



# Employment Rights that Work for All:

*A Citizens Information Perspective*



# Acknowledgements

The Citizens Information Board gratefully acknowledges the assistance of those who contributed to the preparation of this report. In particular, we thank the staff of the Citizens Information Services for highlighting employment rights' issues and for providing feedback and related case evidence, examples of which were used in this report to underline issues affecting their clients. The Citizens Information Board also acknowledges the work of the researcher, Ann Clarke, in undertaking the research and compiling the report.

# Preface

This report is one in a series of social policy reports addressing issues for clients of Citizens Information Services, in the context of the Citizens Information Board's (CIB) role in providing evidence to Government of the ways in which policies are impacting on citizens.

CIB has prioritised the issue of employment rights over a number of years, producing policy outputs on this topic, including research reports and a number of submissions. In this time, there have been significant changes and additions to the legislative framework on employment rights.

The report examines the area of employment rights, based on the queries, social policy issues, and advocacy cases emerging from the Citizens Information Services over a three year period. The trend over recent years is for an increase in the number and complexity of employment related concerns people are presenting with, e.g. there were almost 70,000 employment rights queries in 2019 and a 20% increase in social policy issues over the period of this research. There was an equal growth in the number of employment related advocacy cases (20%) with the main areas of support being assisting the client with direct negotiations with their employer (54% of all cases) and supporting clients with Workplace Relations Commission (WRC) hearings or mediation (37%).

The main themes explored in the analysis are issues relating to terms of employment; leaving work and changing jobs; and enforcement and redress. Queries on employment rights and conditions generally come from people who are on low pay, are non-unionised, are working part-time or are working for smaller employers. A key issue that emerged is the challenge in enforcing existing legislation.

Enforcement issues persist with CISs reporting breaches of legislation and on-going enforcement issues for clients, compounded by the lack of access to free legal aid for employment cases. The concentration of women and young people in low level paid employment, and the inadequacy of, and non-payment, of the National Minimum Wage (NMW) continue to be areas of concern, as does the growth in atypical forms of employment and the ensuing implications for employment rights that this development implies. Another key concern highlighted was the process of seeking redress and enforcement of WRC decisions with CIS clients encountering challenges in securing payment of awards from their employers.





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# Executive Summary

## Introduction

The Citizen's Information Board (CIB) assists and supports people in identifying their needs and options and in accessing their entitlements. This role is carried out mainly through its delivery services the Citizens Information Services (CISs), the Citizens Information Phone Service (CIPS) and the Money Advice and Budgeting Service (MABS). CIB also supports the National Advocacy Service (NAS) for people with disabilities.

Each year the CISs and CIPS receive over one million queries from around 600,000 people on all aspects of rights and entitlements to public and social services. About 70,000 of these queries are employment rights-related.

An important part of the service provided to citizens on employment rights is giving information, advice and support, advocacy, negotiating with employers and at times representing clients in cases at the Workplace Relations Commission. Many people seeking employment rights information and advice from the CISs and CIPS are non-unionised, working for smaller companies and in low paid jobs. They are most at risk of not being able to exercise their rights under employment legislation.

The CIB published a detailed report on employment rights in 2006 and has made numerous submissions on the topic since. In recent years these include, amongst others<sup>1</sup>, its submission to the Department of Social Protection on 'Make Work Pay' for people with disabilities (2016) and recent and previous

submissions to the Low Pay Commission on the National Minimum Wage (2020, 2019, 2016, 2015, 2016), women on low pay (2016) and sub-minima wage rates for young people (2016).

In recent years, there have been significant changes and additions to the legislative framework on employment rights, developments to the National Minimum Wage and consolidation of complaints and redress structures and mechanisms. It was therefore considered timely to revisit the topic in more detail, drawing on the perspective of CISs and CIPS.

## Methodology

This report draws from an analysis of various returns and queries received by CISs<sup>2</sup> including employment rights advocacy cases, a consultation with CIS staff on issues of concern and a desk-based analysis of developments in the field of employment rights.

It explores significant developments in recent years and the key issues that have consistently arisen for CIS clients. Three main themes emerged from the analysis: Terms of Employment, Leaving Work and Changing Jobs, and Enforcement and Redress, each with a number of sub-themes, which are explored in the report.

## Employment Rights Queries

Queries to CISs about employment rights-related issues accounted for 7% of all queries over the period 2016 to 2018. There were

1 Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish Economy. A submission by the Citizens Information Board (2016); Consultation on the Comprehensive Employment Strategy, Action 5.1 'provision of coordinated and seamless support to people with disabilities'. Submission on 'Pathways to Work Strategy 2020 - 2024' - Department of Employment Affairs and Social Protection (2019)..

2 Data is collected on the nature of queries as well as policy issues that CISs come across repeatedly and/or an issue that they feel is having a serious impact on their clients. The report they submit is referred to as a Social Policy Return (SPR). All of the information submitted is anonymous. CIPS record similar data on their own system.

69,959 queries in 2019 and 71,380 such queries in 2018. Queries on employment rights and conditions generally come from people who are on low pay, are non-unionised, are working part-time or are working for smaller employers.

Employment rights advocacy cases have been on the rise and in 2018/2019 accounted for 20% of all CIS advocacy cases. The number of complex employment rights queries requiring support is growing. Support can take the form of research, contact with employers, negotiating with employers on behalf of individuals, helping individuals to make WRC complaints, attending WRC hearings, assisting individuals make appeals or apply for enforcement orders from the courts.

The main query areas received by CISs relate to leave and holidays, employment contracts, redundancy and unfair dismissal, pay and non-payment of wages, self-employment, redress and enforcement, starting and changing jobs and working hours. These are similar areas to the information queries received by the WRC, other than employment permits which accounted for over one-third of WRC queries in 2018.

## Key Developments

Significant developments in recent years include the following:

- The Workplace Relations Act, 2015 streamlined industrial relations, employment law and employment equality complaints and disputes procedures into one entity, the Workplace Relations Commission (WRC), and the Labour Court as the single appeal body.
- The Low Pay Commission was set up in 2015 to examine and make recommendations on the appropriate level of the National Minimum Wage each year.

- Responsibility for employment rights policy and legislation transferred to the Department of Employment Affairs and Social Protection (DEASP)<sup>3</sup> in 2017. The Employment Rights Policy Unit ensures that legislation remains relevant and up to date and reflects national and international developments. The Department is also responsible for administering the Redundancy and Insolvency Payment Scheme and for determining the employment status of individuals as employees or self-employed.

Relevant new legislation included:

- The Industrial Relations (Amendment) Act 2015 which, amongst, other things, strengthened unfair dismissals protection.
- The Paternity Leave and Benefit Act 2016 introduced paternity leave for parents, other than mothers, within the first six months of birth or adoption of a child. The Parental Leave (Amendment) Act 2019 allows the parents of children under 12 years of age to take a total of 26 weeks unpaid leave.
- The Employment (Miscellaneous Provisions) Act 2018 addresses concerns about precarious employment, zero hours' contracts and uncertain working arrangements. It also contains provisions regarding unfair dismissal, and the information employers must supply within five days of employees commencing a job.

## On-Going Issues

While the developments mentioned above have strengthened rights and supported people seeking redress, queries to CISs indicate that on-going issues remain for many and that new concerns are emerging including issues arising from the Covid-19 pandemic.

<sup>3</sup> At the time of publication of this report employment rights policy lay with the DEASP but under the new Government, responsibility is moving to Department of Business, Enterprise & Innovation. The DEASP has reverted to the Department of Social Protection (DSP).

The problems that emerge from advocacy cases and social policy feedback submitted by CISs are very similar to the issues highlighted in CIB's previous reports. Issues remain for employees, despite the strengthening of employment rights legislation and the streamlining of the complaints and redress procedures. Breaches of legislation continue (whether deliberate or through lack of knowledge and information), and employees encounter difficulties enforcing redress decisions in their favour.

Although enforcement of WRC decisions is its responsibility, CISs reported on-going enforcement issues for clients. Clients can now seek a court order from the District Court (previously it was the Circuit Court), which in theory enables lay representation and is lower cost, but in practice it can be challenging for some clients, especially when the employer has legal representation. Employment legislation is a complex area, and many employees feel the need to be represented to bring a case or to enforce redress. Even with advocacy support, the absence of free legal aid for employment cases can mean that employees cannot afford the cost of pursuing an employer through the courts for enforcement of a complaint made in their favour.

Steady progress has been made in increasing the level of the National Minimum Wage and while some people continue to be paid below the minimum (21,900 in the fourth quarter of 2019), the overall numbers on the National Minimum Wage or less (122,800 or 6.4% of employees in the same period) have been falling as the economy recovered. It remains to be seen how this will be impacted by the fallout from the pandemic. However, the National Minimum Wage is still below the living wage and CISs report that where the only work available is at the minimum wage, it acts as

a disincentive to taking up employment. Women and young people are particularly vulnerable to low rates of pay<sup>4</sup> and although the majority of people starting on the National Minimum Wage move to higher earnings, a significant minority remain trapped in low paid jobs.<sup>5</sup> Apart from complaints made about low wages, CISs regularly receive complaints from employees about non-payment of wages, annual leave and public holiday entitlements.

CISs continue to report on-going issues regarding dismissal of people employed for less than 12 months, as this group is not protected by legislation.

CISs received complaints from clients that have been penalised because of maternity leave as well as equality issues in the workplace regarding disability, gender, age and race. It will be of interest to see if new issues emerge for clients who avail of unpaid parental leave in coming years.

CISs highlighted challenges for clients when companies become informally insolvent and therefore cannot access the Social Insurance Fund for redundancy, and for clients 'encouraged' by employers to be self-employed. Developments in technology and the platform and gig economies have contributed to the growth in atypical employment,<sup>6</sup> including instances of false self-employment, and it is anticipated that people will face more frequent job changes and increased risk of job obsolescence in the coming decade<sup>7</sup> that will impact on employment rights. The Department of Employment Affairs and Social Protection announced in September 2019 that its fraud section will be placing a particular focus on bogus self-employment.

4 Citizens Information Board, 2016, Consultation on the underlying reasons for the preponderance of women in minimum wage. Submission by the Citizens Information Board; Citizens Information Board, 2016, Consultation on the appropriateness of the sub-minima rates for young people. Submission by the Citizens Information Board.

5 Low Pay Commission, 2018, The length of time employees spend on the National Minimum Wage, LPC.

6 OECD, 2015, Adapting to the changing face of work: Policies to make the most of part-time and temporary work, OECD: Paris.

7 OECD, 2019, OECD Employment Outlook 2019, OECD: Paris.

## Summary of Employment Rights Issues

The main issues brought to the attention of CISs by their clients regarding employment rights are summarised below under the three main themes

of Terms of Employment, Leaving Work and Changing Jobs, and Enforcement and Redress.

### Terms of Employment

- Lack of contracts of employment.
- Issues arising regarding changes to terms and conditions resulting from a transfer of business undertakings especially where share transfers are involved.
- Non-receipt of annual leave and/or public holiday entitlements.
- Manipulation of averaging in the calculation of working hours.
- Lack of entitlement to flexible work hours.
- Non-payment of wages owed and attempts by employers to deter pursuit of claims.
- Changes to work patterns, roles and hours upon returning to work after long-term sick leave.
- Non-receipt of payslips, P45s and P60s<sup>8</sup>.
- Payment below the National Minimum Wage.
- False self-employment.
- Absence of grievance and disciplinary procedures and due process.

### Leaving Work and Changing Jobs

- Non-receipt or delays in receiving P45s on leaving employment.
- Administrative challenges accessing the Redundancy and Insolvency section of the DEASP.
- Non-receipt of minimum notice of redundancy.
- Delays in receipt of redundancy payments or non-receipt of redundancy.
- Difficulties accessing online P50 form.
- Dismissal of employees working for less than 12 months.
- Penalisation of employees on sick leave employed for less than 12 months.
- Penalisation of employees who went on maternity leave or became pregnant.
- Impact of technological developments on access to services and jobs.
- Difficulties obtaining references.
- Unpaid wages on leaving employment.

<sup>8</sup> As part of PAYE modernisation, P45s and P60s have been abolished and replaced with an online system for 2019.

## Enforcement and Redress

- Gap between legislative protection and enforcement of rights.
- Lengthy delays in processing claims through WRC.
- Complexity of legislation and lack of legal advice and representation impacting on employees' perception of their ability to enforce their rights.
- Penalisation of employees for trying to enforce rights.
- Difficulties contacting and engaging employers and in some cases identifying who the actual employer was.
- Difficulties accessing relevant records, especially from smaller companies.
- Inability to enforce WRC decisions.
- Maternity and paternity equality issues and discrimination on the basis of gender, age, race, and disability.
- Inadequate information necessary to apply for employment permits.
- Issues with visas and responses from employers.
- Inadequate information on rights of asylum seekers to obtain work and related matters.
- Bullying at work.

## Conclusions and Recommendations

The main conclusion of this report is that despite substantive new legislation and structures, similar issues remain for employees

in terms of breaches of legislation and enforcement of rights as were encountered in earlier employment rights reports. There is still a gap between legislative protection and the ability of employees to enforce their rights.

## Main Challenges

- Breaches regarding minimum notice of redundancy.
- Breaches regarding terms and conditions of employment and entitlements to leave.
- Absence of protection for workers employed for less than 12 months.
- Difficulties encountered when losing, changing or starting jobs including enforcing redundancy entitlements.
- Issues with payment, including non-payment of wages, and with working hours.
- Multiple complaints against individual employers.
- Challenges around migrant working and equality at work.

Developments in software, artificial intelligence, automation, new ways of working such as remote working, accelerated by the Covid-19 pandemic and the digital economy are likely to lead to new employment rights issues including impacts on job opportunities, new forms of atypical working and covert discrimination through the use of algorithms. The regulatory environment needs to be alert to these developments to safeguard employment rights. Collaborative working for solutions between government, businesses and educators may be necessary to address some of the employment policy issues that will arise in the near future.

The recommendations of this report are

summarised below. They endeavour to ensure that employment rights for all workers keep pace with new forms of employment and prepare for the impact of technological developments. They aim to strengthen redress and enforcement procedures. They seek to address inequalities and information gaps for people with disabilities, migrant workers, refugees and asylum seekers, people on short-term contracts, in false self-employment or in atypical working, many of whom are women and younger people. While the research for this report was undertaken in 2019 prior to Covid-19, CIB supported services have continued to deal with significant levels of employment rights during the pandemic.

## Recommendations

### Policy

- Consider the pros and cons of developing a definition of work for new forms of working that are neither traditional employee nor true self-employed.
- Learn from pilots of Universal Basic Income and move towards a living wage.
- Review the social welfare code and employment legislation to ensure they reflect technological developments in the workplace.
- Maintain a watching brief on how new developments will impact employment rights.
- Commence a national dialogue on the implications of automation for employment rights, training and re-training.
- Ensure aims and objectives of EU Directives on employment rights are fully transposed into Irish law.

### Redress and Enforcement

- Establish a section in the WRC Enforcement Unit to specifically assist employees to pursue enforcement of awards.
- Ensure strengthened enforcement of existing legislation with real consequences for continuous breaches.
- Revise the civil legal aid system to provide for representation for individuals appearing before the WRC.

### WRC

- Resource the WRC to speed up the hearing of complaints.
- Introduce a swift mechanism for addressing small claims and urgent cases.
- Include interviews with employees as a routine part of workplace inspections.

## Working Arrangements

- Provide unfair dismissal protection for those working less than 12 months.
- Assess the costs and benefits of introducing an entitlement to flexible working arrangements. At a minimum introduce a Code of Practice on flexible working arrangements to promote a healthy work-life balance.
- Introduce a mandatory entitlement to a reference.
- Clarify whether 'if and when' contracts are covered by employment rights legislation.
- Review legislation on a regular basis to ensure there are protections for atypical working.
- Include the risk of bullying and policies and procedures to mitigate this risk as mandatory in safety statements.

## Equality

- Increase legislative protection for breastfeeding in the workplace to 12 months.
- Review the adequacy of paternity leave and implications of introducing a period of paid paternity.
- Conduct targeted research to get comprehensive gender disaggregated data relating to low-paid employment as well as to possible links between under-investment in public childcare and women in low paid employment.
- Proactively promote the Wage Subsidy Scheme<sup>9</sup> to employers and people with a disability.

## Information

- Provide more targeted information on the implications of becoming self-employed.
- Provide information about self-employment permit requirements for asylum seekers.
- Provide detailed information about specific documentation required for Critical Skills Employment permits.
- Encourage employers to make employment rights information available to employees, particularly migrants.

9 Wage Subsidy Scheme for people with disabilities.

# 1. Introduction

## 1.1 Introduction

The Citizens Information Board (CIB) supports the provision of information, advice and advocacy on social services in Ireland. It provides the Citizens Information website ([www.citizensinformation.ie](http://www.citizensinformation.ie)) and supports the network of Citizens Information Services (CISs) and the Citizens Information Phone Service (CIPS). It also funds and supports the Money Advice and Budgeting Services (MABS) and the National Advocacy Service (NAS) for people with disabilities. The value of these services to the state and public is significant and includes helping and empowering people to access rights and entitlements; savings to the state by preventing costly appeals; civic education through its resources; and providing social policy analysis to inform policy implementation.<sup>10</sup>

The CIB undertakes social policy research based on the concerns that are recorded by delivery services in Social Policy Returns (SPRs). This is in line with its strategic remit to highlight issues of concern to users of social services so that policy and administration of public services can be enhanced and evolve with changing times. SPRs highlight access and administrative issues, information deficits, gaps or anomalies in policy.

## 1.2 Employment Rights

Employment rights queries to CISs accounted for 7% of all queries in the period 2016 to 2019 representing around 70,000 queries and 3% of all SPRs. The number of advocacy cases involving employment rights has grown and accounted for 20% of on-going advocacy cases on the electronic case management system in 2018/2019. Support to clients can take the form of research, contact with employers, helping an

individual to make a WRC complaint, attending WRC hearings, assisting an individual to make appeals or to apply for enforcement orders from the courts.

In 2006, CIB published a detailed social policy report covering employment rights and has advocated on this theme in a range of submissions and policy proposals since. Given new employment legislation, the consolidation of structures into the Workplace Relations Commission (WRC) and other developments impacting on workers and their rights, it was considered opportune to revisit employment rights as a topic at this time.

In 2006, the key issues centred on effective enforcement of employment legislation, including family-related employment legislation and employment of children and young people, information about legislation and specific employment issues. These related to work permits, part-time employment, holiday entitlements, payment of wages, documentation, the National Minimum Wage, unfair dismissals, bullying in the workplace, and health and safety at work. Some of these issues remain as recurring themes and are discussed in this report. There are also other aspects of employment rights which have emerged and are explored in this report.

## 1.3 Profile of People Seeking Advice

Queries on employment rights and conditions generally come from people who are on low pay, are non-unionised, are working part-time or are working for smaller employers. Many are seeking advice about how to maximise household income by combining income from work with social welfare payments such as the Working Family Payment.

10 O'Connor, N., 2017, Making an Impact: The Public Value of Citizens Information Services in Ireland, CIB: Dublin.

A random sample of 1,500 queries from 2018 was examined to gauge the profile of CIS clients coming with employment rights queries.<sup>11</sup> The majority of clients were female, Irish nationals, aged between 26 and 45.

Fifty-eight per cent of queries were made by women and 39% by men. Three per cent of clients were couples.

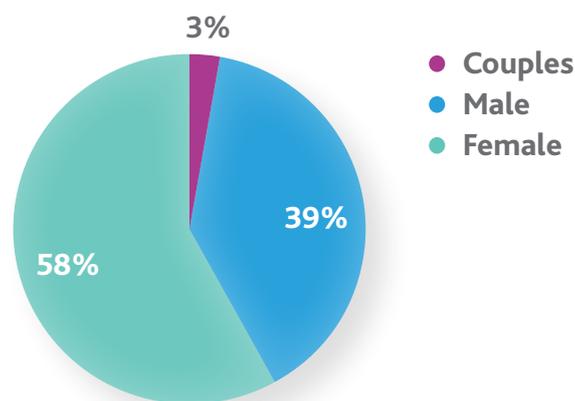
Sixty-one per cent were aged between 26 and 45 and 31% were aged 46 to 65. Young people under the age of 26 accounted for 6% and older people

aged 66 or over made up 2% of queries.

