



## Section 2

# Employment Status

by the Workplace Relations Commission



### Introduction

Dairy farmers should be familiar with a number of basic provisions under Irish employment law when engaging employees. Employees in certain sectors are covered by specific agreements regarding their employment and which deal with the pay and working conditions of the employees in these sectors. These agreements are Employment Regulation Orders (EROs) Registered Employment Agreements (REAs), Sectoral Employment Agreements (SEOs). Details of EROs, REA and SEOs currently in force are available at [www.workplacelrelations.ie](http://www.workplacelrelations.ie).

- ① What are the employer's obligation when employing labour on a dairy farm?
- ② What records do I need to keep?
- ③ What is the employment status of employees?
- ④ What is the employment status of foreign nationals?
- ⑤ What are fixed-term employees?
- ⑥ How are agency workers treated on farms?
- ⑦ What about part-time Employees?
- ⑧ What is the law in relation to employment of young persons?
- ⑨ What is meant by transfer of undertakings?

# Employment Status

## ① What are the employer's obligations when employing labour on a dairy farm?

The dairy farmer is responsible for ensuring that his/her employees receive certain basic employment rights. The main obligations include:

- To only engage employees who have permission to work within the State
- To ensure that employees are provided with a written statement of terms and conditions of employment
- To give employees a written statement of pay or 'payslip'
- To pay employees not less than the statutory minimum wage rates
- To comply with the maximum working week requirements
- To provide breaks and rest periods during working hours
- To give annual leave from work
- To give a minimum amount of notice before termination of employment
- To maintain records in relation to employees and their entitlements

## ② What records do I need to keep?

This list sets out the standard employment records which farmer employers must keep and to which a Workplace Relations Commission (WRC) Inspector will require access during the course of an inspection:

1. The completed template sent with the inspection appointment letter or the same information in a similar format
2. Employer registration number with the Revenue Commissioners
3. List of all employees including full name, address and PPS number for each employee (full-time and part-time)
4. Written terms of employment for each employee
5. Payroll details (including Gross to Net, Rate per hour, Overtime, Deductions, Shift and other Premiums and Allowances, Commissions and Bonuses, Service Charges, etc.)
6. Evidence that the employer has provided payslips to employees
7. Employees' job classifications
8. Dates of commencement and, where relevant, termination of employment
9. Hours of work for each employee (including starting and finishing times)
10. Register of employees under 18 years of age
11. Details of any board and/or lodgings provided to employees
12. Holiday and Public Holiday entitlements received by each employee
13. For non-EEA nationals, employment permits or evidence that permits are not required
14. Any documentation necessary to demonstrate compliance with employment rights legislation

## ③ What is the employment status of employees?

Employers engage persons on either contracts of service or contracts for services. Only a person engaged under a contract of service is deemed to be an employee and therefore protected by the full range of employment legislation. An independent contractor or self-employed person will have a contract for services with the party for whom the work is being done.

The distinction between a contract of service, on the one hand, and a contract for services, on the other, is sometimes unclear but the type of contract a person is engaged under can have serious implications for both employer and employee in matters such as employment protection legislation, legal responsibility for injuries caused to members of the public, taxation and social welfare. For further information, please see the Code of Practice for Determining Employment or Self-Employment Status, which can be downloaded from [www.revenue.ie](http://www.revenue.ie).

There are minimum periods for which these records must be kept (generally three years).



**4 What is the position with regard to employment of foreign nationals?**

Foreign nationals working legally in Ireland are entitled to the full range of statutory employment rights and protections in exactly the same manner as an Irish worker.

A non-EEA national, except in the cases listed below, requires an employment permit to take up employment in Ireland. It should be noted that the possession of a PPS (Personal Public Service) number does not automatically entitle a person to work in the State.

