Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying”

#### **Harassment**

Harassment is any form of conduct or behaviour(s) which are unwanted, unwelcome, and are intimidating, offensive, hostile or degrading to the recipient on any one of 9 grounds:

**-gender, marital status, family status, sexual orientation, religion, disability, age, race, or membership of the traveller community**

**Examples of Bullying/Harassment may include but are not limited to:-**

**Physical:**

- Shoving, jostling
- Interfering with personal property or work station

**Non-physical and verbal:**

- Constant private or public humiliation, deliberate exclusion/ostracism
- Repeated use of offensive language directed at an individual or individuals
- Personal insults, such as name-calling, sneering, continued and deliberate staring, repeated put-downs, offensive jokes, racial remarks
- Repeated verbal abuse
- Undermining a person's role, dignity or respect
- Spreading malicious rumours
- Derogatory graffiti
- Threatening behaviour

**Sexual Harassment**

Sexual Harassment is defined as any act of physical intimacy, request for sexual favours, and/or other acts or conduct including spoken words, gestures or the production, display or circulation of written words, pictures or other material that is unwelcome, humiliating or intimidating to the recipient.

**Examples of Sexual Harassment may include but are not limited to-**

**Physical:**

- Unnecessary touching, pinching or brushing against another's body
- Sexual Assault

**Verbal:**

- Unwelcome sexual advances
- Continued suggestions for social activity outside work that are unwanted or declined
- Suggestions that consent to sexual favours might advance one's career or that lack of consent might hinder career opportunities
- Sexually suggestive jokes and/or comments
- Lewd remarks or innuendoes
- Unwelcome objectionable comments about person or dress

**Non-verbal examples may include:**

- Sexually offensive gestures
- Indecent exposure, leering, whistling
- Transmission to another or display of sexually suggestive material such as computer graphics, screensavers, films, pictures, posters, magazines or objects
- Sexually offensive or derogatory graffiti

## **Note**

Investigations into bullying/harassment/sexual harassment will take due account of the impact of the behaviours on the recipient. Behaviours that constitute bullying/harassment may be physical, non-physical or verbal. In non-physical forms of bullying, the determining factor is the repeated and persistent nature of the unwanted and offensive behaviour against an individual or group.

It is important when making a complaint that employees distinguish bullying/harassment from (a) the normal management function of managing performance and behaviour (including supervision of work and performance related discussions) and (b) normal acceptable interaction in the workplace.

## **Complaints Procedure**

In drawing up the complaints procedure, the organization has had regard to the time limits specified in the Equality Authority's Codes of Practice. Therefore whether a complainant is making a formal or informal complaint, the complaint will be made within six months of the last alleged incident, be this alleged incident of a bullying, harassment or sexual harassment nature. Where a reasonable cause has prevented a person making a complaint within this timeframe, the 6 month window may be extended by the company.

ABC Ltd supports two approaches to resolving complaints regarding bullying, harassment and sexual harassment, an informal and a formal procedure. It is the decision of the complainant which approach to adopt in a situation. Before deciding on which approach to adopt, the employee may seek help and advice, on a strictly confidential basis, from one of the nominated contact officers in the company, who should listen to the complaint and discuss with the complainant the various options available to them to resolve the complaint.

### **Informal Procedure:**

While in no way diminishing the issue or the effects on individuals, an informal approach can often resolve matters satisfactorily and speedily.

#### **Option 1**

An employee who feels that he/she has been subjected to bullying, harassment or sexual harassment should approach the alleged perpetrator (s) and explain clearly that the behaviour in question is unacceptable and request that it stops immediately. The employee should explain that the behaviour is not welcome, that it offends them and that it interferes with their work.

#### **Option 2**

In circumstances where the employee finds it difficult to raise the issue with the alleged perpetrator (s), he/she may approach a designated HR representative with their complaint with a view to resolving the issue informally through a mediated solution.

It is not appropriate that either party would be accompanied by either colleagues or representatives at such informal meetings.

## **Formal Procedure:**

The formal procedure may be used when:

- The complainant does not wish to use the informal procedure.
- The alleged bullying or harassment is too serious to be treated informally.
- Informal attempts at resolution have been unsuccessful.
- The behaviour has continued after an informal approach.

