



Number 38 of 2018

Employment (Miscellaneous Provisions) Act 2018



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EMPLOYMENT (MISCELLANEOUS PROVISIONS) ACT 2018

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement
2. Interpretation
3. Repeals

PART 2

AMENDMENT OF UNFAIR DISMISSALS ACT 1977

4. Amendment of Unfair Dismissals Act 1977

PART 3

AMENDMENT OF ACT OF 1994

5. Amendment of section 1 of Act of 1994
6. Amendment of section 2 of Act of 1994
7. Amendment of section 3 of Act of 1994
8. Amendment of section 4 of Act of 1994
9. Amendment of section 6 of Act of 1994
10. Offences
11. Protection against penalisation
12. Amendment of section 7 of Act of 1994

PART 4

AMENDMENT OF ACT OF 1997

13. Amendment of section 2 of Act of 1997
14. Amendment of section 5 of Act of 1997
15. Amendment of section 18 of Act of 1997
16. Banded hours
17. Protection against penalisation

[No. 38.]

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[2018.]

PART 5

AMENDMENT OF NATIONAL MINIMUM WAGE ACT 2000

18. Amendment of National Minimum Wage Act 2000

PART 6

AMENDMENT OF WORKPLACE RELATIONS ACT 2015

19. Amendment of Workplace Relations Act 2015

ACTS REFERRED TO

Companies Act 2014 (No. 38)
Industrial Relations Acts 1946 to 2015
National Minimum Wage Act 2000 (No. 5)
National Minimum Wage Acts 2000 and 2015
Organisation of Working Time Act 1997 (No. 20)
Payment of Wages Act 1991 (No. 25)
Petty Sessions (Ireland) Act 1851 (14 & 15 Vict., c.93)
Protected Disclosures Act 2014 (No. 14)
Terms of Employment (Information) Act 1994 (No. 5)
Unfair Dismissals Act 1977 (No. 10)
Unfair Dismissals Acts 1977 to 2015
Workplace Relations Act 2015 (No. 16)



Number 38 of 2018

EMPLOYMENT (MISCELLANEOUS PROVISIONS) ACT 2018

An Act to provide for a requirement that employers provide employees with certain terms of employment within a certain period after commencing employment; to impose sanctions for certain offences; to further provide for a minimum payment due to employees in certain circumstances; to prohibit contracts specifying zero as the contract hours in certain circumstances and to provide for the introduction of banded contract hours; to further provide for prohibition of penalisation and for those purposes to amend the Terms of Employment (Information) Act 1994 and the Organisation of Working Time Act 1997; to amend the Unfair Dismissals Act 1977; to amend the National Minimum Wage Act 2000; to amend the Workplace Relations Act 2015; and to provide for related matters. [25th December, 2018]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Employment (Miscellaneous Provisions) Act 2018.
- (2) Subject to *subsection (3)*, this Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.
- (3) This Act, except insofar as it is already in operation pursuant to an order or orders under *subsection (2)*, shall come into operation no later than 3 months after the date of its passing.

Interpretation

2. In this Act—
 - “Act of 1994” means the Terms of Employment (Information) Act 1994;
 - “Act of 1997” means the Organisation of Working Time Act 1997;
 - “Minister” means the Minister for Employment Affairs and Social Protection.

Repeals

3. The following are repealed:
- (a) paragraphs (a), (b), (f) and (g) of section 3(1) of the Act of 1994, and
 - (b) section 16 of the National Minimum Wage Act 2000.

PART 2

AMENDMENT OF UNFAIR DISMISSALS ACT 1977

Amendment of Unfair Dismissals Act 1977

4. Section 8 (amended by the Workplace Relations Act 2015) of the Unfair Dismissals Act 1977 is amended, by the insertion of the following subsection after subsection (12):

“(13) (a) An adjudication officer may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice to give evidence in proceedings under this section or to produce to the adjudication officer any documents in his or her possession, custody or control that relate to any matter to which those proceedings relate.

(b) A person to whom a notice under paragraph (a) is given shall be entitled to the same immunities and privileges as those to which he or she would be entitled if he or she were a witness in proceedings before the High Court.

(c) A person to whom a notice under paragraph (a) has been given who—

(i) fails or refuses to comply with the notice, or

(ii) refuses to give evidence in proceedings to which the notice relates or fails or refuses to produce any document to which the notice relates,

shall be guilty of an offence and shall be liable, on summary conviction, to a class E fine.”.