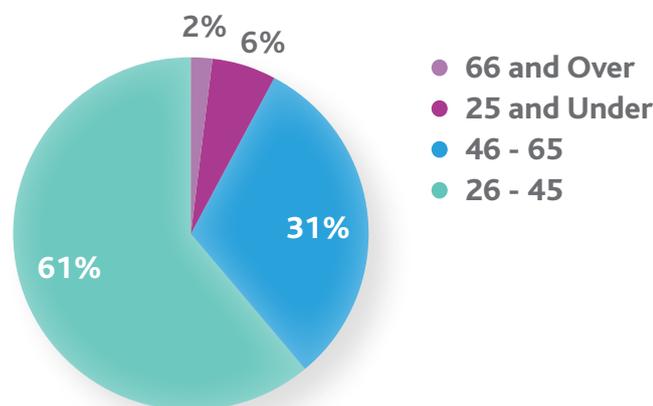
Seventy-seven per cent of clients were Irish nationals, 9% were Polish nationals and 9% were from other EU Member States including the UK. Five per cent of queries were made by people from other countries outside of the EU.

The majority of queries (68%) took 20 minutes or less to address, but a significant minority (32%) needed more than 20 minutes, reflecting the complex nature of many employment rights queries.

**Figure 1.1: Gender of CIS Clients**

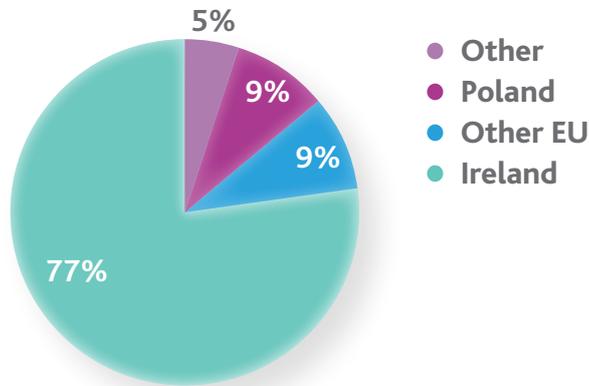


**Figure 1.2: Age Profile of CIS Clients**

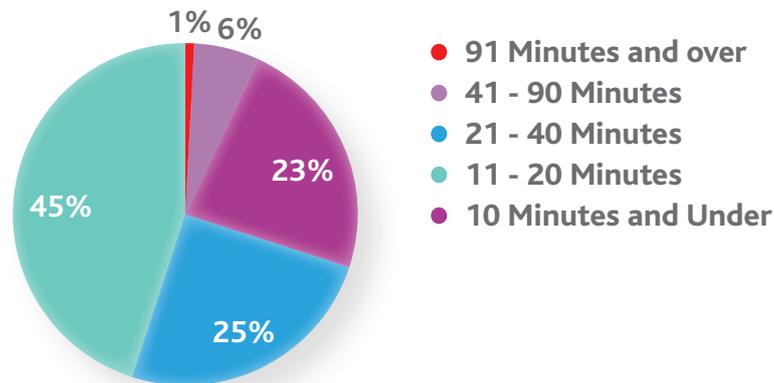


<sup>11</sup> The total number of employment rights queries for 2018 was 71,380. This does not include clients of long-term advocacy.

**Figure 1.3: Nationality of CIS Clients**



**Figure 1.4: Length of Time Required to Address Query**



### 1.4 Methodology

This report draws from:

- a desk analysis of statistical trends,
- CIS employment rights advocacy cases 2018 - 2019,
- CIS Social Policy Returns 2016-2018/19,
- feedback from a sample of CISs on common issues they encounter and,
- a random sample of 1,500 queries out of a total of 71,380 employment queries in 2018, from which smaller random samples were

drawn for each sub-theme; and 150 long-term advocacy cases from 2018.

The theme of this report is ‘Employment Rights that Work for All: A Citizens Information Perspective’. It explores major developments in the past decade and the key issues that have consistently arisen for CIS clients in recent years. A number of aspects of employment rights brought to the attention of CISs by the public are examined to illustrate these challenges. These are laid out below and examined in greater detail in Chapter 4.

**Table 1.1: Aspects of Employment Rights Examined**

Main Theme	Sub-theme
Terms of Employment	<ul style="list-style-type: none"> <li>• Contracts</li> <li>• Leave</li> <li>• Hours of work</li> <li>• Pay and wages</li> <li>• False self-employment</li> <li>• Grievance and disciplinary matters</li> </ul>
Leaving Work and Changing Jobs	<ul style="list-style-type: none"> <li>• Unemployment and redundancy</li> <li>• Unfair dismissal</li> <li>• Starting and changing jobs</li> </ul>
Enforcement and Redress	<ul style="list-style-type: none"> <li>• Seeking redress</li> <li>• Accessing redress mechanisms</li> <li>• Enforcement of legislation</li> <li>• Equality matters</li> <li>• Rights of asylum seekers, immigrants and migrants</li> <li>• Health and safety at work</li> </ul>



## 2. Key Developments in Recent Years

### 2.1 Policy Context

Since 2017, the Department of Employment Affairs and Social Protection (DEASP) has had responsibility for employment rights policy and legislation.<sup>12</sup> The Employment Rights Policy Unit, which had been under the previous Department of Enterprise, Trade and Employment (now Business, Enterprise and Innovation), transferred to the DEASP.<sup>13</sup>

The role of the Employment Rights Policy Unit is to ensure employment legislation remains relevant and is updated to reflect national and international developments, including at European Union, Court of Justice and International Labour Organisation level. The Unit advises the Minister on employment rights policy matters. It has lead responsibility for Employment Rights – Policy and Legislation, covering at least a dozen primary acts governing employment rights.

The Unit ensures that employment rights provide adequate protection for employees while at the same time taking into account the core business needs of employers. It encourages compliance with legislation amongst employers but is not responsible for enforcing compliance. The Workplace Relations Commission (WRC), set up in 2015, is responsible for ensuring compliance with employment legislation.

The WRC responds to specific queries or complaints from the public about employment rights. It has a formal Memorandum of Understanding with its parent department, the Department of Business, Enterprise and Innovation (DBEI).

Amongst its many functions, the DEASP is

responsible for the administration of the Redundancy and Insolvency Payment Scheme. Payments to employees under certain circumstances where employers become redundant or insolvent are made out of the Social Insurance Fund (SIF), which it manages.

Determination of employment status whether as an employee or self-employed person is made by the Scope section within the DEASP.

### 2.2 Legislative Developments

Over the past five years a number of new pieces of employment legislation have been introduced as well as amendments and updates to older legislation. Appendix A summarises the main employment legislation.

The most important new pieces of legislation are:

- **Parental Leave Act 2019:** allows parents of children under the age of 12 to take a total of 26 weeks unpaid leave from their jobs.<sup>14</sup>
- **Parent's Leave and Benefit Act, 2019:** allows each parent 2 weeks paid parent's leave for a child born or adopted on or after 1 November 2019.
- **Employment (Miscellaneous Provisions) Act 2018:** deals with precarious employment, zero hours contracts and uncertain working conditions for employees in sectors requiring considerable flexibility in the employment contract, such as retail, hospitality and tourism. Under the Act dismissal is considered to be automatically unfair in most circumstances. It also sets out information that employers must supply to employees.

<sup>12</sup> Functions were transferred from the then Department of Enterprise, Trade & Employment.

<sup>13</sup> Due to transfer back to the DBEI under the new government department configuration in 2020.

<sup>14</sup> From 1 September 2020, this increased from 22 weeks to 26 weeks parental leave.

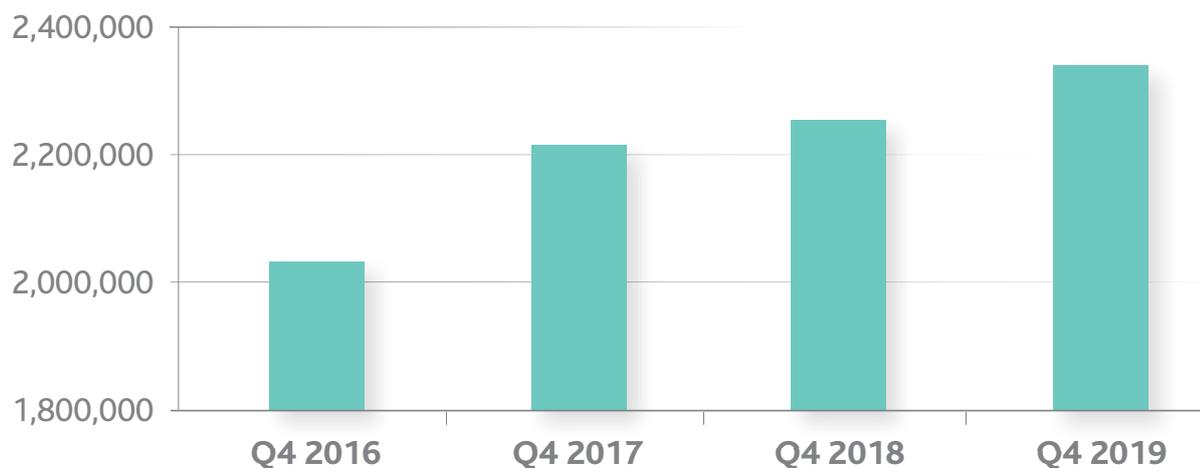
- **Paternity Leave and Benefit Act 2016:** allows parents, other than the mother, to take two weeks paternity leave within the first six months after the birth or adoption of a child.
- **National Minimum Wage (Low Pay Commission) Act 2015:** set up the Low Pay Commission to examine and make annual recommendations on the appropriate level of the National Minimum Wage and related matters.
- **Workplace Relations Act 2015:** streamlines industrial relations, employment law and employment equality complaints and disputes procedures into two bodies – the Workplace Relations Commission and the Labour Court.
- **Industrial Relations (Amendment) Act 2015:** provides a new system of Registered Employment Agreements and Sectoral Employment Agreements, strengthens unfair dismissal protection for employees and provides an extended definition of collective bargaining.
- **Protected Disclosures Act 2014:** protects workers (employees, agency workers, contractors and trainees) who raise concerns of possible wrongdoing in the workplace.

A bill<sup>15</sup> providing additional protections for employees working in the services sector to ensure they receive tips or gratuities paid by customers was at the second stage of the Dáil, but lapsed due to the dissolution of the Dáil in January 2020.

### 2.3 Trends in Employment

The numbers in employment in Ireland over the past four years have grown steadily.

**Figure 2.1: Trend in Employment '000 (all people aged over 15 years) Q4 2019**



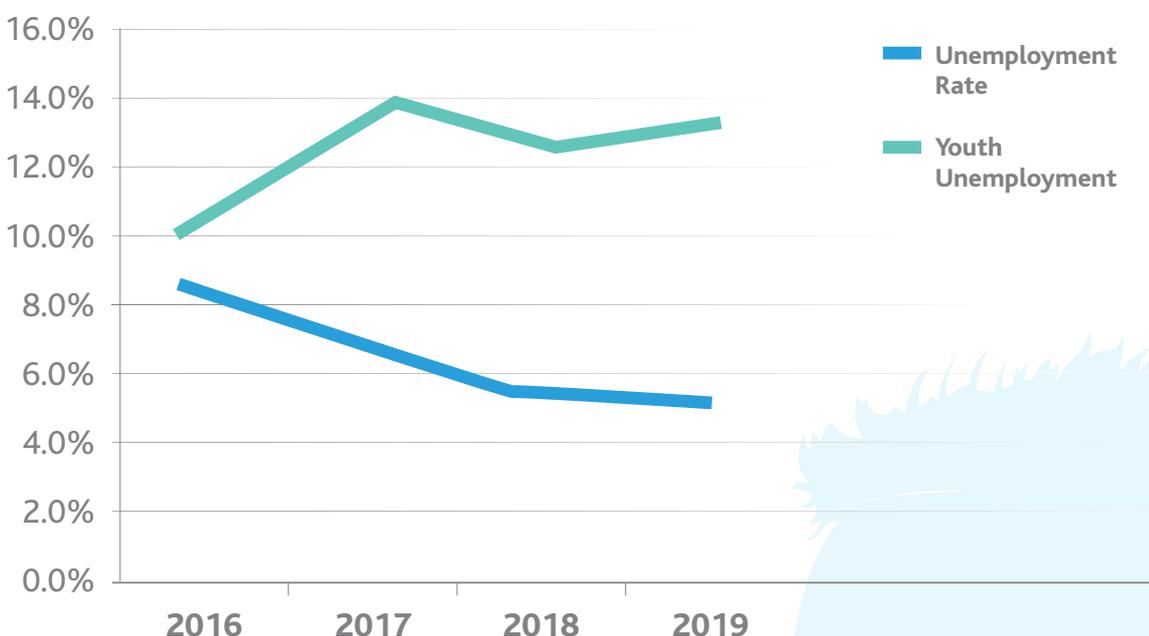
(Source: CSO Labour Force Surveys <https://www.cso.ie/en/statistics/labourmarket/labourforcesurvey/lf/>)

15 National Minimum Wage (Protection of Employee Tips) Bill 2017

Unemployment (seasonally adjusted) fell from 8.6% in March 2016 to 5.3% in September 2019.<sup>16</sup> While there has also been a fall in youth unemployment, it remains persistently high and stood at 14.7% in August 2019. The Covid-19 health crisis has seen a huge increase in unemployment with the figures for September

showing the standard measure of Monthly Unemployment as 5.4% and a new COVID-19 Adjusted Measure of Unemployment indicating a rate as high as 14.7%<sup>17</sup> if all claimants of the Pandemic Unemployment Payment were classified as unemployed.

**Figure 2.2: Unemployment (seasonally adjusted) March, 2019**



(Source: CSO Monthly Unemployment <https://www.cso.ie/en/releasesandpublications/er/mue/monthlyunemploymentmarch2019/>)

16 <https://www.cso.ie/en/statistics/labourmarket/monthlyunemployment/>. Note that effective from Q3 2017 the Labour Force Survey replaced the Quarterly National Household Survey, and thus the series before Q3 2017 and afterwards may not be directly comparable.

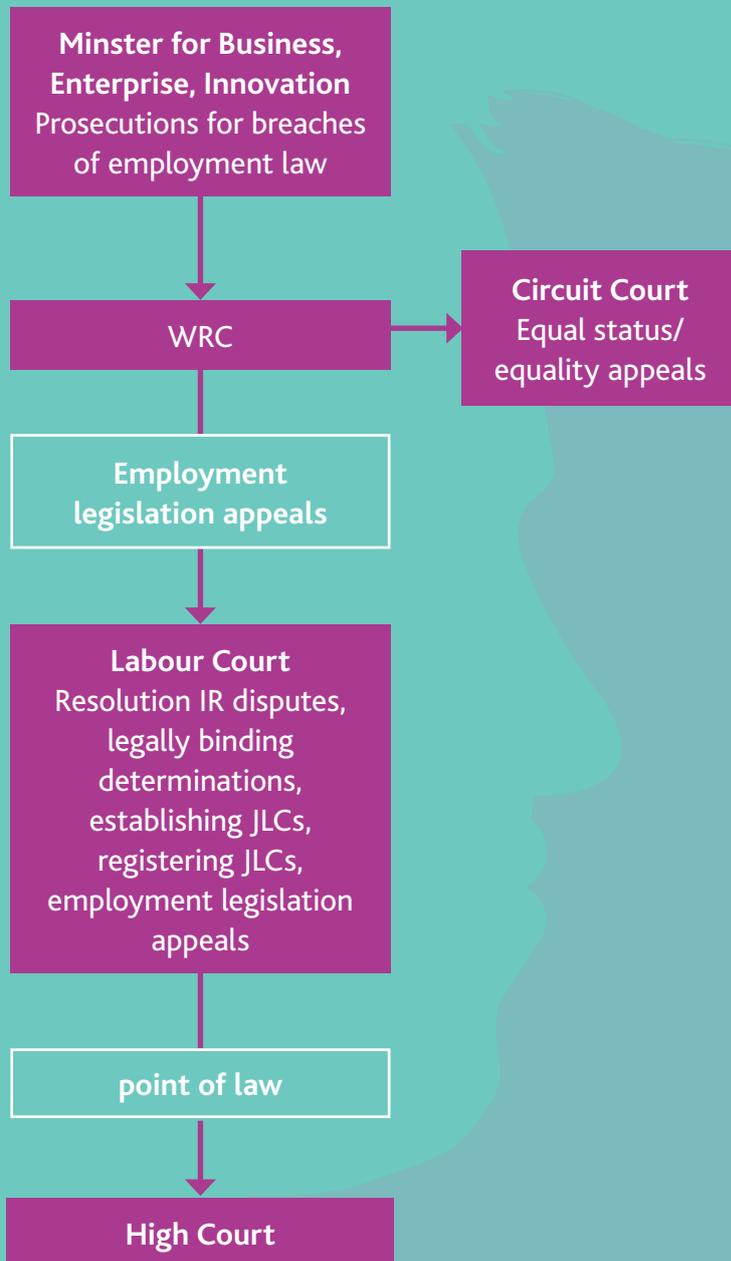
17 This rate would have been just over 26% in May 2020.

## 2.4 Complaints and Disputes Mechanisms

Before the Workplace Relations Commission (WRC) was set up, a very complicated complaints and appeals process existed. With the establishment of the WRC, this was radically simplified when the powers and responsibilities of National Employment Rights Authority (NERA), Labour Rights Commission

(LRC), Rights Commissioners Service, Employment Appeals Tribunal (EAT) and Equality Tribunal all moved to the WRC. As a result, the appeals process was also simplified. The powers of the then Minister for Jobs, Enterprise & Innovation to prosecute people for breaches of employment legislation were also transferred to the WRC. The diagram below summarises these changes.

**Figure 2.3: Complaints and Appeals Process**



## 2.5 Workplace Relations Commission

The WRC was established in 2015 under the Workplace Relations Act as an independent statutory body. The intention was to simplify the number of employment rights fora, to streamline timeframes and to introduce a single online complaint form.

The WRC assumed the roles and responsibilities of the National Employment Rights Authority, the Equality Tribunal, the Labour Relations Commission and the Rights Commissioners Service. It also assumed some functions of the Employment Appeals Tribunal. It is funded by the Department of Business, Enterprise and Innovation.

The WRC is responsible for enforcing the National Minimum Wage and other employment and equality legislation. In 2018, it detected 2,548 legislative breaches (3,039 in 2017).

The WRC is the primary body which hears employment disputes. The WRC Inspectorate and Enforcement Division inspects employers' statutory employment records to check for compliance with employment law. The number of inspections fell from 4,830 in 2016 to 4,747 in 2017 but grew to 5,735 in 2018. Inspections were 5,719 in 2005, around the time of the last CIB report, which then jumped to 8,223 for the first six months of 2006 after the appointment

of additional inspectors.

Prosecutions for breaches of legislation remain relatively low and stood at 125 in 2017 and 98 in 2018.

Complaints to the WRC can be heard by mediation or adjudication. A complaint or dispute should be sent to the WRC within six months of the date of the alleged contravention. An extension of a further six months may be granted if there was reasonable cause for delay.

The Adjudication Officers make independent decisions on complaints sent to them by the WRC Director General. They hold a hearing where both parties have an opportunity to present evidence and to be heard by the Adjudicator. Adjudication hearings grew by 51% from 2016 to 2018 and adjudication decisions more than doubled. Appeals against these decisions can be made to the Labour Court (generally these must be made within 42 days).

Complaints to the WRC grew by 13% from 2016 to 2018. Each application had on average two specific complaints indicating multiple issues for each place of employment. This is mirrored in queries to the CISs where multiple issues are raised about individual employers on a regular basis.

