





# Employment Rights

from information to redress

**A Comhairle Social Policy Report**  
**August 2006**

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## Preface

One of Comhairle's functions is to provide information on the effectiveness of current social policy and services and to highlight issues which are of concern to users of those services. Comhairle is well placed to highlight issues of concern to the public through its links to information services on the ground. Citizens Information Services (CISs) and the Citizens Information Phone Service (CIPS) are funded and supported by Comhairle. In 2005 CISs and CIPS dealt with over 820,000 queries from the public on all aspects of rights and entitlements to public services. Approximately 11% of these queries related to employment rights issues.

In 2000 Comhairle published its first social policy report on Employment Rights. The 2000 report referred to the availability of a wide range of employment rights legislation but highlighted significant shortcomings in the enforcement of that legislation. The present report re-iterates and highlights this concern. The problem has been exacerbated in the intervening six years by the significant growth in the workforce, including foreign nationals, and an ongoing shortage of resources and structures to meet the increasing demands on the enforcement institutions.

Government, employer bodies and trade unions recognise the challenges faced in establishing stronger rights enforcement structures. This has been a key factor in the recent partnership negotiations (June 2006) and agreement has been reached in relation to key reforms that would enhance the enforcement process. Stronger rights enforcement structures are particularly important for people who seek information and advice in relation to employment protection matters from Citizens Information Services. Such employees are generally non-

unionised (often migrant workers and/or people in low paid jobs, many working for smaller employers) and most at risk of not being able to exercise their rights under employment legislation. For such employees the gap between the theory of employment protection legislation and its implementation in practice is widest.

Evidence from CISs cited in this report shows that employers in certain instances are still not applying current legislation. It would appear that there is a general reluctance on the part of employees in some work situations to seek information or discuss employment conditions and rights with employers because of fear of reprisal. Contact with enforcement agencies to seek redress often occurs only after the person has already left the employment. Against this overall background it is hardly surprising that CISs report an increasing number of queries in relation to employment issues.

While this report contains a number of recommendations in relation to specific aspects of employment legislation, the most significant problem identified relates to the actual enforcement of existing legislation. There is a need for much greater co-ordination in the area of enforcement and implementation of legislation. In this regard, it is important that the establishment of a single point of contact for the Labour Court, the Rights Commissioner Service and all other services of the Labour Relations Commission and the Employment Appeals Tribunal, recommended by the Review Group on the Role and Functions of the Employment Rights Bodies, should be progressed immediately.

Improvements are also necessary in respect of informing both employees and employers of the provisions of employment protection legislation. The report identifies a number of ways in which this could be addressed. Indeed, the information

deficit problem could be improved significantly if it was made mandatory for employers to display information on employment rights, including national minimum wage rates and Joint Labour Committee agreed rates for employees in certain sectors, in the same way as they are obliged to display information about health and safety in the workplace.

The report refers to the fact that migrant workers, including people on work permits, frequently experience breaches of various aspects of employment protection legislation, including not being paid the national minimum wage. The Employment Permits Bill 2005, when enacted, will allow workers (rather than employers) to apply for their own permits. This would provide a stronger base for such workers to enforce their employment rights.

The challenge for Government is to create an environment where all workers can vindicate their employment rights, where employers in breach of the legislation are targeted and prosecuted and where employers who discharge their responsibilities properly are not over-regulated. There is a need to move to a situation where non-compliance by employers is regarded as totally unacceptable in the wider society.

The proposed establishment of a new statutory body (Office of the Director of Employment Rights Compliance) to police employment legislation, included in *Towards 2016*, is a welcome development in this regard as is the increase in the number of labour inspectors (up to 90 by the end of 2007). The introduction of stronger penalties for non-compliance by employers will also be a welcome development.

Workers who have legitimate grievances should have easier access to redress. As far as possible,

redress should be available in the first instance by means of a non-legalistic process where a solution can be identified and agreed with all parties involved. This could be facilitated by providing better access throughout the country to the institutions involved in employment rights enforcement, particularly the Rights Commissioner Service. This would enable better liaison between the enforcement bodies and Citizens Information Services and other voluntary and community organisations working in the area of employment rights.

*Chris Glennon*  
*Chairman*



## 1. Context of Report

### 1.1 Introduction

This report draws on the experience of Citizens Information Services and the Citizens Information Phone Service in relation to employment protection issues. In 2005, Citizens Information Services (CISs) throughout the country dealt with almost 740,000 queries from members of the public and the Citizens Information Phone Service (CIPS) registered almost 88,000 queries. The most recent survey of CISs shows that 11% of queries relate to employment rights. This was second only to social welfare queries (34%). The proportion of employment rights queries was higher than in 2000 (8%) and 2003 (10%). It can be estimated that in 2005 there were over 90,000 employment rights queries nationally. CISs and the CIPS also identify queries with a social policy dimension and return social policy records to Comhairle accordingly. Over 25% of such records refer to employment related matters this has increased from 19% in 2003 and 22% in 2004. The report describes and analyses the issues arising from these records and sets out a series of related recommendations.

### 1.2 Background and Context

In November 2000 Comhairle published its first social policy report on Employment Rights. Since the publication of the 2000 report, employment levels have risen consistently. There has been a dramatic increase in the numbers of migrant

workers, initially on work permits and more recently from EU accession states. While the employment environment has changed considerably in the intervening years, many of the issues around enforcement of employment legislation, the array of bodies dealing with employment legislation enforcement and the difficulties inherent in this remain the same.

The enactment of a wide range of employment protection legislation during the 1990s reflected a growing recognition of the importance of workers' rights. While some of this legislation extends the scope of previous legislation, a considerable body of it covered entirely new ground, such as rights to a national minimum wage, a statement of pay, adoptive leave, statutory provision for rest periods, parental leave (albeit unpaid) and carer's leave. Some of the legislation clearly reflects the influence of EU Directives on our employment legislation, such as the Protection of Young Persons (Employment) Act 1996, the Parental Leave Act 1998 and the Protection of Employees (Part-time Work) Act 2001.

The volume of employment related queries to CISs in recent years is likely to be due to both the extra volume of employment protection legislation and the increased numbers in the workforce, particularly the numbers engaged in part-time employment. The growth in employment-related queries is also due to the increased number of foreign nationals in recent years, whether employed on work permits or from the new EU accession countries.

Many non-unionised employees receive their information on employment rights from CISs since they do not have the resources to go to private solicitors. Thus, CISs have a potentially valuable role to play in feeding into the enforcement process the information that they

gather on problems being faced by a vulnerable section of the community on a day-to-day basis. Evidence from CISs cited in this report indicates a failure on the part of some employers to fully apply current legislation.

There is a general recognition that the resources available to the institutions responsible for enforcing employment legislation have not kept pace with the level of increased demand arising from new employment protection measures. Likewise, the mechanisms available to deal with disputes and enforce rights have become more complex.

A review of the role and relationships of the employment rights bodies<sup>1</sup> and their adjudication and enforcement frameworks was undertaken by Government following a commitment in the Programme for Government 2002-2007. Following this review<sup>2</sup>, a programme of work has been undertaken by the Department of Enterprise, Trade and Employment, in co-operation with the Office of the Attorney General, to simplify, harmonise and consolidate the corpus of employment rights legislation. A customer-focused working group<sup>3</sup> has been established in each of the bodies concerned.

### 1.3 Employment Rights Queries to CISs

The people who seek information and advice in relation to employment protection matters from CISs are generally non-unionised employees (often migrant workers or people in low paid jobs and many of whom work for smaller employers) who are most at risk of not being able to exercise their rights under employment legislation. For such employees the gap between the theory of employment protection legislation and its implementation in practice is widest.

According to the most recent (2005) CIS Survey, the most common employment rights queries were regarding leave entitlements (e.g., holiday leave) and payment of wages, contracts and PRSI payments. These categories made up almost half of all employment rights queries (see Appendix 1). The main employment-related issues identified by CISs in Social Policy records also relate to holiday entitlements and lack of documentation from employers. Issues relating to work permits also feature prominently.

### 1.4 Outline of Report

The report contains three chapters. Chapter One has set out the context of the report. Chapter Two discusses enforcement issues in respect of employment rights legislation. A number of case examples cited by CISs which refer to inadequate enforcement are set out and related recommendations put forward. Chapter Three looks at specific employment rights issues and related breaches of legislation reported by CISs - work permits; holidays; part-time employees; documentation; payment of wages; minimum wage; unfair dismissal; bullying and harassment in the workplace; safety, health and welfare, working time; family-related employment legislation; and employment of children and young persons. A number of case examples cited by CISs are included under each topic and a series of recommendations put forward. The chapter also identifies some general information issues in respect of employment rights legislation.

The report contains 5 appendices.

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<sup>1</sup> The bodies, whose functions were examined, were:

The Rights Commissioner Service (Labour Relations Commission)

The Employment Appeals Tribunal (EAT)

The Labour Court

Equality Tribunal (The Office of the Director of Equality Investigations)

The Employment Rights Enforcement Unit of the Department of Enterprise, Trade and Employment.

<sup>2</sup> <http://www.entemp.ie/employment/rights/publications.htm>

<sup>3</sup> These working groups will address issues identified by the Review Group in the context of improving the delivery of service by the individual employment rights bodies.



## 2. Enforcement Issues

### 2.1 Introduction

The major issue arising from the experience of Citizens Information Services and the Citizens Information Phone Service is that of the effectiveness of employment legislation enforcement. The cases cited throughout this report point to a significant gap between legislative protection and the ability of employees to enforce their statutory rights. The bridging of this gap is of vital importance if legislative protection is to be meaningful for all employees, including the most marginalised. The reasons for the gap are varied but include such issues as a lack of resources (particularly in relation to workplace inspection<sup>4</sup>), complexity of procedures, lack of adequate information on the part of employers and employees and the need for increased protection for employees seeking to enforce rights.

### 2.2 Context

There are a diverse range of agencies responsible for inspection and enforcement of the different aspects of the employment situation including employment protection legislation, health and safety, and tax and social welfare matters. For example, a relatively straightforward unfair dismissal case might involve an aggrieved employee in dealings with all of the following:

- The Rights Commissioner Service and/or the

Employment Appeals Tribunal, in relation to the actual dismissal,

- The Revenue Commissioners, for example, in relation to the non-receipt by the employee of a P45 form, and
- The Department of Social and Family Affairs and the Social Welfare Appeals Office if, for example, there has been a suspension of Unemployment Benefit payment due to a Departmental opinion that the dismissal arose from the fault of the employee.

The number of institutions and their jurisdictions can be bewildering for an employee seeking to enforce his/her rights. The details of the present enforcement structures are set out in Appendix 2 and Appendix 3.

The procedures for the enforcement of employment rights can be complex and confusing. For example, at a very basic level, an employee currently may have very little information on which to make a decision as to whether to refer an unfair dismissal case to a Rights Commissioner or proceed directly to the Employment Appeals Tribunal.

There is no specific provision for legal aid for Employment Appeals Tribunal cases. While the Minister for Justice, Equality and Law Reform has the power under the Civil Legal Aid Act 1995 to extend civil legal aid to matters outside the courts, this power has not been exercised. Although there has been a view that the Employment Appeals Tribunal should be kept free of legal representation and should be informal, the reality is that a great deal of employment legislation is complex and requires specialist advice. This may be reflected in the fact that, in 2004, almost 68% of employees were represented at Employment Appeals Tribunal hearings, the majority by solicitors and/or counsel. Nearly 56% of

<sup>4</sup> The Labour Inspectorate (Department of Enterprise, Trade and Employment) has responsibility for implementing the law and investigating any employer in breach of the law. The Inspectorate has currently (since November 2005) 31 Inspectors.

employers were represented<sup>5</sup>, again the majority by solicitor and/or counsel. The experience of CISs suggests that, while the number of employees represented at the Tribunal is relatively high, some employees have felt unable to enforce their rights because of the complexity of the legislation and the fact that detailed legal advice and representation is not always available.

Over the years there has been a relatively low level of prosecutions of employers in breach of the legislation initiated by the Department of Enterprise, Trade and Employment. Instigating and following through with prosecutions is very resource intensive. A focus on increasing the number of successful prosecutions may not, therefore, be the best use of Departmental resources in the context of improving the general level of compliance with employment legislation.

In 2004, there were 5,160 workplace inspections or visits carried out by the Labour Inspectorate, part of the Department of Enterprise, Trade and Employment. Ten additional inspectors were appointed in 2005, to bring the total to 31. As a result some 8,223 inspections were carried out between January and June 2006, compared with 5,719 for the whole of 2005. Under the partnership agreement *Towards 2016*, the number of inspectors is to be trebled by the end of 2007.

It should be noted that difficulties with enforcement of legislation sometimes arise because of collusion between employers and employees. For example, there may be an understanding that part of the wages is paid in cash "under the table". In other instances there may be a tacit agreement between employers and parents that the requirements of protective legislation in respect of young people can be suspended. In such instances the breaches of

legislation may only come to light when there is a breakdown in the relationship between employee and employer.