Citizens of non-EEA countries who do not require employment permits include those with:

- Permission to remain as spouse or a dependent of an Irish/EEA national
- Permission to remain as the parent of an Irish citizen
- Temporary leave to remain in the State on humanitarian grounds, having been in the asylum process
- Explicit permission from the Department of Justice and Equality to remain resident and employed in the State
- Permission to be in the State as a registered student who is permitted to work 20 hours during term time and 40 hours during holiday periods
- Permission to be in the State under the terms of the Diplomatic Relations and Immunities Act 1967, and are assigned to a Mission of a country with whom the Government has entered into a Working Dependents Agreement
- Swiss Nationals: In accordance with the terms of the European Communities and Swiss Confederation Act, 2001, which came into operation on 1 June, 2002, this enables the free movement of workers between Switzerland and Ireland, without the need for Employment Permits

It is an offence under the Employment Permits Acts 2003 and 2006 for both an employer and an employee if a non-EEA national is in employment without an appropriate employment permit or other permission to

work. Employment permit holders can only work for the employer named on the permit.

If the holder of an employment permit ceases, for any reason, to be employed by the employer named on the permit during the period of validity of the permit, the original permit and the certified copy must be returned immediately to the Department of Jobs, Enterprise and Innovation.

Depending on the business needs of the dairy farm, the farmer may take on part-time employees, fixed-term employees or temporary agency workers.

**5 What are fixed-term employees?**

A fixed-term employee is someone who is employed under a contract which contains a specific start and end date or who is employed to carry out a specific task or project or the continuity of whose contract is contingent on a particular event such as the availability of continued funding from an external source.

Fixed-term employees cannot be treated in a less favourable manner than comparable permanent employees in relation to conditions of employment. All employee protection legislation, other than that relating to unfair dismissal in certain circumstances, applies to fixed-term employees in the same manner as it applies to a permanent employee. Fixed-term employees may only be treated less favourably than a permanent employee where such treatment can be justified on objective grounds.

Employees cannot remain on a series of fixed-term contract indefinitely. If an employee who commenced employment on a fixed-term basis on or after 14 July 2003 has had two or more fixed term contracts, the combined duration of the contracts may not exceed four years. After this, if the dairy farmer wishes the employee to continue, it must be on the basis of a contract of indefinite duration.

# Employment Status

## 6 What is the status of agency workers?

An agency worker is an individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person-the hirer (e.g. a dairy farmer) - other than the employment agency.

The law provides that all temporary agency workers must have equal treatment with workers hired directly by the hirer in respect of:

- Pay
- Working time
- Rest periods
- Rest periods during the working day
- Night work
- Overtime
- Annual leave
- Public holidays

Temporary agency workers must also have equal access, with the hirer's own workers, to facilities such as canteen or similar amenities, or transport services.

Where a vacant position of employment arises with the hirer of an agency worker, the hirer must, when informing his/her own employees, inform any agency worker who is for the time being assigned to work for him/her, of the vacancy for the purpose of allowing the agency worker to apply for that position.

## 7 What about part-time employees?

A part-time employee is someone who works fewer hours than a comparable full-time employee doing the same type of work.

Since 2001, a part-time employee may not be treated less favourably than a comparable full time employee in respect of any condition of employment and all employee protection legislation applies to part-time employees in the same manner as it already applies to full-time

employees. A part-time employee may only be treated in a less favourable manner than a comparable full-time employee where such treatment can be justified on objective grounds.

## 8 What is the law in relation to the employment of young persons?

The Protection of Young Persons Act, 1996 is designed to protect the health of young workers, and to ensure that employment during the school year does not put their education at risk. The law sets minimum age limits for employment, sets rest intervals and maximum working hours, and prohibits the employment of those under 18 years of age on late night work.

