



The Employment Contract

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‘FLOOR’ NOT ‘CEILING’

The law establishes a minimum legal entitlement (the “floor”) that can always be improved upon by collective bargaining at local level.

Union Organising, Collective Bargaining and improving workers’ basic legal entitlements go hand in hand



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FORMATION OF A CONTRACT

The principles of Contract Law apply directly to Contracts of Employment

1. An Offer from the Employer – verbal or written

2. Acceptance by the Employee – usually a written contract offered

3. The intention to create legal relations – formal relationship

4. Consideration – work in exchange for pay



TERMS OF A CONTRACT

Written Terms – considered express terms as they are explicitly stated

Incorporated Terms - considered express terms as they are explicitly stated i.e. policies, handbooks, collective agreements

Oral Terms – can be considered express terms or implied terms depending on the circumstances surrounding them

Fundamental Terms – can be express terms or implied terms depending on the construction of the contract i.e. offer, acceptance, pay, capacity, conduct



IMPLIED TERMS

Not expressly written but still legally binding

Derive from sources of law such as legislation, case law and custom and practice

Legislation – duty to provide a safe workplace, obligation to provide a fair procedure

Case Law – duty to provide work (mutuality of obligation), mutual trust and confidence

Custom and Practice – can relate to any issue in the workplace but must be proven to be reasonable, certain and notorious



EXPRESS TERMS

The terms explicitly agreed and written down in the contract: i.e. position, salary, hours of work, sick pay, pension etc.



Under the Terms of Employment Act 1994, certain express information must be provided in the Employment Contract:

1. A statement must be given within 5 days of commencement of employment containing certain information – S.3(1A)

2. The remaining information be issued within 1 month of the commencement of employment – S. 3(1)



5 DAY STATEMENT

Full names of the employer and employee.

Address of the employer.

The expected duration of the contract

Rate or method of calculating pay.

The 'pay reference period' (be it weekly, fortnightly or monthly).

The number of hours that the employer reasonably expects the employee to work – per day /week



5 DAY STATEMENT

Confirmation of
place of work

The title, grade,
nature or category of
work

Date of
commencement of
employment
contract

Any terms and
conditions relating to
hours of work
(including overtime).

Duration and
conditions of a
probationary period



ONE MONTH STATEMENT

Applicable pay
intervals (weekly /
monthly)

Terms or conditions
relating to paid leave
(incl. PH's)

Terms or conditions
relating to sick pay

Terms or conditions
relating to pensions

The notice period
which the employee is
required to give and
entitled to receive

Details of any
applicable collective
agreements



ONE MONTH STATEMENT

The training entitlement

For temporary agency workers,
the identity of the end-user

Where the working pattern is
unpredictable:-

- The number of guaranteed hours
- The period within which they may be required to work
- The minimum notice period to which the employee is entitled before they start work.

Details of social insurance
contributions and any protection
relating to social security
provided by the employer



VARYING THE TERMS OF A CONTRACT

Section 5(1) of the Act states that any change to these terms shall be notified to the employee in writing no later than 1 month after the change takes effect.

This does not affect the legal principle (established through case law) that both you and your employer must consent to any changes in your terms and conditions of employment.

Distinction must be made between a work practice and a term and condition of employment.

Work practices can include breaks, rostering, uniforms, clock ins etc. Your employer may change these work practices without your consent.



REDRESS

Claim to the Workplace Relations Commission / Labour Court for breaches of the Terms of Employment Act 1994. Must be lodged within 6 months of the breach, 4 weeks pay is maximum compensation



Either collective conciliation claim or individual industrial relations claim can be taken to the Workplace Relations Commission. No deadline to submit and no set compensation



EMPLOYEE v SELF EMPLOYED

The relationship of an employer and an employee exists under a contract of employment (Contract of Service)

Employment Legislation is only concerned with this relationship

If you are self employed, you fall outside this legislation completely as you are considered your own employer (Contract for Service)

You therefore have all of the rights and obligations that an employer has – to yourself – and non of the protections or benefits of an employee



Contract for Service (Self-Employed)

Independent Contractor

A relationship organised around the completion of a once-off piece of work (gig)

A duty of care arising from occupier's liability.

The employer is generally not liable for the vicarious acts of independent contractors.

No Employment Legislation applies to independent contractors

Various methods of payment, including lump sum per job. Submits an invoice

Controls own hours of work to complete piece of work

Responsible for filing own income tax returns.



Contract of Service (Employed)

Employer – Employee Relationship

Usually a continuous relationship

A common law duty of care owed to employees as the employer

The employer is generally liable for the vicarious acts of employees

Employment Legislation applies to this contract

Receives a fixed hourly/weekly/monthly wage. Receives a payslip

Works set hours or a given number of hours per week/month

Tax and PRSI deducted from his/her income



Henry Denny & Sons (Ireland) LTD, trading as Kerry Foods v. The Minister for Social Welfare [1998] 1 IR 34

Ms. Sandra Mahon was hired by Henry Denny in 1988 as shop demonstrator, offering shoppers free samples of products.

Ms. Mahon's contract referred to her as an independent contractor and stated expressly that she was not an employee.

She was not eligible under her contract to become a member of the company pension scheme or a trade union.



Henry Denny & Sons (Ireland) LTD, trading as Kerry Foods v. The Minister for Social Welfare [1998] 1 IR 34

Ms. Mahon was not supervised carrying out her work, but she was provided by the company with necessary clothing and equipment to carry out her function.

She invoiced the company after carrying out the demonstration and this had to be signed off by the supermarket store manager, with whom Ms. Mahon was required to comply with any reasonable direction given.

Ms. Mahon was not allowed to work for any competitors and could not routinely hire other people to carry out her work if she was unavailable.



SUPREME COURT RULING

The Irish Supreme Court ruled that the supermarket demonstrator was an employee under a contract of service, not an independent contractor. The key aspect of the case's outcome was the court's focus on the reality and substance of the working relationship over the formal wording of the contract, establishing a crucial precedent for determining employment status in Ireland. This means the courts look at the actual facts of the arrangement to decide if someone is an employee or an independent contractor.



THE 5 STEP TEST

Revenue Commissioners v Karshan (Midlands) Ltd t/a Domino's Pizza [2023] IESC 24 :

- ✓ The first three questions act as a filter –
 1. **Pay:** Does the contract involve the exchange of wage or other remuneration for work?
 2. **Personal Service:** Is the agreement one where the worker is agreeing to provide their own services, and not those of a third party, to the business?
 3. **Control:** Does the business exercise sufficient control over the worker to render the agreement one that is capable of being an employment agreement?



THE 5 STEP TEST

✓ If the above questions are answered positively, the business must consider two further questions:

4. Circumstances of the arrangement: The business must consider whether the terms of the arrangement, in light of the practical/real conditions of engagement (the “factual matrix”), are consistent with a contract of employment or some other form of contract.

5. Legislative regime: Is there anything in the particular legislative regime under consideration that requires a particular approach to be taken.



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