



Organisation of Working Time Act 1997

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TO MAKE PROVISION
OTHERWISE IN RELATION TO THE
CONDITIONS OF EMPLOYMENT
OF EMPLOYEES AND THE
PROTECTION OF THE HEALTH
AND SAFETY OF EMPLOYEES

EXEMPTIONS AND EXCLUSIONS

All workers are covered by the Act unless they
are –

- members of the Defence Forces
- members of the Garda Síochána

EXEMPTIONS AND EXCLUSIONS

There are a small group of workers to whom S. 11 – 18 of the Act does not apply:

- persons engaged in sea fishing, work at sea or doctors in training
- persons who determine the duration of their own working hours
- persons employed by a relative in a dwelling in which they reside

EXEMPTIONS AND EXCLUSIONS

- Exemption for duration of a Collective Agreement if agreement addresses these provisions.
- Exemption from the rest provisions if there are exceptional, unusual and unforeseeable circumstances beyond the employer's control where it would not practical for them to comply with the Act.

EXEMPTIONS AND EXCLUSIONS

There are a larger group of workers to whom s.11,12,13,16 and 17 of the Act does not apply and they are set out in Regulation SI 21/1998:

For Example:

- The transmission of gas, water or electricity;
- Ambulance, fire and civil protection services;
 - Services at a harbour or airport;
 - Security or surveillance
 - Mobile Transport workers

COMPENSATORY REST

- Must make such arrangements that will compensate the employee
- Monetary compensation will not suffice
- The provision of physical conditions under which the employee works or the amenities or services available to the employee while he or she is at work will suffice
- What are compensatory provisions - Code of Practice on Compensatory Rest



WORKING TIME V REST PERIODS

- The Act only provides for working time or rest time – there is no in between.
- The Act defines working time as; *“any time that the employee is at his or her place of work or at his or her employer’s disposal, and carrying on or performing the activities or duties of his or her work...”*
- Therefore, working time excludes breaks, meals, travel time to and from work - whether paid or not.
- Issue has arisen in relation to workers who are on stand by and there is a large body of European case law in relation to what factors and criteria must be present in order to be considered engaged in working time while on stand by.

DAILY AND WEEKLY REST PERIODS – s.11,12 and 13

Rest Type	Entitlement
Daily (Section 11)	11 consecutive hours daily rest per 24 hour period, i.e. the interval between daily finishing and starting times must be normally at least 11 hours
Weekly (Section 13)	One period of at least 24 hours rest per week preceded by a daily rest period (i.e. 11 consecutive hours) which is a total of 35 hours; <u>OR</u> 14 days work =2 x 24 hour weekly rest periods. If consecutive, preceded by one daily rest period, if not each to be preceded by a daily rest period
Rest Breaks (Section 12)	15 minutes where more than 4 and a half hours have been worked; 30 minutes where more than 6 hours have been worked which may include the first break.

SUNDAY PREMIUMS – s.14

An employee who is required to work on a Sunday shall be compensated by his or her employer for being required to work by the following means:

- by the payment to the employee of an allowance of such an amount as is reasonable having regard to all the circumstances, or;
- by otherwise increasing the employee's rate of pay by such an amount as is reasonable having regard to all the circumstances, or;
- by granting the employee such paid time off from work as is reasonable having regard to all the circumstances, or;
- by a combination of two or more of the means referred to in the preceding paragraphs.

CASE LAW

Chicken & Chips LTD T/A Chicken Hut v Dawid Mainowski [DDWT159]

“The Court considers a premium of 33% of the hourly rate is reasonable.”

Viking Security LTD v Valent [DWT1489]

“The Court measures the level of compensation for working on Sundays that is reasonable in all the circumstances at time-plus-one-third for each hour worked on a Sunday.”