PART 3

AMENDMENT OF ACT OF 1994

Amendment of section 1 of Act of 1994

5. Section 1(1) of the Act of 1994 is amended by the insertion of the following definition:

“ ‘Commission’ means the Workplace Relations Commission;”.

Amendment of section 2 of Act of 1994

6. Section 2 of the Act of 1994 is amended by the substitution of the following subsection for subsection (1):

“(1) This Act, other than section 3(1A), shall not apply to employment in which the employee has been in the continuous service of the employer for less than 1 month.”.

Amendment of section 3 of Act of 1994

7. Section 3 of the Act of 1994 is amended—

- (a) by the insertion of the following subsection after subsection (1):

“(1A) Without prejudice to subsection (1), an employer shall, not later than 5 days after the commencement of an employee’s employment with the employer, give or cause to be given to the employee a statement in writing containing the following particulars of the terms of the employee’s employment, that is to say:

- (a) the full names of the employer and the employee;
- (b) the address of the employer in the State or, where appropriate, the address of the principal place of the relevant business of the employer in the State or the registered office (within the meaning of the Companies Act 2014);
- (c) in the case of a temporary contract of employment, the expected duration thereof or, if the contract of employment is for a fixed term, the date on which the contract expires;
- (d) the rate or method of calculation of the employee’s remuneration and the pay reference period for the purposes of the National Minimum Wage Act 2000;
- (e) the number of hours which the employer reasonably expects the employee to work—
 - (i) per normal working day, and
 - (ii) per normal working week.”,

- (b) by the insertion of the following subsection after subsection (1A):

“(1B) Where a statement under subsection (1A) contains an error or omission, the statement shall be regarded as complying with the provisions of that subsection if it is shown that the error or omission was made by way of a clerical mistake or was otherwise made accidentally and in good faith.”,

- (c) by the substitution of the following subsection for subsection (2):

“(2) Each statement referred to in subsection (1) and (1A) shall be given to an employee notwithstanding that the employee’s employment ends

before the end of the period within which the statement is required to be given.”,

- (d) in subsection (3), by the substitution of “paragraph (d) of subsection (1A) or paragraphs” for “paragraphs (g)”,
- (e) in subsection (4), by the substitution of “subsection (1) or (1A)” for “subsection (1)”,
- (f) in subsection (5), by the substitution of “a statement furnished under this section” for “the said statement”, and
- (g) in subsection (6)(a), by the substitution of “subsection (1) or (1A)” for “subsection (1)”.

Amendment of section 4 of Act of 1994

8. Section 4(1) of the Act of 1994 is amended by the substitution of “containing the particulars specified in subsections (1) and (1A) of section 3” for “under section 3”.

Amendment of section 6 of Act of 1994

9. Section 6(1) of the Act of 1994 is amended by the substitution of “containing the particulars specified in subsections (1) and (1A) of section 3” for “under section 3”.

Offences

10. The Act of 1994 is amended by the insertion of the following section after section 6A:

- “6B. (1) An employer who, without reasonable cause, fails to provide an employee with a statement required by section 3(1A), within one month of the date of the commencement of that employee’s employment, shall be guilty of an offence.
- (2) An employer who deliberately provides false or misleading information to an employee, or who is reckless as to whether or not false or misleading information is provided, as part of the statement required by section 3(1A), shall be guilty of an offence.
 - (3) A person guilty of an offence under this section shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or to both.
 - (4) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (5) Summary proceedings for an offence under this section may be brought and prosecuted by the Commission.
- (6) Where a person is convicted of an offence under this section the court shall order the person to pay to the Commission the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence unless the court is satisfied that there are special and substantial reasons for not so doing.
- (7) In proceedings for an offence under this section, it shall be a defence for the accused to prove that he or she exercised due diligence and took reasonable precautions to ensure that this Act was complied with by the accused and by any person under the control of the accused.
- (8) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.”.

