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REDUNDANCY PAYMENTS ACT 2003

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Acts Referred to

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Civil Service Regulation Act 1956	1956, No. 46
Employment Agency Act 1971	1971, No. 27
Employment Equality Act 1998	1998, No. 21
Industrial Relations Act 1946	1946, No. 26
Local Government Act 2001	2001, No. 37
Maternity Protection Act 1994	1994, No. 34
National Minimum Wage Act 2000	2000, No. 5
Parental Leave Act 1998	1998, No. 30
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Redundancy Payments Act 1967	1967, No. 21
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Social Welfare (Consolidation) Act 1993	1993, No. 27



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REDUNDANCY PAYMENTS ACT 2003

AN ACT TO AMEND AND EXTEND THE REDUNDANCY PAYMENTS ACT 1967, TO AMEND THE REDUNDANCY PAYMENTS ACT 1971, THE PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACT 1984, THE SOCIAL WELFARE (CONSOLIDATION) ACT 1993 AND THE EMPLOYMENT EQUALITY ACT 1998 AND TO PROVIDE FOR RELATED MATTERS. [15th May, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“Minister” means the Minister for Enterprise, Trade and Employment;

“Principal Act” means the Redundancy Payments Act 1967.

(2) In this Act—

- (a) a reference to a section is to a section of this Act, unless it is indicated that reference to some other enactment is intended, and
- (b) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

2.—Section 5 of the Social Welfare (Consolidation) Act 1993 is amended by inserting the following after subsection (5): Expenses.

“(6) There shall be paid to the Minister for Enterprise, Trade and Employment out of the Social Insurance Fund, at such times and in such manner as the Minister for Finance may direct, the sums that the Minister for Enterprise, Trade and Employment may estimate, on the basis that may be agreed upon between the Minister for Enterprise, Trade and Employment, the Minister and the Minister for Finance, to be part of the expenses incurred in carrying into effect—

- (a) the Protection of Employees (Employers' Insolvency) Acts 1984 to 2001, and

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(b) the *Redundancy Payments Acts 1967 to 2003*,

and any sums so paid shall be appropriated in aid of moneys provided by the Oireachtas for carrying into effect the Acts referred to in paragraphs (a) and (b).”.

Amendment of
section 2 of
Principal Act
(Interpretation).

3.—Section 2(1) of the Principal Act is amended—

(a) by inserting the following after the definition of “business”:

“ ‘contract of employment’ means—

(a) a contract of service or apprenticeship, and

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract),

whether the contract is express or implied and, if express, whether it is oral or in writing and references to ‘contract’ shall be construed accordingly;”.

(b) by substituting the following for the definition of “employee”:

“ ‘employee’ means a person of 16 years and upwards who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer and, for the purposes of this Act, a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act 1956) shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority, a harbour authority, the Eastern Regional Health Authority, the Northern Area Health Board, the East Coast Area Health Board or the South-Western Area Health Board, a health board or vocational education committee shall be deemed to be an employee employed by the authority, health board or vocational education committee, as the case may be;”.

(c) by substituting the following for the definition of “employer”:

“ ‘employer’ means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, subject to the qualification that the person who under a contract of employment referred to

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in paragraph (b) of the definition of 'contract of employment' is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual's employer;";

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and

(d) by inserting the following after the definition of "lay-off":

" 'local authority' means a county council, a city council or a town council for the purposes of the Local Government Act 2001;".

4.—Section 4 of the Principal Act is amended by substituting the following for subsection (2):

Amendment of section 4 of Principal Act (Classes of persons to which this Act applies).

"(2) This Act shall apply to an employee employed in employment which would be insurable for all benefits under the Social Welfare (Consolidation) Act 1993 but for the fact that the employment concerned is an excepted employment by virtue of paragraph 2, 4 or 5 of Part II of the First Schedule to that Act."

5.—Section 7(2) of the Principal Act is amended by inserting "for one or more reasons not related to the employee concerned" after "if".

Amendment of section 7 of Principal Act (General right to redundancy payment).

