

# Employment Law for Farmers

## Presentation to Dairy Farmers

in association with



### AISLING MEEHAN

AGRICULTURAL SOLICITORS

**Aisling Meehan** *BA LAW & ACC, AITI, FETAC (AGRI)*

*Solicitor & Tax Consultant*

Office :: Rathlahine Farm, Newmarket-on-Fergus, Co. Clare.

Telephone :: 061 368412 Mobile :: 085 7386615

E-mail :: [aisling@agriculturalsolicitors.ie](mailto:aisling@agriculturalsolicitors.ie)

Web :: [www.agriculturalsolicitors.ie](http://www.agriculturalsolicitors.ie)

# BACKGROUND



**ACADEMIC** – Solicitor, Tax Consultant,  
Young Trained Farmer, Nuffield Scholar

**PRACTICAL** – Award Winning  
Family Dairy Farm



# AGENDA



- Legal Obligations on an Employer
  1. Provide written Terms and Conditions of Employment within 2 months of employee commencing work
  2. Furnish a payslip which will show the gross wage and details of all deductions
  3. Furnish a copy of the Safety Statement/Risk Assessment Document
  4. Provide written Grievance and Disciplinary Procedures (procedures to be followed before an employee is dismissed) within 28 days of entering contract of employment



# TERMS OF EMPLOYMENT



- Terms and Conditions of employment to be furnished within 2 months of commencing employment and must be signed and dated by employee to include:-
  - Full name and address of employer and name of employee,
  - Place of work or a statement that employee will be required to work at various places,
  - Job title and/or nature of work,
  - Date employment commenced,
  - If contract is temporary or fixed, the date on which contract expires,
  - Rate of pay, and whether paid weekly, fortnightly or monthly,
  - Terms and conditions relating to hours of work (including overtime), paid leave, incapacity, pensions and pension schemes if applicable,
  - Period of notice which employee is entitled to receive and required to be given on termination,
  - Details of rest periods and breaks.



# TERMS OF EMPLOYMENT



- The contract can include a probationary period
- The Unfair Dismissals Acts will not apply (except in specific limited circumstances) to the dismissal of an employee when he/she is on probation or undergoing training provided that:
  - the contract of employment is in writing
  - the duration of probation or training is one year or less and is specified in the contract
- **Sample Clause**
  - *“The first 6 months of the employees employment shall be a probationary period and the employment contract may be terminated during this period at any time on one weeks prior notice. The employee may also terminate the employment contract during this period and must also give one weeks prior notice to the employer.*
  - *During the probationary period there will be two formal assessments against agreed criteria. The employer may, at their discretion, extend this period up to a further period of 6 months. During this probationary period the employees performance and suitability for continued employment will be monitored.”*



# TERMS OF EMPLOYMENT



- **Sample Job Title**

- *“The employee is employed as assistant manager/herd manager and will report to the farm manager. The employees duties will encompass the full range of activities required to assist the farm manager with the operation of the dairy farm. The employee will be in sole charge of the farm when the farm manager/owner is not present”*





# TERMS OF EMPLOYMENT



- **Sample Description of Duties/Nature of Work**

- Milking, attending to normal animal husbandry requirements during and after milking, maintenance of milking plant, premises and surrounds in a sanitary condition. Parlour operation costs to be minimised through controlled power cost and efficient use of detergents and other materials. Milking and washing routines to be carried out to standard procedure.
- Mating of cows and associated records, milk recording of cows and associated records. Complete records to be kept up to date.
- Attend to the care and feeding of all calves being reared and the cleaning of the facilities/utensils used in calf rearing.
- Attend to the care and feeding of all livestock. Stock are to be adequately fed and steps taken to ensure stock have access to water at all times. Take all reasonable steps to avoid injury or loss of stock such as inspecting stock close to calving at regular intervals which may necessitate being carried out outside normal working hours.



# TERMS OF EMPLOYMENT

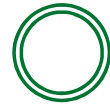


- **Sample Clauses in relation to Standard Procedures**
  - I. Milking cups and claws to be cleaned daily by hand
  - II. Cows to be teat sprayed after every milking
  - III. Check milk pumps for oil, belt tension, water logging on a weekly basis or more frequently if required
  - IV. Check all other mechanical equipment re oil, grease, fuel etc before using such equipment
  - V. Grease, wash and maintain machinery on a weekly basis or more frequently if required
  - VI. Carry out duties in accordance with the Farm Safety Statement and also to help put requirements of Farm Safety Statement in place





# PART TIME & FIXED TERM EMPLOYEES



- **Part Time Employees**

- Part time workers should be in continuous service of the employer for not less than 13 weeks and normally expected to work not less than 8 hours for that employer in order to avail of provisions under the Unfair Dismissal and Redundancy Payments legislation
- Protection of Employees (Part-Time Work) Act, 2001 provides that a part-time employee should not be treated in a less favourable manner than full time employee. Continuous service threshold does not apply in order to avail of the provisions of that Act.