A formal complaint should be made to the complainant's immediate manager, or if not appropriate, to any member of local management or the Human Resources department. All complaints should ultimately be in writing and should be confined to precise details of the alleged incidents. Assistance in writing this complaint can be sought from your manager or a HR representative.

The alleged perpetrator will then be notified in writing that an allegation has been made and he/she will be given a copy of the complainant's statement and be advised of the procedures for dealing with the complaint.

At this stage, the recipient of the complaint will review the complaint with a view to determining an appropriate course of action and respond to the parties within 5 working days. An appropriate course of action at this stage, for example, could be exploring a further mediated solution or a view that the issue may be resolved informally. Should either of these approaches be deemed inappropriate or inconclusive or should the complainant wish, a formal investigation of the complaint will take place with a view to determining the facts and the credibility or otherwise of the allegation (s).

During the investigation process, the complainant and the alleged perpetrator (s) shall be entitled to be accompanied by a representative of their choice.

## **Investigation:**

Investigations may be conducted by an internally trained investigator(s) or if deemed appropriate by the company, an agreed third party. Where appropriate, the investigation will be conducted by two people and every effort shall be made to ensure a gender-balanced team. The investigators will take due regard of the impact of the investigation on both parties and every effort will be made to conclude the investigation as soon as possible. The Company will do its best to ensure any investigation is completed in sufficient time to protect the complainant's statutory rights.

The investigator (s) will:

- Interview the complainant.
- Invite the alleged perpetrator to respond orally and in writing to the allegations.
- Meet with the complainant and put the alleged perpetrator's response to them.
- Decide at this stage if it appropriate to (a) resolve the issues (b) carry out further investigations (c) reach a conclusion.
- If further investigation is necessary, the investigator shall meet with both parties again and any witnesses involved.

- During the process all information gathered will be forwarded to all parties involved and they will be entitled to respond before the investigation is concluded.

At the completion of the investigation, a report determining whether an allegation of bullying, harassment or sexual harassment has been substantiated or not will be prepared. This report will include: the nature and details of the complaint, the response of the alleged offender, the conclusions of the investigation team. This report will be forwarded to the manager who initiated the investigation, who will determine an appropriate course of action. Both the complainant and person(s) complained of will be notified of the outcome of the investigation stage.

If a complaint is upheld, any action taken will mirror the offence. In some cases an apology and assurance of non-recurrence may suffice. In others, options such as training, counselling, a period of monitoring and appraisal, demotion, or transfer may be considered, as might disciplinary action, up to and including dismissal. This list is not exhaustive

Throughout the investigation, an external counselling support will be offered to both the complainant and alleged offender if so desired and appropriate. Counselling may also be run in parallel with any disciplinary proceedings progressing at the conclusion of an investigation.

A complainant's rights are protected under this policy and a complainant will not be penalised for making a complaint in good faith. However, should it be found that a complaint has been brought maliciously; it will be treated as gross misconduct under the Company's disciplinary procedures.

### **Confidentiality**

At all times through informal and formal procedures, confidentiality will be maintained to the degree to which this is possible subject to the requirements of our established procedures.

### **Statutory Rights**

The key aim of the company's policy is that all complaints can be resolved through internal procedures available to the employee. However, it is the statutory right of all employees to process a complaint under the terms of the relevant legislation where internal procedures have failed to resolve the issue.

### **Appeal**

If either party is dissatisfied with the decision or findings of the investigation, an appeal may be made to an appropriate department director or Human Resources Director.

### **Policy Review**

This policy will be reviewed on an on-going basis and any amendments will be advised to employees.

**Signed by:** \_\_\_\_\_

**Authorised by:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## **Appendix 6**

### **Policy on use of Internet and E-mail**

#### **Introduction**

This policy details the rules and procedures that all employees of ABC Ltd must follow when using e-mail or accessing the internet. The policy explains what you are allowed to do and where legal problems may arise for the company and or yourself in seven key areas. These areas are,

- Electronic mail
- Harassment
- Defamation
- Copyright
- Pornography
- Internet
- Confidential information

Failure to comply with the rules set out in this policy may:

- a) result in legal claims against the company and or yourself, and or
- b) lead to disciplinary action being taken against you, which in certain circumstances may lead to summary dismissal since breaches of the policy may be viewed as gross misconduct

It is important that you familiarize yourself with this policy. Should you have any queries please refer them to your immediate Manager. You are also reminded that much of this policy will also apply to other communications within the company and to the outside world such as use of telephone, fax or letter correspondence.