**Table 2.1: Trend in Complaints, Inspections and Prosecutions – WRC 2016 - 2018**

	2016	2017	2018
Number of applications of complaint received by WRC	6,863	7,317	7,724
Number of specific complaints contained within the applications	14,004	14,001	15,451
Number of adjudication hearings	3,518	4,370	5,312
Number of adjudication decisions issued	1,232	2,247	2,964
Number of inspections concluded	4,830	4,747	5,735
Number of prosecutions	136	125	98

(Source: Workplace Relations Commission Annual Report 2018)

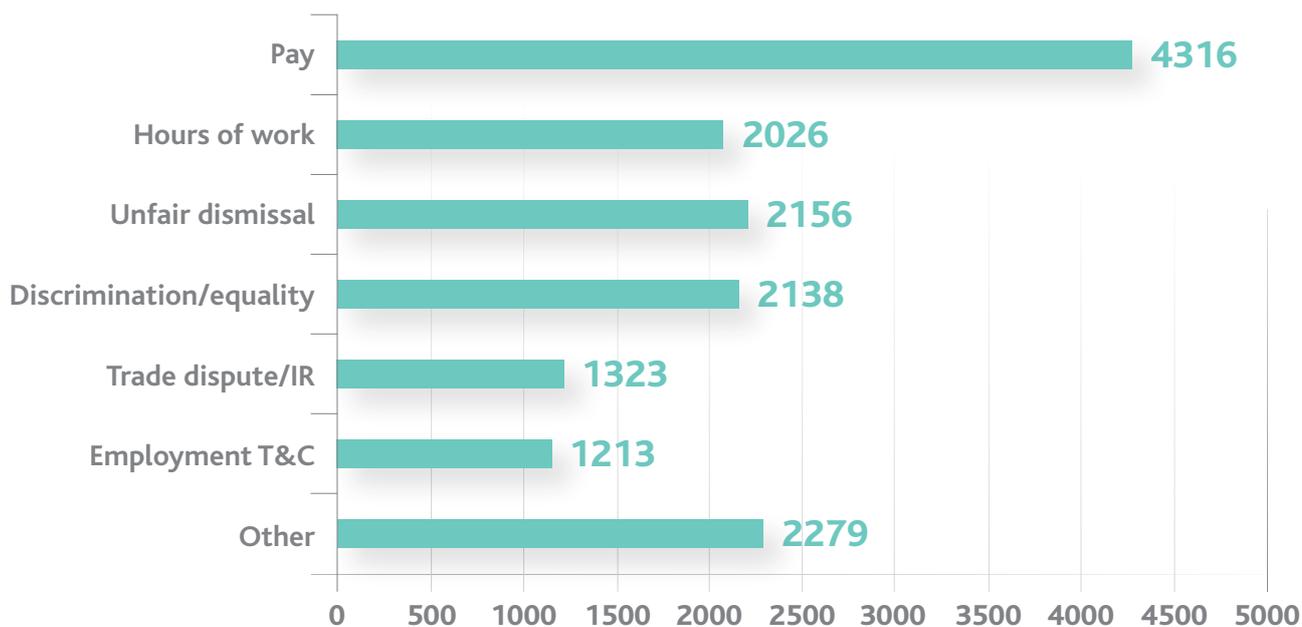
Pay accounted for 27% of specific complaints made to the WRC, followed by complaints about unfair dismissal, discrimination/equality, working time, trade disputes and employment terms and conditions. By contrast, the main query areas for CISs were contracts and terms and conditions of employment (30%), leave and holidays (18%), redundancy (10%) and pay (9%).

The WRC and the Gardaí have responsibility for identifying non-EU nationals who are illegally employed in Ireland and non-EU nationals with permission to reside who breach the conditions

of employment permits. The WRC reports cases of undocumented migrants to the Garda National Immigration Bureau (GNIB).

Queries to the CISs regarding GNIB applications and renewals are just under 3,000 a year. Queries from migrant workers have grown steadily over the past three years as have queries in respect of asylum seekers and refugees. Asylum seekers are now entitled to work and it is likely that queries from them regarding employment rights and entitlements will grow in the coming years.

**Figure 2.4: Nature of Specific Complaints to WRC, 2018**



(Source: Workplace Relations Commission Annual Report 2018)

**Table 2.2: Migrant Queries to CISs 2016 - 2018**

	2016	2017	2018
Queries about GNIB applications and renewals	2,779	2,706	2,850
Queries about asylum seekers and refugees	1,072	1,190	1,705

## 2.6 Labour Court

The Labour Court was set up under the Industrial Relations Act 1946 to address employment disputes. Under the Workplace Relations Act, 2015 it became the sole appellate jurisdiction in all employment rights. It is not a court of law and recommendations made by it are not binding. Issues it deals with include pay claims under national agreements, hours of work, pensions and recruitment.

In 2018, 139 WRC conciliation cases were referred to the Labour Court for a recommendation under section 26 (1) of the Industrial Relations Act 1990. These were cases where a resolution to resolve a dispute was not possible at the conciliation stage. In addition, around 10% of WRC adjudication decisions are appealed to the Labour Court each year.

In 2018, the Labour Court issued 372 appeal decisions (up 6% from 2017). In nearly half of these cases the decision of the WRC Adjudication Officer was upheld, the remainder were either overturned or varied.

## 2.7 Low Pay Commission

The 2014<sup>18</sup> Structure of Earnings Survey conducted in EU Member States indicated that low-wage employees accounted for on average 17% of all employees. The figure for Ireland was higher at 22% (ranked 20th), which increased to 23% in 2017, according to OECD research.

In 2015, the Low Pay Commission was set up under the National Minimum Wage (Low Pay Commission) Act to examine and make annual

recommendations on the appropriate level of the National Minimum Wage and related matters.

Not long after it was set up it requested the Central Statistics Office (CSO) to pilot the inclusion of questions about the National Minimum Wage in the Labour Force Survey.<sup>19</sup>

## 2.8 National Minimum Wage

The National Minimum Wage<sup>20</sup> was introduced in 2000, primarily as a poverty alleviation measure.

The OECD in its 2015 analysis indicated that the minimum wage on its own is not sufficient to alleviate poverty and that it should be accompanied by other tax and benefit measures to address poverty, both in and out of work.<sup>21</sup> The CIB in its 2015, 2016 and 2020 submissions<sup>22</sup> to the Low Pay Commission argued that the concept of a living wage should be taken into consideration to ensure that work provides a minimum acceptable standard of living and not result in people living in poverty.

The National Minimum Wage has been increased a number of times since 2006 and as of February 2020 stood at €10.10 per hour for adults<sup>23</sup>. This represents a 5.7% increase on the previous rate for adults of €9.55. However, it still falls short of the €12.30 per hour proposed living wage for 2019.<sup>24</sup> Feedback from CISs and CIPS indicates that where the only work available is at the minimum wage, it acts as a disincentive to taking up employment.<sup>25</sup> CISs also regularly receive complaints about breaches of minimum wage legislation.

18 The next survey was due in 2019.

19 Previously the Quarterly National Household Survey.

20 It does not apply to close relatives of employers, statutory apprenticeships or non-commercial activity or work engaged in by prisoners.

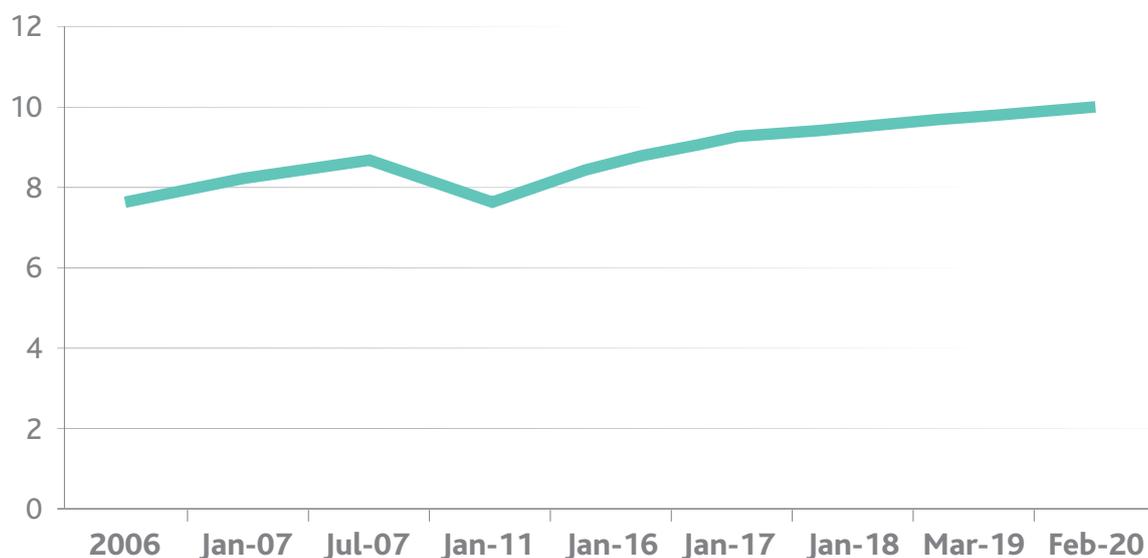
21 OECD, 2015, Minimum wages after the crisis: Making them pay, OECD: Paris.

22 CIB, 2015, Consultation on the National Minimum Wage. Submission to the Low Pay Commission by the Citizens Information Board; CIB, 2016, Consultation on the National Minimum Wage. Submission to the Low Pay Commission by the Citizens Information Board; CIB, 2016, Consultation on the appropriateness of the sub-minima rates for young people. Submission by the Citizens Information Board; CIB, 2020, National Minimum Wage Submission to the Low Pay Commission.

23 To increase to €10.20 per hour from 1 January 2021.

24 [https://www.livingwage.ie/download/pdf/living\\_wage\\_technical\\_document\\_july\\_2014.pdf](https://www.livingwage.ie/download/pdf/living_wage_technical_document_july_2014.pdf)

25 CIB, 2016, Consultation on the National Minimum Wage. Submission to the Low Pay Commission by the Citizens Information Board.

**Figure 2.5: Trend in Adult National Minimum Wage € per hour**

As of the 1st of February 2020 the full range of rates are as follows:

**Table 2.3: National Minimum Wage 2020**

	Minimum hourly rate € <sup>26</sup>	Percentage of minimum wage
Adult minimum wage	10.10	100%
Aged 19	9.09	90%
Aged 18	8.08	80%
Aged under 18	7.07	70%
Trainee rates <sup>27</sup>	Abolished	

In 2018, the LPC<sup>28</sup> examined the impacts of increasing the minimum wage on what it termed the PRSI Step Effect for employers and recommended that any increase in the National Minimum Wage should be accompanied by an appropriate adjustment to employer's

PRSI. Without an adjustment it found that an increase of 10 cent an hour would cost the employer six times the benefit to the employee. This could act as a disincentive to hiring staff, especially in small businesses.

<sup>26</sup> To increase to €10.20 per hour from 1 January 2021.

<sup>27</sup> The trainee rates used to apply to people over the age of 18 taking part in a prescribed course of certified study or training for between three months and three years.

<sup>28</sup> Low Pay Commission, 2018, Recommendations for the National Minimum Wage.

**Table 2.4: Number Earning National Minimum Wage or Less**

	Q4 2017	Q4 2018	Q4 2019
Earning NMW or less	150,700	137,200	122,800
Of which: earning less than NMW	24,600	24,500	21,900
Percentage of all employees earning NMW or less	8.6%	7.6%	6.4%

(Source: CSO LFS National Minimum Wage Estimate Q4 2019)

Women of all ages and young people are particularly vulnerable to lower rates of pay, especially if working part-time, working unpredictable hours, on temporary contracts or in certain sectors such as retail and hospitality.<sup>29</sup> Women are over-represented in the data on the national minimum wage, because of a greater likelihood of part-time working (often linked to the need to combine work with caring) and disproportionate representation in low paid sectors such as retail,

food and hospitality.<sup>30</sup> Women on low pay may be the sole wage earners in a household, seeking part-time or flexible working, often because of caring duties, and are frequently restricted to low-level and low-paid positions.<sup>31</sup> The 2019 Labour Force Survey (fourth quarter) statistics also indicate that non-nationals are more at risk.

The CIB and others have argued for a more robust evidence-base to support understanding about the nature and shape of low pay.<sup>32</sup>

**Table 2.5: Who Earns the National Minimum Wage or Less?**

Cohort	Proportion of All Employees	Proportion of All Employees earning National Minimum Wage or Less
Female employees	50%	54% were female
Young People 15-24	12%	55% were young people
Non-nationals	18%	6% were non-nationals

(Source: Labour Force Survey Q4 2019)

29 Collins, M, 2016, Earnings and Low Pay in the Republic of Ireland, NERI, <https://www.nerinstitute.net/research/earnings-and-low-pay-republic-ireland>

30 Low Pay Commission, 2016, The preponderance of women on the National Minimum Wage, LPC No. 4 (2016).

31 Low Pay Commission, 2016, The preponderance of women on the National Minimum Wage, LPC No. 4 (2016). CIB, 2016, Consultation on the underlying reasons for the preponderance of women on minimum wage. Submission by the Citizens Information Board.

32 CIB, 2016, Consultation on the underlying reasons for the preponderance of women on minimum wage. Submission by the Citizens Information Board; Collins, M., 2016, Earnings and Low Pay in the Republic of Ireland, NERI.

Data from the Labour Force Survey indicates that in 2018 the majority (57.9%) of those earning the minimum wage or less were working part-time. Just over half (51.5%) worked for less than 30 hours a week, down from 54.1% in 2017. Another 32.7% worked between 35 and 44 hours a week, up from 31% in 2017.

Services accounted for 83.5% of all employees earning the National Minimum Wage or less.

While the majority of employees move beyond the minimum wage to higher earnings within a year, a significant minority do not and remain on it for extended periods.<sup>33</sup>

Being restricted to low level and low paid jobs does not make good use of skills. It may limit opportunities to acquire new skills through training if the person is employed in a smaller company, thus leaving people trapped in low paid jobs.

## 2.9 Migrant Workers

Ireland is now one of the most diverse populations in the EU with 14% of the population born outside Ireland. Unemployment rates for both groups are similar (although there are differences between nationalities) and around 279,000 non-nationals are working in Ireland.<sup>34</sup> The number of non-EEA nationals with work permits has increased by 43% in the past three years (see table 2.6 below).

The number of undocumented migrant adults working in Ireland is estimated at between 20,000 and 26,000.<sup>35</sup> Migrants working in the catering sector and in homes (for example as carers) are at highest risk of illegal employment.<sup>36</sup>

**Table 2.6: Trend in Non-EEA Work Permits 2016 - 2019**

	2016	2017	2018	2019
Number of new work permits	7,691	9,401	11,305	14,163
Number of renewed work permits	1,682	1,960	2,093	2,220
Total	9,373	11,361	13,398	16,383
Number of work permits refused	1,321	1,458	1,247	1,364

(Source: <https://dbei.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Statistics/>)

33 Low Pay Commission, 2018, The length of time employees spend on the National Minimum Wage, LPC.

34 McGinnity, Fahey, E., Quinn, E., Arnold, A., Maitre, B., O'Connell, P., Monitoring Report on Integration 2018, ESRI: Dublin.

35 Migrant Rights Centre Ireland, 2014, Ireland is Home: An analysis of the current situation of undocumented migrants in Ireland, MRCI: Dublin.

36 Arnold, S., Whelan, S., 2017, Illegal Employment of Non-EU Nationals in Ireland, ESRI: Dublin.

## 2.10 Atypical Work

The OECD<sup>37</sup> has noted growth in what is termed 'atypical work'. It estimates that around 60% of jobs created in the past fifteen years were non-traditional. This growth has both positive and negative impacts.

On the plus side, new job opportunities have been made available to people who might not otherwise access the labour market<sup>38</sup> and people in atypical jobs were more likely to move into a standard employment contract than those who were unemployed.<sup>39</sup>

On the downside, these types of working arrangements may not act as stepping stones to better quality and better paid employment and can thus contribute to inequality and poverty, especially for young people and women.<sup>40</sup> Web-based business models (the platform or 'gig' economy) often 'employ' people on a self-employed basis. In the wider economy, people face more frequent job changes and are at increased risk of job obsolescence.<sup>41</sup>

The OECD has expressed concerns that many people and communities are being left behind by globalisation and digitalisation and the divide is leading to new inequalities.<sup>42</sup> They refer to the potential 'hollowing out' of the middle-class due to technological evolution and the advent of more lower-quality and precarious jobs.

Precarious employment can take the form of temporary work, casual work, internships, zero hours contracts, sub-contracting and 'if and when' hours. CISs and CIPS deal on an on-going basis with people combining low income part-time or casual work with social welfare payments in order to maximise household income. Confusion by employers and employees about the rights of employees in low hours and/or casual work was evident in CIS and CIPS cases and there was a lack of clarity about employment status and protection for people on 'if and when' contracts.<sup>43</sup>

Young people can be particularly impacted as they receive a lower minimum wage than adults aged over 19. Many young people contacting CISs experience 'welfare to work' traps and difficulties meeting living costs, especially if they live independently from their parents. Young adults under the age of 30 represent 39% of all workers on the minimum wage<sup>44</sup> and a proportion of these would be on sub minima rates. One-fifth of Irish jobs are classified as low paid compared to an EU average of 17%.<sup>45</sup>

The insecurity provided by much atypical employment can have negative impacts on health<sup>46</sup>, mental health<sup>47</sup>, household finances, career opportunities, access to housing and credit, family formation and maintaining social relationships.<sup>48</sup>

37 OECD, 2015, Adapting to the changing face of work: Policies to make the most of part-time and temporary work, OECD: Paris.

38 Ibid

39 Couprie and Joutard (2017) referenced in Kelly, E., Barrett, A., 2017, Atypical Work and Ireland's Labour Market Collapse and Recovery, The Economic and Social Review Vol. 48 (4), Winter 2017, p.463-488

40 OECD, 2014, OECD Employment Outlook 2014, OECD: Paris.

41 OECD, 2019, OECD Employment Outlook 2019. The Future of Work, OECD: Paris.

42 Ibid.

43 CIB, 2016, Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish Economy. A Submission by the Citizens Information Board.

44 <http://www.lowpaycommission.ie/publications/national-minimum-wage-/recommendations-of-the-low-pay-commission-for-the-national-minimum-wage-2015-.pdf>

45 [https://www.tasc.ie/assets/files/pdf/tasc\\_cherishing\\_all\\_equally\\_web.pdf](https://www.tasc.ie/assets/files/pdf/tasc_cherishing_all_equally_web.pdf)

46 Benach, J., Vives, A., Amable, M., Vanroelen, C., Tarafa, G., Muntaner, C., 2014, Precarious Employment: Understanding an Emerging Social Determinant of Health, Annual Review of Public Health, Vol 35, p.229-253, March 2014, <https://www.annualreviews.org/doi/abs/10.1146/annurev-publhealth-032013-182500>

47 Moscone, F., Tosetti, E., Vittadini, G., 2016, The Impact of Precarious Employment on Mental Health, Social Science & Medicine, Vol 158, p.86-95, June 2016, <https://doi.org/10.1016/j.socscimed.2016.03.008>

48 Bobek, A., 2017, Social implications of precarious work. Possible consequences of atypical employment, <https://www.tasc.ie/blog/2017/03/22/social-implications-of-precarious-employment>

Unpredictable working hours impacts on stability of income, ability to get credit, access to some social welfare payments because of insufficient PRSI contributions, and difficulties accessing childcare services, most of which require fixed days/hours. Employees might also believe they will be penalised for not accepting work; they may not have an input to work scheduling; they may be sent home while on shift or they may receive insufficient notice when called for work. Their terms and conditions of employment may be poorer than other employees and often employment contracts do not reflect the reality of hours worked.

There has been a perception, particularly during the economic downturn that employment with unpredictable working hours was on the rise. Research by the University of Limerick<sup>49</sup> commissioned by the then Department of Jobs, Enterprise and Innovation into the prevalence of zero contract hours found that these were not extensive in Ireland. However, it did find that some employers favour the use of 'if and when' working arrangements. This is where, unlike zero hours contracts,<sup>50</sup> there is no contractual obligation on the part of the employer to provide work or on the employee to carry out work. As a result employment protection legislation may not apply.

The Employment (Miscellaneous Provisions) Act 2018 aims to address concerns about precarious employment, zero hours contracts and uncertain working conditions for employees in sectors requiring considerable flexibility in the employment contract, such as retail, hospitality and tourism.

## 2.11 Impact of Transformative Technologies on Work

While there are many potential benefits to emerging technologies such as 'the internet of things', blockchain and artificial intelligence, research by the OECD<sup>51</sup> into the impact of transformative technologies on jobs in the future indicated that 40% of workers with lower second level education were at high risk of losing their jobs because of automation compared with 5% of workers with a third level degree. It anticipates that 14% of existing jobs will disappear in the next 20 years and another 32% of jobs are likely to change radically as individual tasks are automated.<sup>52</sup> Overall, around half of all workers will need to significantly adapt to new working environments.

The OECD highlighted that emerging digital inequalities along age, gender and socio-economic lines will have profound implications for work and social protection and many workers may end up trapped in precarious or non-standard working arrangements with social protection lagging behind these developments. A survey it conducted in 2018 indicated that nearly three-quarters of respondents wanted their governments to do more to protect their social and economic security.<sup>53</sup>

Equipping workers with a wide range of skills will be necessary to minimise the impacts of automation and to facilitate redeployment. The OECD found that adults with good proficiency in literacy, numeracy and problem-solving in 'technology-rich' environments had better employment outcomes.<sup>54</sup>

Specific groups will require additional targeted measures such as women, young people not

49 O'Sullivan, M., Ryan, L., MacMahon, J., Lavelle, J., 2015, A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees, University of Limerick: Limerick.

50 Employees on zero hours contracts are protected under the Organisation of Working Time Act 1997.

51 OECD, 2018, Transformative Technologies and Jobs of the Future. Background report for the Canadian G7 Innovation Ministers' Meeting, Montreal Canada 27-28 March 2018, OECD: Paris.