# PART TIME & FIXED TERM EMPLOYEES



- **Fixed Term Employees**

- A person who has entered into a contract of employment where the end of the contract is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event e.g. cows finished calving, all calves reared to 6 weeks etc.
- Where an employer renews a fixed term contract, he/she shall inform the employee of the objective grounds justifying the renewal of the fixed term contract and justification for the failure to offer a contract of indefinite duration
- Possible to exclude the application of Unfair Dismissals Act provided the contract is in writing, signed by both parties and clearly provides that the Unfair Dismissals Act does not apply
- Restrictions on extending fixed term contracts; deemed to be continuous periods of employment



# WAGES



- Obligated to pay at least the minimum wage, currently €8.65 per hour.
- Wages are set by agreement between the employer and employee and will vary depending on the position and level of experience of the employee.
- Minimum Wage legislation does not apply to a person employed by a close relative (for example, a spouse, civil partner or parent) nor does it apply to those in statutory apprenticeships. Also some employees such as young people under 18 and trainees are only guaranteed a reduced or sub-minimum rate of the national minimum wage.



# WAGES



- As an employer you are obliged to provide a payslip which should include a breakdown of gross pay, hours worked, hourly rate of pay, holiday pay, sick pay etc. In addition it should include deductions from gross salary such as tax, PRSI, board and lodgings etc.
- If you are providing food and/or accommodation, the maximum value that can be attributed to these in terms of the minimum wage calculation is as follows:
  - €54.13 for full board (food) and lodgings (accommodation) per week or €7.73 per day
  - €32.14 for full board (food) only per week or €4.60 per day
  - €21.85 for lodgings (accommodation) only per week or €3.14 per day



# WAGES



Dept	Employee No.	Employee Name	Company Name
123456789	123456	Your Name	Your Company

Period	Date	PPS No.	Tax Code	Tax Credit This Period	Tax Cut Off This Period	PRSI Class	Ins. Weeks	Pay Method
13	17/06/2007	1234567Z	N	149.24	1307.70	A1	26	BACS

Gross Pay				Deductions			Balance	
Hours	Value	Y.T.D	Value	Y.T.D	Value	Y.T.D	Value	
Regular	72.00	820.04	9067.48	Tax	38.79	819.57	GROSS PAY YTD	11799.93
Overtime	7.00	68.34	273.37	P.R.S.I	46.25	428.37	NOTIONAL PAY YTD	521.17
Double	4.00	91.12	273.35	EE Pension	45.56	592.28	TAX CREDITS YTD	1940.12
Holiday	8.00	91.12	1664.56	Sports & Social	2.00	26.00	CUT-OFF YTD	17000.10
NP-VHI- BIK		40.09	521.17	ESPP	100.00	300.00	TAXABLE PAY YTD	9736.48
				AVC	25.00	650.00	Employer PRSI Per	101.07
							Employer PRSI YTD	1293.43
							ESPP	300.00
							ER Pension Per	45.56
							ER Pension YTD	592.28
<b>Total Gross</b>	<b>1070.62</b>			<b>Total Deductions</b>	<b>257.60</b>		<b>Net Pay</b>	<b>8:</b>
	(Excl. Notional)							



# WORKING TIME



- Maximum average working week cannot exceed 48 hours.
- 48 hours is determined over an average period of 4 months for most employees but has been an average over 6 months for those employees working in the agricultural industry.
- As an employer you are obliged to keep records of an employees working time. If the employee does Sunday work, in the absence of any specific agreement, an employer must give an employee one or more of the following for Sunday working:
  - A reasonable allowance
  - A reasonable pay increase
  - Reasonable paid time off work
- What is reasonable depends on all the circumstances and some guidance may be obtained by referring, to an agreement applying to comparable employees elsewhere in similar employment.





# WORKING TIME



- The provisions of the Organisation of Working Time Act 1997 on breaks and rest periods do not apply to certain categories of employees including those employees involved in agriculture
- Justification is on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves.



# HOLIDAYS



- There are 3 different ways of calculating annual leave entitlements, and the employee can use whichever of these methods gives the greater entitlement:-
  - 4 working weeks in the leave year (1 April – 31 March) in which the worker works at least 1,365 hours (unless it was a leave year in which the worker changed employment)
  - 1/3 of the working week per calendar month that the worker works at least 117 hours
  - 8% of the hours worked in a year subject to a maximum of 4 working weeks.



# HOLIDAYS



- A worker who has 8 or more months of service is entitled to take an unbroken period of 2 weeks annual leave
- Employer can determine the time of annual leave but must give one months notice
- Annual leave must be taken within the leave year or by agreement within 6 months of the end of leave year
- Pay cannot be given in lieu of holidays
- If an employee falls ill on annual leave, it shall not be counted as annual leave
- The onus is on employers to ensure that employees receive their annual leave entitlement. Employees may carry forward annual leave for up to 6 months of the next annual leave year, but employers should issue a reminder regarding 'untaken' leave within three months of the end of the leave year to any employees with outstanding leave.