### Summary of provisions in relation to employment of young people

Age	Max hours per day during school term	Max hours per week	Permitted hours of work
16 & 17	8	40	6am - 10pm

In general, the Act prohibits the employment of children under the age of 16. However 14 and 15 year olds can be employed:

- During the school holidays
- Part-time during the school term
- As part of an approved work experience or education programme where the work is not harmful to their safety, health, or development



**Summary of provisions in relation to employment of children over age 14**

Age	Max hours per week/day during school term	Max hours per week/day outside school term	Permitted hours of work	Maximum work experience per week/day**
14	Nil	35/7	8am - 8pm	40 hours/8 hours
15	Nil	35/7	8am - 8pm	40 hours/8 hours

\*\* The reference to "work experience" is to training or work experience programmes approved by the Minister for Jobs, Enterprise and Innovation or an tSeirbhis Oideachais Leanunaigh agus Scileanna (SOLAS).

16 and 17 year olds must receive a 30 minute break if working for more than a 4.5 hour period and two days off in every seven days. Fourteen and 15 year olds must be given a 30 minute break if working more than four hours, two days off in every week (if working during the school holidays) and a 21 day break from work in the summer.

**Summary of Rest Break provisions for Young Persons and Children**

	Under 16s	16 & 17 Year Olds
30 minutes break after working	4 hours	4½ hours
Every 24 hours	14 hours off	12 hours off
Every 7 days	2 days off	2 days off

In addition to the normal statutory records that employers are required to keep, the following records must be kept for any children and young persons employed by them -

- Full name
- Date of birth
- Time work begins each day
- Time work finishes each day
- Rate of wages or salary paid per day, week, month or year, as appropriate
- Total amount of wages or salary paid to each person

In addition, before employing someone under 16 years of age, an employer must see a copy of the child's birth certificate and obtain the written permission of a parent or guardian to employ the child.

An employer must provide all workers under the age of 18 years with a copy of the official summary of the Protection of Young Persons (Employment) Act, together with the other details of their terms of employment within one month of taking up a job.

Also, employers who employ persons under 18 years of age must display the official summary (abstract) of the Act at the workplace where it can be easily read.

**9 What is meant by transfer of undertakings?**

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 provide that the employment law rights and obligations of the original employer will be transferred to the new employer in the event of the transfer of the business or part of the business. The new employer must observe the terms and conditions agreed in any collective agreement on the same terms as were applicable to the original employer.





## Section 2

# Pay and Wages

by the Workplace Relations Commission



### Introduction

Employers in sectors covered by an Employment Regulation Order (ERO), Registered Employment Agreement (REA) or Sectoral Employment Order (SEO) are obliged by law to pay the wage rates prescribed by the orders and agreements. Details of EROs, REA and SEOs currently in force are available at [www.workplacerelations.ie](http://www.workplacerelations.ie).

- ① What is the National Minimum Wage?
- ② Are there sectoral or Industry Specific Minimum Wages?
- ③ How is Sunday work treated?
- ④ What requirements are associated with payslips?
- ⑤ What deductions can an employer make from the pay?

# Pay and Wages

## ① What is the National Minimum Wage?

Experienced adult workers in Ireland are entitled to be paid a minimum rate per hour. There are however, some exceptions to the minimum wage, including those employed by close relatives, those aged under 18 and trainees or apprentices.

### Minimum pay under the National Minimum Wage Acts

Employee	% National Minimum Rate of Pay
Experienced adult worker	100%
Employee under age 18	70%
Employee in the second year after the date of first employment over age 18, whether or not the employee changes employer during the year	90%
Employee in the first year after the date of first employment over age 18, whether or not the employee changes employer during the year*	80%
Employee in a course of training or study over age 18, undertaken in normal working hours	
1st 1/3 period	75%
2nd 1/3 period	80%
3rd 1/3 period	90%
Note: Each 1/3 period must be at least 1 month and no longer than 12 months	
Experienced adult worker named by the Labour Court in granting a temporary exemption to an employer from paying the national minimum hourly rate of pay	The Labour Court will decide the lower hourly rate of pay that the employee must be paid for the period of the temporary exemption
Note: Minimum period of temporary exemption 3 months and maximum period is 12 months	

\* Employment experience prior to age 18 is not taken into account for these rates.