Trinity Leisure Holdings Limited trading as Trinity City Hotel and Sofia Kolesnik and Natalia Alfimova

“Moreover, it also fell into error in deciding that the Organisation of Working Time act 1997 imposed an obligation on an employer to draw up a contract in a particular way-that is, explain the breakdown of wages referable to working on Sunday”

MAXIMUM WEEKLY HOURS – s.15

- The maximum average working week is 48 hours per week.
- Averaging may be balanced out over a 4, 6 or 12 month period depending on the circumstances, i.e. 'The Reference Period'.
- The calculation during a reference period does not include rest breaks, annual leave, protective leave or sick leave.

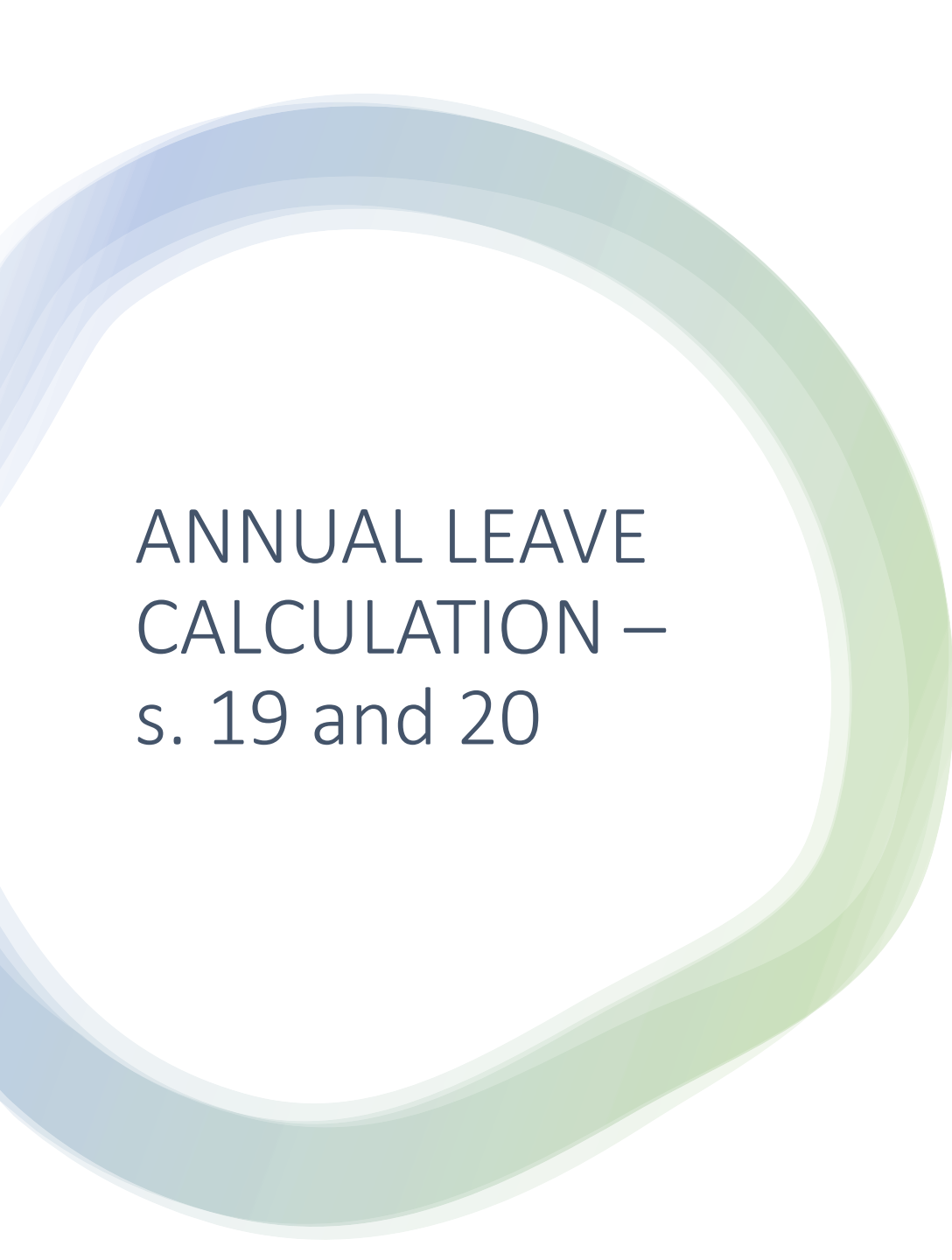
Night Workers	2 months
Employees generally	4 months
Employees whose work is subject to seasonality, a foreseeable surge in activity or where directly involved in ensuring continuity of service or production	6 months
Employees who enter into a collective agreement with their employers which is approved by the Labour Court	Up to 12 months
Young people under 18	Hours fixed by the Protection of Young Persons (Employment) Act, 1996