6.—Section 9(1) of the Principal Act is amended by substituting the following for paragraph (b):

Amendment of section 9 of Principal Act (Dismissal by employer).

"(b) where, under the contract under which the employee is employed by the employer the employee is employed for a fixed term or for a specified purpose (being a purpose of such a kind that the duration of the contract was limited but was, at the time of its making, incapable of precise ascertainment), that term expires or that purpose ceases without being renewed under the same or similar contract, or".

7.—Section 17 of the Principal Act is amended—

Amendment of section 17 of Principal Act (Notice of proposed dismissal for redundancy).

(a) in subsection (1), by deleting:

"and send to the Minister a copy of that notice",

(b) in subsection (2), by substituting the following for paragraphs (b) and (c):

"(b) the method of service of the notice.",

and

(c) by inserting the following after subsection (2):

"(2A) A notice under this section, a redundancy certificate and a claim for a rebate under section 36 may be combined in one document."

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Amendment of section 25 of Principal Act (Employment wholly or partly abroad).

8.—Section 25 of the Principal Act is amended—

(a) in subsection (2), by substituting “the employee was insurable for all benefits under the Social Welfare (Consolidation) Act 1993 or would have been insurable for all such benefits but for the fact that the employment concerned was an excepted employment by virtue of paragraph 2, 4 or 5 of Part II of the First Schedule to that Act and the employee” for “he was domiciled in the State and”, and

(b) by inserting the following after subsection (2):

“(2A) An employee who under a contract of employment has worked outside the State and was working in the State for at least two years immediately prior to the date of termination of the employment concerned shall be entitled to redundancy payment in respect of all his employment with the employer concerned.”.

Amendment of section 39 of Principal Act (Redundancy Appeals Tribunal and appeals and references thereto).

9.—Section 39(2) of the Principal Act is amended in paragraph (b) by inserting “who, before their appointment, shall each have had not less than 5 years’ experience as a practising barrister or practising solicitor” after “vice chairmen”.

Transitional arrangements.

10.—(1) Paragraph 1 of Schedule 3 to the Principal Act is amended—

(a) in subparagraph (a), by substituting “two weeks” for “one-half”, and

(b) in subparagraph (b), by inserting “two weeks of” after “product of”.

(2) On the commencement of *section 11* this section shall cease to have effect.

Enhanced redundancy payments.

11.—Schedule 3 to the Principal Act is amended by substituting the following for paragraphs 1, 2 and 3:

“AMOUNT OF LUMP SUM

1. (1) The amount of the lump sum shall be equivalent to the aggregate of the following:

(a) the product of two weeks of the employee’s normal weekly remuneration and the number of years of continuous employment from the date on which the employee attained the age of 16 years with the employer by whom the employee was employed on the date of dismissal or by whom the employee was employed when the employee gave notice of intention to claim under section 12, and

(b) a sum equivalent to the employee’s normal weekly remuneration.

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(2) In calculating the amount of the lump sum, the amount S.11 per annum to be taken into account shall be that obtaining under section 4(2) of the Redundancy Payments Act 1979 at the time the employee is declared redundant.

2. If the total amount of reckonable service is not an exact number of years, the “excess” days shall be credited as a proportion of a year.

3. (a) For the purpose of ascertaining, for the purposes of paragraph 1, the number of years of continuous employment, the number of weeks in the period of continuous employment shall be ascertained in accordance with this Schedule and the result shall be divided by 52.

(b) In ascertaining the number of weeks in the period of continuous employment, a week which under this Schedule is not allowable as reckonable service shall be disregarded.”.

12.—Schedule 3 to the Principal Act is amended—

(a) by substituting the following for paragraph 5:

Amendment of
Schedule 3 to
Principal Act
(Amount of lump
sum).