## 2.3 Enforcement of Employment Legislation: Queries to CISs

Difficulties arising from the lack of enforcement of employment protection legislation are regularly reported to CISs.

### 2.3.1 Multiple Breaches of Legislation

Multiple breaches of employment protection legislation by the one employer are regularly reported to CISs. The following case examples give a general picture of the nature of such breaches

A young man contacted a CIS about his work situation. The CIS established that he works 39 hours per week but does not receive the minimum wage. He has never received a statement of pay - he is paid cash in hand every week. He had only received 2 days' paid holidays in 2 years and was not paid for bank holidays during this period. He had never received a P60 and, therefore, did not know whether his PRSI contributions were up to date or not.

Two women who worked in a childcare service run by a voluntary organisation (one for 3 years and the other for over 1 year) have never received a contract or written terms of employment. The women told the CIS that they do not receive pay slips and are not sure as a result how much they are being paid. They were informed at short notice that the service would be closing for a week and that they would not be paid. They were unsure about their rights because their terms and conditions of employment had never been clarified.

<sup>5</sup> This figure does not include in-house representation by, for example, human resource managers.

A male employee, aged 23, was 10 months working for the same employer and was being paid the minimum wage. He had received no written terms of employment, no statement of pay, no P60 and no holidays to date. He told the CIS that when he asked his employer for the documentation he was verbally abused and asked "did he want a job or not". He told the CIS that he was also afraid to ask for holidays in case he would be let go.

A woman worked for over 30 years in a grocery shop and was always treated fairly with regard to working hours, breaks and holidays until the business was sold as a going concern and had been under new management for the previous 2 years. She told the CIS that her terms of employment had been altered without any consultation. She now works 7 days a week (32 hours per week), 52 weeks of the year and does not receive pay or time off for public holidays, or minimum leave entitlements under the legislation. She receives 9 days' paid annual holidays. Also, she is being paid for 20 hours 'through the books' and the balance as 'cash in hand'. She told the CIS that her employer repeatedly tells her that if she receives extra pay she would lose her medical card, as her income would be above the limit.

### 2.3.2 Difficulties Experienced in Enforcing Employment Rights

The following case illustrates the difficulty some employees experience in enforcing their rights in situations where a determination is made in their favour.

A man had worked for his employer for 5 months. He decided to leave his employment and gave his employer 2 weeks notice in writing. When he was leaving, his employer refused to pay him the holiday pay he was owed. The CIS advised the man to refer his case to the Rights Commissioner Service and he received a decision in his favour. His employer, however, appealed the Rights Commissioner decision to the Labour Court and the Labour Court upheld the decision of the Rights Commissioner.

The man had to wait for 6 weeks to allow for due process before he could take further action. In the event of the employer not paying the money, as he felt would almost certainly be the case, the options available to him were limited. He could go to court to get an enforcement order, which could then be given to the local sheriff office to enforce, or he could ask the Department of Enterprise, Trade and Employment Enforcement Section to follow up on his case. Both processes take a long time. The man felt that current mechanisms are not sufficiently protective or supportive of employees in instances where an employer fails to comply with a Labour Court decision.

The following 2 cases reported by CISs are examples of employers failing to comply with legally binding decisions. They highlight the need for a stronger enforcement process to ensure that when an award is granted, it is in fact paid by the employer.

The Rights Commissioner awarded an employee €1,200 for holiday entitlements but over 2 years later he had not received this payment.

An employee was awarded €1,800 for unfair dismissal by the Labour Court under the Industrial Relations Act but 6 months later had not received this payment.

## 2.4 Addressing the Issues

There is a need to strengthen the enforcement system by providing for more efficient systems of detection and redress. This will require an integrated and targeted approach by all the institutions involved. Sufficient resources to ensure compliance with employment protection legislation need to be made available. While the number of inspectors in the Department of Enterprise, Trade and Employment has been increased to its current (2006) complement of 31 (with a planned increase to 90 by the end of 2007), enforcing the entire range of employment legislation will continue to present enormous challenges. As well as promoting the right of employees to bring their own claims under the various pieces of legislation, the State urgently needs to be seen to be policing and maintaining standards, especially in relation to persistent offenders. It is also important that employers are actively engaged in the process of developing and maintaining a stronger culture of compliance in all sectors of work.

No matter which piece of legislation is breached, it is essential that persistent offenders are targeted and prosecuted if necessary. This applies whether breaches involve employing someone without a work permit where one is necessary, working time, the right to a statement of pay, the working hours of young persons or safety statements. Also, employers should incur penalties and interest for delaying compensation payments awarded to employees. Such an approach would send out a clear message that a take it or leave it approach to employment legislation is not acceptable.

Much greater co-ordination is required in the area of inspection. Ideally, compliance with all aspects of the law should be taken into account when an employment premises is visited by a public official; this includes employment protection

legislation, health and safety, tax and social welfare. Where appropriate, such inspections could be backed up with specific expertise, for example, in regard to technical matters arising from health and safety issues. While an overriding employment inspectorate may not be feasible, the notion of a more co-ordinated approach between the agencies and some pooling of data should be considered.

### Recommendations

As recommended by the Review Group on the Role and Functions of the Employment Rights Bodies, the establishment of a single point of contact has much merit and should be progressed. The bodies concerned are the Labour Court, the Rights Commissioner Service and all other services of the Labour Relations Commission and the Employment Appeals Tribunal. This single point of contact would be useful not only for information provision, but also for receipt and distribution of requests for service.

The institutions involved in employment rights enforcement need to give greater attention to the specific issue of better access to their services by people throughout the country.

The Department of Enterprise, Trade and Employment should set up a specialist award enforcement unit to assist employees, particularly those of modest means, to follow through on their awards, as many employees do not have the legal resources to do so and have insufficient knowledge to tackle the Circuit Court route themselves.



### 3. Specific Employment Issues

#### 3.1 Work Permits

##### 3.1.1 Summary of Legislation

The Employment Permits Act 2003 provides for the granting of employment permits in respect of foreign nationals. Under the legislation employers may not employ nationals of states outside the European Economic Area (European Union, Norway, Iceland, Liechtenstein) or Switzerland without a valid employment permit.

The Act also sets out certain categories of persons who do not require an employment (work) permit. It places the onus clearly on employers to obtain a valid employment permit, or to satisfy themselves that such a permit is not needed.

The prospective employer must apply to the Department of Enterprise, Trade and Employment for the permit and pay the relevant fee<sup>6</sup>. Once a person has been issued with a work permit, he/she has all the employment rights of Irish or EU citizens for the duration of the work permit. The legislation allows for an employer to apply for a renewal of a work permit. In the case of a person with a work permit who wishes to change employment, the prospective employer must apply for a new work permit and the person cannot start the new job until the permit is issued.

A person who loses his/her job through redundancy has the right to remain and seek new employment for as long as the original work permit remains valid. However, when he/she finds alternative employment, the new employer has to apply for a new work permit<sup>7</sup>.

In the case of students it is a primary condition of entry into the State that they are in a position to maintain themselves while studying here. Up to April 2005 students who are non-European Economic Area (EEA) nationals were entitled to take up casual employment (defined as up to 20 hours part-time work per week or full-time work during holiday periods) for the duration of their permitted stay in Ireland. Students who wanted to continue working after their course of study ended needed a work permit to do so. Since April 2005 students given permission to remain in Ireland for study are not given permission to work unless they are attending a full-time course of at least a year leading to a recognised qualification<sup>8</sup>.

Applications for work permits for domestic staff are only considered where it has been established that the person has been in employment with a family abroad for at least 1 year, prior to the date of applying for a work permit. Permits, where issued for domestic staff, are subject to strict conditions because the home is the workplace in such instances.

The Employment Permits Bill 2005, currently at final stage in the Oireachtas (July 2006), makes provision for a Green Card-type system to be introduced for highly-skilled migrant workers, likely to apply in sectors such as Information and Communications Technology (ICT), financial services, biotechnology and pharmaceuticals.

<sup>6</sup> Schedule of Fees

1 Month	€65
2 Months	€95
3 Months	€125
4 Months	€170
5 Months	€210
6 Months up to 1 Year	€500

<sup>7</sup> Special conditions apply to work permit holders who have been made redundant there are no ineligible occupations, the prospective employer does not have to advertise the vacancy with FÁS and the application is given priority.

<sup>8</sup> Recognised qualifications include those issued by the Dublin Institute of Technology, the universities, FETAC and HETAC.

Lower-skilled workers from outside the European Economic Area will continue to require work permits. The legislation will provide for a statement by employers of workers' rights and entitlements. Permits will be issued to employees rather than employers and employers will be prohibited from deducting recruitment expenses from workers' pay and from retaining workers' personal documents. There will also be a statement of the requirement to pay the national minimum wage.

The partnership agreement, *Towards 2016*<sup>9</sup>, includes a provision that "the Government has agreed that the Employment Permits Bill will be enacted at the earliest possible date and that economic migration policy will ensure ...that all workers will be allowed to apply for and reapply for their own permit...[and] that employment permit holders may transfer to another employment in case of unfair treatment"(p 104).

### 3.1.2 Context

The Labour Relations Commission (LRC) (2005)<sup>10</sup> refers to a significant increase in claims from migrant workers. The LRC highlighted the fact that 94% of claims from migrant workers were successful which was significantly in excess of the general average of successful outcomes for claimants overall. The LRC expressed concern that many of the complaints made by migrant workers on work permits are brought against small and medium-sized Irish-owned enterprises. The claims were usually in respect of the most basic entitlements such as wages, holidays, public holidays and Sunday premium payments. The overwhelming majority of such claimants do not receive written terms of employment, which in itself is a breach of the Terms of Employment (Information) Act 1994. Many also complain of not receiving the basic entitlement of a statement of pay and of working hours in excess of the

statutory limits. Underpayment of wages is also regularly the subject of referral to the Rights Commissioner Service in connection with the national minimum wage or legally established rates in the industry in question. It should be noted that in some instances there may be collusion between employers and employees and that breaches of legislation may only come to light when there is a falling out between the parties involved.

### 3.1.3 Migrant Workers on Work Permit Scheme: Issues Identified by CISs

Evidence from CISs shows that migrant workers on the Work Permit Scheme are having difficulty obtaining their basic employment rights including minimum wages, contracts or terms of employment and holiday pay. Their rights are compromised by the fact that the work permit is employer-specific and that, as a result, the options for finding a new job are limited.

Deductions from wages are being imposed by some employers without the consent of the workers in respect of work permit fees, accommodation and meal charges. One CIS reported a situation where workers' passports and return tickets were taken and held by an employer. It appears that many people here on work permits are being paid less than the statutory minimum wage. A recurring theme in queries to CISs from people here on work permits is fear of victimisation if they make a complaint. This is particularly the case in situations where workers want their employers to renew their work permits.

The following are 3 examples reported by CISs of breaches of legislation in respect of people employed on work permits.

<sup>9</sup> *Towards 2016*, Ten Year Framework Social Partnership Agreement 2006-2015, The Stationery Office Dublin, 2006

<sup>10</sup> Labour Relations Commission, *Annual Report 2005*

## Multiple Breaches

A foreign national on a work permit receives €150 for 80 - 90 hours work per week. For the first 3 months of his employment he received no days off. He now has one day per week off. He does not get public holidays off or payment in lieu and he does not receive pay slips. He told the CIS that all of the staff on work permits are in similar situations and that they are afraid to challenge their employer. These working conditions are not consistent with the information about the job that he received prior to coming to Ireland. For example, he was told, at that stage, that his accommodation would be provided which is not the case.

The CIS was told by the Department of Enterprise, Trade and Employment that it would take a minimum of 3 months before his claim would be investigated and a spot check carried out.

## Illegal Retention of Documents by Employer

A number of people on work permits told a CIS that on their arrival in Ireland, their Irish employer asked them to hand over their passports. The gardaí were called to deal with the matter which was eventually only resolved when the ambassador wrote to the employer, pointing out that the passports were the property of the government of Brazil, the workers' country of origin. Their return flight tickets to Brazil had also been taken from them by their employer and deductions were being made from their wages to pay for them. The workers claimed that they had paid for the tickets themselves.

## Work Permit Renewal

The following example highlights the unsatisfactory situation of a person depending on the current employer to renew a work permit.

A Ukrainian woman was told by her employer that a work permit renewal application had been lodged. She was anxious about her situation and tried on numerous occasions to get the employer to check the status of the application with the Department of Enterprise, Trade and Employment, particularly as almost 6 months had elapsed since the application and the woman was now almost 6 months into her second year in the job and the permit had not been issued. On contacting the work permit section of the Department, the CIS was advised that the application had not been processed to completion because the employer had not followed up on it. The woman was powerless in the situation in that her immigration status in the country depended on the outcome of the application by the employer for a work permit renewal.