52 OECD, 2019, The Future of Work. OECD Employment Outlook 2019. Highlights, OECD: Paris.

53 OECD, Risks that Matter Survey 2018, <http://www.oecd.org/social/risks-that-matter.htm>

54 OECD, 2016, Skills Matter: Further Results from the Survey of Adult Skills, OECD Skills Studies, OECD Publishing: Paris, <http://dx.doi.org/10.1787/9789264258051-en>

in education, employment or training (NEETs), indigenous people and ethnic minorities, the long-term unemployed and unemployed young people.

Non-standard work is a growing phenomenon that is expected to gather pace. Around one in seven workers are currently self-employed and one in nine are on temporary contracts.<sup>55</sup> Workforces are also ageing and by 2050, 53% of people of working age will be aged over 65, nearly double the proportion for 2015.<sup>56</sup>

The growth of atypical employment is expected to challenge traditional forms of social protection and there are risks in extending social protection to non-standard employment. The OECD<sup>57</sup> named these as 'regulatory arbitrage' (whereby workers are deliberately misclassified); coverage amongst intended target groups that is low; adverse selection; unaffordability for contributors, and high administration costs. It argued for the development of a person centred adaptation agenda to address the inevitable structural shifts required of workers, businesses and governments in the coming years. Key areas of support will include helping people to make transitions;<sup>58</sup> continuous up-skilling and re-training; reshaping social protection systems; collective bargaining and social dialogue, and refocusing on people and their well-being.<sup>59</sup>

## 2.12 Remote Working

Remote working has the potential to increase labour force participation, for example for people with disabilities, women and older people, by providing flexible working solutions.<sup>60</sup> It includes working from home and working from hubs in the community that are close to employees' homes. A pilot survey carried out by the Central Statistics Office in 2018 found that 18 per cent of respondents worked from home for a

number of days each week. A 2019 survey by the Department of Business, Enterprise and Innovation found that 49 per cent of 1,720 respondents had experience of working remotely. The Covid-19 pandemic has significantly increased remote working as government control measures include advice to work from home where possible.

As more people experience working from home various pros and cons have been highlighted. Positives include reduced commuting times, better work-life balance, greater flexibility, increased productivity, access to wider pool of talent, employee retention and reduced costs for both employers and employees. Challenges include structural issues around accessible and adequate broadband coverage, access to equipment, space within homes to effectively work remotely, difficulties for some in managing time and being able to disconnect from work, mental health impacts such as anxiety or feelings of isolation and additional stress of managing relationships when household members are in close contact over extended periods of time.

The EU Directive on Work-Life Balance came into force in 2019 and must be enacted within three years. It gives employees the right to request flexible and remote working arrangements. For many who have experienced the benefits of these arrangements during the pandemic, remote and flexible working will be a preference for how they work longer-term. It is vital that poor workplace environments, where they exist, are not replaced by poor remote working environments, whether in the home or other remote locations. Guidance for employers and employees will be necessary as well as the provision of other remote alternatives to home working such as co-working spaces and community hubs.

55 OECD, 2019.

56 Ibid.

57 OECD, 2018.

58 Including transitioning to the mass remote working experience brought on by Covid-19.

59 OECD, 2019.

60 Department of Business, Enterprise and Innovation, 2019, Remote Work in Ireland. Future Jobs 2019, Government of Ireland.

## 3. Employment Rights Query Trends

### 3.1 Queries

From 2016 - 2018, queries to CISs about employment related issues have been between 71,000 and 72,000 per annum, representing 7% of all queries.

In 2018, there were 44,582 employment rights and conditions queries<sup>61</sup> (63% of the employment-related category). Other employment related queries included 7,181 (10%) associated with unemployment and redundancy and 5,276 (7%) connected to self-employment. See Figure 3.1 below for a breakdown of the main employment related queries.

Other employment related queries included enforcement and redress, starting work

and changing jobs, part-time employment, grievance and disciplinary procedures, employment schemes and internships and employment and disability.

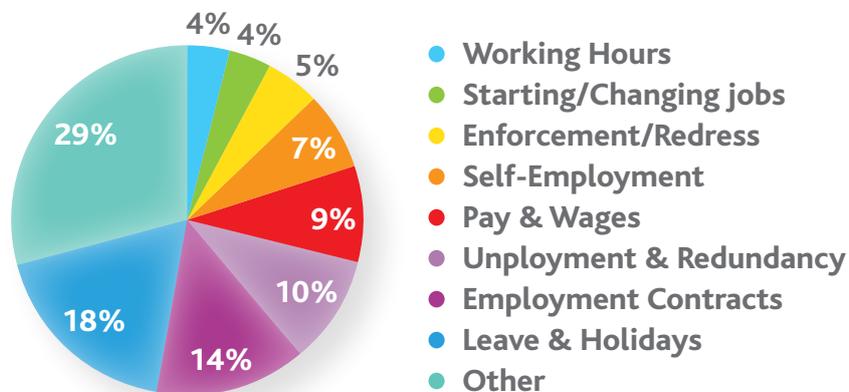
Queries about employment rights and conditions included issues about leave and holidays (18% of queries), contracts of employment (14%), unemployment and redundancy (10%), pay (9%), self-employment (7%), enforcement and redress (5%), starting and changing jobs (4%) and hours of work (4%). These areas tend to be the main subjects of social policy returns (SPRs) i.e. indicative cases. There are also a significant number of SPRs covering unemployment and redundancy and unfair dismissal.

**Table 3.1: Trend in CIS Employment Related Queries 2016 - 2018**

	2016	2017	2018
Employment related queries	71,463	72,508	71,380
Total number of queries	1,013,046	1,039,133	1,017,369
Employment related as a percentage of all queries	7%	7%	7%

61 This includes the sub-categories of contracts of employment, Garda vetting, health and safety, hours of work, leave and holidays, pay / wages, and 'other'.

**Figure 3.1: Main CIS Employment Rights Queries, 2018<sup>62</sup>**



By contrast, queries to the WRC’s information unit in 2018 were dominated by employment permits (38% of all queries).

Other employment rights queries were similar to those addressed by the CISs with the main exception of self-employment.

**Table 3.2: Main WRC Employment Queries 2018<sup>63</sup>**

	Queries to WRC <sup>64</sup>
Employment permits	38%
Working hours	12%
Complaint enquiries	12%
Terms of employment	10%
Redundancy	7%
Unfair dismissals	6%
Other specific conditions	3%
Maternity	2%
Minimum notice	2%

(Source: Workplace Relations Commission Annual Report 2018)

62 Total queries were 71,380.

63 Based on 57,348 calls answered and 2.7m web site visits.

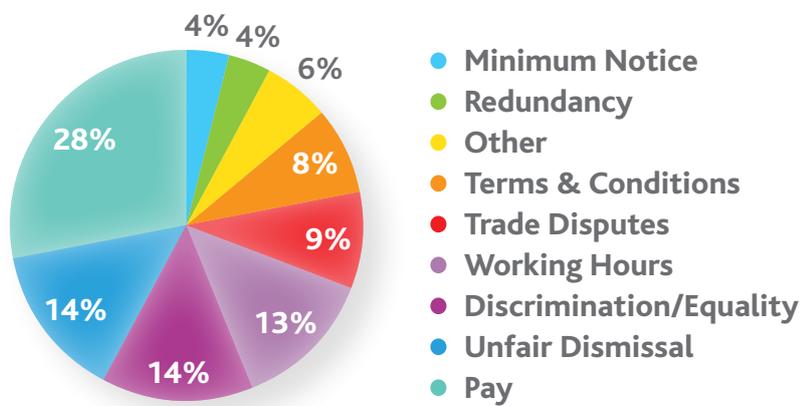
64 From employers and employees.

Pay, HR/IR and organisation structures accounted for 89% of the issues addressed by the WRC Conciliation Service. Other areas involved redundancy (4%), holidays and leave (4%) and pensions (3%).

In 2018, there were 7,724 applications of complaint made to the WRC. These

applications contained a total of 15,451 specific complaints, meaning there were multiple complaints in each application - an average of two per employer. Pay once more dominated (28%), followed by unfair dismissals (14%), discrimination/equality (14%) and hours of work (13%).

**Figure 3.2: Specific Complaints to the WRC 2018<sup>65</sup>**



(Source: Workplace Relations Commission Annual Report, 2018)



65 Total = 15,451

### 3.2 Advocacy

As well as information and advice, CISs also provide advocacy support on both a short-term and long-term basis. Short-term advocacy may include one or two actions on behalf of a client, such as writing a letter or making a telephone call. Around 10% of this type of advocacy relates to employment rights. Some cases may require longer term or in-depth advocacy involving specialist support. These long-term

cases can take many hours and can last for a number of months, and in some cases, years.

In the period under review, while the number of employment cases requiring short-term advocacy declined, the number requiring more specialist advocacy support has grown. In 2018, the number of on-going advocacy cases recorded on the electronic case management system (ECMS) was 524.

**Table 3.3: Trend in Employment Related Advocacy Cases, 2016 - 2018**

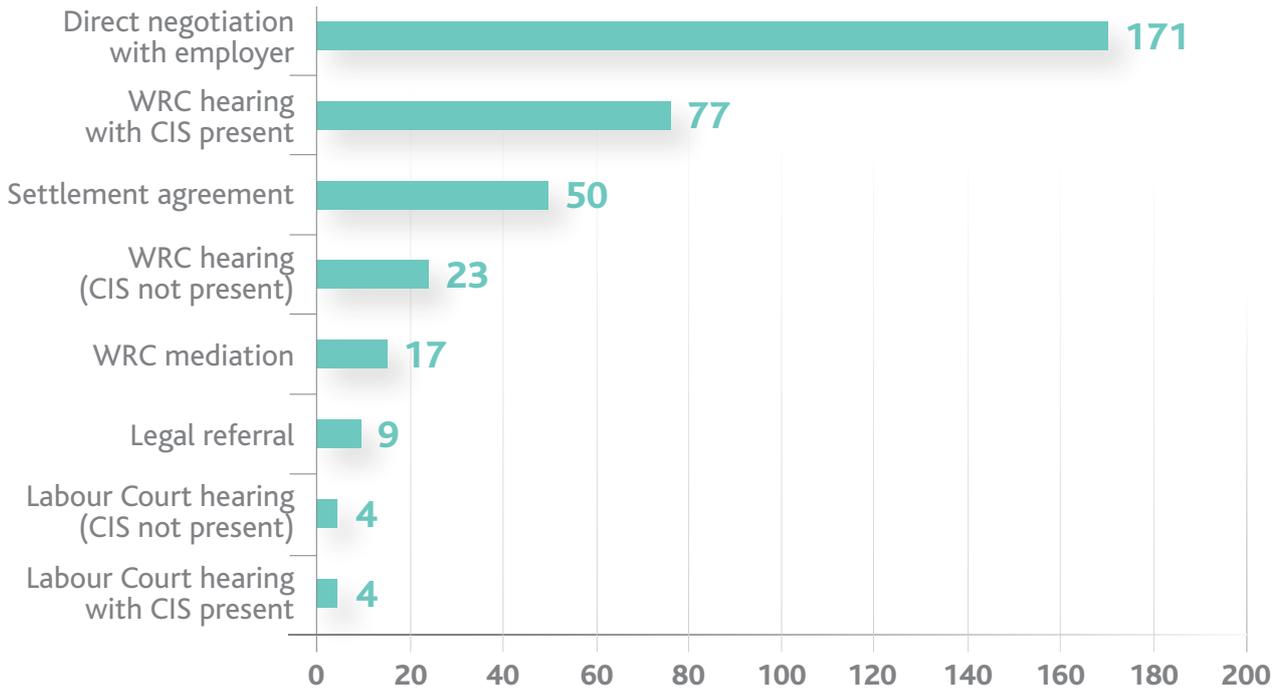
	2016	2017	2018
Total once-off advocacy queries	10,091	9,907	8,360
Once-off employment advocacy queries	1,014	997	928
Employment as a percentage of once-off advocacy queries	10%	10%	11%
Total long-term advocacy cases	2,366	2,692	2,638
On-going advocacy cases associated with employment rights	449	467	524
On-going employment advocacy cases open as a percentage of all cases open on the ECMS	19%	17%	20%



In 2018, the main advocacy interventions were assisting the client with direct negotiations with their employer (54% of all cases) and supporting clients with WRC hearings or

mediation (37%). The majority of WRC hearings involved the CIS being present to act on behalf of the client.

**Figure: 3.3: CIS Long Term Advocacy Interventions, 2018**



A considerable amount of the advocates' time is given to direct negotiations with employers on behalf of clients. This often provides a quick, manageable, local resolution with good outcomes for the clients.

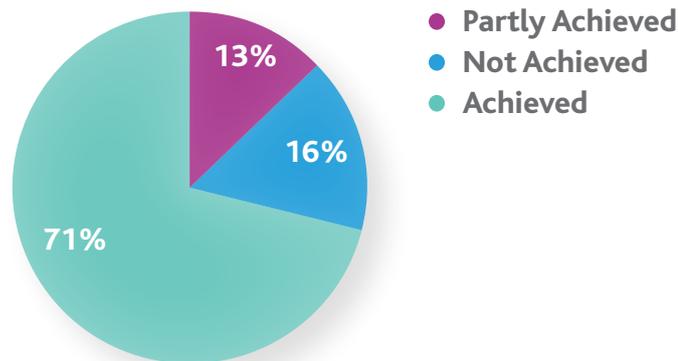
*'We find it better to negotiate a settlement with employers or employers' representatives. Often they will engage as they do not wish to have an audit'. [Kerry CIS]*

However it means that the cases involved are not brought forward for adjudication by the WRC and are thus not visible to regulators.

CIS advocates agree an Advocacy Plan with the client which outlines the desired outcomes. In 2018, 71% of these employment case outcomes were achieved and a further 13% were achieved in part.

Supporting clients to make applications to the WRC, the Social Insurance Fund, or negotiating directly on their behalf with employers, yielded awards of over €1 million for clients as a result of advocacy interventions made from January 2018 to August 2019.

**Figure 3.4: Achievement of Agreed Advocacy Plan Outcomes, 2018**



### 3.3 Social Policy Returns

Employment rights account for 3% of all SPRs over the past three years. The number of employment rights SPRs grew by 21% between 2016 and 2018. Some of the issues in these SPRs are dealt with in more detail in the next chapter.

### 3.4 Main Issues

The main issues to emerge from SPRs and advocacy cases in the last three years can be grouped into three categories as follows:

#### Group 1: Terms of Employment

- Contracts of employment.
- Leave.
- Hours of work.
- Pay and wages.
- False self-employment.
- Grievance and disciplinary matters.

#### Group 2: Leaving Work and Changing Jobs

- Unemployment and redundancy.
- Unfair dismissal.
- Starting and changing jobs.

#### Group 3: Enforcement and Redress

- Seeking redress.
- Accessing redress mechanisms.
- Enforcement of legislation.
- Equality matters.
- Rights for asylum seekers, immigrants and migrants.
- Health and safety at work.

The next section explores these issues in more depth.

Covid-19 has highlighted structural inequalities in Irish society including those related to employment. Those impacted the most have been the most disadvantaged and include people in insecure and/or low paying jobs, especially young people, women and economic migrants.

**Table 3.4: Trend in Employment Related SPRs, 2016 - 2018**

	2016	2017	2018
Employment related CIS SPRs <sup>66</sup>	121	150	144
Total number of CIS SPRs	3,729	4,579	4,910
Percentage of all CIS SPRs	3%	3%	3%

<sup>66</sup> In addition there were some employment related SPRs from CIPS over this period. 1%, 2% and 1% of the CIPS SPRs for these years respectively.

## 4. Employment Rights Issues

### 4.1 Terms of Employment

The Organisation of Working Time Act, 1997 sets out minimum entitlements for most employees<sup>67</sup> for working hours, annual leave, night work, breaks and rest periods. The average working week cannot exceed 48 hours.

Under the Terms of Employment (Information) Acts 1994-2014 employers must provide employees with a written statement of terms and conditions of employment within two months of commencement of employment. The Employment (Miscellaneous Provisions) Act 2018 amended the Act to provide for a written statement of basic terms to employees within five days of commencing work. An unintended consequence of this Act could be to deter employers hiring people for short periods of casual work, such as young people in summer time.

Under the Protection of Employees (Temporary Agency Work) Act, 2012 temporary agency workers have the right to equal treatment in basic working and employment conditions such as pay, working time, rest periods, night work, annual leave and public holidays. The Protection of Employees (Part-Time Work) Act, 2001 prohibits less favourable treatment of a part-time employee than a comparable full-time employee, unless it is justified on objective grounds such as pension entitlements.

The Employment (Miscellaneous Provisions) Act, 2018 was introduced mainly to address precarious employment, zero hours contracts and uncertain working conditions for employees in sectors requiring considerable flexibility in the employment contract, such as retail, hospitality and tourism.

The Act prohibits bogus self-employment and zero hours contracts other than genuine casual employment and where zero hours contracts are essential for the business in the short term or in emergency situations. Employees now have a statutory entitlement to a banded hours contract when their contracted working hours over the previous 12 months do not reflect actual working hours. There are eight different bands and once an employee is placed on a particular band they are entitled to work an average of these hours for the following 12 months. Employees who are not called into work in any given week will be entitled to a new minimum payment equivalent to 25% of their weekly contracted hours. Employees given a series of fixed contracts will accumulate continuous service for the purpose of protection under various employment law statutes.

67 The Act does not apply to transport workers, workers at sea, Gardaí, Defence Forces, trainee doctors, certain categories of civil protection services, employees who control their own working hours and family employees on farms or in private homes.

### 4.1.1 Contracts of Employment

Queries made by the public to CISs about contracts of employment grew by 3% from 2016 to 2018.

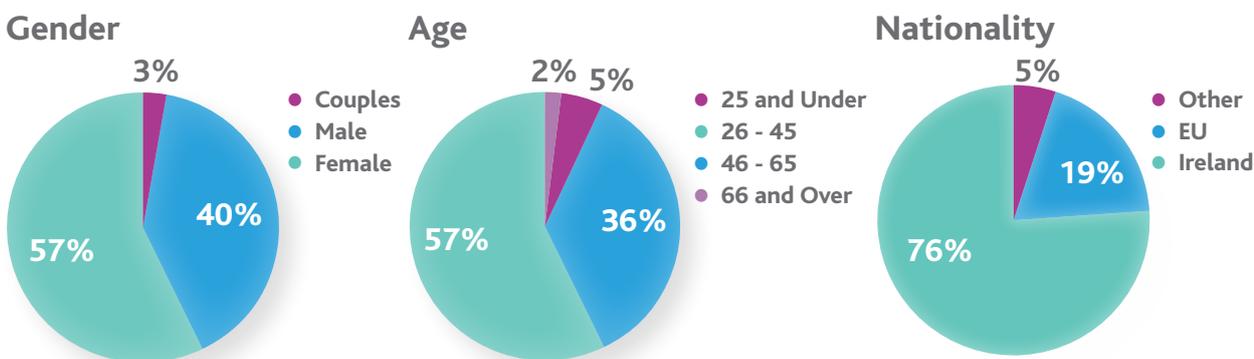
Under the Employment (Miscellaneous Provisions) Act, 2018 employers must give a written statement of five terms of employment within five days of a person starting employment.<sup>68</sup>

Based on a random sample of 260 clients with employment contract queries in 2018 (9,915), three out of every five were female (women coming in alone or as a couple). Fifty-seven per cent were aged 26 to 45 and another 36% were aged between 46 to 65 years. Young people and older people represented 7% of the queries. Three-quarters were Irish and 19% were from the EU. A significant majority of these (80%) were from East European countries, notably Poland.

**Table 4.1: Queries on Contracts of Employment, 2016 - 2018**

	2016	2017	2018
Queries about contracts of employment	9,615	9,974	9,915

**Figure 4.1: Gender, Age, and Nationality of Clients with Employment Contract Queries (n=260)**



68 Full name of the employer and employee, the employer’s address, expected duration of the employment contract, method of calculating the rate of pay and expected normal working day and week.

Prior to the 2018 Act employers were not obliged to provide a contract of employment for up to eight weeks and during 2018 CISs continued to work with clients who had not received adequate contracts. Some examples include:

- A client employed with the same company since December 2016 never received a contract of employment despite many requests.
- A client had no contract of employment, worked extra hours but was not paid for them and was taken off the payroll without written notice.
- A client who worked part-time for 20 years with the same organisation had never been issued a contract of employment and had not been awarded annual leave or public holidays.
- A client was informed verbally that their existing contract would end in five days. They were offered an alternative job option but it was unsuitable and did not have comparable terms and conditions to the existing job.