The statutory minimum hourly rates of pay are gross amounts i.e. before tax/PRSI is deducted

## ② Are there sectoral/industry specific minimum wages?

Legal minimum rates of pay for particular industries or sectors may also be laid down in Employment Regulation Orders (EROs), Registered Employment Agreements (REAs) and Sectoral Employment Orders (SEOs). Farmers who propose to employ labour should check if such agreements or orders are in place for the Agriculture Sector.

Details of the existing minimum rates, under the National Minimum Wage Acts and under EROs, REAs and SEOs are available on [www.workplacerelations.ie](http://www.workplacerelations.ie).

## ③ How is Sunday work treated?

If not already included in the rate of pay, employees are generally entitled to a premium payment for Sunday working or paid time-off in lieu.

## ④ What requirements are associated with payslips?

All employees are entitled to receive a payslip with every payment of wages. This payslip should show the gross wage (wage before deductions) and the nature and amount of each deduction.

## ⑤ What deductions can an employer make from pay?

An employer is allowed to make the following deductions from an employee's wage:

- Any deduction required or authorised by law (e.g. PAYE or PRSI)
- Any deduction authorised by the term of an employee's contract (e.g. pension contributions)
- Any deduction agreed to in writing in advance by the employee (e.g. health insurance subscription )

## Section 2



# Holidays, Breaks, Rest Time

by the Workplace Relations Commission



### Introduction

Employers must ensure that employees are given adequate rest. The Organisation of Working Time Act, 1997 sets down the rules governing maximum working hours, daily and weekly rest breaks, annual leave and public holiday entitlements.

Employment Regulation Orders (EROs), Registered Employment Agreements (REAs) or Sectoral Employment Orders (SEOs) may also prescribe working time requirements for specific Industries or Sectors. Details of any such requirements are available on [www.workplacerelations.ie](http://www.workplacerelations.ie) or by telephoning the Workplace Relations Commission at lo-Call 1890 80 80 90.

- ① What is the maximum working week?
- ② What rest and breaks must be provided for an employee?
- ③ What is compensatory rest?
- ④ How many days' holidays are employees entitled to?
- ⑤ What about Public Holidays?
- ⑥ What is Protective Leave?

# Holidays, Breaks, Rest Time

## 1 What is the maximum working week?

The maximum an employee should work in an average working week is 48 hours. This working week average should be calculated over a four-month period. There are, however, some exceptions to this average period; for example, a six-month averaging period can be used where the work is seasonal or subject to a foreseeable surge in activity.

Category of Worker	Reference Period for Averaging
Employees who are night workers	2 months
Employees generally	4 months
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
Employees who enter into a collective agreement with their employers which is approved by the Labour Court	Up to 12 months
Young people under 18 years	Hours of work are fixed by the Protection of Young Persons (Employment) Act 1996

## 2 What rest and breaks must be provided for an employee?

Appropriate rest breaks from work are vital to the health and safety of workers and are of importance in the efficient and effective operation of the workplace. Employees in general are entitled to the following rest periods;

Rest Type	Entitlement
Daily	11 consecutive hours daily rest per 24 hour period
Weekly	One period of 24 hours rest per week preceded by a daily rest period (11 consecutive hours)
Rest Breaks	15 minutes where more the 4½ hours have been worked; 30 minutes where more than six hours have been worked which may include the first break

There is no statutory entitlement to payment for breaks.

## 3 What is compensatory rest?

Agricultural employees are exempted from the above rest provisions subject to receiving equivalent compensatory rest. This means that, although farmer employers may operate a flexible system of working, employees must not lose out on rest. In these circumstances rest may be postponed temporarily and taken as soon as possible after the statutory rest period has been missed out on and, generally, in an adjacent time frame. The **Code of Practice on Compensatory Rest** can assist dairy farmers in observing the requirements relating to compensatory rest and gives guidance on the arrangements that may be put in place to achieve compliance.