### 3.1.4 Addressing the Issues

The Employment Permits Bill 2005, when enacted, will provide migrant workers with greater protection and flexibility. A particularly significant development is the proposed issue of permits to workers themselves along with a statement of their rights and entitlements. It is essential that all workers be allowed to apply for their own permit and that employees on work permits are able to move out of unsatisfactory employment situations, particularly where there is unfair treatment.

Additional protective mechanisms included in the Employment Permits Bill would help to ensure that employers do not breach the terms

of the permit. However, work permit holders are considerably less likely to be able to avail of their entitlements if they are tied to the one employer and do not have genuine freedom of movement. Employment rights will continue to be a problem for work permit holders unless there is a stronger enforcement of employment protection legislation generally. Also, the terms outlined in the work permit should constitute a binding contract.

A permit holder whose employment is terminated without justifiable cause or whose employer does not seek to renew without a valid reason or who leaves their employment because of their employer's misconduct or because terms are not honoured has no direct avenue of complaint under the Bill to a third party such as a Rights Commissioner. Equally, there is no express right for such an employee to remain in the State and seek another employer.

It should be noted that there are a number of criminal offences in both the 2003 Act and the 2005 Bill. If migrant workers are to be properly protected, the State must ensure that employers who persistently breach the requirements are prosecuted.

More co-ordination and pooling of data between the various enforcement agencies should be considered to ensure compliance with all aspects of the law, including employment protection legislation, health and safety, tax and social welfare.

## Recommendation

The Employment Rights Unit of the Department of Enterprise Trade and Employment should proactively encourage employers to make employment rights information fully available to all employees. In particular, employers should be

encouraged to advise migrant workers of the information available from the Department in a range of languages<sup>11</sup>. The Department should develop links with Comhairle and Citizens Information Services and other local information providers for this purpose.

## 3.2 Holiday Entitlements

### 3.2.1 Summary of Legislation<sup>12</sup>

All employees (full-time, part-time, temporary or casual) have an entitlement to paid annual leave. The actual amount of an employee's leave entitlement is based on his/her hours of employment during the leave year, usually the calendar year. Since April 1999 the annual leave entitlement provided for in the legislation is 4 working weeks. This is the minimum an employer must provide although an individual contract may allow for a longer leave period. The time at which leave may be taken is a matter for the employer, but, under the legislation, regard must be had to the need for employees to reconcile work with family commitments, and the opportunities for rest and recreation available to employees.

In addition to annual leave employees are also entitled to paid time off for specified public holidays (9 in total) or one of a range of alternatives set out in the legislation. Part-time or casual staff must have worked a set minimum number of hours, 40 hours in the 5 weeks immediately prior to the public holiday, in order to be entitled to avail of the legislation.

### 3.2.2 Context

The total number of referrals under the Organisation of Working Time Act 1997 to the Rights Commissioner Service in 2005 was 665.

Just over 14% of queries to the Employment Rights Information Unit of the Department of

<sup>11</sup> Currently (2006) employment rights information is available from the Department of Enterprise, Trade and Employment in Chinese, Czech, English, Hungarian, Irish, Latvian, Lithuanian, Polish, Portuguese, Romanian and Russian.

<sup>12</sup> Organisation of Working Time Act 1997 part III  
Organisation of Working Time (Determination of Pay For Holidays) Regulations 1997. SI. 475/97;  
Organisation of Working Time Directive 93/104/EC - Article 7: Annual Leave.

Enterprise, Trade and Employment in 2005 referred to the Organisation of Working Time Act including holiday entitlements. In the period January-June 2006, 4,421 queries (almost 9% of total) referred specifically to holiday entitlement.

### 3.2.3 Holiday Entitlements: Issues Identified by CISs

Queries in connection with holiday entitlements constitute a significant element of the employment rights work of CISs. The level of queries concerning leave (both annual and public holiday) points to a clear deficit in workers getting their full entitlements in this area.

Seeking to enforce annual leave and public holiday entitlements presents a particular problem. Some employees, even though they have sufficient service to have the protection of the unfair dismissals legislation, are still fearful of taking action against a recalcitrant employer. Even less likely to seek to enforce holiday entitlements are employees who have less than 1 year's service and are, therefore, generally outside the protection of the unfair dismissals legislation. For example, an employee with 6 months' service may, understandably, be reluctant to risk dismissal by taking action against an employer who refuses to grant a day's pay in lieu of a public holiday. It should be noted, however, that 2 years' pay can be awarded as compensation under Section 26 of the Organisation of Working Time Act 1997.

The following 2 cases illustrate the reluctance of some workers to use the protection of the law in relation to holiday entitlement.

A man working for 30 years with the same company, took one week's holiday in mid-July and had booked another week in August. When he returned from the July break there was a notice displayed to the effect that no other holidays could be taken for the rest of this year. Many of the man's colleagues had also booked holidays for August. When they raised the matter with the employer, they were told that if they took their holidays in August they would not have a job to return to. The man was advised by the CIS that he could seek redress under the unfair dismissals legislation if he was dismissed. However, he felt that this was not an option as he would have great difficulty getting another job because of his age.

A woman had not received any annual leave entitlement since starting work in 2001. She told the CIS that she had brought up the matter "a few times" with her employer but that he had ignored it. When advised by the CIS to refer the matter to a Rights Commissioner, she was reluctant to do so as she felt that she would be let go if, as she put it, she "rocked the boat".

### 3.2.4 Addressing the Issues

Additional provision should be made for employees with less than one year's service to be given some form of protection in circumstances where the employee is dismissed or fears dismissal for seeking to avail of or enforce holiday entitlements.

#### Recommendations

The Department of Enterprise, Trade and Employment - in conjunction with Comhairle, CISs and other information services - should set up proactive mechanisms to disseminate the details of the relevant legislation on holiday entitlement to both employees and employers on an ongoing basis.

A person dismissed for requesting annual leave or public holiday is entitled to bring a claim under the Organisation of Working Time Act 1997 (with provision for up to 2 years' compensation). This option should be highlighted and explored more frequently by organisations supporting people in enforcing employment rights.

### 3.3 Part-time Employees

#### 3.3.1 Summary of Legislation

The Protection of Employees (Part-time Work) Act 2001, which updated the Worker Protection (Regular Part-time Employees) Act 1991, brought in improvements for part-time workers. The purpose of the Act was to implement a 1997 EU Directive which set out the general principles and minimum requirements relating to part-time work. For example, the Directive states that:

- Part-time workers shall not be treated less favourably than comparable full-time workers solely because they work part-time unless the different treatment is justified on objective grounds
- A worker's refusal to transfer from full-time to part-time work or vice-versa should not of itself constitute a valid reason for termination of employment, though this is without prejudice to certain matters including reasons which may arise "from the operational requirements of the establishment concerned"
- As far as possible, employers are:
  - (a) To give consideration to employee requests to transfer from full-time to part-time work or vice-versa
  - (b) provide "timely information" on part-time and full-time positions in the workplace

The purpose of the Protection of Employees (Part-time Work) Act 2001 was to ensure that part-time employees are not treated in a less favourable manner than a comparable full-time employee unless there are objective reasons for such treatment. Where an employer tries to justify less favourable treatment on objective grounds, he/she has to show that the difference in treatment is based on grounds other than the part-time status of the employee. A part-time worker is someone whose normal hours of work are less than the normal hours of work of a comparable employee. A part-time worker no longer has to have 13 continuous weeks' service and no longer has to work a minimum of 8 hours per week as previously in order to qualify as a part-time worker. A part-time worker must not be penalised for invoking his/her rights under the Act.

Complaints under the Act are to be brought to a Rights Commissioner within 6 months of the date of the contravention of the Act or the date of termination of employment, whichever is earlier. A period of up to 12 months may be allowed by a Rights Commissioner who is satisfied that the failure to bring the complaint within the 6-month period was due to reasonable cause.

When considering the position of part-time employees it must also be remembered that, just as for full-time employees, certain legislation may be availed of by employees regardless of the length of service. For example, the Maternity Protection Acts 1994 and 2004 and the Payment of Wages Act 1991 fall into this category. The Parental Leave Act 1998, on the other hand, requires a minimum period of employment (normally 1 year) but not a minimum working week. The Terms of Employment (Information) Act 1994 by contrast applies to employees with 1 month's service.

### 3.3.2 Context

In 2005, 75 cases were referred to the Rights Commissioner Service under the Protection of Employees (Part-time Work) 2001. There were 1,136 queries on part-time workers to the Employment Rights Information Unit of the Department of Enterprise, Trade and Employment, which constituted just under 1% of all queries to the Unit.

### 3.3.3 Part-time Employees: Issues Identified by CISs

An ongoing difficulty in relation to part-time employees is the confusion amongst employers and employees as to the definition and rights of a part-time employee. There continues to be a perception that part-time employees may have limited rights under employment protection legislation. However, in reality such employees are covered by all current legislation subject to fulfilling any relevant length of service requirements. The difficulties encountered by part-time workers are highlighted by the following CIS social policy record.

A number of part-time workers have contacted our CIS regarding problems they have been experiencing with annual leave and public holiday entitlements. They are being told by their employers that, because they work part time, they are not entitled to annual leave. Also, many who work only 2 or 3 days per week are being told that they are not entitled to any pay for bank holidays (for example, one-fifth of a week's pay if their days of work do not normally fall on the bank holiday). Many of them believe their employers.

The following case relating to a part-time worker illustrates both significant breaches of legislation by an employer and a reluctance on the part of the employee to seek redress.

A CIS client had been working part-time, 20 hours per week, for 2 years. In 2004 she applied for Family Income Supplement (FIS) which she received. In 2005 she applied again for FIS but received a letter from the Department of Social and Family Affairs to say that she would not be granted FIS and, also, that she must repay the money she had received in 2004 as she was working only 14 hours per week. It emerged that, in order to comply with the minimum wage regulations, the employer had reduced the certified working hours to 14. The woman told the CIS that other staff would be happy to testify that she worked 20 hours per week.

The woman was reluctant to make a complaint to a Rights Commissioner in respect of the breaches of legislation - non-payment of minimum wage, no statement of pay, no written terms of employment. She was fearful that she would lose her job if she complained.

### 3.3.4 Addressing the Issues

Part-time employees are often non-unionised and vulnerable to a denial of even the most basic of employment rights. Hence sufficient resources need to be made available to the relevant authorities to ensure adequate inspection of workplaces regularly employing part-time staff. Basic information on the rights of part-time workers could, for example, be supplied along with other documentation from the Revenue Commissioners to employees identified as regular part-time workers.

## Recommendation

Industries that tend to rely heavily on part-time employees (for example, cleaning and catering) should be targeted in relation to providing comprehensive information on the rights of part-time workers.

## 3.4 Documentation

### 3.4.1 Summary of Legislation

#### Written Terms and Conditions of Job

Under the Terms of Employment (Information) Act 1994-2001 an employer should inform employees in writing of the terms and conditions of the job.

This must include:

- Job title or nature of the work
- Date the job started
- Rate of pay
- Whether payment is weekly or monthly
- Hours of work (including overtime)
- Holidays
- Sick pay arrangements
- Periods of notice or if the contract of employment is for a fixed term
- The date when the contract expires and if the contract is temporary
- The expected duration of the employment
- Details of rest periods and breaks required by law

Employers must provide these particulars in writing within 2 months of commencement of employment. It should be noted that only the employer is obliged to sign the statement.

It should also be noted that if there are any changes to the particulars in the statement, the employee should be notified within 1 month of

the change taking effect. This should not be interpreted as giving the employer the unilateral right to alter the terms of employment.

There is no statutory provision requiring an employer to provide an employee with a written contract of employment. However, in practice, many employers base a full written contract of employment around the necessity to provide the statement of terms and conditions.

In addition, employers of persons under 18 are required under the Protection of Young Persons (Employment) Act 1996 to display a summary of the legislation regarding the employment of children and young people and also to give a summary of the Act to the employee within 2 months of the commencement of employment.

#### Statement of Pay

The other key legislation in this area, the Payment of Wages Act 1991, covers the method of payment and the right to receive a statement of pay setting out the gross pay and listing any deductions made.

#### P60 and P45

Employers are obliged by law to provide all employees with a P60 at the end of each year which shows total pay for the year, number of weeks in employment and tax and PRSI payments.

They are also obliged to provide a P45 to all persons leaving or dismissed from a job which provides the same information from the start of the tax year to the date the person leaves or is dismissed from the job.

### 3.4.2 Context

A dispute under the Terms of Employment (Information) Act 1994 must first be brought before a Rights Commissioner. It may then be brought before the Employment Appeals Tribunal by way of an appeal against the recommendation of the Rights Commissioner in the matter. The total number of referrals to the Rights Commissioner Service in 2005 in connection with the Terms of Employment (Information) Act 1994 was 301, an increase of almost 23% on the 2004 figure.

