Payment Of Wages Act, 1991

Origin And Purpose Of The Act

The Payment Of Wages Act, 1991 came into force on 1 January, 1992. It established for the first time the right to -

- a readily negotiable mode of wage payment;
- a right to a written statement of wages and deductions;
- and protection against unlawful deductions from wages.

The Act contains transitional arrangements for employees who, when the Act came into operation, were paid in cash or by a mode other than cash under the Payment Of Wages Act, 1979.

The Act repeals the Truck Acts, 1743 to 1896 and the Payment Of Wages Act, 1979. The Truck Acts had required that manual workers be paid in 'ready money' or in 'current coin of the realm' and limited the circumstances in which deductions could be made from wages. This was to outlaw the abuse of payment of wages in kind. The 1979 Act allowed payment to manual workers other than in cash as modern modes of wage payment developed and security issues around the movement of large amounts of cash arose.

Who Is Covered By The Act?

The Act applies to anyone –

- working under a contract of employment or apprenticeship;
- employed through an employment agency or sub-contractor;
- in the service of the State including Garda Siochána, Defence Forces, civil servants and employees of a local authority, the HSE, harbour authority or Vocational Education Committee.

Neither an employer or employee can 'contract out' of the provisions of this Act.

What Are Wages Within The Meaning Of The Act?

For the purpose of the Act, the following payments are regarded as wages –

- normal basic pay as well as any overtime;
- shift allowances or other similar payments;
- any fee, bonus or commission;
- any holiday, sick or maternity pay;
- any other return or payment for work whether made under the contract of employment or not – such as an additional allowance relating to acquiring higher qualifications;
- any sum payable to an employee in lieu of notice of termination of employment.

What Is Not Considered Wages?

The following payments are not considered wages –

- any payment of expenses incurred by the employee in carrying out their duties;
- any payment by way of a pension, allowance or gratuity in connection with the death, retirement or resignation of the employee or compensation for loss of office;
- any payment referable to the employee's redundancy;

- any payment to the employee other than in their capacity as an employee (for example a Suggestions Box reward);
- any payment in kind or benefit in kind;

What Are The Legally Acceptable Modes Of Wage Payment?

The Act specifies a range of legally acceptable modes of wage payment, including –

- cheque or bank draft drawn on any of the commercial banks;
- payable order warrant issued by the Minister of the Government, a public authority, etc;
- postal order, money order, paying order or warrant issued by or drawn on An Post;
- credit transfer to an account specified by the employee;
- cash.

The Act lists less common modes of payment that are acceptable and the Minister may, in the future, adapt this list as banking technology advances.

What Happens If The Financial Institutions Are On Strike?

Where a strike or industrial action affects a financial institution and, as a result, cash is not readily available to employees, an employer must make alternative arrangements to pay their employees. Wages could be paid, with the employee's consent, by another of the legally acceptable modes of payment. Otherwise, the employer must pay the wages in cash.

Do Employees Have A Right To Written Statement Of Wages?

Yes. Employers must provide a written statement of wages to be given to each employee with every payment of wages. If wages are paid by credit transfer, the statement of wages should be provided as soon as possible after the credit transfer has taken place. In every other case, the statement of wages must accompany the wages.

An employer not providing a written statement of wages, or not providing a written statement of wages within the specified time, periods is guilty of an offence and is liable on summary conviction to a fine of up to €2,500.

What Should The Statement Of Wages Show?

Each statement of wages must show –

- the gross amount payable;
- an itemised list of each deduction.

The Act obliges the employer to treat information contained in a statement of wages with confidentiality. A statement of wages including an error or omission is still valid providing the error or omission can be shown to have resulted from clerical or other mistake accidentally and in good faith.

Remember too that the Terms Of Employment (Information) Acts, 1994 (as emended) oblige the employer to provide employees with a written statement of the method of calculating wages and at what interval they will be paid – weekly, fortnightly, monthly, etc.

What Deductions Can An Employer Legally Take From An Employee's Wages?

The Act allows an employer to make the following deductions or receive the following payments from the wages of an employee –

- any deduction or payment authorised by law (such as PAYE or PRSI);
- any deduction or payment authorised by the term of an employee's contract (such as an occupational pension scheme contributions);
- any deduction agreed to in writing in advance by the employees (such as trade union subscriptions, VHI payments, savings schemes or sports and social funds).

What Restrictions Are Placed On Employers Making Other Deductions?

The Act places special restrictions on employers in relation to deductions from wages which –

- arise from any act or omission of the employee (such as till shortages, breakages or spillages, poor quality, etc);
- are in respect of the supply of goods or services supplied to or provided for the employee by the employer which are considered necessary to the employment (such as the provision or cleaning of uniforms).