#### **Electronic Mail**

The company e-mail system is for business use. Occasional and reasonable personal use is permitted provided that this does not interfere with the performance of your duties or contravenes company policy (e.g. defamation, harassment, security and confidentiality). The company reserves the right to access all e-mails at any time and without notice.

Before sending any e-mail an employee must be satisfied that if its contents were to be disclosed, then it would not have implications for them or the company in regard to harassment, defamation, copyright, pornography or disclosure of confidential information.

If you send a personal e-mail you must start or sign off the e-mail with a message as follows;

'This e-mail is personal and is not authorized by, or sent on behalf of my employer. This e-mail is the personal responsibility of \_\_\_\_\_. Insert your name in space.

In regard to business e-mails you are required to obtain confirmation of receipt for all important e-mails sent and you must make and keep hard copies of all such mails as well as any such mails received.

You must check your e-mail every working day or arrange for a duly authorized person to do so on your behalf. You must not impersonate any other person when using e-mail, or amend messages received. You are required to keep all passwords secure.

### **Copyright**

The owner of copyright has exclusive rights to works such as software, documents, articles, books, plays and musical compositions, in that they cannot be copied or used without the consent of the copyright owner.

You must not download, upload, copy or transmit to third parties the works of others without their permission as this may infringe copyright. Copyright is most likely to be breached:

- a) when you download or upload material from the internet, or
- b) when you copy text/graphics or attach it to an e-mail message

You and indeed the company could be sued by the owner of the copyright for damages for unauthorized use of the copyrighted material.

### **Harassment**

Please refer to our Code of Practice on Dignity and Respect at Work. In addition the following points are important with regard to harassment and the internet/e-mail.

Harassment can occur through electronic media and remember it is any unwelcome statement or action, which the recipient finds offensive. In the context of this policy sexual harassment can include sending messages with suggestive material, offensive sexual propositions or abuse of a sexual nature. Racial harassment is unwanted conduct based on race affecting the dignity of the individual. In the context of this policy this includes sending messages containing offensive insults or 'jokes' based on race and abuse of a racial nature.

Employees must not send abusive messages or messages which contain sexual or racist material. An employee suspected of having committed acts of harassment will be dealt with under the Company's Disciplinary procedures, which may lead to their dismissal. The matter may also be referred to the Gardai and criminal proceedings may be taken against an employee.

Any employee who is subjected to, or has knowledge of harassment (whether emanating from inside or outside the Company) is encouraged to

immediately report that matter to Management. Please refer to the Dignity and Respect at Work Code of Practice.

### **Defamation**

Defamation is the publication of a statement, which adversely affects a person or company's reputation. Employees must not send or circulate internally or externally any information which is defamatory. In particular, you must not send or circulate internally or externally any information, which contains negative comments about an individual or company without first checking that the content of the information is accurate. If in doubt, you must check with your manager.

A person or company defamed may sue an employee and the company. Failure to follow the guidelines as set down in this policy may lead to disciplinary action being taken against the employee.

### **Pornography**

There is no legitimate business use for accessing or transmitting sexually explicit material at work. Employees must not access or transmit any material with a sexual content.

Accessing and transmitting sexual material may be a criminal offence for which both employees and the company could be liable. The display on screen of sexual material or the transmitting of such material to other people may constitute sexual harassment, which has potential consequences for an employee as outlined in this policy.

Failure to follow these rules regarding the use of the internet or e-mail may lead to disciplinary action against an employee, which includes possible summary dismissal for gross misconduct.

### **Internet**

An employee must not access the World Wide Web for purposes other than those for which you are employed. No employee may deliberately visit, view or download any material from any web site containing sexual or illegal material or material, which is offensive and may in any way contravene the ABC Ltd Dignity and Respect at Work Code of Practice.