### 3.4.3 Documentation: Issues Identified by CISs

The overall evidence of employment queries received by CISs suggests that a sizeable proportion of employees are not supplied with even the minimum written statement of terms of employment required by the legislation. The failure to comply with the legislation undoubtedly leads to workplace disputes that might otherwise have been avoided. Even in employments where a written contract exists, employers may seek to introduce unilateral changes into the contract. Employees in such situations may be presented with the choice of accepting the change, leaving the employment of their own accord or being dismissed.

Many employees view the contract as essentially the employer's document rather than something they are an equal party to and are reluctant to resist changes to their terms even if they are unhappy with them. A term in the contract can only be altered by consent. Many employees do not immediately object to changes and are thus taken to have implied their consent.

While an employee is entitled to a written statement of the terms of employment specified

in the legislation within 2 months of starting the employment, in many instances it is likely that a new employee would be reluctant to seek to enforce this right.

There is some evidence from CISs of P45s having been withheld where there is a dispute about the termination of employment. This can affect the person's access to social welfare entitlements.

The following 4 cases illustrate the types of problems with documentation reported to CISs.

A man employed in the construction industry on a work permit had never received a P60, a pay slip, or a contract or written terms of employment. He told the CIS that he was afraid to ask his employer for the forms or his pay slips because his work permit was due for renewal and he felt that his employer might not renew it if he was making demands.

A woman who has worked with her present employer for over 3 years has never received a statement of pay even though she has requested them on a regular basis.

A Latvian man who was returning home for an indefinite period did not receive his P45 on the final date of employment following a period of 3 weeks notice to his employer. He wanted this document with him to access benefits in Latvia. He left the country unsure whether it would be forwarded to him or not.

A construction worker who was made redundant had a great deal of difficulty getting a P45 from his employer. He was also owed €1500 for work he had done. The employer said that he would not pay him the money and the company accountant said he could not issue the P45 until the money

matter was settled. Consequently, the client could not get paid Unemployment Benefit nor could he get his tax sorted when he subsequently took up employment with a new employer. This situation went on for 12 months. Following contact with the company by the CIS, the P45 was issued but with incorrect tax deductions.

#### 3.4.4 Addressing the Issues

The right to written details of the basic terms of employment stems from an EU Directive<sup>13</sup> and is a core employment right. At present the onus is on individual employees to enforce their rights under the legislation. Given the State's interest in ensuring compliance, more emphasis should be placed on the employer's responsibilities in this regard and the legislative consequences for employers in default of their statutory obligations.

In view of the considerable advantages to be gained from ensuring that employers provide employees with the written statement of terms required by the legislation, the Department of Enterprise, Trade and Employment should promote the importance of compliance with the law and highlight the consequences for employers in continuous breach of the legislative provisions. As a minimum, every worker should have a legal right to know who his/her employer is. This information should be provided as a matter of course in written terms of employment and on the statement of pay.

An employee who is dismissed for attempting to enforce his/her right to written terms of employment and a statement of pay cannot access the unfair dismissals legislation if he/she does not have 1 year's service. This is a major omission and breaches the spirit of the EU Directive.

## Recommendations

The Department of Enterprise, Trade and Employment should proactively promote the importance of compliance with the law and highlight the consequences for employers in continuous breach of the legislative provisions.

### 3.5 Payment of Wages

#### 3.5.1 Summary of Legislation

The key legislation in this area, the Payment of Wages Act 1991, covers the method of payment and the right to receive a statement of pay setting out the gross pay and listing any deductions made. The legislation also regulates deductions from wages for losses arising from an employee's conduct or omissions and sets out the procedures required of employers to ensure such deductions are lawful.

#### 3.5.2 Context

The total number of referrals in 2005 to the Rights Commissioner Service under the Payment of Wages Act 1991 was 1,875. It was the highest category of referral to the service and represents a 22% increase over 2004 and almost 40% when compared with 2001.

In 2005 queries concerning wages (4,842) made up over 3% of all queries received by the Employment Rights Information Unit of the Department of Enterprise, Trade and Employment. In 2004 the Employment Appeals Tribunal received 103 appeals against Rights Commissioner decisions under the Payment of Wages Act 1991, compared with 21 in 1998.

Although the Payment of Wages Act 1991 provides for the prosecution of employers who, for example, fail to provide a statement of pay, prosecutions under the legislation are extremely

<sup>13</sup> Directive 91/533/EEC

rare. For example, there were 2 successful prosecutions in 2002, none in 2003, only 1 in 2004 and none in 2005 or 2006 to date.

### 3.5.3 Payment of Wages: Issues Identified by CISs

The following 2 cases illustrate the types of problems encountered by CIS users in respect of payment of wages.

Eight people on work permits who worked for the same firm told the CIS that their employer had been deducting money for rent, heat, ESB, their flight to Ireland, and advances of rent from their wages without their consent.<sup>14</sup> Until they contacted the CIS, the workers did not know that it was illegal for an employer to make deductions from wages without the written consent of and/ or written notice to the employee.

A woman contacted the CIS to seek assistance with the non-payment of wages and holiday entitlements from her ex-employer. Over a series of letters and phone calls the CIS succeeded in settling this case. The CIS noted, however, that: "this employer (a restaurant and take-away business) has a history of mistreating his staff and regularly hires and fires without all outstanding monies being paid. Previously, we had dealt with 3 other employees from the same company. The employees are mainly waitresses, waiters, chefs and cleaners. We are currently assisting another group of 5 ex-employees from the same company who are owed 2 and 3 weeks' wages".

Another issue that arises from time to time in CISs is that awards made under employment protection legislation may not be recovered if the employer company does not go into liquidation but ceases to trade. Where a company fails to comply with a court order under employment legislation and it has gone into either voluntary or compulsory

liquidation, application may be made for payment of the outstanding award by the Insolvency Fund established under the Protection of Employees (Employers' Insolvency) Acts 1984 and 2003. However this will not cover a situation where a company has become 'informally' insolvent.

### 3.5.4 Addressing the Issues

There is general agreement that there is a need for improved record keeping by employers in order to protect workers rights. The partnership agreement *Towards 2016* includes a proposal "to prescribe the form in which payroll and working time records must be kept by employers... consistent with the existing record keeping requirements for employers in relation to, for example, taxation and social welfare." (p. 94). This would be an important development.

#### Recommendation

There should be a role for the Director of Corporate Enforcement to investigate situations where complaints are made in relation to limited companies that have become 'informally' insolvent and whose employees are, as a result, not protected by the Protection of Employees (Employers' Insolvency) Acts 1984-2003.

## 3.6 National Minimum Wage

### 3.6.1 Summary of Legislation<sup>15</sup>

A national minimum wage<sup>16</sup> came into force in April 2000. The National Minimum Wage Act 2000 applies to all employees except in the case of (a) close relatives of the employer (such as father, mother, son, daughter, brother and sister) and (b) any employee undergoing structured training, such as an apprenticeship (other than hairdressing apprenticeships).

Complaints regarding breaches of the National

<sup>14</sup> The Employment Permits Bill 2005, when enacted, will make such deductions a criminal offence.

<sup>15</sup> National Minimum Wage Act 2000.

<sup>16</sup> The current national minimum wage is €7.65. Employees who are in their first year of employment since turning 18 are entitled to €6.12 per hour. Employees who are in their second year of employment since turning 18 are entitled to €6.89 per hour. Employees who are under 18 years of age are entitled to €5.36 per hour.

Minimum Wage Act 2000 can be made to the Employment Rights section of the Department of Enterprise, Trade and Employment. The Department's inspectors, who have powers to enter places of work and examine records, do not reveal without the consent of the person making the complaint, whether the inspection is a routine one or is a result of a complaint. Complaints regarding the minimum wage may also be referred to a Rights Commissioner. However, a Rights Commissioner cannot hear a complaint if it is being simultaneously investigated by the Labour Inspectorate.

Certain conditions are attached to making a complaint to a Rights Commissioner under the minimum wage legislation. A statement of average hourly pay over the relevant pay reference period must be sought by the employee and the complaint must be made within 6 months of the statement being provided.

In addition to the provisions for a national minimum wage, a range of employees in traditionally low pay occupations are covered by Joint Labour Committees that set minimum pay and conditions for sectors such as hotels, clothing manufacture and agriculture. Minimum pay and conditions for employees covered by Joint Labour Committees are determined by way of Employment Regulation Orders (EROs). Joint Labour Committees are composed of employer and trade union representatives and overseen by the Labour Court.

Section 36 of the National Minimum Wage Act 2000 prohibits victimisation of an employee for asserting his/her rights under the legislation and further provides that any dismissal for so doing is both unfair and is not subject to the normal 1 year's service requirement under the Unfair Dismissals Acts.

### 3.6.2 Context

In 2005 there were 4,860 queries on the minimum wage to the Employment Rights Information Unit of the Department of Enterprise, Trade and Employment. This represented almost 4% of all queries to the Unit.

### 3.6.3 National Minimum Wage: Issues Identified by CISs

The following 3 cases illustrate some of the issues relating to the national minimum wage brought to the attention of CISs.

A woman works as a carer in private employment. Her employer was paying her €5.50 per hour (at the time the minimum wage was €7.00 an hour). She told the CIS that when she complained she was effectively told that if she did not like it she should get another job. She needs the job to supplement other family income and feels that she has no choice but to accept the rate of pay offered.

A woman contacted the CIS on behalf of herself and some colleagues. They had been working at the same mushroom-growing and picking plant for a number of years. They were paid piecework for picking mushrooms. During the course of the interview, it emerged that the woman and her colleagues were being paid an average of €2.65 per hour. They were not paid any overtime premiums, and their employer had told them that they were not allowed to join a trade union. The woman said that they had complained to the employer once about the rate of pay but to no avail.

The CIS explained about the minimum wage entitlement and also that the employees had a right to join a trade union, even without informing their employer. The CIS also explained that

breaches of the minimum wage rate could be brought to the attention of the Employment Rights Labour Inspectorate. The woman was not willing to make a complaint because she was very fearful of losing her job.

A 19-year old woman has been working with her current employer for 4 years. She took a few months out to finish exams but still worked on call, as required during that time. She is not receiving the full € 7.65 adult minimum wage. Her employer is arguing that because she had a break in service, she is only entitled to a reduced rate of pay. The woman is of the view that she is an experienced adult worker and, therefore, should be paid the full rate. She feels that she will be let go if she challenges the employer any further on the matter.

### 3.6.4 Addressing the Issues

#### Recommendation

Employers should be required to provide information on the national minimum wage rates and display these details prominently in the workplace.

## 3.7 Unfair Dismissal

### 3.7.1 Summary of Legislation<sup>17</sup>

The Unfair Dismissals Acts 1977-2001 offer redress to employees in situations of unfair dismissal provided they have at least 52 weeks' continuous service with the employer. These general requirements do not apply in the case of employees whose dismissal arises from any of the following:

- Trade union membership or activity
- Pregnancy-related issues
- Exercising rights in relation to maternity or adoptive leave
- Parental leave or force majeure leave or

- Seeking national minimum wage entitlements

Once dismissal is established, the onus is normally on the employer to justify the dismissal. Dismissal on certain grounds is deemed to be unfair under the legislation - these grounds include dismissal for religious belief, race and colour.

Where an employee is found to have been unfairly dismissed, he/she may be awarded compensation for loss incurred due to the dismissal or the employer may be ordered to reinstate or re-engage the employee.

An employee who is dismissed and does not have the required service to bring a claim under the unfair dismissals legislation (and whose case does not come within one of the exceptions mentioned above) may refer the matter to a Rights Commissioner under the industrial relations legislation. However, the Rights Commissioner cannot hold a hearing into the dispute under this legislation if the employer objects to it. Also, the decision of neither the Rights Commissioner nor the Labour Court (where the employer objects to the Rights Commissioner hearing) is legally enforceable. Furthermore, even where a hearing takes place, any resulting recommendation of the Rights Commissioner in favour of the employee is non-enforceable.

The Employment Equality Acts 1998 and 2004 provide for the bringing of claims in relation to dismissal on any of the prohibited grounds of discrimination listed in the Acts (or in circumstances of victimisation).

A significant gap in the existing legislative protection against unfair dismissal arises from the fact that an employee with less than 1 year's service could be dismissed for seeking even the most basic of employment entitlements and have no redress for example, an employee who

<sup>17</sup> Unfair Dismissals Acts 1977-2001  
Employment Equality Acts 1998 and 2004  
Organisation of Working Time Act 1997  
Maternity Protection Acts 1994 and 2004  
National Minimum Wage Act 2000

after a couple of months in a job requests a statement of pay.

As already stated, this problem has been recognised and dealt with in certain employment legislation by giving all employees, regardless of length of service, protection from dismissal for seeking to enforce legislative rights. Examples of such employment legislation include the Maternity Protection Acts 1994 and 2004 and the National Minimum Wage Act 2000. Section 36 of the latter Act states that an employee is not to be prejudiced by exercising a right under the Act. In addition, the protection of the Unfair Dismissals Acts will be available to all employees regardless of length of service (or number of hours worked) in the event of a dismissal arising from such an exercise of rights.