Protection against penalisation

11. The Act of 1994 is amended by the insertion of the following section after section 6B:

- “**6C.** (1) An employer shall not penalise or threaten penalisation of an employee for—
- (a) invoking any right conferred on him or her by this Act,
 - (b) having in good faith opposed by lawful means an act that is unlawful under this Act,
 - (c) giving evidence in any proceedings under this Act, or
 - (d) giving notice of his or her intention to do any of the things referred to in the preceding paragraphs.
- (2) Subsection (1) does not apply to the making of a complaint that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.
- (3) In proceedings under Part 4 of the Workplace Relations Act 2015 in relation to a complaint that subsection (1) has been contravened, it shall be presumed until the contrary is proved that the employee concerned has acted reasonably and in good faith in forming the opinion and making the communication concerned.
- (4) If a penalisation of an employee, in contravention of subsection (1), constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2015, relief may not be granted to the employee in respect of that penalisation both under this Act and under those Acts.
- ”

- (5) In this section ‘penalisation’ means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—
- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal,
 - (b) demotion or loss of opportunity for promotion,
 - (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
 - (d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and
 - (e) coercion or intimidation.”.

Amendment of section 7 of Act of 1994

12. Section 7 of the Act of 1994 is amended—

- (a) by the insertion of the following subsection after subsection (1):
 - “(1A) An employee shall not be entitled to present a complaint under Part 4 of the Workplace Relations Act 2015 in respect of a contravention of section 3(1A)—
 - (a) unless the employee has been in the continuous service of the employer for more than 1 month, or
 - (b) if the employer concerned has been prosecuted for an offence under this Act in relation to the same contravention.”,
- (b) in subsection (2)—
 - (i) by substituting “section 3, 4, 5, 6 or 6C” for “section 3, 4, 5 or 6” in each place where it occurs,
 - (ii) in paragraph (d), by the insertion of “in relation to a complaint of a contravention under section 3, 4, 5 or 6, and without prejudice to any order made under paragraph (e)” before “order the employer”,

and
- (c) by the insertion of the following paragraph after paragraph (d):
 - “(e) in relation to a complaint of a contravention under section 6C, and without prejudice to any order made under paragraph (d), order the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all of the circumstances, but not exceeding 4 weeks’ remuneration in respect of the employee’s employment calculated

in accordance with regulations under section 17 of the Unfair Dismissals Act 1977.”.

PART 4

AMENDMENT OF ACT OF 1997

Amendment of section 2 of Act of 1997

13. Section 2(1) of the Act of 1997 is amended by the insertion of the following definitions:

“ ‘adjudication officer’ means an adjudication officer appointed under section 40 of the Workplace Relations Act 2015;

‘collective bargaining’ shall be construed in accordance with the Industrial Relations Acts 1946 to 2015.”.

Amendment of section 5 of Act of 1997

14. Section 5 of the Act of 1997 is amended by the substitution of “16, 17 or 18A” for “16 or 17”.

Amendment of section 18 of Act of 1997

15. The Act of 1997 is amended by the substitution of the following section for section 18:

“Prohibition of zero hours working practices in certain circumstances and minimum payment in certain circumstances

18. (1) This section applies to an employee whose contract of employment operates to require the employee to make himself or herself available to work for the employer in a week—

- (a) a certain number of hours (‘the contract hours’),
- (b) as and when the employer requires him or her to do so, or
- (c) both a certain number of hours and otherwise as and when the employer requires him or her to do so,

and the requirement is not one that is held to arise by virtue only of the fact, if such be the case, of the employer having engaged the employee to do work of a casual nature for him or her on occasions prior to that week (whether or not the number of those occasions or the circumstances otherwise touching the engagement of the employee are such as to give rise to a reasonable expectation on his or her part that he or she would be required by the employer to do work for the employer in that week).

(2) In a contract for a certain number of hours of work referred to in paragraphs (a) and (c) of subsection (1), the number of hours concerned shall be greater than zero.

- (3) Notwithstanding subsection (1), subsection (2) shall not apply to—
 - (a) work done in emergency circumstances, or
 - (b) short-term relief work to cover routine absences for that employer.
- (4) If an employer does not require an employee to whom this section applies to work for the employer in a week referred to in subsection (1)—
 - (a) in a case falling within paragraph (a) of that subsection, at least 25 per cent of the contract hours, or
 - (b) in a case falling within paragraph (b) or (c) of that subsection where work of the type which the employee is required to make himself or herself available to do has been done for the employer in that week, at least 25 per cent of the hours for which such work has been done in that week,

