

## Miscellaneous Provisions – Info Sheet

### What Is It?

The Miscellaneous Provisions Act 2018 is a piece of legislation that amends specific sections of a number of already existing employment acts. These acts are:

- The Minimum Terms of Employment Act
- The Organisation of Working Time Act
- The National Minimum Wage Act
- The Unfair Dismissals Act

### Will It Affect My Company?

Some of the changes will impact all employers and others will only affect employers that recruit and employ team members on a Casual or Part-Time Basis.

### When Is It Coming Into Effect?

The changes will be in place from the first week in March 2019.

### What's Changing?

There are a wide range of changes from the requirement to outline details of employment in the first five days of employment to the restriction on Zero Hour Contracts. The details and associated penalties for each act are outlined below.

### **The Minimum Terms of Employment Act**

Within the first FIVE days of employment, all new employees must be issued with a document that outlines the following details:

- (a) The full names of the employer and the employee
- (b) The address of the employer or the address of the principal place of the relevant business of the employer in the State
- (c) The expected duration/purpose if it is a fixed term contract and, in the case of a temporary contract of employment, the date on which the contract expires
- (d) The rate or method of payment and the pay schedule and the pay reference period
- (e) The number of hours which the employee is expected to work in: (i) the normal working day, and (ii) the normal working week.

The document must be issued even if the employee leaves. An award of up to 4 weeks wages may be made where an employer is found to have failed to issue such a statement.

Employer's that provide false or misleading information to an employee will be guilty of an offence.

### Penalisation of Employees

Employers must not penalise or threaten employees who submit queries or complaints in relation to this Act.

Examples includes:

- Suspension, lay-off or dismissal (including constructive dismissal), or the threat of suspension, lay-off or dismissal
- Demotion or loss of opportunity for promotion
- Transfer of duties, change of location of place of work, reduction in wages or change in working hours
- Imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty)
- Coercion or intimidation

### New Penalties under the Act

Failure to provide the five day agreement document may result in compensation of up to 4 weeks wages.

Intentionally false statements on the five day agreements carry penalisation under the terms of a Class A fine – up to €5,000 and/or 12 months in prison plus the costs of the Commission. Complaints can be brought and prosecuted by the Adjudicator hearing a complaint at the WRC.

The recognised defence for issuing false statements is that the company has conducted Due Diligence and it was a genuine error.

Awards for the Penalisation of Employees under this act may be from 4 weeks salary up to two years' salary in the event of an unfair dismissal.

The time limit for complaints to the WRC is 6 months from the date of contravention.

Summary (criminal) proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

## The Organisation of Working Time Act

Where an employer requires an employee to be available to come into work (Zero Hour Contracts) they are now subject to certain restrictions.

Such a contract may no longer be for zero hours. Where the employees hours are not established, employers must allocate hours within one of the following formats and in line with the eight bands outlined in the table below.

Working hours must be confirmed in the following format:

- 1 Set working times
- or,*
- 2 'If and When'
- or,*
- 3 Mix of set hours and 'If & When'

Where employees are not given the opportunity work their contract hour's employers are required to pay the employee in one of two methods.

### *Employee's With Set Hours*

If an employer does not require an employee who has set hours to whom this section applies to work at least 25 per cent of the contract hours, then the employee shall be entitled to:

- in a case where the employee has not been required to work for the employer at all in that week, to be paid by the employer the pay he or she would have received if he or she had worked for the employer in that week, whichever of the following is less, namely 25% of the contract hours or 15 hours, and the minimum payment shall be calculated as 3 times the national minimum hourly rate / ERO Rate
- In a case where the employee has been required to work for the employer in that week less than 25% that is less than 15 hours, to have pay for that week calculated on the basis that he or she worked that week for 25% of the Contract hours and the minimum payment shall be calculated as 3 times the national minimum hourly rate / ERO Rate

Complaints outside of these criteria will be addressed through the WRC under Section 6 of the Payment of Wages act.

### *Employee's With 'If & When' Term and Conditions*

For employees on If & When contracts of any type, Where an employer does not require an employee to work for the employer in a week where there has been work carried out for at least 25 per cent of the hours for which such work has been done in that week by a comparable other, then the employee shall be entitled to:

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- in a case where the employee has not been required to work for the employer at all in that week, to be paid by the employer the pay he or she would have received if he or she had worked for the employer in that week whichever of the following is less, namely 25% of the hours conducted by a comparable other or 15 hours, and the minimum payment shall be calculated as 3 times the national minimum hourly rate / ERO Rate
- In a case where the employee has been required to work for the employer in that week less than 25% of contract hours that is less than 15 hours, to have pay for that week calculated on the basis that he or she worked that week for 25% of a comparable other and the minimum payment shall be calculated as 3 times the national minimum hourly rate / ERO Rate

Complaints outside of these criteria will be addressed through the WRC under Section 6 of the Payment of Wages act.

In the event of emergency or a need to meet a need for SHORT TERM relief, employers may issue contracts that do not include this band however this must be time bound and exceptional.

#### Banding of Hours

Employees have the right to be assigned to one of the following hourly bands:

	From	To
A	3	6
B	6	11
C	11	16
D	16	21
E	21	26
F	26	31
G	31	
H	36 or more	

The Hourly Bands are determined by calculating the average hours worked per week in the previous 12 months (or relevant period).

They are available to any employee whose contract does not match the number of hours that they work.

Exceptional and temporary periods of business activity can be taken into account (and omitted) during the review.

The request for a review must be submitted in writing by the employee and the employer must place an employee on a band within FOUR weeks of the request.

The employer can challenge the request of the employee where:

- There is no evidence that the hours that the employees has claimed is accurate

- The company has had a significant change to the business during or after the reference period
- The employee is currently subject to a period of short time or Lay-off
- Where there is an existing collective agreement detailing the working hours

### Penalisation of Employees

Employers must not penalise or threaten employees who submit queries or complaints in relation to this act.

This includes:

- Suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal
- Demotion or loss of opportunity for promotion
- Transfer of duties, change of location of place of work, reduction in wages or change in working hours
- Imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty)
- Coercion or intimidation

### Penalties For Employers

Where Banding has not been applied appropriately, the matter may be referred to the Workplace Relations Commission for adjudication and could be applied retrospectively.

Awards for the Penalisation of Employees under this act may be from 4 weeks salary up to two years' salary in the event of an unfair dismissal.

## **The National Minimum Wage Act**

There has been a repeal of trainee rates identified in the National Minimum Wage

## **The Unfair Dismissals Act**

Adjudicating Officers now have the ability to compel an individual to give evidence or produce documentation.

Individuals are offered the same immunities afforded during HC proceedings

A failure to comply, either in attendance or participation shall be guilty of an offence and liable to a Class E fine (up to €500)