### 3.7.2 Context

The total number of referrals to the Rights Commissioner Service in 2005 under the Unfair Dismissals Acts 1977-2001 was 823, slightly more than the 2004 figure (808).

The Employment Rights Information Unit of the Department of Enterprise, Trade and Employment received 4,995 queries in relation to dismissals in 2005, or almost 4% of the total number of queries.

Unless an employee can bring his/her case within one of the exceptions referred to above, the employee has no substantive protection against unfair dismissal during the first year of employment. Although such an employee may seek to bring a case to a Rights Commissioner under the industrial relations legislation, as already stated, any recommendation by the Rights Commissioner in the employee's favour is unenforceable. This lack of protection during the first year of employment can lead to abuse by

employers who may employ people for a period of just short of the year and then dismiss them without having to justify the decision or face any legal sanction.

### 3.7.3 Dismissal: Issues Identified by CISs

The experience of CISs is that many employees feel unable to seek entitlements due to fear of dismissal. If an employment relationship is going to be based on compliance with employment protection legislation, the early days of the relationship are critical. If during this period an employee feels insecure in requesting even the most basic of entitlements, such as a statement of pay, then the situation is unlikely to improve in the future. As a result many employees become locked into a culture where non-compliance with statutory entitlements is the norm. Such employees, for example, have little choice but to accept the lack of written terms of employment, no statement of pay and the absence of proper leave entitlements because that is the way it has always been. CISs can provide information on rights and options, but sometimes employees do not feel in a position to enforce those rights because of fear of being dismissed.

The experience of CISs is that fear of dismissal and having to leave the country frequently results in people employed on work permits putting up with situations that are clearly in breach of legislation rather than asserting their rights under employment legislation.

The following 2 cases illustrate some of the issues arising for people who do not have 1 full year's service in a job.

A female employee was not in receipt of various entitlements under employment legislation. She was reluctant to take the matter further because she had only been in the job for 6 months. The employer had made it clear to her that any complaints would lead to dismissal and that she was not covered by the unfair dismissals legislation. The CIS noted that the woman had a very good case under the Payment of Wages Act due to an illegal deduction from her wages. However, she was not prepared to follow it up because she feared that, if she did, she would be dismissed and felt that because she had been working for her employer for less than 1 year she would have no comeback if that happened.

A woman who felt that she was unfairly dismissed from employment was unable to take a case under the Unfair Dismissals Acts because she had only been employed for 9 months. She applied under the Industrial Relations Act but the CIS noted that even if her case was heard and a decision was made in her favour, the employer would not be bound by the decision.

#### 3.7.4 Addressing the Issues

The general concept of protection from dismissal for seeking to enforce a statutory right regardless of length of service, as already accepted in certain of our legislation, needs to be extended to embrace all aspects of employment legislation.

#### Recommendations

The Unfair Dismissals Acts 1977 - 2001 should be amended to remove the 1 year's service requirement in cases where an employee is dismissed for seeking to avail of or enforce employment legislation.

Employers should be required to display information about the exemptions to the requirement for employees to have 1 year's service

in order to be able to avail of unfair dismissals legislation.

### 3.8 Bullying and Harassment in the Workplace

#### 3.8.1 Legislation

Employers have a duty under legislation to provide a safe system of work. This includes taking appropriate steps to ensure that harassment or bullying does not occur. The Employment Equality Acts 1998 and 2004 prohibit sexual harassment perpetrated by fellow employees, employers or clients, customers or business contacts of the employer and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to control it. There is a similar prohibition on harassment arising from the other discriminatory grounds prohibited by the Acts, that is, age, race, religion, disability, sexual orientation, marital status, family status, or membership of the Traveller community.

Sexual harassment or harassment<sup>18</sup> of an employee constitutes discrimination by the employer, whether perpetrated by the employer directly, by employees or clients, customers or business contacts of that employer. Employers are liable for anything done by an employee in the course of his/her employment. It is a defence for an employer to prove that he/she took reasonably practicable steps to prevent the person harassing or sexually harassing the victim or (where relevant) prevent the employee from being treated differently in the workplace or in the course of employment and to reverse the effects of any such harassment.

The Health and Safety Authority's *Code of Practice on the Prevention of Workplace Bullying* and the corresponding complaints procedure issued by the Minister for Enterprise, Trade and

<sup>18</sup> The Equality Authority has published a Code of Practice on Sexual Harassment and Harassment in the Workplace. This is being revised in light of some changes to definition given in the Equality Act 2004.

Employment under Section 42 of the Industrial Relations Act 1990 are admissible in legal proceedings and, together with the Equality Authority's code, should mean that there are adequate procedures in workplaces.

### 3.8.2 Context

*The Report of the Expert Advisory Group on Workplace Bullying*<sup>19</sup> pointed to a significant issue with workplace bullying and referred to earlier research which found that 1 in 12 Irish workers was bullied at work. Among the problems identified by the report is the lack of independent advice and information for alleged victims. There is also no state agency where cases of bullying can be heard by an independent person in a quasi-judicial role while the person is still employed.

The Expert Advisory Group produced a number of recommendations to address the problem of workplace bullying and to complement existing procedures. The key recommendations are:

- The inclusion of bullying as a risk together with policies and procedures to mitigate that risk should be mandatory in every employer's safety statement.
- A formal model for the handling of bullying cases should be published for the guidance of employers in their workplace dispute resolution procedures and should be followed by the State for cases referred out of the workplace.
- The Labour Relations Commission should be the single state agency charged with the management of specific allegations of workplace bullying.
- The Employment Appeals Tribunal or the Labour Court should be the court of appeal for decisions of a Rights Commissioner.

- The Labour Relations Commission should encourage and promote Alternative Dispute Resolution as the preferred approach to tackling instances of bullying. The Commission should resource its teams and allocate responsibilities accordingly.
- Decisions by the Employment Appeals Tribunal or the Labour Court should be binding and legally enforceable through the courts.

### 3.8.3 Workplace Bullying and Harassment: Issues Identified by CISs

CISs report that harassment or bullying at work is sometimes not treated with the seriousness it requires. A lack of adequate procedures within the workplace for handling such issues may force even employees with long service to quit their jobs rather than continue in intolerable situations. Although a constructive dismissal claim may be an option, such a course of action is likely to be very stressful for the employee concerned, and one that many employees may be very reluctant to take up.

CISs have identified a number of instances of worker harassment. The following cases highlight difficulties employees sometimes have in dealing with harassment in the workplace.

A 19-year-old woman worked for a company for 9 months. She liked the work and got on well with her employer who was generally very happy with her work. However, she experienced sexual harassment from a fellow worker on a number of occasions. She brought the matter to the attention of the employer who requested the perpetrator to apologise. However, no further action was taken by the employer and the harassment continued. The woman told the CIS that she became very upset and traumatised by the continuing sexual harassment, suffered sleeplessness and left the job

<sup>19</sup> *Report of the Expert Advisory Group on Workplace Bullying* (2005), The Stationery Office, Dublin.

because she felt she could not continue to work in the situation. The woman felt particularly aggrieved because she felt that she was constructively dismissed by the failure of the employer to deal effectively with the perpetrator of the sexual harassment.

A woman complained to the CIS that she had to leave her employment because of alleged bullying and harassment from her employer. When she applied for Unemployment Benefit she was advised by the Department of Social and Family Affairs that she was not eligible because she had left the employment of her own accord. According to the employer, her position was still available if she returned. However, she felt that she could not return as the bullying and harassment was likely to continue and that she would not be able to deal with it.

A woman contacted the CIS for advice and assistance in relation to dealing with being bullied in her workplace. On the advice of the CIS, she instigated a process of meeting with the supervisor and management to try and resolve the situation. While initially she was optimistic about getting a satisfactory resolution to the problem, she found that she could not cope with the ongoing stress of having to put pressure on management to deal effectively with the perpetrator in the situation. She subsequently informed the CIS that she had resigned from her job because she could not see a way to resolve the situation and could not handle the stress of it any longer. The CIS noted that the woman would have required more on-the-job support from the employer and that existing anti-bullying and harassment policies were not sufficiently strong to deal with the situation. "Surely workers should not feel that resignation is their only option [in such situations]".

### 3.8.4 Addressing the Issues

#### Recommendations

It should be mandatory for all employers to have a bullying and harassment prevention policy with a complaints procedure attached in line with the Code of Practice issued by the Health and Safety Authority and to apply these rigorously.

The recommendations of the Expert Advisory Group on Workplace Bullying should be implemented with due speed.

## 3.9 Safety, Health and Welfare at Work

### 3.9.1 Summary of Legislation<sup>20</sup>

The legislation is particularly concerned with the prevention of accidents and injury in the workplace by the identification of hazards and assessment of the risks from those hazards. The legislation requires every employer to draw up a safety statement that should identify risks and hazards faced by the employees. The statement should also set out the arrangements to safeguard safety and health and provide the names of those people with responsibility for safety and health in the workplace. There are particular regulations dealing with the safety and health of pregnant employees and children or young people.

The Safety, Health and Welfare at Work Act 2005 (which came into effect on 1st September 2005) updates previous legislation. It sets out the general duties of employers to ensure, as far as is reasonably practicable, the safety, health and welfare of employees. It also sets out the types of information to be given by employers to employees and outlines the general duties of employees. A new provision in the Act ensures that employees have an avenue of appeal against any form of penalisation in their employment, which results from carrying out their duty in

<sup>20</sup> Factories Act 1955  
Safety in Industry Act 1980  
Mines & Quarries Act 1965  
Maternity Protection Acts 1994 and 2004  
Employment Equality Act 1998  
Safety, Health and Welfare at Work Act 2005

relation to safety matters. The Organisation of Working Time Act 1997 sets out the maximum working hours of employees in addition to minimum breaks and rest periods.

The Safety, Health and Welfare at Work (Pregnant Employees) Regulations 2000 (SI No 218 of 2000) set out employers' requirements in relation to an employee who is pregnant, or breastfeeding or has recently given birth. Employers must assess the safety or health risks which result from any activity at their place of work likely to involve a risk of exposure to certain agents, processes or working conditions including but not limited to those specified in the Regulations.

Employees who are pregnant or breastfeeding or who have recently given birth may be prevented from working due to health and safety reasons, and after three weeks on normal pay, they may claim Health and Safety Benefit from the Department of Social and Family Affairs.

### 3.9.2 Context

The Health and Safety Authority made 11,382 formal inspections of workplaces in 2004 compared to 8,729 in 1999. Enforcement actions were taken in 9% of cases. Two-thirds of employers inspected had safety statements. The compliance of safety statements with legal requirements varied -full or broad compliance (64%), some compliance (32%) and almost no compliance (4%). The level of compliance within particular employment sectors also varied.

### 3.9.3 Safety, Health and Welfare: Issues Identified by CISs

CISs record a lack of response by some employers to the requirement to identify hazards and the produce safety statements. It is a cause of concern that this sometimes arises in the case of pregnant employees. A pregnant employee may spend

many weeks attempting to establish that, due to her condition, a particular risk exists in the workplace.

A woman, 31 weeks pregnant, is working full-time in a shop and is on her feet all day. She inquired from the CIS if she was entitled to extra breaks, for example, 10 minutes to rest from a standing position at any time during the working day. The woman had raised the issue informally with her employer but it had not been addressed. The CIS established that there is no legislation in place that says she is entitled to extra breaks because of her condition<sup>21</sup>. The woman felt that she may be unable to continue to work in those circumstances.

A man who was concerned about health and safety practice in his workplace contacted the CIS to see what he could do about his concerns. He was working on machines in a factory alone at night (his colleague had been out sick for a long period and had not been replaced). He had brought his concerns to the attention of his employer but was told that "if he didn't like it he knew where the door was".

The CIS noted that there was not enough protection for the worker in this situation and that there was no provision for night-time workplace inspection.

### 3.9.4 Addressing the Issues

Recent legislation further develops the responsibilities of both employers and employees in relation to health and safety. This inevitably requires further resources to police its implementation.

Ensuring the provision of a safety statement in all workplaces should be a priority in order to put in place proper procedures. To deal with persistent problems, the relevant authorities need to have the

<sup>21</sup> While there may be no specific section in the maternity legislation entitling an employee to extra rest breaks in this situation, an employer is obliged, when informed of an employee's pregnancy, to check the safety statement in relation to pregnant employees, re-evaluate the hazard identification and re-assess the risks. This includes chemical, biological and physical risks. If standing for a continuous period at work constitutes a physical risk to pregnancy, then the risk should be minimised by rest breaks.

resources available to ensure effective enforcement of health, safety and working time legislation.

Health and safety leave should be very much a last resort, provided only when the risk to the pregnancy cannot be eliminated

### **Recommendations**

The rate of Health and Safety Benefit should be brought into line with that of Maternity Benefit which is paid at a rate of 80% of gross earnings subject to a set minimum and a maximum rate.