# HOLIDAYS



- Most full-time employees entitled to paid leave on public holidays (9 days)
- Employees who qualify for public holiday benefit will be entitled to one of the following:
  - a paid day off on the day,
  - a paid day off within the month,
  - an extra days annual leave or
  - an additional days pay
- If you are a full time worker who is on sick leave during a public holiday you are entitled to benefit for the public holiday you missed. If you are a part-time worker on sick leave during a public holiday, you would be entitled to time off work for the public holiday provided you worked for your employer at least 40 hours in the previous 5-week period.
- No entitlement to public holidays where employees absent from work for 52 weeks due to occupational illness, 26 weeks in the case of other illness, 13 weeks for authorised absence.



# HEALTH & SAFETY



- The Safety, Health and Welfare at Work Act, 2005, place a legal duty on employers to prepare and work to a safety statement.
- However, farmers with 3 or less employees will be able to fulfill their statutory duty by completing a Risk Assessment Document which should be brought to the attention of all employees.
- A copy of the HSA Agriculture Code of Practice incorporating the Risk Assessment Document is available on the Teagasc or HSA website



# MINIMUM NOTICE



- Employees are entitled to statutory minimum notice or pay in lieu on termination of employment except where they are dismissed for gross misconduct

<b>CONTINUOUS SERVICE</b>	<b>NOTICE</b>
13 weeks – 2 years	1 week
2 - 5 years	2 weeks
5 – 10 years	4 weeks
10 – 15 years	6 weeks
Over 15 years	8 weeks

- Employee must give at least 1 weeks notice of termination of employment contract unless employment contract specifies to the contrary





# DISMISSAL & REDUNDANCY



- An employee who has been employed for a year or more may claim unfair dismissal if he/she should be dismissed or feels obliged to leave by reason of the conditions of work being made so difficult.
- However dismissal can be justified on the grounds of capability, competence or qualifications of the employee, conduct, redundancy provided the selection criteria and procedures are fair, and other substantial reasons
- Legal obligation on all employers to supply employees, not later than 28 days after commencing employment with written procedures that the employer will observe before dismissing an employee
- The Industrial Relations, Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) Declaration Order, 2000 sets out best practice on disciplinary and grievance procedures.
- Use of disciplinary procedures strongly recommended where an employees conduct, attendance or performance is of concern.



# DISMISSAL & REDUNDANCY



- Notify employee of any shortcomings, suggest improvements and give a period of time in which to make improvements.
- Disciplinary action may include:-
  1. Oral warning
  2. Written warning
  3. Final written warning
  4. Suspension without pay
  5. Transfer to another task i.e. demotion
  6. Some other appropriate disciplinary action short of dismissal
  7. Dismissal



# DISMISSAL & REDUNDANCY



- **Sample Disciplinary Action Procedure:-**

- a) *“The employee will be informed verbally and informally about the breach of a disciplinary matter and will be afforded the opportunity to desist from such action as is alleged. If the breach continues the employee will be given a written warning regarding the breach and will be given a further opportunity to desist from such a breach. Should the matter which is the subject of such a breach still continue the employee shall be given the opportunity to formally explain his/her actions. The employer will consider the appropriate action to bring about the cessation of any further breaches which have been proved to exist.*
- b) *If an employee wishes to raise a grievance they may apply in writing to the Manager.”*



# DISMISSAL & REDUNDANCY



- **Sample Disciplinary Action Procedure:-**

- a) *“When an employee is rendered incapable of the proper performance of his/her responsibilities and duties required under their contract of employment, as a result of mental or physical illness or injury, the employer may terminate the employees employment by giving not less than one month’s notice to the employee. Before taking this action the employer will ask the employee to undergo a medical examination by a registered medical practitioner nominated by the employer. The employer will meet the cost of the medical examination. The employer shall consider any reports or recommendations made available to the employer as a result of the examination and any other relevant reports or medical recommendations which may be given to the employer by or on behalf of the employee.*
- b) *The employer shall be entitled to dismiss the employee at any time on account of an act of gross misconduct. Acts of gross misconduct include (but are not limited to) theft, fraud, cruelty to stock, employee being under the influence of alcohol and/or drugs at work.”*



# DISMISSAL & REDUNDANCY



- Dismissal of an employee regarded as unfair dismissal unless there are substantial grounds justifying the dismissal
- Redundancy can be justified on the follow basis:-
  - The fact employer has ceased or intends to cease to carry on the business for the purposes for which the employee was employed
  - The fact that the requirements of that business for the employee to carry out work or a particular kind in the place where he/she was so employed have ceased or diminished
  - The fact that the employer has decided to carry on the business with fewer or no employees
  - The fact that the employer has decided that the work for which the employee had been employed should be done in a different manner which the employee is not sufficiently qualified or trained to do
  - The fact that the employer has decided that the work for which the employee had been employed be done by a person who is capable of doing other work for which the employee is not sufficiently qualified or trained



# DISMISSAL & REDUNDANCY



- **Legal Entitlements following Redundancy**
  - Entitled to 2 weeks notice in writing of proposed dismissal and reasonable paid time off to look for new employment or make arrangements for training for future employment
  - Employee must be given redundancy certificate not later than the date the dismissal is to take effect
  - Lump sum payment payable to employee of two weeks pay for every year of service plus equivalent of one weeks normal pay subject to ceiling of €600 per week





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# Questions?



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