No employee of ABC Ltd may subscribe to any bulletin boards, newsgroups or any other internet service of any kind without prior written permission from your Manager. Also no employee may download software onto the company's system without prior written permission from their Manager.

The company reserves the right to monitor and log all internet access and to use the information accessed where necessary. Each employee must keep all passwords secure at all times.

### **Confidential Information**

Confidential information is any information, which is not available to the public. Information, which is confidential, could damage the company's business if it became known to our competitors. Such information could include price lists, development strategies, processes, etc. An employee is required to treat information on a confidential basis and to check with their

Manager if unsure. No documents of a confidential nature may be e-mailed, unless authorized by your Manager.

Where information of a confidential nature is being transmitted by e-mail it must contain the following statement;

“The information included in this e-mail is of a confidential nature and is intended only for the addressee. Disclosure to any party other than the addressee, whether inadvertent or otherwise is not intended to waive privilege or confidentiality. ABC Ltd accepts no responsibility for any loss or damage arising in any way from receipt of this transmission to the intended recipient address.”

All employees must follow this policy and you are also requested to refer to the clause in your employment contract on confidentiality. Breaches will be dealt with under the discipline procedure and can include summary dismissal for gross misconduct in certain instances.

## Appendix 7

### Works Committee

**ABC Limited and its employees agree the following constitution for the organisation and operation of a Works Committee. The purpose of the Works Committee is to bring forward all matters concerning employees and to negotiate with management in respect of terms and conditions of employment.**

#### **Membership**

Membership of the Works Committee shall be open to all current employees at the time of elections which shall be held every two years in November, commencing in November 2005.

#### **Committee Structure**

The committee shall comprise of x people representing the following groups and category of staff:

- 1 person from x group
- 1 person from x group
- 1 person from x group
- 1 person from x group
- 1 person from x group
- 1 person from x group
- 1 person from x group

Elections shall be held by way of secret ballot. Management shall provide facilities to staff to provide information on interested candidates to all employees and to allow for orderly conducting ballots, counting of votes and all other matters associated with the election process.

Following their election the x people shall meet and elect a Chairperson and a Secretary. The other x members of the committee shall operate as Works Committee Representatives.

#### **Meetings**

The Works Committee shall meet with management once per month at dates and times to be mutually agreed. The Committee shall be afforded time to prepare for these meetings and to meet after meeting management to prepare notes for distribution to all staff.

The Works Committee shall be entitled to call for additional meetings with management by giving 5 working days notice and by outlining the matter to be discussed. Management shall be responsible for ensuring that such meetings are held within the 5 day notice period.

Management shall be represented at each meeting by at least 2 persons who shall always include the General Manager or his Deputy.

Management shall confirm in writing to the Chairperson of the Committee any items agreed in negotiation with the Works Committee within 3 working days of the conclusion of the negotiations and meeting(s).

ABC Ltd shall provide secretarial services to the committee to complete minutes and preparation of notices as required.

### **Agendas**

The Works Committee shall be entitled to raise any matter of a collective bargaining nature with the company. The committee shall ensure that employees operate to the principles and procedures contained in the agreed internal dispute resolution procedures.

### **Training**

ABC Ltd shall provide training through a 3<sup>rd</sup> party Industrial Relations specialist for each new committee. Such training shall be agreed in advance with the elected committee and shall include negotiations, running of meetings and facilitation skills.

### **Review**

6 months after the election of the committee the 3<sup>rd</sup> Party Mediator shall review the workings of the Works Committee and shall present a report and any recommendation to both Management and the Works Committee.

Management shall arrange a meeting within one month of the publication of this report to discuss its findings and recommendations.

### **Further Enhancement of Works Committee Procedures**

The Works Committee shall be entitled to bring forward proposals to enhance their role in regard to negotiations on behalf of employees within a spirit of partnership between the Committee and Management on an on going basis. Any such items can be included in the normal monthly meetings between Management and the Works Committee.

**Signed:** \_\_\_\_\_  
**For and on behalf of ABC Limited**

**Date:** \_\_\_\_\_

**Signed:** \_\_\_\_\_  
**For and on behalf of WORKS COMMITTEE**

**Date:** \_\_\_\_\_