In the case of health and safety leave, where there is a dispute between an employer and employee as to whether a risk exists to pregnancy, there should be provision for an immediate hearing under the Maternity Protection Acts 1994 and 2004 to determine the issue. In any such case, the Health and Safety Authority should carry out an immediate inspection and give evidence of its opinion at any hearing.

## **3.10 Family-Related Legislation**

### **3.10.1 Summary of Legislation**

There are a number of "family friendly" pieces of legislation in place relating to employment - the Maternity Protection Acts 1994 and 2004, the Parental Leave Act 1998, the Adoptive Leave Act 1995, the Adoptive Leave Act 2005 and the Carer's Leave Act 2001. The parental leave legislation is in the process of being amended at present by means of the Parental Leave (Amendment) Bill 2004 .

### **Maternity Leave**

Legislation provides for a basic period of maternity leave (22 weeks since 1st March 2006), the right to return to work following the leave, and paid time off for ante-natal or post-natal clinic visits. In addition it establishes various safeguards for pregnant employees (and for those who have recently given birth or who are breastfeeding) concerning health and safety in the workplace. There is an entitlement under the legislation to take 12 weeks' additional unpaid maternity leave.

The Maternity Protection Act 1994 provided for health and safety leave under certain circumstances and contained new provisions regarding time off for ante-natal care visits. The Maternity Protection (Amendment) Act 2004 was introduced to give effect to the outstanding recommendations of the Working Group on the Review and Improvement of the Maternity Protection Legislation. The amended Act of 2004 included a right to paid time off for a pregnant employee or expectant father to attend ante-natal classes. It also introduced other new entitlements such as a right to time off or breaks from work for breastfeeding purposes.

### **Parental Leave**<sup>23</sup>

The Parental Leave Act 1998 provides for employees both male and female to be given 14 weeks' unpaid leave to allow them to care for their children aged less than 5 years of age. The legislation provides for the manner in which parental leave may be taken either as a continuous block of 14 weeks or, with the agreement of the employer, broken up over a period of time. The employment rights of the employee are protected while he/she is on parental leave, and the employee has the right to return to work after such an absence. Generally, the employee must have at

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<sup>22</sup> While In November 2005, the Bill was referred to the Select Committee on Justice, Equality, Defence and Women's Rights

<sup>23</sup> There is no legal entitlement to paternity leave (time off for birth of a child). It is provided only at the employer's own discretion.

least 1 year's continuous service with the employer before he/she is entitled to take parental leave. However, where the child is approaching the age threshold and the employee has more than 3 months but less than one year's service with the employer, he/she shall be entitled to pro rata parental leave. In such a case the employee will be entitled to one week's leave for every month of continuous employment completed with the employer when the leave begins.

The Parental Leave (Amendment) Bill 2004 contains a number of amendments to the existing legislation including:

- Raising the maximum age of an eligible child from 5 to 8 years
- An increase in the maximum age of an eligible child to 16 years in the case of children with disabilities
- Extending parental leave to persons acting in *loco parentis* of an eligible child
- An entitlement to take the 14 weeks' parental leave in separate blocks of a minimum of 6 continuous weeks
- Allowing an employee who falls ill and is unable to care for the child to postpone or suspend the leave during the illness
- Protecting employees who avail of parental leave rights from penalisation
- Strengthening the right to return to work after parental leave.

Employees on parental leave are not entitled to pay from an employer. Nor is there any social welfare payment equivalent to Maternity or Adoptive Benefit.

## **Adoptive Leave**

The Adoptive Leave Act 2005 provides for an adopting mother or a sole male adopter who is in employment to:

- A minimum of 20 consecutive weeks of adoptive leave from work beginning on the day of placement of the child
- Up to 12 weeks additional adoptive leave

The Adoptive Leave Act 2005 also introduced some important changes and additional rights for adoptive parents:

- Adopting parents are entitled to paid time off work to attend preparation classes and pre-adoption meetings with social workers or HSE officials required during the pre-adoption process
- The adopting mother and employer may agree to terminate unpaid additional adoptive leave in the event of the mother's illness, there by allowing her to transfer onto paid sick leave
- An employee's absence from work on additional unpaid adoptive leave will count for all employment rights (except remuneration, superannuation benefits) associated with the employment such as annual leave and seniority

## **Force Majeure Leave**

Force majeure leave is an entitlement under the Parental Leave Act 1998. This provides for employees to take 3 days paid leave in any 12-month period (to a maximum of 5 days in any 36-month period) where a person's presence is indispensable for urgent family reasons owing to illness or injury.

## Carer's Leave

The Carer's Leave Act 2001, which came into operation in July 2001, provides an employee with an entitlement to avail of unpaid leave from his/her employment to enable him/her to personally provide full-time care and attention for a person who is in need of such care. The period of leave to which an employee is entitled is subject to a maximum of 65 weeks in respect of any one care recipient. The Act provides that the leave may be taken in block form and that an employer may refuse a proposed period of less than 13 weeks where he/she has reasonable grounds. Where leave is taken in block form, the next period of carer's leave may be postponed for 6 weeks.

An employee who wishes to avail of carer's leave must have completed at least 12 months' continuous service with the employer from whose employment the leave is taken before the commencement of the leave. There is no hours threshold in the Act. 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 requirement to provide full-time care and attention is assessed on an individual basis by the Department of Social and Family Affairs.

The person being provided with full-time care and attention must be deemed to be in need of such care and attention by a deciding officer (or appeals officer) of the Department of Social and Family Affairs. This decision is based on information provided by the person's general medical practitioner and assessed by that Department's medical advisor.

### 3.10.2 Context

In 2005, there were 3,891 queries in relation to maternity protection legislation to the Equality Authority Public Information Centre, 2,699 queries in relation to parental leave legislation and 112 queries in relation to adoptive leave legislation<sup>24</sup>. In 2005 there were 20 referrals under the Parental Leave Act 1998 to the Rights Commissioner Service. There was one referral under the Adoptive Leave Act 1995 and there was no referral made under the Carer's Leave Act 2001.

In 2005, there were 1,979 queries to the Employment Rights Information Unit of the Department of Enterprise, Trade and Employment on maternity-related matters and 621 queries on carer's leave.

### 3.10.3 Family-Related Legislation: Issues Identified by CISs

Although pregnant employees may not be dismissed directly due to pregnancy, it should be noted that the Equality Authority reports that in 2004 many of its complaints in relation to gender were pregnancy related. The number of unfair dismissal cases on the subject of pregnancy has been consistent over the years. In some cases, it may be that pressure may be brought to bear on the employee by making the situation at work so intolerable that the employee feels she has no alternative but to quit the job. The following cases identified by CISs illustrate clients' difficulties in relation to maternity leave.

A CIS client is pregnant with her second child. She has worked for the same company for 17 years and has a middle management post. She complained to the CIS that, when she told her employer of her pregnancy, his response was that her timing was poor. The HR manager also implied that her pregnancy and absence on maternity leave placed her section of the company in a difficult position in relation to maintaining output.

<sup>24</sup> Equality Authority, *Annual Report, 2005*

The CIS explored options with the client, including a potential case through the Equality Tribunal. However, she felt vulnerable and decided not to take any action.

A pregnant employee working full time asked for time off for doctor and hospital appointments. She was told by her employer that she would have to use up part of her holidays for this purpose. This employer was clearly in breach of the legislation. The woman was reluctant to pursue the case further.

A woman informed her employer that she intended to return to work after maternity leave and wished to book accrued holidays. She was informed by her employer that she was not entitled to leave for the period of maternity leave and that the company would not provide any. The client telephoned the CIS to check her entitlement and is now taking the matter up with her employer.

A woman was employed by a company over a year ago at a rate of pay on a par with the national minimum wage. The store then changed policy and reduced the wages by €20 and put in place a system of commission of 3% per sale. The woman had no problem with this until she became pregnant and was unable to keep up the pace at the shop to earn the commission. The employer was prepared to allow her not to participate in the commission scheme but, if she opted out, her wages would not be up to the minimum wage standard.

An employee may find herself unable to claim Maternity Benefit due to a change in her employment situation, as in the case cited below.

A pregnant woman working in Ireland on her third consecutive 1 year employment permit. Her baby is due the same time as her present work permit runs out. She has paid all her PRSI contributions and is thus entitled to full Maternity Benefit. There is an apparent anomaly in that, from the day when her employment permit ends, she will become illegal in Ireland and technically liable to be deported while at the same time she will still be entitled to several weeks of Maternity Benefit.

#### 3.10.4 Addressing the Issues

Information concerning the principal features of maternity protection legislation, such as the right to maternity leave and the right to return to work, appears to be reasonably widely available. However, queries to CISs suggest that there is still a significant lack of information concerning entitlement to paid ante-natal and post-natal leave and the position concerning annual leave and public holidays while on maternity leave.

#### Recommendations

The co-ordinated dissemination of information on all issues relating to maternity protection legislation should be a priority for State agencies, employer organisations, trade unions and information providers.

At present a woman must be employed immediately before the first day of her maternity leave in order to be able to claim Maternity Benefit. Consideration should be given to allowing some relaxation of this requirement in cases where a woman was employed up to shortly before her leave was due to commence and would otherwise fulfil the contribution conditions for payment of benefit. For example women who have been employed up to 20 weeks before the date of the birth and who fulfil the contributions requirements could be allowed claim Maternity Benefit.

## 3.11 Employment of Children and Young Persons

### 3.11.1 Summary of Legislation<sup>25</sup>

The legislation broadly prohibits the employment of children under 16 (or the school leaving age, whichever is higher) apart from work sanctioned by the Minister for Enterprise, Trade and Employment or light work during school holidays. A child of 15 years or over is permitted to do light work during school term provided that the number of hours does not exceed 8 in any one week. With regard to the employment of young people (aged 16 - 18) the legislation allows employment but subject to controls as to the working times and total working hours.

The legislation prohibits double employment where the total hours worked would breach the set maximum. A parent or guardian who aids and abets an employer to contravene this aspect of the legislation is liable to prosecution.

The legislation also sets out requirements to be fulfilled by employers concerning, for example, informing employees about the legislation, the verification of the age of a child or young person, obtaining parental or guardian consent (in the case of a child only), and the keeping of records as to hours worked.

There are special provisions covering health and safety for children or young persons at work. These include the provision that if the work involves risks of accidents that it may be assumed the child or young person would not recognise owing to lack of experience, then the children or young person should not be employed at such work.

### 3.11.2 Context

In 2005 there were 3 referrals to the Rights Commissioner Service under the Protection of Young Persons (Employment) Act 1996 and there were no referrals in 2004. A total of 883 queries (less than 1%) to the Employment Rights Information Unit of the Department of Enterprise, Trade and Employment in 2005 related to the 1996 Act.

Successful prosecution figures under the Protection of Young Persons (Employment) Act (13 in 2002, 19 in 2003, 10 in 2004 and 13 in 2005), while better than those for other pieces of legislation, are still quite low given the widespread perception of abuse of the legislation.

A 2004 ESRI Report (McCoy and Smyth) concluded that combining work and study appears to have become a relatively common pattern among second-level students in Ireland. They also found that part-time employment, especially that involving longer hours, has a negative impact on young people's educational careers in terms of early school leaving and exam performance. Overall, students were found to be employed in service jobs, particularly in petrol stations and shops, pubs and off licences and the hotel/restaurant/fast food sector. The report also found that a substantial number of students are working over 20 hours per week during school term and that students from disadvantaged schools tended to work rather more than those in other schools, especially during weekdays.

With regard to the conditions and terms of work the report found the following:

- On average male students worked 20 hours per week and females 16 hours per week. The bulk of the hours worked were at weekends, 72% for males and just under 78% for females. Just under 14% of hours were worked after 10pm, mainly on Friday nights, but also

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<sup>25</sup> Protection of Young Persons (Employment) Act 1996;

significantly during the rest of the school week. It should be noted that it is illegal for young people to work after 10pm.

- On average students worked up to four hours without a break of at least half an hour, though 35% were working longer than this without a break.
- 46% had received a pay slip with their wages, and only 19% had a written statement of their employment terms and conditions.
- 13% of students were provided with details of the Protection of Young Persons (Employment) Act provisions, and 15% saw a summary of the Act displayed in their workplace.

### 3.11.3 Employment of Children and Young People: Issues Identified by CISs

There is general acceptance that the legislation is being breached widely and that the resulting situation can be detrimental to the educational needs of many young people. There are indications that often employers and parents collude in ignoring the legislation and this may account for the low number of cases taken under the legislation. Likewise parents may choose not to ask too many questions regarding the times or hours worked by young people. Formal written consent of a parent is only required in the case of the employment of a child.