then the employee shall, subject to this section, be entitled—

- (i) in a case where the employee has not been required to work for the employer at all in that week, to be paid by the employer the pay he or she would have received if he or she had worked for the employer in that week whichever of the following is less, namely—
 - (I) the percentage of hours referred to in paragraph (a) or (b), as the case may be, or
 - (II) 15 hours,
- (ii) in a case where the employee has been required to work for the employer in that week less than the percentage of hours referred to in paragraph (a) or (b), as the case may be (and that percentage of hours is less than 15 hours), to have his or her pay for that week calculated on the basis that he or she worked for the employer in that week the percentage of hours referred to in paragraph (a) or (b), as the case may be,

and the minimum payment shall be calculated as 3 times the national minimum hourly rate of pay within the meaning of the National Minimum Wage Acts 2000 and 2015 or 3 times the minimum hourly rate of remuneration established by an employment regulation order, for the time being in force, on each occasion that this occurs.

- (5) Subsection (4) shall not apply—
 - (a) if the fact that the employee concerned was not required to work in the week in question the percentage of hours referred to in paragraph (a) or (b) of that subsection, as the case may be—
 - (i) constituted a lay-off or a case of the employee being kept on short-time for that week, or

- (ii) was due to exceptional circumstances or an emergency (including an accident or the imminent risk of an accident), the consequences of which could not have been avoided despite the exercise of all due care, or otherwise to the occurrence of unusual and unforeseeable circumstances beyond the employer's control,
 - or
 - (b) if the employee concerned would not have been available, due to illness or for any other reason, to work for the employer in that week the said percentage of hours.
- (6) The reference in subsection (4)(b) to the hours for which work of the type referred to in that provision has been done in the week concerned shall be construed as a reference to the number of hours of such work done in that week by another employee of the employer concerned or, in case that employer has required 2 or more employees to do such work for him or her in that week and the number of hours of such work done by each of them in that week is not identical, whichever number of hours of such work done by one of those employees in that week is the greatest.
 - (7) References in this section to an employee being required to make himself or herself available to do work for the employer shall not be construed as including references to the employee being required to be on call, that is to say to make himself or herself available to deal with any emergencies or other events or occurrences which may or may not occur.
 - (8) Nothing in this section shall affect the operation of a contract of employment that entitles the employee to be paid wages by the employer by reason, alone, of the employee making himself or herself available to do, at the times and place concerned, the work concerned.”.

Banded hours

16. The Act of 1997 is amended by the insertion of the following section after section 18:

- “18A.(1)Where an employee's contract of employment or statement of terms of employment does not reflect the number of hours worked per week by an employee over a reference period, the employee shall be entitled to be placed in a band of weekly working hours specified in the Table to this section.
- (2) In accordance with subsection (1), where an employee believes that he or she is entitled to be placed in a band of weekly working hours, he or she shall inform the employer and request, in writing, to be so placed.

- (3) The employee shall be placed by the employer in a band of weekly working hours from a date that is not greater than 4 weeks from the date the employee made the request under subsection (2).
- (4) The band of weekly working hours on which the employee is entitled to be placed shall be determined by the employer on the basis of the average number of hours worked by that employee per week during the reference period.
- (5) An employer may refuse to place an employee on the band requested—
 - (a) where there is no evidence to support the claim in relation to the hours worked in the reference period,
 - (b) where there has been significant adverse changes to the business, profession or occupation carried on by the employer during or after the reference period,
 - (c) in circumstances to which section 5 applies, or
 - (d) where the average of the hours worked by the employee during the reference period were affected by a temporary situation that no longer exists.
- (6) This section shall not apply to banded hour arrangements which have been entered into by agreement following collective bargaining.
- (7) An employee placed on a band of weekly working hours shall work hours the average of which shall fall within that band for a period of not less than 12 months following that placement.
- (8) Where an employee believes that his or her employer has failed to place the employee in a band of weekly working hours in accordance with subsection (3), having been requested to do so under subsection (2) or unreasonably refused a request to be placed on a band of weekly working hours, the employee may make a complaint in accordance with Part 4 of the Workplace Relations Act 2015.
- (9) A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a failure to comply with this section shall do one or more of the following, namely—
 - (a) declare that the complaint was or, as the case may be, was not well founded, and
 - (b) where the decision is that the complaint was well founded, require the employer to comply with this section and place the employee on the appropriate band of hours.