*'Employees of sole traders/small enterprises frequently do not receive contracts of employment. [The] general consensus [is] that many employers do not know or understand the parameters of the employment legislation within which they should operate. [There is] a lack of information and knowledge among*

*employees and employers around entitlements and calculation of entitlements'* [North Connacht and Ulster CIS].

When a business<sup>69</sup> is transferred to a new employer, the rights of employees are covered by TUPE.<sup>70</sup> Its purpose is to preserve employment terms and conditions (pension entitlements are excluded). Employees cannot be dismissed solely on grounds of the transfer. However, CIS cases in 2018 indicated that breaches continue and because share transfers are not covered workers can be vulnerable. For example:

- A client's terms and conditions changed and he was issued with a new contract as a result of a transfer.
- A client granted two weeks leave to deal with a family emergency returned to find the company had been sold in the meantime and all employees had transferred to the new employer. However, the client was informed he would only be paid one week of leave instead of two because he took the two weeks together and extra hours he worked were also not paid.

There were instances of terms and conditions being changed because of care leave. For example:

- A client who worked part-time and who took carer's leave was issued a P45 but while a copy was sent to Revenue she did not receive a copy. On returning to work after her leave, her employer issued her with a new contract with this new start date, despite the client having worked for 26 years for the company.

69 TUPE covers transfers of a business or undertaking or part thereof, other than those by way of a share transfer.

70 European Communities (Protection of Employees on Transfer of Undertaking) Regulations, 1980-2003.

### 4.1.2 Leave

Queries made by the public to CISs about leave and holidays grew by 8% from 2016 to 2018.

There are various types of leave and payment for leave is a complicated area. In general, there is no entitlement under law to be paid while on sick leave. The Organisation of Working Time Act 1997 provides for paid public holidays and basic annual leave entitlement of four weeks. Contracts of employment may give greater rights. Calculations to entitlements for part-time employees are generally based on the 8% method for annual leave<sup>71</sup> and they must have worked a specified number of weeks prior to a

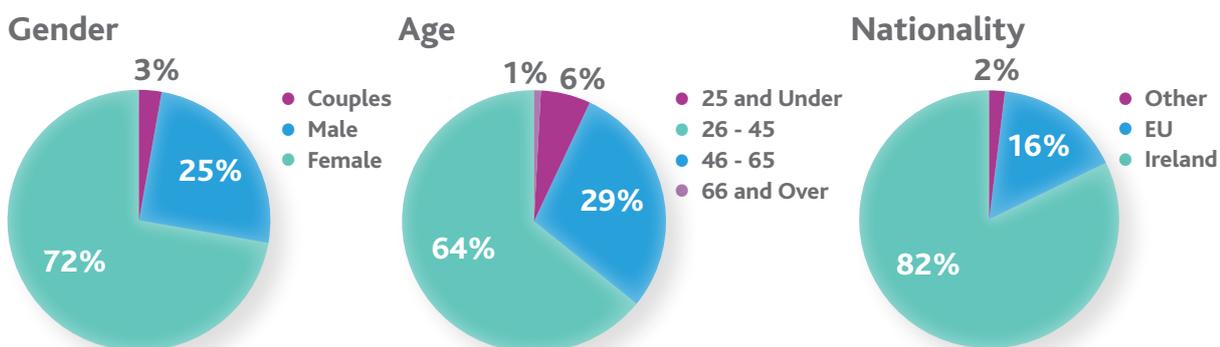
public holiday to receive pay for such a holiday. Other Acts cover maternity leave, parental leave, paternity leave, adoptive leave, force majeure and carer’s leave.

Based on a random sample of 250 clients with queries about leave and holidays in 2018 (12,515), women were much more impacted by these issues than men. Younger people aged 45 and under were also more impacted than older age cohorts. The vast majority were also Irish and 83% of EU nationals impacted were from Eastern European countries such as Poland, Latvia, Lithuania and Croatia.

**Table 4.2: Queries about Leave and Holidays**

	2016	2017	2018
Queries about leave and holidays	11,587	12,248	12,515

**Figure 4.2: Gender, Age, and Nationality of Clients with Leave and Holiday Queries (n=250)**



71 Calculated based on 8% of hours worked in the leave year.

Non receipt of **annual leave** and paid **public holiday** entitlements were common complaints made to the CISs. For example:

- A client who left his job due to unsatisfactory working conditions sought help from the CIS to negotiate with his former employer for outstanding annual leave entitlements which amounted to €800.
- A client never received any annual leave.
- An employer insisted that employees take annual leave to undertake work-related training.

In addition, CISs report cases where clients have been informed by their employer that their hourly rate is going to be reduced because the contracted amount includes a sum for their annual leave. This is despite a 2006 ruling from the European Court of Justice that found it was illegal to roll-up an employee’s entitlement to paid annual leave into their existing wage. CISs encountered clients who on return to work

from long-term sick leave had their hours, roles and work patterns changed.

Interpretation of the law in respect of **part-time employees** was also an issue in a small number of cases. For example:

- A client who worked part-time took annual leave in the weeks prior to a public holiday. The employer did not pay for the public holiday as they claimed the requirement for 40 hours worked in the five weeks prior to the public holiday was not met.

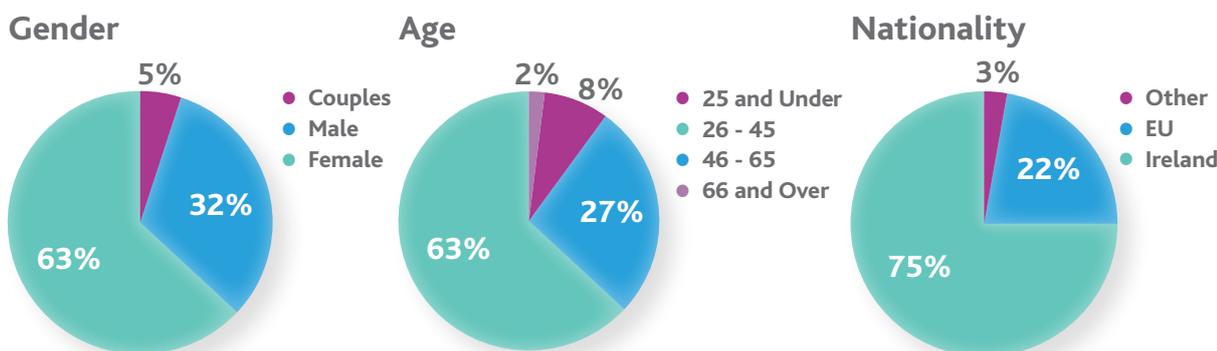
### 4.1.3 Hours of Work

Queries to CISs about hours of work have held steady in recent years. A random sample of 63 cases from 2018 (2,600) shows that two out of every three were female and aged 45 or under. Hours of work was a notable issue for young people along with pay (see below). Three-quarters were Irish and a number of other nationalities were affected, mainly from across the EU.

**Table 4.3: Queries about Hours of Work**

	2016	2017	2018
Queries about hours of work	2,581	2,653	2,600

**Figure 4.3: Gender, Age, and Nationality of Clients with Hours of Work Queries (n=63)**



Under the Organisation of Working Time Act 1997 average working hours per week is 48 hours. Examples of **averaging** being manipulated were given, particularly to satisfy the conditions of the Working Family Payment.

An example of manipulation is:

- A client working at heavy manual labour was supposed to be doing eight hours a day and overtime as required but in fact was working 15 hours a day including Saturday. The client was aware of the 48 hour averaging rule but the averaging was taking place over a longer period of time. The client also felt he should only have to do overtime on certain specified occasions and not every day.

There is no entitlement in law to **flexible working** as there is in the UK and some other EU member states and employees have to negotiate with employers for such arrangements. Flexible working arrangements can be important for some workers, especially those with caring responsibilities. For example:

- A client who was a lone parent sought assistance from the CIS to help her negotiate with her employer for childcare friendly working hours. She had tried unsuccessfully herself and was considering giving up work.

#### 4.1.4 Pay and Wages

Queries to CISs about pay and wages grew by 6% from 2016 to 2018.

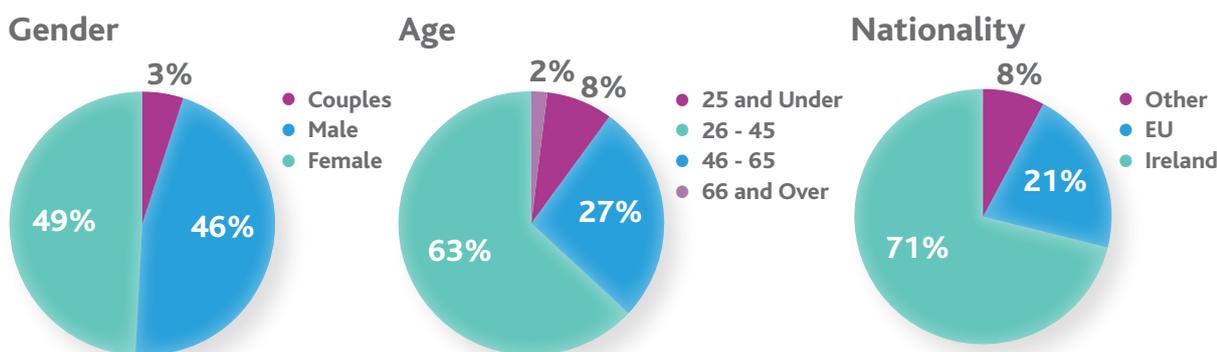
The Payment of Wages Act 1991 covers methods of payment, allowable deductions and employee information in relation to wages.

A random sample of 144 clients from 2018 (6,358) indicated a fairly even split between men and women with pay and wage queries. Most were aged between 26 to 45 years but young people aged 25 years or under featured comparatively strongly, reflecting issues around the National Minimum Wage. The majority of clients were Irish but 29% were from other countries, notably Poland, Romania and other Eastern European countries such as Latvia, Croatia, Lithuania and Slovakia.

**Table 4.4: Queries about Pay and Wages**

	2016	2017	2018
Queries about pay and wages	5,991	5,984	6,358

**Figure 4.4: Gender, Age, and Nationality of Clients with Pay and Wages Queries (n=144)**



Recovery of wages as a result of complaints made to the WRC has grown significantly in the past three years (see Figure 4.5 below), from €1.5m in 2016 to €3.1m in 2018.

CISs also dealt with numerous cases of clients that had **unpaid wages**. Clients were assisted by CISs to negotiate with their employers. However, if the employer did not pay, the process of making a complaint to the **WRC** can be viewed as long and cumbersome, especially if relatively small sums are involved, and often employees went without redress:

- A client had a legal dispute with his employer and lost his case. He owed legal costs to the employer who deducted them from his wages leaving the employee with no earnings. This was possibly an unfair deduction under the Act and he could have sought redress for restoration of pay through the WRC but at the time the period for accessing hearings was four to six months. The client had insufficient funds to pursue a High Court injunction and was in serious financial difficulty.

- A part-time cleaner left her job and did not receive wages for the last week in December and the month of January. She was aware of her right to bring a claim to the WRC but knew the process would take a long time and did not do so.

There were instances of employers refusing to pay outstanding wages and indicating their willingness to go to the **Labour Court** to deter employees from pursuing claims. For example:

- Many employees in a non-unionised place of employment were foreign nationals and not aware of their employment rights. One left and was owed three weeks wages and annual leave. He also had not received any payslips. When he pursued this with the employer, the employer indicated that he would go to the Labour Court. The client was supported by the CIS to make a complaint to the WRC but an early resolution was not offered. The employer only paid the outstanding wages and provided payslips when the WRC hearing was imminent and an investigation was initiated by the Data Protection Commissioner.

**Figure 4.5: Recovery of Unpaid Wages by WRC, 2016 - 2018**



(Source: Workplace Relations Commission Annual Report, 2018)

People also came to the CISs for help because they had not received [payslips, P45s or P60s](#). Not having up to date payslips, a P45 or P60<sup>72</sup> can result in difficulty accessing social welfare entitlements and delays in receipt of payments. For example:

- A client on reduced wages was unable to access Supplementary Welfare Allowance or the Exceptional Needs Payment. His wife's Jobseeker's Allowance was not increased appropriately because, through no fault of his own, he could not supply payslips and a P60.

Clients also presented to the CISs because they were receiving less than the [National Minimum Wage](#). Some employers also appear to be unaware of changes to the sub-minimum rate and continue to apply the old system of sub-minima wage payments based on age and training allowances. Others are not automatically changing the rate when a genuine sub-minimum wage employee reaches the age they are entitled to the full National Minimum Wage.

*'People getting less than the minimum wage would be a common occurrence across many industries and would be one of the highest applications presented to the WRC.'* [South Leinster CIS].

#### 4.1.5 False Self-Employment

Total queries to CISs about self-employment declined by 7% from 5,686 in 2016 to 5,276 in 2018.

Bogus or false self-employment has been an on-going issue in Ireland in the construction sector, but it has also emerged as a wider issue, not just in Ireland but internationally. The growth of the gig or platform (web-based) economy, along with non-standard employment, has resulted in blurring

between traditionally defined employees and independent contractors.

The European Commission noted that in 2016 one-quarter of all employment contracts were for non-standard forms of employment and over the previous ten years nearly half of all new jobs were atypical.<sup>73</sup>

Some countries, such as the UK, have introduced new employment categories to address these developments and to provide limited labour protection.

The Irish Industrial Relations (Amendment) Act of 2015 introduced Sectoral Employment Orders (SEOs) to provide mandatory terms and conditions for particular sectors including construction, which took effect in 2017.

In Ireland there is no statutory definition of employment and determination of such is left to the courts or the Scope section within the DEASP. There are also inconsistencies between different Acts in how 'employees' are defined.<sup>74</sup> In 2018, the DEASP undertook a public awareness campaign about its right to decide whether a person is an employee or self-employed where such a question arises. Its main guidance summarises the distinctions between employee and self-employed as follows, but continues to fall along traditional lines (see Appendix B).

The distinction between employee and self-employed is important because of its impact on statutory protections and access to social welfare entitlements. For example, employees have protections in respect of minimum wages, receipt of payslips, rest breaks, public holidays, annual leave and against unfair dismissal. In company law, employees have certain rights if a company becomes insolvent. A person who thinks they are an employee can bring an

72 Process has moved online and P45s/P60s abolished as part of the tax modernisation programme.

73 European Commission explanatory memorandum on a proposed new directive on predictable and transparent working conditions referenced by Professor Michael Doherty in his contribution to the debate of the Joint Committee on Employment Affairs and Social Protection 14th February 2019, [www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2019-02-14/3/](http://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2019-02-14/3/)

74 Professor Doherty highlighted the wider definition as set out in national minimum wage legislation compared with unfair dismissals legislation.

employment rights or equality complaint to the WRC. People who are in false self-employment cannot engage in collective bargaining as independent undertakings coming together to mutually agree terms as this contravenes competition law.

Examples of the issues raised by CIS clients include:

- A client employed as a childminder was being encouraged by her employer to become self-employed. The employer argued it would be more advantageous for the client but she felt it was because the employer did not want to pay annual leave or public holidays, which the client had already had difficulty securing. The client was unsure of the full implications of becoming self-employed.
- An employer had the client down as a sub-contractor when they were clearly an employee. Tax had been deducted but not PRSI or USC and no payments had been made to the Revenue. The client was owed two weeks' pay and was having difficulty securing it.
- A client was offered a job but the employer stated the client must register as self-employed even though the client was using

the employer's premises and equipment.

*'The CIS has increased queries from clients who have been told that if they want the job they must become self-employed. Employers are forcing people to become "self-employed contractors" which enables the employer to avoid adhering to employment legislation and also saves the employer PRSI contributions.'*  
[South Leinster CIS]

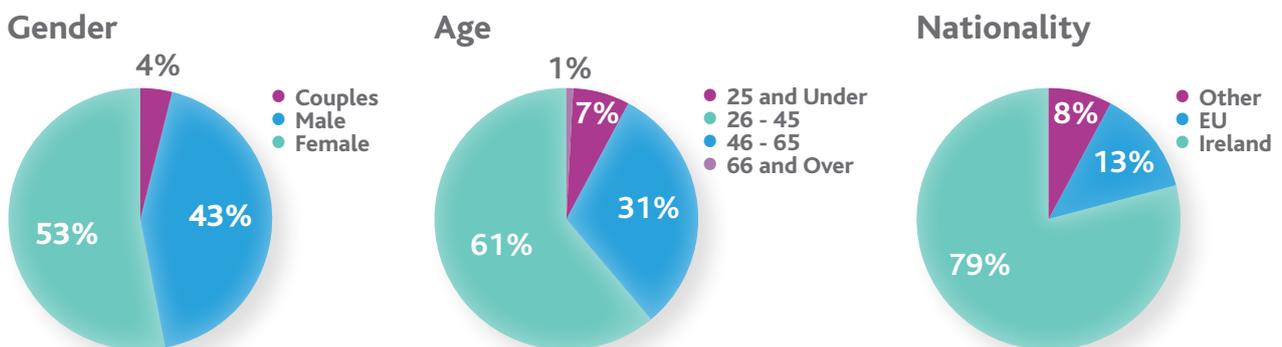
#### 4.1.6 Grievance and Disciplinary Matters

Queries to CISs about grievance and disciplinary matters were introduced as a separate category in 2018. In 2018 there were 1,198 such queries.

The Industrial Relations Act 1990 Code of Practice on Grievance and Disciplinary Procedures (Declaration) Order 2000 (SI No. 146 2000) sets out the general principles for grievance and disciplinary procedures in the work place.

A random sample of 100 clients from 2018 shows that more women than men were impacted. Around three-quarters of clients were aged 45 or under. The majority were Irish and most of the EU nationals were from East European countries.

**Figure 4.6: Gender, Age, and Nationality of Clients with Grievance and Disciplinary Queries (n=100)**



SPRs on this issue included examples of people who had been suspended from work without any verbal or written warning or due process. In some instances, these clients did not have contracts or terms of employment. Clients had not been given staff handbooks or copies of disciplinary or grievance procedures. In some cases, clients who were subject to disciplinary hearings did not receive prior notice or an opportunity to seek information or representation.

**Box 4.1: Advocacy Case Example**

A client had no contract of employment and had not received a staff handbook and was not aware of any company policy on disciplinary procedures. The client received a disciplinary notice citing negligence and falsification of documents. The CIS supported the client and attended the disciplinary meeting which was conducted by the company’s HR firm.

The decision was dismissal which the client appealed with the CIS’s support. The client acknowledged she had made an error but disputed the other claims made by the employer. Other employees had made similar errors in the past and were retained without any sanctions. The client found a new job and decided to resign and not pursue the matter further.

**4.2 Leaving Work and Changing Jobs**

As the economy improved, queries to CISs about starting work, changing jobs, unemployment and redundancy declined in recent years.

Under the Protection of Employees (Fixed Term) Work Act, 2003 the termination of a fixed term contract is defined by objective conditions such as reaching a specified date, completing specified tasks or the occurrence of a specific event. The Redundancy Payments Acts 1967-2014 provide a minimum entitlement to a redundancy payment for employees who have a set period of service with the employer.

**Table 4.5: Queries about Leaving Work and Changing Jobs**

	2016	2017	2018
Queries about starting work, changing jobs, unemployment and redundancy	12,223	11,385	10,371

### 4.2.1 Unemployment and Redundancy

This is the largest category giving rise to Social Policy Returns (SPRs) and also the largest category of long-term employment related advocacy cases, particularly in instances of companies going out of business.

Many clients came to the CISs because employers did not issue them with P45s on leaving employment or there were delays in P45s being issued.<sup>75</sup> For example:

A client finished work 12 months previously and still had not received his P45. This was impacting his entitlement to Rent Supplement and Disability Allowance.

A client was not paid for the last two weeks worked before leaving his job and he disputed this deduction. He received no P45 or his last P60 despite having given valid notice. He had a new job but could not start because his new employer was requesting the P45.

In some cases, P45s had been filed by the employer with Revenue but the employee had not been given a copy and Revenue told the clients they could not supply a copy. Revenue can only supply year-to-date pay and tax details. The Data Protection timeframes available to the employer to respond to notifications is also quite generous (40 days initially with potential for a further 14 days) and can impact on the employee's ability to have relevant information/documentation to hand for a WRC hearing.

#### Box 4.2: Advocacy Case Example

A client resigned from work because of poor working conditions. She was owed wages and annual leave. The employer also refused to supply a P45 on both the client's and CIS's initial request and indicated that they would go to the Labour Court. The CIS intervened with a Data Protection request, complaint to the WRC, and complaint to the Data Protection Commissioner. The employer paid the outstanding wages and annual leave amounting to €1,359, issued the P45 and payslips to reflect the outstanding wages four months after the employee had left. This resulted in emergency tax being deducted by her new employer. The CIS then assisted her to seek a refund of this tax from Revenue.