## 4 How many days' holidays are employees entitled to?

Holiday entitlements are earned from the date of commencement of employment.

The minimum annual leave entitlement is four working weeks paid annual leave per leave year. However, annual leave is accrued based on time worked by the employee. Full-time employees earn one week of paid annual leave for every three months worked. Employees who work 1,365 hours in any given leave year have earned



their full four week annual leave entitlement at that point, except if it is a leave year in which the employee changes employment.

Part-time employees are entitled to annual leave consisting of 8% of hours worked, subject to a maximum of four working weeks in the leave year. Employees are also entitled to nine public holidays during the year, in respect of which an employer may choose to give one of the following four options:

- A paid day off on the day, or
- A paid day off within a month, or
- An extra day of paid annual leave, or
- An extra day's pay

**5 What about Public Holidays?**

The following are the nine public holidays in Ireland:

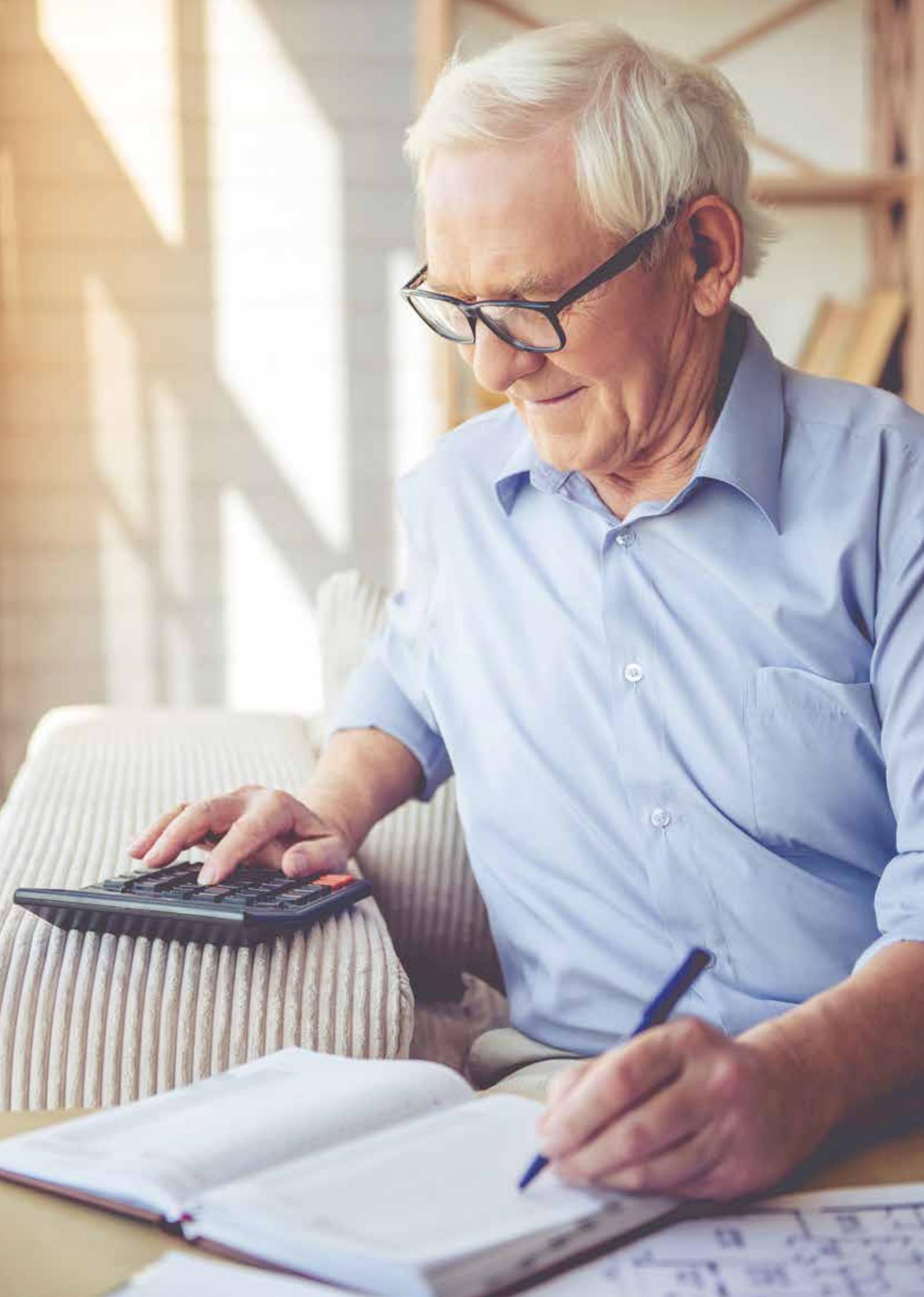
Public Holidays
1st January (New Years Day) St. Patricks Day; Easter Monday; the First Monday in May; the First Monday in June; the First Monday August; the Last Monday in October; Christmas Day; St. Stephen's Day