NIGHT WORKERS - s.16

- Night-time is defined as the period between midnight and 7am the following day.
- A Night Worker is defined as an employee who normally works at least 3 hours of their daily working time during night-time and the annual number of hours worked at night equals or exceeds 50% of annual working time.
- Night workers cannot work more than an average of 8 hours in 24 hours when averaged over 2 months (this can be extended by Collective Agreement approved by the Labour Court).
- The calculation during a reference period does not include rest breaks, annual leave, protective leave or sick leave.
- Night-workers whose work involves special hazards or heavy physical or mental strain are known as 'Special Category Night Workers' and cannot work more than 8 hours in a 24-hour period – no average over a reference period is permitted.

ANNUAL LEAVE – s. 19 and 20

- There is no service qualification for annual leave, an employee starts to accumulate an entitlement to holidays from the moment their employment commences on a pro rata basis.
- For employees who work more than 8 months in a year - 2 weeks unbroken leave must be provided unless a Collective agreement says otherwise.



ANNUAL LEAVE CALCULATION – s. 19 and 20

- Depending on time worked, employees' annual leave entitlements should be calculated by one of the following methods (whichever is the most favourable up to a maximum of 4 working weeks).
- 4 'working weeks' where 1,365 hours worked in a leave year
OR
- 1/3 of a 'working week' for each month worked in the leave year
OR
- 8 % of the hours worked in a leave

ANNUAL LEAVE PROVISIONS – s.19 and 20

- Employer decides times at which annual leave is taken, subject to need for employee to reconcile work and family responsibilities and the opportunity for rest and recreation available to the employee
AND
- The Employer must consult employee or trade union one month before leave is to be taken.
- Leave to be taken in leave year, extendable by employer by 6 months with employee consent.
- If employee cannot take leave in leave year due to certified illness can carry it over for 15 months past the end of that leave year. If Employee remains on sick leave past this time frame, the leave is lost.

ANNUAL LEAVE PAY

- The pay for annual leave must be given in advance of the commencement of the employee's annual leave and is calculated in accordance with *S.I. No. 475/1997 - Organisation of Working Time (Determination of Pay For Holidays) Regulations, 1997*.
- Pay should reflect the pay that would have been received if the employee had worked that period – for example consistent and regular overtime, shift premiums etc.
- It is illegal to pay in lieu of the minimum statutory holiday entitlement under the Act, unless the employment relationship is terminated.

PUBLIC HOLIDAYS – s. 21

- There are now 10 public holidays
- The Act does not refer to 'Bank Holidays'. Not every bank holiday is a public holiday, e.g. Good Friday
- Full time employees have an automatic entitlement to Public Holiday entitlements
- Part-time employees must have worked at least 40 hours during the 5 weeks ending on the day before the Public Holiday to be entitled to the entitlement

PUBLIC HOLIDAY ENTITLEMENTS – s. 21

In respect of each public holiday, an employee is entitled to:

- 1) a paid day off on that day
- 2) a paid day off within a month of that day
- 3) an additional day's annual leave
- 4) an additional days pay

As the employer may decide, it should be set out in the contract of employment and notified at least 14 days prior to the Public Holiday taking place.

PUBLIC HOLIDAY PAY – s. 21

- ✓ If the public holiday falls on a day on which the employee does not normally work, then the employee is entitled to 1/5th of his/her 'normal weekly wage' for the day.
- ✓ If the public holiday falls on a day on which the employee does normally work, then the employee is entitled to a days pay which is equivalent to the days pay they received for the day they last worked before the public holiday.