Revenue can issue a warning and a fine to employers who do not provide P45s but based on CIS cases this does not appear to happen in many instances.

The Redundancy and Insolvency section within the DEASP is responsible for administering the Redundancy and Insolvency Payment Scheme which is paid from the Social Insurance Fund (SIF). A number of administrative issues were highlighted by CISs mainly in relation to difficulties communicating with the section by telephone or in correspondence.

<sup>75</sup> P45s were replaced in 2019 with an online system.

Some clients did not receive [minimum notice](#) of redundancy and others did not receive [redundancy payments](#) either in a timely manner or at all. When an employer refuses to pay redundancy or there is a dispute about redundancy, a claim can be brought to the WRC using an online complaint form. A challenge for some clients was accessing the [P50 form online](#) to claim a tax refund on becoming unemployed or applying for redundancy from the Social Insurance Fund, in cases, where employers were unable to pay redundancy. Issues raised in CIS cases included:

- The length of time it can take to process WRC applications.
- Employers not completing P50s to certify redundancy to enable the client claim from the SIF. Employers unable to pay redundancy must sign the P50, submit a letter from an accountant or solicitor stating they cannot pay and provide audited accounts as evidence.
- Delays by liquidators or receivers in sending in P50s in instances when companies went into liquidation.
- The Protection of Employees (Employers' Insolvency) Act 1984 implemented Council Directive 80/987/EC requiring member states to make a fund available to employees to claim debts owed from employment. In Ireland this is the SIF. However, the directive was not transposed correctly<sup>76</sup> and employees of companies who go insolvent cannot informally apply to the SIF for compensation for owed wages, annual leave or public holiday pay.

#### 4.2.2 Unfair Dismissals

Under the Unfair Dismissals Acts 1997-2015, all dismissals are presumed to be unfair and the employer must show fair grounds for dismissal. Unfair dismissal results when a contract of employment is terminated with or without notice or the employee terminates the contract of employment because of the conduct of the employer (constructive dismissal).

However, employees on probation or undergoing training are not covered by unfair dismissals provisions. Employees must normally have worked continuously for at least 12 months to bring a claim for unfair dismissal. The majority of CIS SPRs and advocacy unfair dismissal cases related to this last point. Many examples were given of employees [working for less than 12 months](#) who were let go without any explanation. For example:

- A client who was employed for eight months was dismissed from work. The client was not aware of any issues regarding their job performance and had not been the subject of any disciplinary procedure.
- A client was dismissed two weeks before the first 12 months of employment were up without any explanation. There were no reported issues of misconduct and no disciplinary procedures.

In theory, employees working for less than 12 months who are dismissed could bring a civil case but in most circumstances this is impractical for low income workers.

76 Court of appeal case Glegola v. Minister of Social Protection, 2014

Employees who went on [sick leave](#) and who were employed for less than 12 months appeared to have been penalised:

- A client who was employed for seven months was on certified sick leave and on her return to work she was dismissed without any reason.

There were other examples of clients dismissed after returning from sick leave. An example of a protracted advocacy case is as follows:

#### Box 4.3: Advocacy Case Example

A client had no terms and conditions of employment or annual leave and was penalised by his employer through reduced hours or threats of dismissal whenever the client raised the issue. As a result, no complaint was made to the WRC and the client could not afford a solicitor. He also had poor English language proficiency. Before 12 months had expired he was dismissed. The CIS helped him to write to the employer seeking outstanding pay, annual leave and compensation for Sunday work, and in making a complaint to the WRC. He was represented by the CIS at a joint hearing with another employee. Some of the entitlement went beyond the six month statute of limitations and the CIS successfully argued for an extension of 12 months because of unfair power dynamics, the language barrier and lack of knowledge by the client. All outstanding entitlements were awarded along with compensation for breaches of the Organisation of Working Time Act, 1997.

Awards continue to be made to women dismissed after returning from maternity leave or because of pregnancy. See Section 4.3.4 Equality Matters below, for examples of the issues arising for CIS clients. In 2018 the WRC

awarded a woman €15,000 after she was dismissed because she was pregnant<sup>77</sup> and in 2019, a hotel employee was awarded €35,384 after losing her job while on maternity leave.<sup>78</sup>

#### 4.2.3 Starting Work and Changing Jobs

Prior to January 2019, employees who lost their job were entitled to receive a P45. Under the Revenue's [PAYE modernisation programme](#), P45s have been abolished and replaced with an online system. When a person leaves a job, the employer will enter the leaving date and details of final pay and deductions on this online system. To access these details, the employee must now go through Revenue's myAccount. Clients with no or limited IT skills or poor broadband connections may be disadvantaged as a result.

*'Employers not complying with new Revenue rules around live time reporting of new employees starting jobs and also employees ceasing employment is leading to clients experiencing difficulties signing on for Jobseekers payments and difficulties with over-payments of tax by clients as their tax credits are calculated incorrectly for the new employment as the old employment [record] is still live on the system.'* [Westmeath CIS].

Clients with limited IT skills also experienced difficulties with exclusively online job application processes. There is growing evidence that [technological discrimination](#) is on the rise.<sup>79</sup> Examples include job advertisements on social media platforms that overtly or subtly discriminate on the basis of age, gender, race, etc. New sourcing software and use of the internet to develop personalised jobs boards also has the potential to incentivise employers to use pre-screening tools that limit and profile the pool of potential candidates for any given job, before any formal recruitment screening begins, effectively determining who learns

77 <https://www.thejournal.ie/coffee-shop-pregnant-worker-discriminated-4206980-Aug2018/>

78 <https://www.breakingnews.ie/ireland/hotel-employee-awarded-35384-after-losing-job-while-on-maternity-leave-840802.html>

79 <https://www.motherjones.com/politics/2019/01/artificial-intelligence-was-supposed-to-reduce-hiring-discrimination-its-already-backfiring/>

about open job opportunities and who can apply for a job.

The introduction of artificial intelligence and predictive hiring tools was supposed to overcome human biases in recruitment but the reality appears to be that these tools mirror underlying systemic and societal biases. Concerns have been raised that the growth of these technologies are outpacing employers' and regulators' capacity to understand and respond to them.<sup>80</sup>

Some clients had difficulty obtaining **references** from previous employers. In Ireland, unlike some other EU countries such as France, there is no statutory entitlement to a reference. Examples of challenges faced by clients as a result were:

- A client's new employer had a policy of insisting on references but the previous employer had a policy of not providing them. The client did not get the job and became unemployed.

- A client's previous employer refused to give a letter of recommendation resulting in a job with a new employer being put on hold.
- A client had been in dispute with her employer about annual leave entitlements and on leaving work experienced considerable delay in obtaining a reference.

CISs noted that one of the advantages of negotiating with an employer on a client's behalf is that it can be easier for the client to obtain a reference after a settlement has been reached in this way compared to taking a complaint to the WRC.

### 4.3 Enforcement and Redress

Queries to CISs about enforcement of rights and redress have grown by 9% from 2016 to 2018. Queries relating to WRC processes and procedures accounted for 54% of enforcement and redress queries in 2018.

**Table 4.6: Queries about Enforcement and Redress**

	2016	2017	2018
Queries about enforcement and redress including appeals	3,358	3,541	3,658

80 Bogen, M., Rieke, A., 2018, Help Wanted: An Examination of Hiring Algorithms, Equity and Bi, Upturn: Washington DC, <https://www.upturn.org/reports/2018/hiring-algorithms/>

In 2006, at the time of the previous CIB report on employment rights, the effectiveness of employment legislation enforcement was an issue. It continues today and despite streamlining of redress mechanisms and new legislation there is still a gap between legislative protection and the ability of employees to enforce their rights.

Contributory factors include resourcing of redress bodies such as the WRC; lack of adequate information on the part of some employers and employees; limitations on access to detailed legal advice and representation when necessary for employees, and low levels of prosecutions for breaches of employment legislation.

In some cases, employers often bring legal representation to the WRC hearings. This can place the employee at a disadvantage as they are not entitled to access civil legal aid. The civil legal aid scheme currently does not cover tribunals such as the WRC.

Some clients feel unable to enforce their rights because of the complexity of employment legislation and the fact that legal advice and representation is not always available. In 2018, the Court of Appeal confirmed that legal representation in the workplace during disciplinary hearings should only be granted in exceptional circumstances and that natural justice and fair procedures could be applied without the need for a lawyer. CISs often support clients by attending WRC hearings on their behalf or attending disciplinary hearings, or referring clients to FLAC for free legal advice. However, it is outside their remit to represent a client in court. There is no free legal aid for employment rights court cases, which can act as a deterrent to lay people taking a case in which they will have to represent themselves. The WRC, [citizensinformation.ie](http://citizensinformation.ie) and [welfare.ie](http://welfare.ie) websites are important sources of information but are predicated on literacy and IT skills and access to the internet.

#### Box 4.4: Advocacy Case Example

A client was dismissed from employment after being absent due to sickness. On his return to work after sickness no work was made available to him and he was isolated. Another person was taken on. The client, with the support of the CIS, made a complaint to the WRC and he received an award totalling €11,786 for unfair dismissal, no contract of employment and not receiving minimum notice. The employer did not appeal the decision within 42 days but the client was not paid within the 42 days as ordered. The client took a case to the District Court for enforcement and it was thrown out by the Judge without any explanation. The CIC supported the client to submit an enforcement order to the WRC who would not pursue enforcement as the client had already done so through the District Court. The client was advised to seek a judicial review or to appeal the decision to the Circuit Court and was referred to FLAC for legal opinion.

#### 4.3.1 Seeking Redress

Previous sections have highlighted examples of clients who have not sought redress through the WRC for unpaid wages because of the length of time it can take to get a response to a complaint (up to six months in some instances) or to get a hearing. [Processing delays](#) like this can deter people from making complaints against employers, particularly when relatively small amounts are involved. For example:

- A client was owed €50 for a night's work. He did not follow up with the WRC because of perceived cost and length of time involved in processing a complaint.

One advocacy case example highlighted challenges that can arise when Irish legislation is not updated to reflect rulings by the European Court of Justice.

#### Box 4.5: Advocacy Case Example

A client worked part-time for 20 years for a state body but had no employment contract and was never awarded annual leave or public holidays. When this was queried she was informed she was not entitled to paid holidays. The CIS informed her of her rights and supported her to make a complaint to the employer in 2017. The employer did not respond so the CIS sought a copy of her personal file under Freedom of Information. On reviewing the file it was clear the employer was in breach of employment legislation. A complaint was made to the WRC in October 2017 on foot of this. Again, the employer failed to respond. In November 2017, the CIS became aware of a European Court of Justice (ECJ) decision<sup>81</sup> which found that where an employer deliberately prevented a worker from taking annual leave, there was no limit to back pay that could be claimed. Under Irish law<sup>82</sup> claims for back holiday pay are limited to 12 months. The CIS made a submission to the WRC on foot of the ECJ ruling in January 2018 and the Adjudicator indicated that in his opinion he could award back pay notwithstanding Irish legislation. The hearing was adjourned for further submissions. In June 2018, the Irish Supreme Court ruled that the WRC could not apply ECJ rulings directly. To implement the ECJ ruling new legislation would be necessary. Following a further hearing in July 2018, the Adjudicator awarded the client compensation arising from failure by the employer to provide a contract and holiday and public holiday claims, as time limited by Irish law, but was unable to make an award in respect of the 20 years where the client received no holidays.

The following case example highlights two issues: penalisation of an employee for trying to enforce her rights and an inspection process which did not entail interviews with employees.

#### Box 4.6: Advocacy Case Example

A client left work with less than 12 months service. She had no contract or payslips and was not being paid the National Minimum Wage. She was working 55 hours a week but claimed she was forced by the employer to sign a document stating she worked 35 hours a week and was receiving statutory breaks, and she also claimed that the employer was falsifying employment records. She complained to the employer and her hours were cut. The CIS contacted the employer and requested a statement of pay per hour over a four week reference period. The employer did not respond. An inspection was subsequently carried out by the WRC and everything was found to be in order. However, the inspector did not speak to the client. A WRC hearing date was set and re-set at the employer's request. In the meantime, the client had moved to a new job and decided not to pursue the WRC hearing. She felt she had achieved change as she had heard from other employees that there had been improvements in respect of contracts, breaks, registration with Revenue and payment of the minimum wage.

CIS staff reported challenges in [engaging employers](#), particularly in instances of company insolvency or in finding out who the ultimate employers of clients were. Often clients had to be assisted to obtain information from employers when their own attempts had proved unsuccessful or employers were unresponsive. In some cases, this meant

81 King v. Sash Window Company Ltd 2017

82 Organisation of Working Time Act 1997.

supporting the client with Freedom of Information requests, Data Protection requests and WRC complaint applications.

#### 4.3.2 Accessing Redress Mechanisms

Some clients sought help from the CISs because they experienced difficulties accessing the WRC [online application](#) process either because they had no computer or internet access at home<sup>83</sup> or because the form would not download properly. The form also only accommodates Irish companies and not companies based overseas which employ people in Ireland.

Key issues raised by CISs include the importance of the applicant identifying the correct legal entity they are employed by, the importance of selecting the correct complaint heading and the importance of issuing notices (such as EE1) to the employer prior to initiating a complaint under the Equal Status Acts. Other concerns related to the difficulties in seeking a time extension for late applications, and the administration section declining cases, when this is a matter for an adjudicator.

*'The system was designed for the lay person but is unduly harsh and difficult on the lay person for minor errors in the application process'. [South Leinster CIS].*

The [length of time](#) it took to process complaints made to the WRC and to obtain appeal hearings, in some instances is a mounting issue, as demand for the WRC's services grow. Figures of four to six months were quoted. This can act as an unintended deterrent to people making complaints to the WRC, especially those with small claims<sup>84</sup> against employers.

Poor [administration](#) of adjudication hearings can also result in delays.

#### Box 4.7: Advocacy Case Example

The CIS supported a number of clients to attend an adjudication meeting in the WRC. On the day of the hearing it became apparent that the Adjudicator was unaware that one of the employers would not be attending, even though the CIS had a copy of a letter from the WRC advising them of same. The Adjudicator was also unaware that an interpreter had been requested for the clients and the hearing was delayed while an interpreter was sourced.

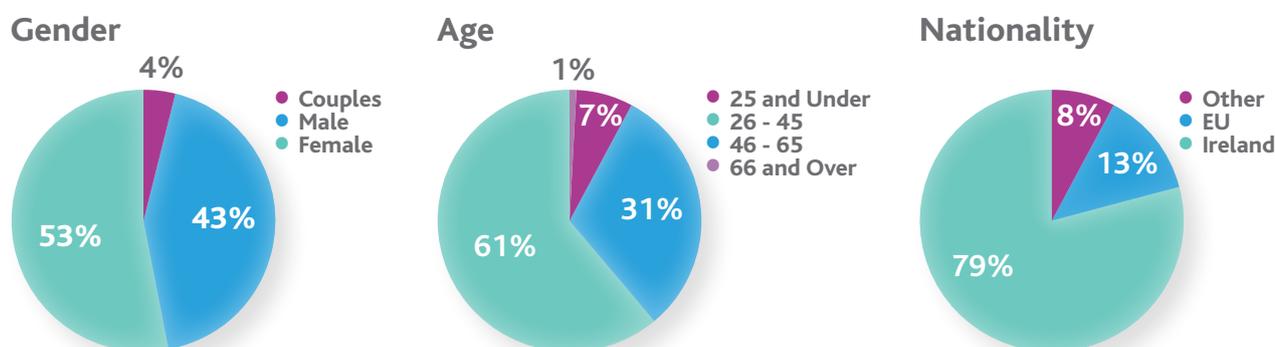
#### 4.3.3 Enforcement

Fifty-two per cent of employment legislation breaches detected by the WRC in 2018 related to insufficient employment records held by employers. In 2017, 51% of breaches were for employment records, 17% were breaches of employment permit requirements, 13% were breaches of the National Minimum Wage and 11% related to annual leave and public holidays.

Prosecutions for breaches of employment legislation declined from 136 in 2016 to 98 in 2018.

83 The WRC will provide a paper form on request.

84 In value terms a claim may be small but for employees on low pay it could be significant.

**Figure 4.7: Legislative Breaches Detected by the WRC in 2017**

(Source: WRC Annual Report, 2017)

At the time that reform of employment rights and industrial relations mechanisms and structures were proposed in its submission,<sup>85</sup> the CIB expressed concerns about the enforcement of awards, especially for clients with modest means. It was also concerned about the procedures for ensuring compliance and lack of clarity over consequences for employers of non-compliance.

These concerns about the reforms have been borne out by the day-to-day experience of CISs who continue to raise the issues that clients can face in the **enforcement** of WRC decisions made in their favour and in securing awards made to them. Enforcement by the WRC appears low and few cases go to court.<sup>86</sup> The only option open to the client is then to go to the District Court, a process which is too onerous and costly for many clients.

*'There are strong reasons to believe that the more outrageous and blatant an employer is in flouting the law, the less likely are they to face any sanctions. There is no punitive element and this affects our clients. We often see the same employers continue to exploit workers for years on end with each individual case taken to the WRC.'* [CIS Advocacy Support Worker].

Examples of the challenges faced by clients are as follows:

- A client represented himself in the District Court to secure enforcement of a WRC award of over €10,000 but was unaware of the grounds for the award and the case was dismissed. The client could not afford to appeal the case to the Circuit Court.
- A client was awarded €7,000 by the WRC in an unfair dismissal case but the employer did not pay. The client was supported by the CIS

<sup>85</sup> CIB, 'Reform of the State's Employment Rights and Industrial Relations Structures and Procedures. A Submission by the Citizens Information Board.' 2012

<sup>86</sup> Under the Unfair Dismissals Acts 1977-2007, if an employer fails to make a payment on foot of a WRC award then the employee, the WRC, the employee's trade union or an excepted body may apply to the District Court for an order directing the employer to comply with the WRC decision. If the decision was to reinstate or re-engage the employee, the District Court may substitute an order to pay compensation. The District Court can also award interest in cases of compensation.

- to make a submission to the District Court for a court order. To do this the client had to pay stamp duty of €80, complete a form and an affidavit. The CIS could not complete the latter as this is outside its remit.

*'While having a one stop shop for complaints making is an improvement, applicants still require a degree of legal knowledge in order to take a case.... Employees often face employers who are represented by barristers and solicitors. WRC adjudicators are not legally trained themselves. It is asking a lot for employees to lock horns with legal professionals in a forum that is not designed for lay people. Very quickly hearings become legalistic and difficult to follow for our clients. Clients can choose to be legally represented but only at their own cost. And when they are represented by the CIS, or another lay advocacy service, there is still a distinct disadvantage between them and their employers.'* [CIS Advocacy Support Worker]

CISs raised concerns about [inconsistent decision making](#) and procedural mistakes with outcomes being dependent on the adjudicator assigned to a client on a particular day.

Another issue raised is that clients do not always know the correct company name they are employed by, especially when 'trading as' names are used, and this can jeopardise a complaint or enforcement of an award.

Clients are not always aware that a favourable decision does not automatically result in

receipt of the [award](#) made and a protracted enforcement process may then be necessary, which may still not be successful.

#### Box 4.8: Advocacy Case Example

A client went through a long process of a WRC hearing and won his case. However, the employer did not pay the award and the client had to go to the District Court to obtain an enforcement order. The employer still did not pay. The client eventually obtained an order for enforcement by the Sheriff. The Sherriff was unable to proceed because the company had changed names, even though it continued in the same business operating out of the same building as previously. After two years, the client had not received his award and was out of pocket having had to pay the fees required to obtain a court order.

The statute of limitations that applies to employment law is relatively short and can have serious financial consequences for employees. For example, an employee who worked for twelve years without holidays will only be compensated for holidays s/he lost in the previous twelve months.

#### 4.3.4 Equality Matters

Queries to CISs about issues pertaining to equality at work have fluctuated between 850 and 880 in recent years.