In order for a part-time employee to qualify for a public holiday, he/she must work at least 40 hours in the five-week period that immediately precedes the public holiday.

If the public holiday falls on a day on which the employee does not normally work, the employee is entitled to one fifth of his/her normal weekly wage for the day.

**5 What is Protective Leave?**

Employers are obliged to allow employees (who meet relevant qualifying criteria, if any) to avail of certain statutory protective leaves, such as maternity leave, health and safety leave, parental leave, adoptive leave, and carer's leave. There is specific legislation setting down the rules for each entitlement which can be accessed at [www.workplacerelations.ie](http://www.workplacerelations.ie).





## Section 2

# Equality and Termination of Employment

by the Workplace Relations Commission



### Introduction

Employment law outlaws discrimination in work places. You need to be also familiar with the redundancy requirements and potential farm inspections.

- ① What is the law regarding equality?
- ② What minimum notice is required?
- ③ What is redundancy?
- ④ What are collective redundancies?
- ⑤ What are codes of practice?
- ⑥ Who can inspect farms to monitor employment compliance?

# Equality and termination of employment

## ① What is the law regarding equality?

The Employment Equality Acts outlaw discrimination in work-related areas such as pay, vocational training, access to employment, work experience and promotion including harassment and victimisation at work and the publication of discriminatory advertisements.

Discrimination is prohibited where it relates to gender, civil status, family status, sexual orientation, religious belief, age, disability, race, colour, nationality, ethnic or national origins and membership of the travelling community.

Any provision in a collective agreement, Employment Regulation Order, Registered Employment Agreement or Sectoral Employment Agreement which discriminates on any of the grounds set out above may be declared null and void.

It is also unlawful to discriminate directly or indirectly in relation to occupational pensions on any of the grounds set out above.

## ② What minimum notice is required?

The Minimum Notice and Terms of Employment Acts 1973 to 2005 provide that every employee who has been in the employment of his/her employer for at least 13 weeks is entitled to a minimum period of notice before that employer may dismiss him or her. This period varies from one to eight weeks according to the length of service.

An employer and employee may agree payment in lieu of notice. An employee's minimum notice entitlement is as follows:

Lenght of Service Minimum	Notice
Thirteen weeks to less than two years	One week
Two years to less than five years	Two weeks
Five years to less than ten years	Four weeks
Ten years to less than fifteen years	Six weeks
More than fifteen years	Eight weeks

An employee who has 13 weeks service with his/her employer is obliged to give one week's notice to his/her employer when resigning, unless there is a written contract of employment that provides for a longer period, in which case this notice period must be given.