Any deduction from wages for the reasons above must satisfy the following conditions –

- the deduction must be provided for in the contract of employment whether express or implied and, if express, whether oral or in writing;
  AND
- the amount of the deduction or payment from wages must be fair and reasonable having regard to the circumstances, including the wages of the employee;
  AND
- the employee must be given at some time prior to the act or omission or provision of goods or services, written details of the terms in the contract of employment governing such deductions. If this exists in a written contract of employment, this must be provided. In any other case, the employee must be given written notice of the existence and effect of the term.

Additional Restrictions On Deductions For Acts Or Omissions Of Employees

Any deduction arising from the act or omission of any employee, must also satisfy the following conditions –

- the employee must be given particulars in writing of the act or omission and the amount of the deduction or payment at least one week before the deduction or payment is made;
  AND
- any deduction to compensate for loss or damage must be an amount not exceeding the loss or damage to the employer;
  AND
- the deduction must be made not later than six months after the act or omission became known to the employer. If a series of deductions is to be made, the first deduction must be made within six months of the act or ommission becoming known to the employer.

Additional Restrictions On Deductions For Goods Or Services

Any deduction for goods and services must also satisfy the following conditions –

- the deduction must not exceed the cost to the employer of providing goods or services. The employer should not stand to profit by the sale of goods or services to employees;

- the deduction must be made no later than six months after the supply of goods or services to the employee. If the deduction is to be made in a series, the first deduction must be within six months of the provision of goods or services to the employee.

An employer may not receive any payment from an employee in respect of a deduction unless the above is complied with and must immediately issue a receipt.

A term in a contract of employment which provides that an employer will supply or provide goods or services and will deduct an amount in respect of the goods or services from the employees wages will not be enforceable by the employer unless the provision of goods or services and the deduction or payment to the employer comply with the Act.

What About The Provision Of Personal Protective Equipment (PPE)?

It should be noted that employers cannot deduct monies for personal protective equipment (PPE) necessitated by the existence of workplace hazards. The Safety, Health & Welfare At Work (General Application) Regulations, 1993, SI 44, establish this principle that employees should not have to pay to protect themselves against hazards in the workplace. Employers may, however, seek a contribution toward the cost of PPE if it is either lost or misused by the employee or if the equipment is worn or used by the employee outside working hours – for example steel toe capped boots that the employee may wear outside work as well as in work – and, as a consequence suffers damage or deterioration quicker than would be the case if it were worn or used exclusively in the workplace.

Can The Employer Deduct Wages For Disciplinary Reasons?

The Act only allows for a disciplinary fine where the disciplinary proceedings were held by virtue of a statutory provision.

This, of course, assumes that any such penalty is in line with any collective disciplinary and grievance procedure and that the employee concerned has had full access to representation, opportunity to defend themselves and that all stages of the procedure have been utilised.

What About Overpayments Of Wages Or Expenses?

The Act will not apply to deductions where –

- the purpose of the deduction is to recover any overpayment of wages or any overpayment of expenses incurred by the employee in carrying out their employment which has been made (for any reason) by the employer to the employee
  AND
- the amount of the deduction does not exceed the amount of overpayment

Is Deficiency In Payment Or Non-Payment Of Wages Lawful?

No. Any non-payment of wages or any deficiency in the amount of wages owed is regarded as an unlawful deduction unless the deficiency or non-payment is attributable to an error of computation.

Transitional Arrangements

The Act provides transitional arrangements for employees who were paid in cash immediately before the coming into operation of the Act. Such employees are entitled to continue to be paid in cash until such time as they come to an agreement with the employer for wages to be paid by one of the legally acceptable modes of payment.

Manual workers who entered into agreements under Section 3, Payment Of wages Act, 1979, for payment of wages otherwise than in cash remain entitled to revert to cash wages under such agreements. The 1979 Act allowed for reversion to cash wages either at the end of the agreement or, where no end date is provided for in the agreement, by four weeks notice on either party.

An employer who contravenes the above is guilty of an offence and is liable on summary conviction to a fine of up to €2,500.

Can An Employer Force Compliance With An Agreement Not In Accord With The Act?

No. Any such agreement would be void.

Raising A Complaint Over Payment Of Wages?

A complaint about non-payment of wages or unlawful deduction may be made to the Workplace Relation Commission within six (6) months of the date of the deduction or non-payment that gave rise to the complaint. The case will be heard by an Adudication Officer in the first instance. The Adjudication Officer may extend the six (6) month time limit for making a complaint to twelve (12) months if there was reasonable cause for not submitting it within the six (6) months.