**Table 4.7: Queries about Equality Issues**

	2016	2017	2018
Queries about equality in the workplace	852	881	850
Queries about disability and the workplace	1,253	1,114	1,040

Examples of **discrimination** based on gender, age, race and religion were:

- A client was dismissed when she brought health and safety concerns to her employer during her pregnancy. The CIS tried to engage directly with the employer but to no avail. A complaint was lodged with the WRC under the Health, Safety and Welfare at Work Act, 2005, the Employment Equality Acts, 2015 and the Minimum Notice Act, 1974. The CIS supported the client to self-advocate. The adjudicator found in her favour on all counts and awarded her €16,880.
- A female client employed for 16 months was certified by her doctor for two weeks sick leave due to pain in her wrists. She advised the employer of her return date but during a call from the employer she was informed she was going to be dismissed because the work was 'too hard for women'. She subsequently obtained employment doing similar work in another enterprise. With the support of the CIS she successfully made complaints to the WRC for unfair dismissal and discriminatory dismissal. The company offered her €10,000 in settlement which she accepted prior to the WRC hearing.
- A client who reached her 66th birthday was dismissed with immediate effect from the company she had worked with for over 35 years. She was given no reason or explanation and did not receive eight weeks pay in lieu of notice. She came to the CIS for help to submit a complaint to the WRC about minimum notice. A hearing date was set and a settlement offer was made by the company which the client refused as it was below the amount she was due. The company increased its offer to €3,500 which she accepted even though the CIS had advised she might get more by letting the case go forward.
- A Muslim client was offered a one year full-time contract. She commenced employment on the 1st April, 2017 but was dismissed without any explanation other than the company was over staffed on the 23rd May, 2017. The client had been measured a few days previously for the company uniform. Her dismissal happened one day after the Manchester terror attack and she believed her dismissal was discriminatory. A complaint was submitted to the WRC and the adjudicator found in the client's favour and she was awarded €12,000 in compensation. The employer did not appeal the award, nor did they pay. The client was supported to complete a WRC enforcement application and after the WRC issued a payment demand, she received the award from the employer.

Some issues emerged in CIS queries as a result of maternity as follows:

- Protections for breastfeeding in the workplace ceases once a child is six months and a significant majority of women on Maternity Benefit<sup>87</sup> are thus ineligible for these protections. Although maternity leave increased from 18 to 26 weeks, breastfeeding regulations<sup>88</sup> did not increase in line with this.
- A client returning to work after maternity leave was informed by her employer that her job was no longer there for her despite the fact that maternity cannot be used as the basis for dismissal.
- A client was dismissed from work because she missed training due to ante natal appointments and pregnancy related sickness. She was supported by the CIS to bring an unfair dismissals case.
- There are no options to swap maternity leave between men and women (paternity leave is inadequate) making balancing work

87 Maternity Benefit is paid for the first six months after birth.

88 Under the Maternity Protection (Amendment Act) 2004, certain women who are in employment are entitled to take time off work each day to breastfeed.

obligations and family finances difficult for some couples.

**Anomalies** in issues of equality at work were brought to the attention of CISs. These included:

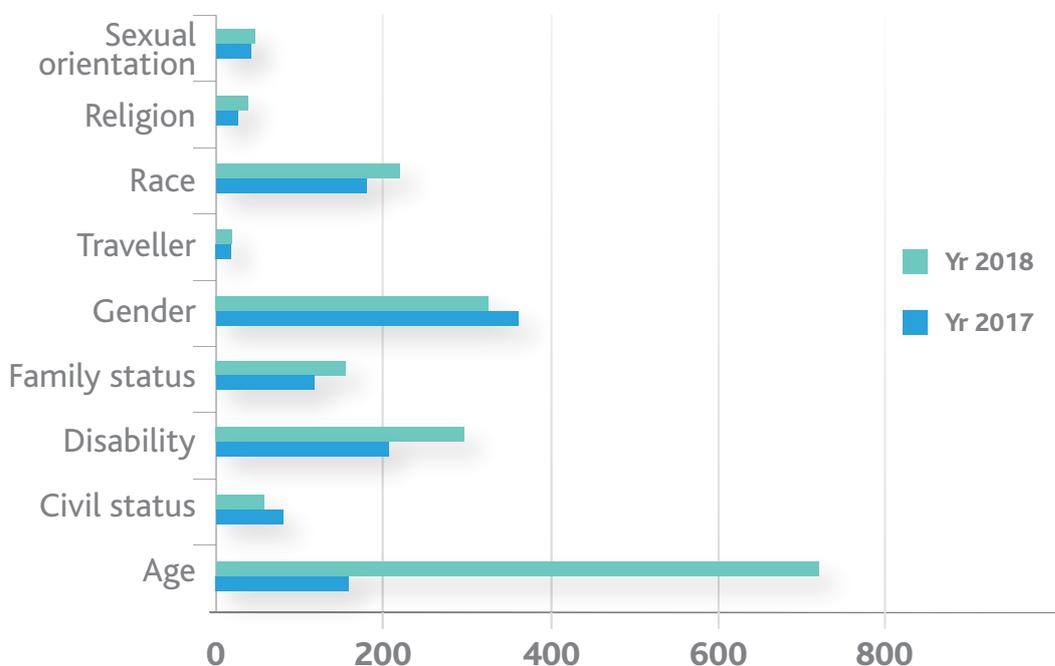
A male client on paternity leave had to pay the employer contributions to his pension fund, while female workers and those on sick leave did not.

Clients who are offered employment subject to medical checks can be discriminated against if they have conditions such as hepatitis.

Paternity leave is only for two weeks and does not incentivise men to take time off to look after a newborn. Similarly, Parent’s Leave/ Parent’s Benefit is paid leave for 2 weeks for each parent. Parental leave was extended to 22 weeks and then 26 weeks but is unpaid.

The Government launched a ten year Comprehensive Employment Strategy for People with a Disability, 2015-2024 (CES) to increase the number of people with disabilities in employment.<sup>89</sup> The Interdepartmental Group on Make Work Pay<sup>90</sup> built on the CES and made recommendations to support people with disabilities to return to work. In its submission,<sup>91</sup> the CIB emphasised that people with disabilities are a diverse group with varying needs and that in addition to incentives to take up work and disability-friendly workplaces, other barriers such as access to transport, personal assistants, poverty-traps, access to childcare and educational attainment needed to be addressed.

**Figure 4.8: All Referrals to WRC under Employment Equality Acts, 2017 - 2018**



(Source: WRC Annual Report, 2018)

89 Government of Ireland, Comprehensive Employment Strategy for People with Disabilities 2015-2024.

90 Make Work Pay Interdepartmental Group, 2017, Make Work Pay for People with Disabilities. Report to Government 2017.

91 CIB, 2016, 'Make Work Pay' Component of the Comprehensive Employment Strategy (CES) for People with Disabilities. A Submission by the Citizens Information Board.

Queries to CISs about employment and disability marginally declined in recent years, and by 7% between 2017 and 2018.<sup>92</sup> This is in contrast to referrals under the Employment Equality Acts 1998-2015 to the WRC where disability referrals increased by 43% between 2017 and 2018. The WRC also saw more than a four-fold jump in referrals in respect of age and a three-fold increase in respect of religion.

Examples of discrimination on the basis of disability were given by CISs:

- A deaf client had applied for a job which he was qualified for. He informed the employer he was deaf but would only need minor adjustments made to accommodate the formal interview and that in previous jobs he had used workspace channel apps to communicate successfully with colleagues. Previous employers had not had any financial outlay to accommodate him as an employee. The company responded that it could not see how they could make the employment work. The CIS supported the client to make a complaint to the WRC under the Employment Equality Acts 1998-2015. At the hearing a settlement of €10,000 was reached.
- A deaf client attended an interview with an employment agency and was treated dismissively. He was questioned about his condition and how he could do his job safely, even though he was suitably qualified for the job under consideration. He did not receive a job offer and believed this was because of his disability. The CIS supported him to lodge a complaint with the WRC and attended the hearing on his behalf. The employer was represented by a barrister. The adjudicator found in the client's favour and he was awarded €5,500.

#### 4.3.5 Rights of Asylum Seekers, Immigrants and Migrants

Around one in eight people living in Ireland are from a migrant background<sup>93</sup>. Migrants can be at higher risk of working in low paid jobs, of having poor quality housing and /or experiencing poverty.

Irish and European citizens have an automatic right to work and live in Ireland. Other citizens generally require a special employment permit to work here. The employment permits system is overseen by the Department of Business, Enterprise and Innovation. There are nine categories of permit with General Employment Permits and Critical Skills Permits the most common forms. There is a prescribed list of occupations that the former cannot be used for, but there are no such restrictions for the latter. People with a separate right to residency granted by the Minister for Justice and Equality may not require a work permit if they are a spouse or civil partner of an Irish or EEA national, or the parent of a child with Irish citizenship, or have been granted leave to remain on humanitarian grounds.

Information about documentation required for various [employment permits](#) was an issue encountered by CISs. For example:

- Information Officers noted that in order to find out what specific documentation is required for a Critical Skills Employment (CSE) permit, the application process must be commenced. Information contained in the User Guide is too general and there is no listing of documents necessary for each type of permit.
- Prior to March 6th 2019, the spouses of workers with Stamp 3 (CSE permit) were entitled to work under the Spouse Employment permit without the usual restrictions. The application process for this was straightforward but some employers did not appear to be aware of this and

92 From 1,114 in 2017 to 1,040 in 2018.

93 <https://immigrantcouncil.ie/rights/working-ireland>

insisted the spouse obtained a Stamp 4. As of March 6th 2019, spouses of partners with CSE permits can reside in the State under a Stamp 1 permit which allows them to work. People who already have Stamp 3 and want to work can apply to get the new Irish Residence permit on Stamp 1 conditions.

Issues encountered by CISs in respect of [visas](#) were evident in some cases. For example:

- A client who was a foreign national took up a job offer and soon afterwards was told by the employer to attend training in England. No mention of this requirement had been made in the job interview. He needed a visa to go to the UK and the notice of training provided by the employer was insufficient to accommodate the visa processing time and he was at risk of losing his job.
- A client's visa expired on 16th December 2018. The client informed his employer he was leaving Ireland but the employer did not respond. The CIS contacted the employer who indicated that unpaid wages and P45 would be issued on the 22nd of December, 2018. In the meantime, the employee was living in Ireland illegally and this affected his immigration record.

*'We see a lot of migrant workers who have been unfairly treated and in some cases they have left the country by the time their case comes up in the WRC. The majority of our employment rights issues pertain to migrant workers who would generally not have a good understanding of their rights and entitlements.'* [Dublin City Centre CIS]

As a result of Ireland's opt-in into the European Communities (Reception Conditions) Directive 2013/33/EU in 2018, [asylum seekers](#) can now apply to work in Ireland, either as employees or on a self-employed basis.<sup>94</sup> Work permits must be renewed every six months.

Of the 4,070 adults living in Direct Provision, as of March 2019, 1,594 (39%) had been granted permission to work but only 579 (36% of those with permits) had confirmed they were in employment.<sup>95</sup> This development is to be welcomed but issues highlighted by CISs in previous years remain:

- If the job involves driving, an asylum seeker cannot obtain an Irish driver's licence.
- The then Minister for Transport, Tourism and Sport indicated this will be reviewed but there are issues around the ability of some asylum seekers to meet the required level of identification under the Standard Authentication Framework Environment, the SAFE standard (given that driving licences are also a form of identity) and necessary mechanisms to cancel driving licences in the event refugee status was not granted.<sup>96</sup>

Most employers pay wages directly into employees' bank accounts. The European Union (Payment Accounts) Regulations 2016 means that since the 18th of September that year any consumer who is legally resident in the European Union (this includes asylum seekers) has the right to open and use a payment account with basic features.<sup>97</sup> The usual identification documentation applies but additional verification may be sought on foot of a risk assessment by the bank. If the bank does not clearly specify what additional proof of address is necessary then this can inhibit access to financial services for asylum seekers.

CISs noted a lack of understanding amongst employers in relation to the rights of asylum seekers to work. The six month temporary nature of the permission to work also appears to be acting as a disincentive for employers to hire asylum seekers.

94 They cannot employ others or enter a partnership.

95 Department of Justice and Equality.

96 <https://www.oireachtas.ie/en/debates/question/2018-09-19/3/>

97 Department of Justice and Equality, 2018, Information Booklet. Labour Market Access for International Protection Applicants, LMA7.

### 4.3.6 Health and Safety at Work

Queries about workplace health and safety have fluctuated in the past three years.

The Safety, Health and Welfare at Work Act, 2005 is primarily concerned with prevention of accidents and injury in the workplace. It sets out the duties of both employers and employees. Specific regulations are in force for employees who are pregnant or breastfeeding or have recently given birth.<sup>98</sup>

A random sample of 40 health and safety queries from clients in 2018 showed that 55% were from women and 45% from men. Seventy per cent were aged between 25 and 46. Seventy-three per cent were Irish and 26% were other EU, most of whom came from Eastern European countries, notably Poland.

**Bullying** is one of the main concerns featured in SPRs. Of the sample quoted above, half of the health and safety queries involved bullying. The gender and age profile of the bullying sub-set is similar to the health and safety sample but a higher proportion (81%) of the bullying sub-set were Irish.

*'Employees often leave due to the stress of bullying in the workplace and then may have to prove constructive dismissal which is extremely difficult.'* [Kerry CIC].

Some examples are:

- A client had worked for eight months and made a complaint about bullying to her employer who then stopped paying her. The client could not afford to wait for the WRC complaint's process and felt she had no option but to leave her employment.
- A client had a dispute with his employer and the employer refused to sign Working Family Payment documentation leaving the client in financial distress.

In 2005, the Report of the Expert Advisory Group on Workplace Bullying pointed to bullying as a significant issue of concern and made recommendations about how it might be addressed. These included mandatory inclusion of the risk of bullying in safety statements together with policies and procedures to mitigate the risk; a formal model for handling cases of bullying; charging relevant state bodies with the responsibility for managing specific bullying allegations and making decisions that are binding.

98 Safety, Health and Welfare at Work (Pregnant Employees) Regulations 2000 (SI No 218 2000).

**Table 4.8: Queries about Health and Safety at Work**

	2016	2017	2018
Queries about health and safety at work	1,629	1,754	1,656

Under the 2005 Act, preventing improper conduct or behaviour (which includes bullying) that is a hazard at work is one of the employer's duties and employers should have procedures to handle such complaints. The Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work was introduced in 2007. Failure to follow the Code, however, is not an offence under the 2005 Act<sup>99</sup> and circumstances where bullying takes place but does not create a work hazard may not be covered.

A recent Supreme Court decision<sup>100</sup> included a definition of bullying that sets a very high bar. Bullying was defined as repeated (for example, over a period of six months), inappropriate behaviour which undermines the dignity of the employee. The behaviour must be outrageous, unacceptable and exceeding all bounds tolerated by decent society. The Court also held that employees are required to have a certain degree of 'robustness' and to be able to take instruction, direction and, on occasion, 'robust management' that ensures efficiency and safety. Legal redress for bullying is either by way of a constructive dismissal complaint made to the WRC, in which case the person must have left their job because of their employer's actions, or a civil action that must prove negligence on the part of the employer.

While not emerging as a specific issue in CIS queries or SPRs, there is growing concern about the use of technology to maintain contact with employees out of hours and even when on

leave. Vigilance is required to ensure workers are able to achieve a proper work-life balance and that they do not become burnt-out. Under the Organisation of Working Time Act, 1997 employees are entitled to an uninterrupted 11 hour break between finishing work and starting again the following day. In 2018, the Labour Court made a significant decision on out of hours work emails and awarded damages of €7,500 to an employee who had been repeatedly required to deal with these.<sup>101</sup>

#### 4.4 Covid-19

The Covid-19 pandemic intensified employment rights issues. Callers to CISs were concerned about social distancing in work places, lack of flexibility in working arrangements to facilitate childcare, not being paid full wages and employers not topping up the wage subsidy. Effectively, many employees worked normal hours for less wages than previously.

Entitlement to sick pay or being paid as a result of Covid-related absences from work as well as racial discrimination or potential discrimination against workers unable or unwilling to return to the workplace are on-going challenges.

Remote working has also given rise to new concerns about working hours, the right to turn off, work supervision and support, health and safety. Bodies such as the WRC and Labour Court had to adjust how hearings were held and the use of video conferencing has posed new technological challenges for individuals and service providers such as CISs.

99 The Code is admissible in evidence in criminal proceedings under s.61 of the Safety, Health and Welfare Act 2005.

100 Ruffley v. Board of Management of St. Anne's School, 2017.

101 <https://www.thejournal.ie/kepak-executive-out-of-hours-work-emails-4161362-Aug2018/>

# 5. Conclusions and Recommendations

## 5.1 Conclusions

### What has changed?

While the past decade or more have seen significant developments in new and updated employment legislation, and streamlining of workplace inspection, complaints and redress structures and mechanisms, the types of queries and complaints being received by the CISs have not altered significantly. The major issues in 2006 remain the same issues currently. These include:-

- breaches of legislation regarding minimum notice of redundancy;
- breaches regarding terms and conditions of employment and entitlement to leave;
- absence of protection for workers employed for less than 12 months;
- difficulties encountered when changing or starting jobs;
- issues around payment (or non-payment) of wages, including the National Minimum Wage, and working hours;
- multiple complaints against individual employers;
- employment rights for migrant workers and equality at work.

This suggests the need for on-going awareness raising amongst employers and workers of rights and obligations and a requisite strengthening of enforcement of the legislation we already have.

Seeking redress and enforcement of decisions made by the WRC remains an issue with many CIS clients unable to receive payment of awards from their employers. Clients sometimes do not make complaints to the WRC because they perceive that the process will take too

long or will be costly, especially when small amounts are involved. The Workplace Relations Act, 2015 provided a simplified enforcement option through the District Court to assist lay litigants to enforce decisions without an ab initio hearing. However, clients may not fully understand the grounds of an award and without assistance in court risk their case being dismissed. The WRC can pursue employers through the court to enforce its decisions but this appears to happen infrequently.

The number of workplace inspections has held steady at just over 5,000 a year and the number of employer prosecutions has declined in recent years. The workload of the WRC in terms of complaints has risen steadily year on year since its formation in 2015 and the length of time to hear cases has also risen. This indicates that resourcing is not keeping pace with demand.

A significant change since 2006 has been the emergence of atypical employment. Recent legislation [Employment (Miscellaneous Provisions) Act 2018] has been introduced to try to address this issue. It is likely that in an increasing technological and digital workplace that more flexible and atypical working arrangements will emerge and the implications for employment rights need to continue to remain in focus.

### Digital Discrimination

Digital discrimination operates at a number of different levels in society and the labour market. At its most basic level, it can preclude access to services, supports and redress when these are exclusively based online or can only be accessed through online portals. Government policy on e-government may contribute to it in an era when not all of the

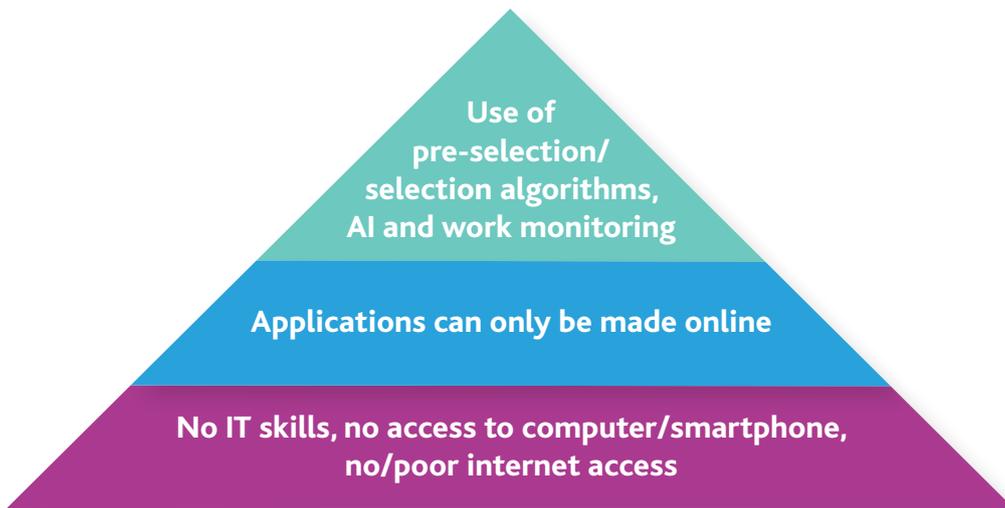
population is computer literate or has access to the necessary technology. This is the base of the digital discrimination pyramid and over time it is likely that this base will diminish as each successive generation becomes more technology literate.