Employment contracts can be terminated in a variety of ways, such as dismissal, redundancy, or insolvency. Employers should be familiar with the rules relating to termination of employment in any of these contexts. To justify a dismissal, an employer must show that it either resulted from one or more of the following causes:

- The capability, competence or qualifications of the employee for the work she/he was employed to do;
- the employee's conduct;
- redundancy;
- the fact that continuation of the employment would contravene another statutory requirement;
- that there were other substantial grounds for the dismissal;
- farmers are advised to seek professional advice if they are considering a dismissal.

## ③ What is redundancy?

A redundancy situation arises, in general, where a job no longer exists and the person is not replaced. For example, if the farm owner decides to reduce the herd size in half, this may be a redundancy situation where labour is no longer needed on the farm.

Under the Redundancy Payment Scheme all eligible employees are entitled to a statutory redundancy lump sum payment on being made redundant. An employee is entitled to two weeks' pay for every year of service, with a bonus week added on, subject to the prevailing maximum ceiling on gross weekly pay which is €600 with respect to redundancies notified and/or declared on or after 1st January 2005.

An employee must have at least two years' continuous service (104 weeks) to qualify for statutory redundancy. An employer who is making an employee redundant must give appropriate notice to the employee according to the length of service under the Minimum Notice and Terms of Employment Acts 1973 - 2005 or the employee's contract.



However, notice of redundancy is only required two weeks before the termination of employment and must be given in writing. This can be done either by using Part A of the RP50 form (see below) or by informing the employee in writing of the redundancy. The employee should not sign Part B of the RP50 form until they have actually received their redundancy payment. For more information including how to calculate redundancy entitlements using the redundancy calculator, log onto [www.welfare.ie](http://www.welfare.ie).

The Redundancy Payments Acts 1967 to 2014 provide that the redundancy lump-sum must be paid direct to the employee.

**4 What are collective redundancies?**

Where employers are planning collective redundancies, they are obliged to supply the employees' representatives with specific information regarding the proposed redundancies and to consult with those representatives at least 30 days before the dismissal takes place to examine if the redundancies can be avoided, or lessened, or their effects mitigated.

**5 What are Codes of Practice?**

In places of employment the establishment of certain policies and procedures, such as those dealing with discipline and grievances, dignity at work (including bullying and harassment), is considered necessary, while the establishment of other policies and procedures, such as data protection and absence policies, is considered best practice. This will vary in importance for employers depending on the type of business involved.

**Checklist for clarity on employment**

	Yes/No
Have you considered the alternatives to employing a full-time labour unit?	
Are you clear on why you are employing?	
Have you a written a six year business plan including the full cost of labour?	
Have you identified some concerns and solutions about employing labour?	
Have you identified the new skills that you need as an employer?	
Have you identified what skills you need an employee to have?	
Are your family members aware of the role of the new employee?	
Have you identified a mentor for the new employee?	
Have you written a job description?	
Have you identified five areas to improve, to make your farm more attractive to employees?	

A number of organisations, including the Workplace Relations Commission, the Health and Safety Authority and the Office of the Revenue Commissioners have produced codes of practice which may be useful for employers.

**6 Who can inspect farms to monitor employment compliance?**

The WRC is also responsible for monitoring a range of employment rights in Ireland through its Inspection Service. WRC Inspectors operate in a fair and impartial manner, carrying out inspections throughout the country. These inspections arise as a result of complaints received of alleged contraventions of employment rights, as a result of targeted inspection campaigns and as a result of routine inspection enquiries. Where evidence of non-compliance with employment rights legislation is found, the inspector's main priority is to have the matter rectified. In some cases the issue of compliance and/or fixed payment notices and/or the initiation of prosecutions against the employer may be necessary.

In general WRC Inspectors have the following powers under legislation:

- To enter any place of work at a reasonable time
- To require the production of records
- To inspect records
- To take copies of, and remove and retain, records
- To interview and require information from any relevant person



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