The Adjudication Officer will send a copy of the complaint to the employer and will arrange a hearing between the parties. Following a hearing the Adjudication Officer will issue a decision.

If the decision of the Adjudication Officer states that the complaint was in whole or in part well founded then the maximum compensation an Adjudication officer may award is –

- if the complaint related to a deduction: the net wage (after all lawful deductions) that would have been paid to the employee in respect of the week immediately preceding the unlawful deduction, or,
  if the complaint related to a payment received by an employer from the employee: the net wage (after all lawful deductions) paid to the employee in respect of the week immediately preceding the date of payment;
  OR
- if the amount of the deduction or payment is greater than the wage specified above, twice the amount of the deduction or payment.

Compensation In The Civil Courts

An Adjudication Officer cannot issue a decision in respect of any unlawful deduction or payment at any time after the commencement in a court of proceedings, brought by the employee in respect of that deduction or payment.

An employee cannot recover a deduction or payment from a court at any time after an Adjudication Officer issues a decision on that deduction or payment.

Essentially, an employee may obtain an award in respect of any unlawful deduction or payment in proceedings before either an Adjudicaation officer or before the courts but not before both.

What Happens If The Employer Fails To Implement An Adjudication Officers decision?

If an employer does not comply with an Adjudicators decision within fifty-six (56) days of receiving notice of the decision and the time for appealing the decision has passed, then the employee can seek to enforce the decision before the District Court.

If an employer appeals an Adjudicators decision but abandons the appeal, then the employee must wait fifty-six (56) days from the date of abandonment to apply to District Court for enforcement

The District Court may issue an Order, without hearing evidence, compelling the employer to comply with the terms of the decision.

Appeal To The Labour Court From A Decision Of An Adjudication Officer

An employer or employee may appeal an Ajudication Officer's decision in writing to the Labour Court within forty-two (42) days of the date the Adjudication Officer's decision. The Labour Court may extend the forty-two (42) day time limit for making an appeal if there were exceptional circumstances for not submitting it within the six (6) months

The Labour Court will notify the other party of the appeal and will arrange a hearing between the parties. A hearing before the Labour Court is in public unless an application is made for special circumstances and the labour Court so determine.

The Labour Court has the power to refer a point of law to the High Court for final determination.

Following the hearing the Labour Court will make a decision in writing affirming, varying or setting aside the decision of the Adjudication officer.

An employer or employee may appeal a Labour Court decision, within six (6) weeks of being served with the decision, to the High Court on a point of law only. A High Court decision arising out of such an appeal is final and conclusive.

What Happens If The Employer Fails To Implement A Labour Court Decision?

If an employer does not comply with a Labour Court decision within forty-two (42) days of receiving notice of the decision and the time for appealing the decision has passed, then the employee can seek to enforce the decision before the District Court.

If an employer appeals an Adjudicators decision but abandons the appeal, then the employee must wait forty-two (42) days from the date of abandonment to apply to District Court for enforcement

The District Court may issue an Order, without hearing evidence, compelling the employer to comply with the terms of the decision.

Othe Deductions And Payments

The following deductions and payments are not unlawful deductions and payments under the Act, however, a case may still be taken to establish, on the facts, whether an alleged deduction or payment properly falls within the Act or not even if they concern one of these areas:

- deductions imposed by statutory provision or court order such as PAYE, PRSI or Attachment of Earnings Order;

- a deduction which the employer pays over to a third party such as trade union subscriptions, VHI premia or payments to a savings scheme;
- deductions by the employer to reimburse the employer because of overpayment of wages or expenses. Such deductions can not exceed the amounts owed;
- deductions arising from a strike or industrial action by the employee concerned;
- deductions arising from statutory disciplinary proceedings such as the Garda Siochána (Discipline) Regulations, 1989;
- deductions arising from certain Court Orders where the employee gives written consent for by the employee to deduct monies from the employee. An exception would be where the Court has awarded damages to an employer against an employee in circumstances which may be incidental to the employment relationship – perhaps a car accident involving the parties.

Monitoring Compliance With The Act

The Workplace Relations Commission have in place Inspectors to monitor compliance with the Act. These Inspectors have power to enter premises, inspect documents and take copies of them. Where an Inspector finds that an employer has contravened ceetain section of the Act they may issue the employer with a Compliance notice requiring the employer to comply with the Act. The ability of the Inspector to issue a compliance notice does not restrict an employee in making a complaint for unlaful deductions or payments.