However, other forms of digital discrimination are emerging. These include the use of pre-screening algorithms in recruitment and

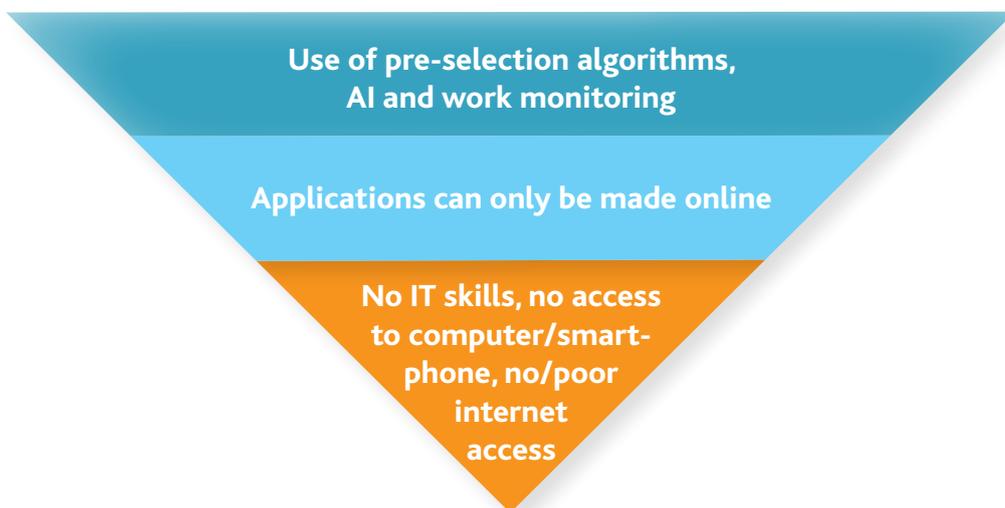
the emergence of technology to control the workforce, such as designs for electronic wristbands to monitor performance. Unless we are alert to them and take action through regulation, they could contribute to significant discrimination and erosion of employment rights in the future. The figure below illustrates how the pyramid could become inverted in terms of its impact on the population.

### Digital Discrimination

## NOW



## FUTURE



Data regulation can play a role in ensuring that machine optimisation rules do not have in-built biases or result in unintended (or deliberate) discrimination.

### The Workplace of the Future

The debate about the potential impact of automation on jobs continues. Factors identified in pushing firms towards increased automation include the risks and costs associated with compliance with employment legislation;<sup>102</sup> the relative growth in minimum wages compared to falling costs of technology,<sup>103</sup> and the growing capability of technology to replicate an ever widening range of human capabilities.<sup>104</sup>

The debate about the potential impacts of automation ranges from destruction of millions of jobs,<sup>105</sup> to the creation of new job opportunities,<sup>106</sup> to growing polarisation of the labour market between high end jobs and a wage race to the bottom for the jobs that remain.<sup>107</sup>

Some believe it could result in loss of significant numbers of jobs by the 2030s in Ireland (44%, UCC).<sup>108</sup> Others believe the potential loss is overstated and change will happen in waves over the coming decades with some sectors and workers more vulnerable than others, such as transport, low skilled manual jobs and less educated workers (2% in the first wave).<sup>109</sup>

The cost of technology may mean it will still be cheaper for small businesses to employ people rather than machines. Machine learning is not yet at the stage where it can replace jobs in sectors where human interaction is important

such as education and health. Either way, there are significant policy implications if we are to safeguard employment rights.

The regulatory environment needs to be aware of and keep pace with developments in automation. Regulation and legislation can play a role in placing a break on automation in order to facilitate orderly transitions that will enable people to re-train and up-skill and to take advantage of new job opportunities that will emerge.

Businesses and educators as well as government should play a role in supporting workers with lifelong learning and career development. Collective dialogue between employers, workers and government will be necessary to ensure employment rights are not further eroded and that adequate support processes are constructed for workers unable to easily adapt to the digital economy and automation.

Keeping pace with evolving job formats will also be important. We already have zero hours contracts, 'if and when' contracts, and self-employment that is neither standard employment nor true self-employment. As new technologies emerge and the requirements of the workforce change, new job formats are likely to develop. Too often legislation is playing a lagged catch-up and needs to become nimbler to respond to rapid changes and advances.

Support mechanisms will have to be enhanced. This includes effective employment services that can support people in a timely manner with job searching, re-skilling,

102 Estlund, E., 2017, What Should We Do After Work? Automation and Employment Law, NELLCO Legal Scholarship Repository, Summer 7-2017, New York University: New York.

103 Ibid.

104 Brynjolfsson, E., McAfee, A., 2012, Race Against the Machine: How the Digital Revolution is Accelerating Innovation, Driving Productivity, and Irreversibly Transforming Employment and the Economy.

105 Frey, C.B., Osborne, M.A., 2013, The Future of Employment: How Susceptible are Jobs to Computerisation, Oxford Martin Sch.

106 PwC 2019.

107 Freeman, R., 2015, Who Owns the Robots Rules the World, IZA World of Labor, 2015:5 <https://wol.iza.org/uploads/articles/5/pdfs/who-owns-the-robots-rules-the-world.pdf?=1>

108 Crowley, F., Doran, J., 2019, Automation and Irish Towns: Who's Most at Risk?, Spatial & Regional Economic Research Centre, UCC: Cork.

109 PwC, 2019, Will robots steal our jobs? An international analysis of the potential long term impact of automation, [www.pwc.co.uk/economics](http://www.pwc.co.uk/economics)

career development and lifelong learning. As recommended by the OECD (2019), social protection mechanisms will need to become more flexible, tailored and portable. The concept of a universal basic income (UBI) to mitigate potential widening income gaps should be explored, including learning from trials of different models around the world (such as Finland and the Netherlands).

## 5.2 Recommendations

Recommendations cover policy issues, redress and enforcement, including the working of the WRC, working arrangements for employees, equality and information.

Policy recommendations endeavour to ensure that employment rights for all workers keep pace with new forms of employment and are prepared for the impact of technological developments, particularly disruptive technologies such as automation.

Redress and enforcement recommendations aim to strengthen the hand of employees seeking redress and in enforcing their rights.

Recommendations about working arrangements seek to support those employed on short-term contracts or in atypical working situations, many of whom are women and younger people; to provide for flexible working opportunities for both men and women; to help people changing employment, and those who experience bullying in the workplace, who are mainly younger men and women.

Equality recommendations intend to support working men and women with children; people with a disability, and women in the workforce.

Information recommendations will support migrants working in Ireland and people who are considering self-employment as an option, including asylum seekers and refugees, and people who may be in false self-employment situations.

### 5.2.1 Policy

- Consider the pros and cons of developing a definition of work that caters for new forms of working that are neither traditional employee nor true self employed. [DEASP and DBEI]
- Learn from pilots of Universal Basic Income currently underway in other countries. At a minimum, move towards applying the living wage concept, including for young people who live independently. [DEASP]
- Review the social welfare code and employment legislation to ensure they are fit for purpose based on likely developments in the work place as a result of technological advancements. [DEASP]
- Maintain a watching brief on technological developments that will impact employment rights. [DBEI]
- Engage with employers, worker representative groups and educators to commence a national dialogue on the implications of automation for employment rights, training and retraining of the workforce. [Government]
- Ensure the aims and intent of employment-related EU Directives, such as Directive 2008/94/EC on insolvency, are fully transposed into Irish law and ensure there is protection for employees owed monies in informal insolvency cases. [Government]

### 5.2.2 Redress and Enforcement

- Establish a section within the WRC Enforcement Unit to specifically assist employees to follow through on awards. [WRC]
- Ensure strengthened enforcement of existing legislation with real consequences for continuous breaches. Persistent offenders should be targeted and prosecuted if necessary. [WRC]

- Revise the civil legal aid system to provide for representation for individuals appearing before the WRC in order to ensure a fair balance between them and employers. [Government]

### 5.2.3 WRC

- Resource the WRC to speed up the hearing of complaints. [DBEI]
- Introduce a swift mechanism for addressing small claims and urgent cases. [WRC]
- Include interviews with employees as a routine part of the workplace inspection process. [WRC]

### 5.2.4 Working Arrangements

- Provide unfair dismissal protection for those working less than 12 months. At a minimum, employees should be given a reason for possible dismissal and an opportunity to improve. Ideally, the 12 months service requirement in the Unfair Dismissals Acts 1977-2015 should be removed. [Government]
- Assess the costs and benefits of introducing an entitlement to flexible working arrangements. At a minimum introduce a Code of Practice on flexible working arrangements to promote a healthy work-life balance. [DBEI]
- Introduce a mandatory entitlement to a reference if requested by an employee. [Government]
- Clarify whether or not 'if and when' contracts are covered by employment legislation. [DBEI]
- Review legislation on a regular basis to ensure there are protections for atypical work arrangements. [DEASP/DBEI]

- Include the risk of bullying as mandatory in safety statements together with policies and procedures to mitigate the risk. [Health & Safety Authority]

### 5.2.5 Equality

- Given the importance of breastfeeding from a health perspective<sup>110</sup>, legislative protections for breastfeeding at work should be increased to 12 months. [Government]
- Review the adequacy of paternity leave and implications for a period of paid paternity, particularly in the context of same sex partnerships. [DEASP]
- Conduct targeted research to get comprehensive gender-disaggregated data relating to low-paid employment as well as to possible links between under-investment in public childcare and women in low paid employment. [Government]
- Proactively promote the Wage Subsidy Scheme to employers and people with disabilities. [DEASP]

### 5.2.6 Information

- Provide information on the implications of being self-employed to help people make informed decisions. [DEASP and CIB]
- Provide information about permit requirements for self-employment for asylum seekers. [DJE and CIB]
- Provide detailed information about the specific documentation required for Critical Skills Employment (CSE) permits. [DBEI and CIB]
- Encourage employers to make employment rights information available to employees, particularly migrants. [DBEI and DJE]

<sup>110</sup> The World Health Organisation recommends that women should breastfeed for at least two years.

# Appendix A: Summary of Main Employment Legislation

**Employment (Miscellaneous Provisions) Act 2018:** Deals with precarious employment, zero hours contracts and uncertain working conditions for employees in sectors requiring considerable flexibility in the employment contract, such as retail, hospitality and tourism. Employers must give a written statement of five terms of employment within five days of starting employment. These are the full name of the employer and employee, the employer's address, expected duration of the employment contract, method of calculating the rate of pay and expected normal working day and week. Employees now have a statutory entitlement to a banded hours contract when their contracted working hours over the previous 12 months do not reflect actual working hours. There are eight different bands and once an employee is placed on a particular band they are entitled to work an average of these hours for the following 12 months. The Act prohibits bogus self-employment and zero hours contracts.<sup>111</sup> Employees who are not called into work in any given week will be entitled to a new minimum payment equivalent to 25% of their weekly contracted hours. Employees given a series of fixed contracts will accumulate continuous service for the purpose of protection under various employment law statutes. There are sanctions for employers who do not implement the Act or who penalise employees who seek to enforce their rights. The Act authorises a WRC Adjudication Officer when dealing with unfair dismissal cases to require any person to attend the hearing to give evidence or to produce relevant documents in their possession. Dismissal is considered

to be automatically unfair if the employee is dismissed because of trade union membership or activity, religious or political opinion, race, colour, sexual orientation, age, membership of the Traveller community, pregnancy, giving birth, breastfeeding or any matters connected with pregnancy or birth and legal proceedings against an employer where the employee is a party or witness.

**Competition (Amendment) Act 2017:** Extends collective bargaining rights to voice-over actors, session musicians and freelance journalists. It also introduces the concepts of false self-employed workers and fully dependant self-employed workers and enables trade unions representing such workers to apply to the Minister to include them within the scope of the legislation to allow the unions enter collective bargaining agreements on their behalf.

**Paternity Leave and Benefit Act 2016:** Provides for statutory paternity leave of two weeks for the parents<sup>112</sup> (other than the mother) of a child, which can commence any time within the first six months following the birth or adoption of a child. During paternity leave parents are treated as if they have been working with entitlements to annual leave and public holidays but entitlement to pay and superannuation depends on the contract of employment.

**Parent's Leave and Benefit Act, 2019:** Allows each parent to 2 weeks paid parent's leave for a child born or adopted on or after 1 November 2019.

<sup>111</sup> There are exceptions such as genuine casual employment and where zero hours contracts are essential for the business in the short term or in emergency situations.

<sup>112</sup> Defined as the father of the child, spouse, civil partner or cohabitant of the mother, parent of a donor-conceived child, nominated parent for an adopted child in the case of married same-sex couples, or the spouse, civil partner or cohabitant of the adopting mother or sole male adopter.

**National Minimum Wage (Low Pay Commission) Act 2015:** Set up the Low Pay Commission to examine and make annual recommendations on the appropriate level of the National Minimum Wage and related matters.

**Workplace Relations Act 2015:** Streamlined industrial relations, employment law and employment equality complaints and disputes procedures into two bodies – the Workplace Relations Commission (a new body that took over the functions of NERA, the Equality Tribunal, the LRC, the Director of Equality Tribunal and some of the functions of the EAT) and the Labour Court (which took over the appeal function of the EAT). It also standardised time limits for the making of appeals. The **Employment (Miscellaneous Provisions) Act 2018** amended the Act to allow an inspector of the WRC to issue a fixed payment notice as an alternative to initiating prosecution proceedings.

**Industrial Relations (Amendment) Act 2015:** Provides a new system of Registered Employment Agreements and Sectoral Employment Agreements, strengthened unfair dismissal protection for employees and provided an extended definition of collective bargaining.

**Unfair Dismissals Act 1997-2015:** Employers must show fair grounds for dismissal. Unfair dismissal results when a contract of employment is terminated with or without notice or the employee terminates the contract of employment because of the conduct of the employer. Apart from constructive dismissal, a dismissal is assumed to be unfair unless the employer can justify it. Dismissal cannot result from trade union membership or activity, pregnancy-related matters, entitlements under legislation covering maternity, paternity leave, parent's leave parental leave, adoptive leave and carer's leave. However, employees on probation or undergoing training are not covered by

unfair dismissals provisions. Employees must normally have worked continuously for at least 12 months to bring a claim for unfair dismissal. The Employment (Miscellaneous Provisions) Act, 2018 amended the Act to enable WRC Adjudicators to compel witnesses to attend an unfair dismissals hearing to give evidence.

**National Minimum Wages Act 2000-2015:** Provides for a minimum wage for adults and sub minima rates for young people aged 19 and under and for trainees. The Employment (Miscellaneous Provisions) Act, 2018 abolished trainee rates and simplified the age-related rates.

**Protected Disclosures Act 2014:** Protects workers (employees, agency workers, contractors and trainees) who raise concerns of possible wrongdoing in the workplace, sometimes called 'whistleblowing'. Dismissal as a result of making a protected disclosure is considered unfair dismissal.

**Terms of Employment (Information) Acts 1994-2014:** Employers must provide employees with a written statement of terms and conditions of employment within two months of commencement of employment. The Employment (Miscellaneous Provisions) Act 2018 amended the Act and employers now must provide to employees a written statement of the full name of the employer and employee, the employers address, the expected duration of the contract of employment, the rate of method of calculation of pay and the hours the employee can be reasonably expected to work within 5 days of the employee commencing work.

**Redundancy Payments Acts 1967-2014:** provides a minimum entitlement to a redundancy payment for employees who have a set period of service with the employer.

**Protection of Employees (Temporary Agency Work) Act 2012:** Temporary agency workers have the right to equal treatment in basic

working and employment conditions such as pay, working time, rest periods, night work, annual leave and public holidays.

**Employment Equality Acts 1998-2015:** Prohibits discrimination in employment-related areas in the public and private sectors. These include recruitment and promotion; equal pay; working conditions; training or experience; dismissal; and harassment. Nine equality grounds are named – gender, civil status, family status, age, disability, religious belief, race, sexual orientation or membership of the Traveller community.

**Redundancy Payments Acts 1967-2014:** Provides a statutory minimum redundancy entitlement.

**Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007:** Gives greater protection to employees in collective redundancy situations where dismissed employees are replaced by new workers doing the same job and performing the same tasks for lower wages.

**Parental Leave Act 1998-2019:** Gives male and female employees the right to take up to 22 working weeks of unpaid leave to care for young children. Each parent is entitled to 22 weeks leave for each child. From 1 September 2020, this increases to 26 weeks.

**Employment Permits Acts 2003-2006 and Employment Permits (Amendment) Act 2014:** Non-EU nationals may not enter into employment unless their residency permit states so. Non-EU students can work 20 hours per week in term time and 40 hours per week during holidays (revised to June, July, August and September in 2016) without an Employment Permit. Non-EU nationals in illegal employment through no fault of their own have a defence in law and are entitled to some redress notwithstanding the illegality of the employment contract if the employer has benefitted from that contract.

**Protection of Employees (Employer's Insolvency) Act 1984-2006:** Established the Insolvency Payments Scheme to protect pay-related entitlements owed to employees who lose employment because of an employer's insolvency. Insolvency is defined as the date of appointment of a liquidator or receiver, the death of the employer where the estate is insolvent, adjudication of bankruptcy or insolvency under another EU Member State's legislation.

**Safety, Health and Welfare at Work Act 2005:** Employers must identify risks and hazards in the work place and identify steps to address these.

**Adoptive Leave Act 1995-2005:** Entitles female employees to time off work while adopting a child. Men who are sole adopters may also avail of adoptive leave. As of March 2007 adoptive leave entitlement is 24 weeks.

**Maternity Protection Acts 1994-2004:** Provides the statutory minimum entitlements for maternity at work, including maternity leave. A woman who becomes pregnant while in employment is entitled to 26 weeks' maternity leave and 16 weeks' additional unpaid maternity leave. Employers must be given four weeks' notice of the intention to take maternity leave. During maternity leave women are treated as if they have been working with entitlements to annual leave and public holidays but entitlement to pay and superannuation depends on the contract of employment. Women may not be penalised by dismissal, unfair treatment, including selection for redundancy, or an unfavourable change in conditions of employment.

**Protection of Employees (Fixed Term) Work Act 2003:** Applies to all fixed term workers. The termination of a contract is defined by objective conditions such as reaching a specified date, completing specified tasks or the occurrence of a specific event.

**European Communities (Protection of Employees on Transfer of Undertaking) Regulations, 1980-2003:** Referred to as TUPE, its purpose is to preserve employment terms and conditions (pension entitlements are excluded) when a business or undertaking or part thereof is transferred to a new employer, other than by way of a share transfer. Employees cannot be dismissed solely on grounds of the transfer.

**Protection of Employees (Part-Time Work) Act 2001:** Prohibits less favourable treatment of part-time employee than a comparable full-time employee, unless it is justified on objective grounds such as pension entitlements.

**National Minimum Wage Act, 2000:** Made provision for an hourly national minimum wage.

**Organisation of Working Time Act 1997:** Sets out minimum entitlements for employees for working hours, annual leave, night work, breaks and rest periods. The average working week cannot exceed 48 hours. However, the Act does not apply to transport workers, workers at sea, Gardaí, Defence Forces, trainee doctors, certain categories of civil protection services, employees who control their own working hours and family employees on farms or in private homes. The Employment (Miscellaneous Provisions) Act 2018 amended the Act to prohibit zero hours contracts except in the case of casual work, emergency work and short term relief work.

**Protection of Young Persons (Employment) Act 1996:** Protects the health of young workers and ensures that the education of young people is not at risk during the school year because of employment. It sets out the minimum age limits for employment, rest intervals and maximum working hours and prohibits the employment of anyone under 18 on late night work.

**Terms of Employment (Information) Act 1994:** Sets out the basic terms of employment which the employer must provide in writing to an employee. Originally set within two months the Employment (Miscellaneous Provisions) Act 2018 changed the period to two weeks.

**Payment of Wages Act 1991:** Covers methods of payment, allowable deductions and employee information in relation to wages.

**Protection of Employment Act 1977:** Makes it mandatory for employers proposing a collective redundancy to engage in an information and consultation process with employee representatives and to inform the Minister of the proposed collective redundancy.

**Minimum Notice and Terms of Employment Act 1973-2005:** Employees in continuous service with the same employer for at least 13 weeks are entitled to a minimum period of notice before an employer can dismiss them or make them redundant.

# Appendix B: Guidance on Self Employment

The table below summarises DEASP guidance on the distinction between employees and the

self-employed. Not all criteria need to be met to qualify for either category.

Employee	Self-employed
<ul style="list-style-type: none"> <li>• Under the control of another person.</li> <li>• Fixed hourly/weekly/monthly wages.</li> <li>• Supplies only labour, not materials or equipment.</li> <li>• Cannot subcontract the work.</li> <li>• Employer obliged to offer work and employee to do the work.</li> <li>• Entitled to sick pay/holiday pay.</li> <li>• Provided with insurance cover.</li> <li>• Set working hours.</li> <li>• Tax deducted under PAYE system.</li> </ul>	<ul style="list-style-type: none"> <li>• Owns the business.</li> <li>• Exposed to financial risk.</li> <li>• Can subcontract the work.</li> <li>• Not obliged to take specific work.</li> <li>• Supplies equipment and materials.</li> <li>• Costs and agrees a price for the work.</li> <li>• Not entitled to paid leave.</li> <li>• Provides own insurance cover.</li> <li>• Controls working hours.</li> <li>• Files tax returns and registered for self-assessed tax.</li> </ul>

(Source: [welfare.ie](http://welfare.ie))







[citizensinformationboard.ie](http://citizensinformationboard.ie)

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