A young woman (under 18) worked in the catering industry and was paid €4 per hour. She received no extra pay for Sundays or bank holidays. Her hours varied from 60 -70 hours per week. She was in this job almost 2 years and asked on numerous occasions for the minimum wage and proper hours (she was legally entitled to 70% of the minimum wage). She was told if she

did not like the conditions, she could leave. The CIS took up her case with the employer and drew his attention to the Organisation of Working Time Act and the fact that she would have a case for unfair dismissal if she were sacked. The CIS also established that no PRSI contributions had been paid on her behalf. Eventually after protracted representation by the CIS, the employer agreed to backdate her wages and arrange proper working hours and to sort out her PRSI payments.

A young man in a FÁS apprenticeship had been working in excess of 48 hours per week. He was given only 3 weeks annual leave and had great difficulty in getting the employer to release him to attend his apprenticeship courses. He was unsure how to deal with the issue because he wanted to complete his apprenticeship and, therefore, did not want to 'rock the boat'.

### 3.11.4 Addressing the Issues

There are a number of ways in which the conditions of young people at work could be enhanced including:

- Proper rates of pay, at least in line with the appropriate national minimum wage rate for the age group
- Provision of transport from work, particularly late at night and/or where no public transport is available
- Allowance of time off in the period before examinations
- A right to return to work for those who have taken time off for examinations
- Proper training including induction training

A major Government commitment is required to step up the enforcement of employment protection legislation for children and young people. Increased inspection is required to ensure that employers with young employees are complying with the legislation. Employers failing in their duties should face prosecution.

## Recommendations

The requirement for formal written consent from parents or guardians, currently required in the case of children, should be extended to the employment of young people (up to age 18) as well.

Employers of children or young people should be required to inform parents or guardians of the details of the legislation as well as the employees themselves.

### 3.12 Information

Despite a range of information initiatives in relation to employment rights by both the Department of Enterprise, Trade and Employment<sup>26</sup> and by Comhairle<sup>27</sup>, a recurring theme across many of the employment rights issues identified is an absence of precise information about entitlements and rights. While information provided by statutory agencies and trade unions is usually comprehensive, workers are not always aware of such information. It is clear that CISs (and other independent information services) play an important role in picking up on gaps and deficits in information. However, the reality is that there are many workers who do not use CISs or other similar information services and who do not know their rights and entitlements.

The information deficit is particularly strong in respect of people employed on work permits and part-time workers. Also, somewhat surprisingly, perhaps, workers are not always aware of their

entitlement to the national minimum wage. Many workers rely on their employers for their information and the latter may either not have the right information or deliberately choose to misinform workers.

Queries to CISs suggest that there are many instances where the basic issue is that workers were not aware of or advised about their entitlements and rights. Contact with a CIS (frequently by chance) results in the provision or clarification of information, and, in some instances, negotiation with an employer in respect of a particular issue or referral to the Rights Commissioner Service or other enforcement agency. However, even with the relevant information, workers are sometimes reluctant to pursue the matter. They do not have the confidence or the skill to deal with employers and, perhaps, do not fully trust the legislation. They fear recrimination if they use new-found information to assert their rights. This suggests a need for much greater dissemination of information about the legislation and about the operation of the enforcement structures so that employees can have total confidence in the process.

## Recommendations

The Department of Enterprise, Trade and Employment should develop links with CISs and other independent information services with a view to providing current information on employment rights for both employers and employees at local level.

The Department of Enterprise, Trade and Employment should target smaller employers through their representative organisations - the Small Firms Association (SFA) and the Irish Small and Medium Enterprises Association (ISME)- to ensure that they are fully informed on all employment rights legislation.

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<sup>26</sup> The Department of Enterprise Trade and Employment publishes a range of information on employment rights

<sup>27</sup> Citizens' information is currently provided through 42 Citizen Information Services from 235 locations around the country. The Citizens Information Phone Service provides a lo-call national information service. Oasis [www.oasis.gov.ie](http://www.oasis.gov.ie) and the Citizens Information Database on [www.comhairle.ie](http://www.comhairle.ie) are web-based information sources currently being integrated. Comhairle also publishes a booklet (updated on a regular basis) entitled *Employment Rights Explained*.

## Appendix 1

### Employment Rights Queries to CISs

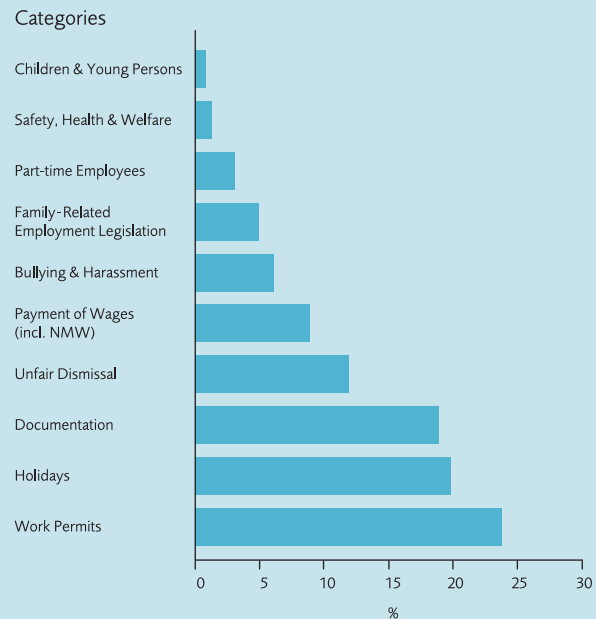
The following graph shows the type of queries presented to CISs in the employment rights category by the relevant sub-categories<sup>28</sup>.

#### Distribution of Employment Rights Queries



A social policy record is completed by CISs and returned to Comhairle in instances where there is a particular difficulty in accessing a social service, entitlement or right. The following graph provides a breakdown of social policy records relating to employment rights received in 2005.

#### Issues Identified by CISs and Reported to Comhairle in Social Policy Records in 2005



<sup>28</sup> Source: Citizens Information Services Survey Report 2005 Comhairle

## Appendix 2

### Summary of Enforcement Structures

#### Introduction

Since the setting up of the Labour Court almost 60 years ago, structures and systems have evolved in an *ad hoc* manner to the extent that there are currently some 7 bodies and 26 Acts operating in the employment rights and industrial relations area. It is generally acknowledged that the piecemeal evolution of employment rights legislation has led to a system which can be complex and costly with duplication of functions as well as divergences in procedures and remedies.

#### Labour Relations Commission (LRC)

The mission of the Labour Relations Commission is to promote the development and improvement of Irish industrial relations policies, procedures and practices through the provision of appropriate, timely and effective services to employers, trade unions and employees.

The Commission carries out this mission by providing the following specific services:

- An industrial relations conciliation service
- An industrial relations advisory service
- A Rights Commissioner Service
- Assistance to Joint Labour Committees and Joint Industrial Councils in the exercise of their functions.

The Commission undertakes other activities of a developmental nature relating to the improvement of industrial relations practices including:

- The review and monitoring of developments in the area of industrial relations
- The preparation, in consultation with the social partners, of codes of practice relevant to industrial relations
- Industrial relations research and publications
- Organisation of seminars and conferences on industrial relations and human resource management issues.

#### Rights Commissioner Service

Rights Commissioners are independent officers of the Labour Relations Commission who investigate disputes concerning a wide range of employment protection matters. Hearings are in private, except for Payment of Wages Act 1991 disputes where there is provision for public hearings. Rights Commissioners will, in many instances, endeavour to facilitate a settlement between the parties. If no such settlement is possible, the Rights Commissioner will issue a decision on the case. If either party is dissatisfied with the decision there is the right of appeal to either the Employment Appeals Tribunal or the Labour Court depending on the particular legislation involved (see Appendix 3).

There are 8 Rights Commissioners. In 2005 they received 5,598 referrals for hearing, an increase of 18% on the 2004 figure. (See Appendix 4 for a breakdown by legislative category of referrals in 2005 to the Rights Commissioner Service).

### Employment Appeals Tribunal (EAT)

This is an independent tribunal that hears a wide range of cases concerning employment protection legislation. Each division consists of a legally qualified chairperson, and two persons, one each from panels put forward by organisations representing employee and employer interests respectively. Under new proposals, all cases which are currently heard in the EAT on a first instance basis are to be referred to the Rights Commissioner Service of the Labour Relations Commission, thus making the EAT an exclusively appellate body.

In 2002 6,259 cases were referred to the Employment Appeals Tribunal including appeals from Rights Commissioners. This compared to the 2001 figure of 5,257.

### The Labour Court

The main function of the Labour Court is the settlement of trade disputes. The Court is arranged into 3 divisions each consisting of a chairperson, 2 deputy chairpersons, and six ordinary members. The ordinary members consist of 3 employer representatives and 3 employee representatives appointed by the Minister for Enterprise, Trade and Employment after nomination by the Irish Business and Employers Confederation (IBEC) and the Irish Congress of Trade Unions (ICTU).

### The Labour Inspectorate - Department of Enterprise, Trade and Employment

The Inspectorate has the responsibility for enforcing employment legislation, including Payment of Wages Act 1991, Terms of Employment (Information) Act 1994, Protection of Young Persons (Employment) Act 1996, the Organisation of Working Time Act 1997 and the National Minimum Wage Act 2000.

The Labour Inspectorate within the Department of Enterprise, Trade and Employment consists (since November 2005) of 31 inspectors who have responsibility for covering the entire country on the full range of employment protection measures. In 2004, inspectors carried out 5,160 workplace inspections or visits. This reached 5,719 in 2005. Ten additional inspectors were appointed in November 2005 bringing the total number of inspectors to 31.

### The Health and Safety Authority

The Health and Safety Authority is a state-sponsored body, established under the Safety, Health and Welfare at Work Act 1989. It aims to promote a working environment in which safety and health of persons at work is ensured at the highest practicable level. The Safety, Health and Welfare at Work Act 2005 (which came into effect on 1st September 2005) replaces previous legislation. It sets out the general duties of employers to ensure, as far as is reasonably practicable, the safety, health and welfare of employees. It also sets out the types of information to be given by employers to employees and outlines the general duties of employees. A new provision in the Act ensures that employees have an avenue of appeal against any form of penalisation in their employment

which results from carrying out their duty in relation to safety matters.

### The Equality Authority

The Equality Authority has the statutory mandate of working towards the elimination of discrimination and promoting equality of opportunity in employment and in matters covered by the Equal Status Act 2000. (The Equal Status Acts make discrimination unlawful in relation to access to goods and services.) It also has a public information function in regard to the Employment Equality Acts 1998 and 2004, the Equal Status Acts 2000, the Adoptive Leave Act 1995 and the Parental Leave Act 1998. The Equality Authority may prepare codes of practice which, if approved by the Minister, are admissible in evidence in proceedings.

The Authority does not have a major enforcement role as such although it can order employers, for example, to carry out equality audits in their workplace. It also has a public information function for the maternity and carer's leave legislation as well as parental leave and adoptive leave acts. Any person who considers that he/she has been discriminated against can apply to the Equality Authority for assistance in bringing proceedings under the Employment Equality Acts and the Equal Status Acts.

### The Equality Tribunal

The Equality Tribunal (formerly the Office of the Director of Equality Investigations) is an independent statutory body which investigates certain complaints arising from the Employment Equality Acts 1998 and 2004 such as discrimination on one of the prohibited grounds. Its core function is to decide and/or mediate

claims of alleged unlawful discrimination in relation to employment as well as to access to goods and services. The Equality Tribunal has a staff of 30 including 13 Equality Officers (5 of whom are also Mediation Officers) with quasi-judicial functions to decide and/or mediate claims.

Tribunal Equality Officers who sit as sole member tribunals, normally request and consider information from both parties before arranging a joint hearing of the case. Where discrimination is found to have occurred, an order for redress is made, including, where appropriate, one or more of the following; compensation, equal pay, arrears of equal pay, equal treatment, an order for a specified person or persons to take a specified course of action. The decision of an Equality Officer on a claim of unlawful discrimination is binding and enforceable by law. Appeals under the Employment Equality Acts are to the Labour Court.

### Enforcing Employment Legislation<sup>29</sup>

Employees in dispute with their employers over non-compliance with employment protection legislation must seek to enforce their rights through a variety of institutions and mechanisms. For example:

- Under Unfair Dismissals Acts 1977-2001, reference is either to the Rights Commissioner Service or the Employment Appeals Tribunal. If the employee chooses the Rights Commissioner Service and the employer objects, then the employee must refer the case to the Employment Appeals Tribunal.
- Under Redundancy Payments Acts 1967-2003 and Minimum Notice and Terms of Employment Acts 1973 - 1991, referrals to

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<sup>29</sup> See also Appendix 3 and Appendix 4

date have been to the Employment Appeals Tribunal only. The EAT also has original jurisdiction under the Protection of Employees (Employer's Insolvency) Act 1984.

