

EUGENEFCOLLINS

The Employment (Miscellaneous Provisions) Act, 2018

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What has been described by the Minister for Employment Affairs and Social Protection as “one of the most significant pieces of employment legislation in a generation”, will come into effect in March 2019. The Employment (Miscellaneous Provisions) Act, 2018 (“the Act”) is of particular importance for employers in sectors where the use of flexible working arrangements is common such as the retail, hospitality and tourism industries. The Act will not just impact on these sectors and introduces a wide range of changes which will be of importance for all employers.

Summary of key changes to the law under the Act

- Employers will be required to provide new employees with a written statement of core terms within five days of starting employment with the remaining terms to be provided within two months of commencement – this is a significant change to the current situation;
- Zero-hour contracts will be prohibited except in very limited circumstances;
- A new concept of ‘banded hours’ will be introduced which protects employees who regularly work more than their contracted hours;
- There will be a minimum payment for employees who are called into work but are sent home without working; and
- There will be strong anti-penalisation provisions for employees who invoke their rights under the Act.

Statement of core terms of employment within five days

The five core terms to be furnished are: -

- The full name of the employer and employee;
- The address of the employer within the State or the registered office of the employer;
- If the contract is temporary the expected duration of the contract and if the contract is a fixed-term contract the date the contract is due to expire;
- The rate or method of calculation of pay and the pay reference period; and
- The number of hours which the employee is normally expected to work per day and per week.

If an employee has been in employment for one month and has not been provided with a statement of the core terms, the employee may bring a claim to the Workplace Relations Commission. If found guilty of failing to provide the statement of core terms, an employer will be guilty of an offence and may be liable to a fine up to €5,000 or a term of imprisonment not exceeding 12 months.

Prohibition of zero-hour contracts

Zero-hour contracts are contracts which require employees to be available for work but do not specify the specific hours of work in the contract. Zero-hour contracts are common in seasonal industries where flexibility is required such as hospitality and tourism.

The Act prohibits zero-hour contracts except in very limited circumstances such as where there is a genuine casual employment requirement or the need to provide cover in emergency situations. The Act also provides for minimum payments to employees who are required to work less than 25% of their contracted hours in a week or are not required to work at all. This minimum payment is calculated at three times the national minimum wage. These provisions do not apply to employees who are required to make themselves available on an ‘on call basis’ such as genuine emergency workers.

Banded hours

The Act provides employees with a statutory entitlement to a banded hours contract where their contract of employment does not reflect the hours they actually worked in the past 12 months. The Act includes eight different bands of hours ranging from 3-6 hours per week to 36 plus hours per week.

Once an employee requests a banded hours contract in writing the employee must be placed on the banded hours contract within one month. The employer is not required to put a banded hours contract in place if no evidence has been provided to support the claim in relation to the hours worked, there has been a significant adverse change to the business or where the hours worked by the employee in the past 12 month was as a result of a temporary situation which no longer exists.

Next steps for employers

As the Act is due to come into force in March 2019 employers should take this time to be prepared for the impending changes to the law by taking the following steps: -

- Ensure it is possible to provide all new employees with a contract of employment or a statement containing (at least) the five core terms within five days upon commencement of employment;
- If zero-hour contracts are in place (and the limited exceptions do not apply) ensure that these contracts are discontinued; and
- Review contracts of employment and ensure that any employees who regularly work in excess of their contracted hours are provided with a contract that accurately reflects their working arrangement.

For further information please contact Kate Field or another member of the Employment & Employee Benefits Group



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