“5. Where an employee’s period of service has been interrupted by any one of the following—

(a) any period by reason of—

- (i) sickness,
- (ii) lay-off,
- (iii) holidays,
- (iv) service by the employee in the Reserve Defence Forces of the State,
- (v) any cause (other than the voluntary leaving of the employment concerned by the employee) not mentioned in clauses (i) to (iv) but authorised by the employer,

(b) a period during which an adopting parent was absent from work while on adoptive leave or additional adoptive leave under the Adoptive Leave Act 1995,

(c) a period during which an employee was absent from work while on—

- (i) additional maternity leave, protective leave or natal care absence within the meaning of the Maternity Protection Act 1994,
- (ii) parental leave or *force majeure* leave within the meaning of the Parental Leave Act 1998, or

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(iii) carer's leave within the meaning of the Carer's Leave Act 2001,

(d) any period during which an employee was absent from work because of a lock-out by the employer or because the employee was participating in a strike, whether such absence occurred before or after the commencement of this Act,

continuity of employment shall not be broken by such interruption whether or not notice of termination of the contract of employment has been given.”,

(b) by substituting the following for paragraph 8:

“8. During, and only during, the 3 year period ending with the date of termination of employment, none of the following absences shall be allowable as reckonable service—

(a) absence in excess of 52 consecutive weeks by reason of an occupational accident or disease within the meaning of the Social Welfare (Consolidation) Act 1993,

(b) absence in excess of 26 consecutive weeks by reason of any illness not referred to in subparagraph (a),

(c) absence by reason of lay-off by the employer.

8A. The following absences shall be allowable as reckonable service:

(a) a period during which an adopting parent was absent from work while on adoptive leave under the Adoptive Leave Act 1995,

(b) a period during which an employee was absent from work while on—

(i) additional maternity, protective leave or natal care absence within the meaning of the Maternity Protection Act 1994,

(ii) parental leave or *force majeure* leave within the meaning of the Parental Leave Act 1998, or

(iii) carer's leave within the meaning of the Carer's Leave Act 2001,

(c) any absences not mentioned in paragraphs (a) or (b) but authorised by the employer.”,

and

(c) by substituting the following for paragraph 10:

“10. During, and only during, the 3 year period ending with the date of termination of employment, absence

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from work by reason of a strike in the business or industry in which the employee concerned is employed shall not be allowable as reckonable service.”.

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13.—The Principal Act is amended by substituting—

Increase in penalties for certain offences.

(a) in section 17(3), “€3,000” for “£300”,

(b) in section 18(4), “€3,000” for “£300”, and

(c) in section 36(3), “€3,000” for “£300”.

14.—Section 10 of the Redundancy Payments Act 1971 is amended in paragraph (c) by inserting “or the national minimum hourly rate of pay declared by order under the National Minimum Wage Act 2000” after “Industrial Relations Act 1946,”.

Amendment of section 10 of Redundancy Payments Act 1971.

15.—The Protection of Employees (Employers’ Insolvency) Act 1984 is amended—

Amendment of section 6 of Protection of Employees (Employers’ Insolvency) Act 1984.

(a) in section 6(2), by substituting the following for subparagraph (iii):

“(iii) at the election of the employee, either—

(I) any amount which an employer is required to pay, by virtue of an award under section 12 of the Act of 1973 made not earlier than the commencement of the relevant period, either for the period of notice required by section 4 of the Act of 1973 or by reason of a failure by that employer to give the notice required by the said section 4, or

(II) any unpaid normal weekly remuneration certified by the relevant officer as being the amount of normal weekly remuneration due to the employee in lieu of the statutory notice prescribed in section 4 of the Act of 1973,”

(b) in section 6(9), by substituting in paragraph (a) “subparagraph (iii)(I),” for “subparagraph (iii),” and

(c) in section 6(9), by inserting the following after paragraph (a):

“(aa) in relation to a debt referred to in subparagraph (iii)(II), the date of termination of employment,”.

16.—Section 17(4) of the Employment Equality Act 1998 is repealed.

Repeal of section 17(4) of Employment Equality Act 1998.

17.—(1) This Act may be cited as the Redundancy Payments Act 2003.

Short title, commencement, collective citation and construction.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders generally or with reference

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to any particular purpose or provision and different days may be appointed for different purposes or different provisions.

(3) This Act and the Redundancy Payments Acts 1967 to 2001 may be cited together as the Redundancy Payments Acts 1967 to 2003 and shall be construed together as one.