- More recent employment protection legislation has adopted the procedure that the initial application is made to the Rights Commissioner Service with an appeal to the Employment Appeals Tribunal or the Labour Court. The employer does not have the option of objecting to a Rights Commissioner hearing, as is the case under the unfair dismissals legislation. This procedure has been adopted under various pieces of legislation<sup>30</sup>.
- The Employment Equality Acts 1998 and 2004:
  - (a) Promote equality and prohibit discrimination (with some exceptions) across nine grounds
  - (b) Prohibit sexual harassment, harassment and victimisation
  - (c) Require appropriate measures for people with disabilities
  - (d) Allow limited positive action measures to ensure full equality in practice across the nine grounds<sup>31</sup>.

Aspects of employment that are covered in the employment equality legislation<sup>32</sup> include advertising, equal pay, access to employment, vocational training and work experience, terms and conditions of employment, promotion or re-grading, classification of posts, dismissal and collective agreements.

The Acts apply to a wide range of employees including full-time, part-time and temporary employees. They also apply to public and private sector employment, vocational training bodies, employment agencies, trade unions, professional and trade bodies they also extend to the self-employed, partnerships and people employed (once recruited) working in another person's home. Discrimination is described as the treatment of a person in a less favourable way than another person is, has been or would be treated.

The Employment Equality Acts provide for a number of different mechanisms for referring complaints depending on the precise nature of the complaint. As a result complaints under the legislation may be referred to the Equality Tribunal (Director of Equality Investigations), the Labour Court or the Circuit Court.

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<sup>30</sup> Maternity Protection Acts 1994 and 2004; Payment of Wages Act 1991; Terms of Employment (Information) Act 1994; Protection of Young Persons (Employment) Act 1996; Adoptive Leave Act 1995; Organisation of Working Time Act 1997 (appeal to Labour Court); Parental Leave Act 1998.

<sup>31</sup> The 9 discriminatory grounds are gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community.

<sup>32</sup> The prohibition on discrimination is subject to a number of exemptions. For example, anything done in compliance with any provisions of the maternity protection and adoptive leave legislation is not discrimination on the gender ground.

## Appendix 3

### Employment Rights Enforcement Process Chart

Process Chart - Rights Commissioner Service/Employment Appeals Tribunal/ODEI - Equality Tribunal/Labour Court/Employment Rights Labour Inspectorate.

Source: [www.entemp.ie/publications/employment/2003/enfchrt.do](http://www.entemp.ie/publications/employment/2003/enfchrt.do)

Act/Regulations	Initial Complaint/Referral To	Appeal To	Enforcement
*Adoptive Leave Act 1995	Rights Commissioner	Employment Appeals Tribunal (EAT)	Party or Minister for Justice, Equality and Law Reform applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination.
Carer's Leave Act 2001	Rights Commissioner  Deciding Officer of Dept. of Social and Family Affairs on certain issues	Employment Appeals Tribunal (EAT).  D/SFA Appeals Officer.	Party or Minister applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination.

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
*Employment Equality Act 1998	Office of the Director of Equality Investigations (ODEI - the equality tribunal) (except dismissal cases)  Labour Court (dismissal cases)  Circuit Court (gender cases - as alternative to ODEI / Labour Court).	Labour Court  Circuit Court  High Court	Complainant or, with the consent of the complainant, the Equality Authority (where the Authority considers that the settlement, decision or determination is unlikely to be implemented without its intervention) applies to Circuit Court for Order directing compliance with
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	Rights Commissioner	Employment Appeals Tribunal (EAT)	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination.
Industrial Relations Acts 1946 - 2001  Trade Disputes  Trade Disputes  Trade Disputes- Section 20 cases  *** EROs and REAs  REAs	Rights Commissioner  Conciliation Service LRC  Labour Court  Employment Rights Labour Inspectorate  Labour Court	Labour Court  Labour Court  None employee/trade union taking case undertakes in advance to accept Recommendation  Voluntary Compliance Expected  Voluntary Implementation of Labour Court Order	Voluntary Process  Voluntary Process  Voluntary Process for employer  Civil/Criminal proceedings  Criminal proceedings by Minister

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
*Maternity Protection Act 1994	Rights Commissioner	Employment Appeals Tribunal (EAT)	Party or Minister for Justice, Equality and Law Reform applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination
Minimum Notice and Terms of Employment Acts 1973 - 2001	Employment Appeals Tribunal (EAT)	Voluntary compliance expected	Trade union or Minister institutes proceedings in District Court for compensation awarded by EAT/Employee sues employer in relevant Court for debt.
National Minimum Wage Act 2000	Rights Commissioner  Employment Rights Labour Inspectorate	Labour Court  Voluntary Compliance Expected	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Labour Court Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner).  Civil/criminal proceedings by Minister
Organisation of Working Time Act 1997	Rights Commissioner  EAT in certain circumstances	Labour Court  Similar appeal procedure to EAT linked case	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Labour Court Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner)  Enforced in same way as EAT linked case.

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
*Parental Leave Act 1998	Rights Commissioner	Employment Appeals Tribunal (EAT)	Party or Minister for Justice, Equality and Law Reform applies to Circuit Court for Order directing compliance with Rights Commissioner Decision (unless appealed) or EAT Determination.
Payment of Wages Act 1991	Rights Commissioner  Employment Rights Labour Inspectorate (pay slips only)	Employment Appeals Tribunal (EAT)  Voluntary compliance expected.	Rights Commissioner Decision (unless appealed)/EAT Determination enforced by party in civil proceedings as if order of Circuit Court  Criminal proceedings by Minister
Protection of Employees (Fixed-Term Work) Act 2003	Rights Commissioner	Labour Court	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Labour Court Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner)
Protection of Employees (Part - Time Work) Act 2001	Rights Commissioner	Labour Court	Employee/trade union or Minister applies to Circuit Court for Order directing compliance with Labour Court Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner)

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
Protection of Young Persons (Employment) Act 1996	Rights Commissioner (section 17 of Act)	Employment Appeals Tribunal (EAT)	Parent/Guardian of child or young person or Minister applies to District Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's recommendation or on appeal from Rights Commissioner)
Protection of Young Persons (Employment) Act 1996	Employment Rights Labour Inspectorate	Voluntary Compliance expected	Criminal proceedings by Minister
**Protections for Persons Reporting Child Abuse Act 1998	Rights Commissioner (section 4 of Act only)	Employment Appeals Tribunal (EAT)	Employee/trade union or Minister for ETE applies to Circuit Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's decision or on appeal from Rights Commissioner)
Protection of Employment Act 1977  European Communities (Protection of Employment) Regulations 2000	Redundancy Payments Section Dept. Enterprise, Trade and Employment (Dept. ET&E)  Rights Commissioner	Voluntary Compliance expected  Employment Appeals Tribunal (EAT)	Criminal proceedings by Minister  Employee/trade union or Minister applies to Circuit Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's decision or on appeal from RC)

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
Redundancy Payments Acts 1967 - 2003	<p>Employee to Employment Appeals Tribunal (EAT) against employer for refusal to pay redundancy lump sum</p> <p>Employer to Redundancy Payments Section Dept. Enterprise, Trade and Employment (Dept. ET&amp;E) (Deciding Officer).</p> <p>Minister may refer doubtful claim to EAT</p>	<p>None.</p> <p>EAT on foot of Deciding Officer's refusal of employer's claim</p> <p>None</p>	<p>Social Insurance Fund pays award in the event of an employer defaulting on EAT Decision.</p> <p>Fund pays rebate to employer</p> <p>If EAT finds in favour</p> <p>Fund pays rebate to employer if EAT finds in favour.</p>
Terms of Employment (Information) Act 1994 and 2001	Rights Commissioner	Employment Appeals Tribunal (EAT)	Employee/trade union or Minister applies to District Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's recommendation or on appeal from Rights Commissioner).
Unfair Dismissals Acts 1977 to 2001	<p>Employment Appeals Tribunal (EAT)</p> <p>Minister may refer doubtful claim to EAT.</p> <p>Rights Commissioner</p>	<p>Circuit Court</p> <p>None</p> <p>Employment Appeals Tribunal (EAT)</p>	Employee or Minister applies to Circuit Court for Order directing compliance with EAT Determination (whether affirming Rights Commissioner's recommendation or on appeal from RC) or with Circuit Court Order (on appeal from EAT)

Act/Regulations	Initial Complaint/ Referral To	Appeal To	Enforcement
Protection of Employees (Employers Insolvency) Acts 1984 - 2003	Insolvency Section (Dept. ETE).	EAT on foot of Insolvency's Section refusal to pay from Social Insurance Fund.	Minister implements EAT Declaration .

\*Legislation administered by the Minister for Justice, Equality and Law Reform

\*\* Legislation administered by the Minister for Health and Children

\*\*\* ERO = Employment Regulation Order, REA = Registered Employment Agreement.

Note:

Minister = Minister for Enterprise, Trade and Employment  
The above table is only a general guide to enforcement and the language used is generic to accommodate brief descriptions. For exact or more complete information please consult individual Regulations/Acts or other explanatory documentation. Most of the Acts listed above may be referred on a point of law to the High Court. Depending on the Act, referral may be by either party, the Minister, the Labour Court or the Employment Appeals Tribunal. For exact details please consult individual Acts. For further information on the details contained in the above table contact Employment Rights Information Unit at telephone 01 631 3131 or 1890 201 615 (lo-call if outside 01 area).

## Appendix 4

### Summary of Recent Employment Legislation

- Minimum Notice and Terms of Employment Acts 1973-2001.
- Industrial Relations Act 2004 updated and amended previous industrial relations legislation.
- Payment of Wages Act 1991 covers methods of payment, allowable deductions, and employee information in relation to wages.
- Worker Protection (Regular Part-time Employees) Act 1991 extends various employment protection legislation, including that dealing with unfair dismissals and redundancy to certain part-time employees.
- Unfair Dismissals Act 1993 -2001 updates and amended previous legislation dating from 1977.
- Maternity Protection Acts 1994 and 2004 covers matters such as maternity leave, the right to return to work after such leave and health and safety during and immediately after pregnancy.
- Terms of Employment (Information) Act 1994 and 2001 updated previous legislation relating to the provision by employers to employees of information on such matters as job description, rate of pay, and hours of work.
- Adoptive Leave Acts 1995 and 2005 provides for leave from employment principally by the adoptive mother and for the right to return to work following such leave.
- Protection of Young Persons (Employment) Act 1996 replaced previous legislation dating from 1977 and regulates the employment and working conditions of children and young persons.
- Organisation of Working Time Act 1997 regulates a variety of employment conditions including maximum working hours, night work, annual and public holiday leave.
- Parental Leave Act 1998 provides for a period of unpaid leave for parents to care for their children, and for a limited right to paid leave in circumstances of serious family illness.
- Employment Equality Acts 1998 and 2004 prohibits discrimination in a range of employment-related areas. The legislation extends the discriminatory grounds covered by previous legislation (gender and marital status) to family status, age, race, religion, disability, sexual orientation, and membership of the Traveller community.
- National Minimum Wage Act 2000 introduces an enforceable national minimum wage.

- Protection of Employees (Part-time Work) Act 2001 repealed the Worker Protection (Regular part-time Employees) Act 1991 and brought in improvements for part-time workers.
- Carer's Leave Act 2001 provides an employee with an entitlement to avail of unpaid leave from his/her employment to personally care for a person in need of full-time care and attention.
- Employment Permits Act 2003 provides for the granting of employment permits in respect of foreign nationals. Under the legislation employers may not employ nationals of States outside the European Economic Area (EU, Norway, Iceland, Liechtenstein) or Switzerland without a valid employment permit.
- Protection of Employees (Fixed-Term Work) Act 2003 provides that a fixed-term employee cannot be treated in a less favourable manner to a comparable permanent employee in relation to conditions of employment.
- Safety, Health and Welfare at Work Act 2005 sets out the general duties of employers to ensure, as far as is reasonably practicable, the safety, health and welfare of employees. It also sets out the types of information to be given by employers to employees and outlines the general duties of employees.
- Parental Leave (Amendment) Act 2006 includes a number of amendments to the Parental Leave Act, 1998, including raising the minimum age of an eligible child from 5 to 8 years.

## Appendix 5

### Rights Commissioner Service Referrals 2005 Breakdown by Legislative Category

<b>Legislative Category</b>	<b>%</b>
Payment of Wages Act 1991	33
Industrial Relations Acts 1969-1990	22
Unfair Dismissals Acts 1977-1993	15
Organisation of Working Time Act 1997	12
Terms of Employment (Information) Act 1994-2001	5
Protection of Employees (Fixed-Term Work) Act 2003	5
European Communities (Safeguarding of Employees Rights on Transfer of Undertakings) (Amendment) Regulations (2003)	2
Industrial Relations (Miscellaneous Provisions) Act 2004	2
Protection of Employees (Part-time Work) Act 200	1
National Minimum Wage Act 2000	1
Other Acts	1



Comhairle is the national agency responsible for supporting the provision of information, advice and advocacy to the public on the broad range of social and civil services. Comhairle provides the Oasis website and is the support agency for the network of Citizens Information Centres and Citizens Information Phone Service. Comhairle supports the development of advocacy services for individuals, particularly those with a disability.

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