- (10) Notwithstanding section 27(3)(c), a decision in accordance with subsection (9)(b) shall not order an employer to pay compensation to the employee for the employer's failure to comply with this section.
- (11) Either party to proceedings under subsection (8) may appeal a decision of an adjudication officer to the Labour Court in accordance with section 44 of the Workplace Relations Act 2015.
- (12) A decision of the Labour Court under section 44 of the Workplace Relations Act 2015, on appeal from a decision of an adjudication officer referred to in this section shall affirm, vary or set aside the decision of the adjudication officer.
- (13) Nothing in this section requires an employer to offer hours of work in a week where the employee was not expected to work, or requires an employer to offer hours of work in a week where the employer's regular occupation, profession or trade is not being carried out.
- (14) In this section 'reference period' means a period of 12 months after the commencement of employment with the employer and immediately before the employee makes a request under subsection (2), and a continuous period of employment with that employer occurring immediately before the commencement of section 18A shall be reckonable for the purposes of this section.

TABLE

BANDS OF WEEKLY WORKING HOURS

Band	From	To
A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
G	31 hours	36 hours
H	36 hours and over	

Protection against penalisation

17. The Act of 1997 is amended by the substitution of the following section for section 26:

- “26. (1) An employer shall not penalise or threaten penalisation of an employee for—
- (a) invoking any right conferred on him or her by this Act,
 - (b) having in good faith opposed by lawful means an act that is unlawful under this Act,
 - (c) giving evidence in any proceedings under this Act, or

- (d) giving notice of his or her intention to do any of the things referred to in the preceding paragraphs.
- (2) Subsection (1) does not apply to the making of a complaint that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.
- (3) In proceedings under Part 4 of the Workplace Relations Act 2015 in relation to a complaint of a failure to comply with subsection (1) it shall be presumed until the contrary is proved that the employee concerned has acted reasonably and in good faith in forming the opinion and making the communication concerned.
- (4) If a penalisation of an employee, in contravention of subsection (1), constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2015, relief may not be granted to the employee in respect of that penalisation both under this Act and under those Acts.
- (5) In this section ‘penalisation’ means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—
 - (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal,
 - (b) demotion or loss of opportunity for promotion,
 - (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
 - (d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and
 - (e) coercion or intimidation.”.

PART 5

AMENDMENT OF NATIONAL MINIMUM WAGE ACT 2000

Amendment of National Minimum Wage Act 2000

18. The National Minimum Wage Act 2000 is amended—

- (a) by the substitution of the following section for section 14:

“**14.** Subject to sections 15, 17, 18 and 41, an employee shall be remunerated by his or her employer in respect of the employee’s working hours in any pay reference period, at an hourly rate of pay that on average is not less

than the national minimum hourly rate of pay.”,

(b) by the substitution of the following section for section 15:

“Prescription of percentages of hourly rates of pay

15. (1) The Minister shall prescribe a percentage of the national minimum hourly rate of pay in relation to employees—

- (a) who have not attained the age of 18 years,
- (b) who are 18 years of age, and
- (c) who are 19 years of age.

(2) Subject to sections 17, 18 and 41, an employee to whom subsection (1) relates shall be remunerated by his or her employer in respect of the employee’s working hours in any pay reference period at an hourly rate of pay that on average is not less than the percentage of the national minimum hourly rate of pay prescribed under that subsection in relation to that employee.

(3) In prescribing percentages under subsection (1), the Minister shall have regard to the condition of the labour market, the costs of employment, levels of youth employment and levels of youth unemployment.

(4) In prescribing percentages under subsection (1), the Minister shall not prescribe a percentage that is—

- (a) in the case of employees who have not attained the age of 18 years, less than 70 per cent,
- (b) in the case of employees who are 18 years of age, less than 80 per cent, and
- (c) in the case of employees who are 19 years of age, less than 90 per cent,

of the national minimum hourly rate of pay.”.

PART 6

AMENDMENT OF WORKPLACE RELATIONS ACT 2015

Amendment of Workplace Relations Act 2015

19. The Workplace Relations Act 2015 is amended—

(a) in section 36(5) by the substitution of the following paragraphs for paragraph (b) and (c):

- “(b) subsection (4) of section 4 of the Payment of Wages Act 1991,
- (c) section 23 of the National Minimum Wage Act 2000, or

(d) section 6B of the Terms of Employment (Information) Act 1994.”,

and

- (b) in Part 1 of Schedule 5, by the substitution of “Section 3, 4, 5, 6 or 6C of the Terms of Employment (Information) Act 1994” for “Section 3, 4, 5 or 6 of the Terms of Employment (Information) Act 1994”.