PUBLIC HOLIDAY ABSENCES – s. 21

- If you are a full-time worker on sick leave during a public holiday, you are entitled to benefit for the public holidays you missed for the first 26 consecutive weeks absence due to illness or accident, or for the 52 weeks absence due to an occupational accident
- If you are a part-time worker on sick leave during a public holiday, you are entitled to benefit for the public holiday, provided you worked for your employer for at least 40 hours in the previous five-week period.
- You are entitled to leave for any public holidays that occur while you are on maternity leave, parental leave, paternity leave or adoptive leave, i.e. 'Protective Leave'.
- You are entitled to benefit for the public holidays you missed for the first 13 weeks of a lay – off / short – time period or any period where the absence have been authorised by the employer.

ZERO HOUR CONTRACTS - S.18

Zero Hour contracts are prohibited in the Act

Certain exemptions still apply:

- a) Where the work is of a casual nature
- b) Where the work is done in emergency circumstances
- c) Short-term relief work to cover routine absences for the employer.

Generally therefore a contract must be for:

- a) A certain number of hours;
- b) As and when the employer requires; or**
- c) A combination of the above

MINIMUM PAYMENTS

- Where an employee works under one of those contracts and he / she has not been required to work for at least 25% of those hours, he / she will be entitled to be paid that 25% of hours or a total of 15 hours – whichever is less.
- If the employee has worked some of the required hours but not a total of 25%, he / she will be entitled to be paid the difference up to a maximum of 25% or 15 hours – whichever is less.

MINIMUM PAYMENTS

- If the employee works as and when the employer requires, the calculation of hours will be 25% of the number of hours another employee of the same employer has worked that week.
- If there are two employees and one worked more hours, it will be the greater number of hours worked
- The minimum payment for these hours is 3 x the national minimum hourly wage (or 3 x the ERO rate where applicable).

BANDED HOURS – S.18A

- When the employees contract or statement of terms does not reflect the reality of hours worked over reference period
- Reference period = 12 months (average pw)
- Employee makes request to employer in writing
- Employer has 4 weeks to consider
- Section does not apply if banded hours provided through collective agreement
- If granted - entitled for at least 12 months

BANDED HOURS

Employer must agree unless:

- ✓ Facts don't support claim
- ✓ Significant adverse changes have impacted on business
- ✓ Emergency circumstances
- ✓ Hours worked were genuinely temporary (Example: Maternity leave)

Bands:

A: 3 to 6

B: 6 to 11

C: 11 to 16

D: 16 to 21

E: 21 to 26

F: 26 to 31

G: 31 to 36

H: 36 or more

RECORDS – s.25

- Records required to be kept by the employer - *S.I. No. 473 of 2001 Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations, 2001.*
- These records must be maintained for 3 years and must be available for inspection by Inspectors of the Workplace Relations Commission.
- Employers are required to keep the following records:
 - ✓ number of daily and weekly working hours, excluding meals & rest breaks
 - ✓ leave granted in each week by way of annual leave, public holidays and payments made
 - ✓ weekly record of the notification of starting and finishing times of employees

WRC INSPECTIONS

- WRC Inspectors can be appointed to investigate the workplace.
- Inspectors have the power to enter premises and inspect records.
- Where Inspector is satisfied that certain contraventions have occurred they may issue a Compliance Notice on the employer setting out the actions to be taken by a specified date.
- Employer can appeal the notice to the Labour Court.
- Failure to comply with a notice is an offence.

COMPLAINTS

- To the Workplace Relations Commission
- Within 6 months of the breach
- Remedies, one or more of the following:
 - ✓ Declaration complaint was or was not well founded
 - ✓ Require employer to comply with relevant provision
 - ✓ Compensation, if any, up to 2 years
- Complaint for banded-hours: no compensation
- Appeal to Labour Court with 42 days of decision



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