

Best practice tips for educational bodies

Guidance on the introduction of the Employment (Miscellaneous Provisions) Act 2018 in the Education Sector

The Employment (Miscellaneous Provisions) Act 2018 (the “**2018 Act**”) came into force on 4 March 2019. The predominant purpose of the 2018 Act is to improve the predictability of working hours for employees on insecure contracts of employment and those working variable hours.

Flexible working arrangements are particularly important for educational bodies in ensuring curriculum needs are met, for example, the use of “if and when” contracts are frequently used to cover an unexpected absence of a staff member and the notice of hours of work to a substitute/replacement, can often be very short.

The 2018 Act has introduced a number of key protections for employees as follows:

Restrictions on the use of zero-hours contracts

The term ‘zero-hours contracts’ refers to employees who are not guaranteed hours of work but who are contractually required to make themselves available for work with an employer. The 2018 Act expressly provides that zero-hours contracts are no longer permitted, save where the work involved: (i) is genuinely casual in nature; (ii) is done in an emergency situation; or (iii) is the cover of short-term routine absences.

A study by the University of Limerick¹ found that the use of zero-hours contracts is not prevalent in the education sector.

Minimum payment

The Act introduces a minimum payment, calculated by reference to three times the national minimum hourly rate or three times the minimum hourly rate of remuneration prescribed by an employment regulation order, where a contract of employment requires an employee to make themselves available to work in a week for a certain number of hours and/or on an “as and when required” basis and the employee is not given at least 25% of the contract hours or of the hours of relevant work done in that week.

Banded hours

The 2018 Act introduced banded hours for employees whose contract does not reflect the number of hours worked per week over a reference period. In such circumstances, the employee may request, in writing, to be placed in the appropriate band of hours.² The employee must be employed for a period of 12 months before making such a request.³

This section will not apply to banded hour arrangements which have been entered into by agreement following collective bargaining. For example, the Haddington Road Agreement (the Public Service Stability Agreement 2013-2016) sets out such arrangements for certain employees in the education sector. Accordingly, the new provisions will not interfere with these arrangements.

Core terms and conditions

Employers are required to provide employees with a statement of core terms and conditions of employment within five days of commencing employment (the “**Day 5 Statement**”). The core terms and conditions are listed as follows:

1. The full name of the employer and the employee;
2. The address of the employer;
3. The expected duration of the contract (where the contract is temporary or fixed-term);
4. The rate or method of calculating pay; and
5. The number of hours the employer reasonably expects the employee to work in a normal working day and week.

¹ University of Limerick, A study on the prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees (2015).

² The table for bands of weekly working hours can be accessed at section 16(14) of the 2018 Act.

³ The Workplace Relations Commission Notice has clarified that current employees will not have to wait 12 months after the commencement of this provision and as of 4 March 2019, may make such a request based on the previous 12 months.

⁴ Section 3 of the Terms of Employment (Information) Act 1994 as amended by Section 7 of the 2018 Act.

Additionally, existing employees may make a written request to an employer for the Day 5 Statement, which the employer must issue within 2 months of the date of the request.

It is of significant note that the 2018 Act makes the failure to provide the Day 5 Statement a criminal offence where the employer fails to provide the Day 5 Statement within 1 month of commencement of employment or where the employer deliberately or recklessly provides false or misleading information. In such circumstances, the employer could face a term of imprisonment not exceeding 12 months or a fine of up to €5,000.

Furthermore, employees who have at least one month's service are entitled to take a claim to the Workplace Relations Commission (the "WRC") where an employer fails to comply and/or penalisation. Additionally, the WRC inspector may issue a fixed payment notice as an alternative to initiating prosecution proceedings in circumstances where the inspector has reasonable grounds for believing the employer has committed an offence.

Conclusion

While it remains to be seen how Courts and Tribunals will interpret the 2018 Act, in order to address the risk of non-compliance, employers will need to review their current arrangements and work practices. This should include:

- Reviewing contracts of employment to ensure that they do not fall foul of the prohibition on zero-hours contracts. For example, bodies which are seeking to rely on any exception need to carefully review work practices to ensure that this exception actually applies.
- Implementing a system through which the relevant body can ensure new employees are provided with the Day 5 Statement as quickly as possible. For example, implementing a process, which facilitates the issuing of letters of appointment, which contain the Day 5 Statement to new hires. We advise that this is provided prior to the commencement of employment. However, as the 2018 Act does not replace the obligation on an employer to provide employees with a full suite of terms and conditions of employment within 2 months of commencement of employment, employers may also wish to consider putting in place a process whereby one document is issued to the new employee which sets out all 15 core terms of employment, preferably prior to the commencement of employment but in any case, no later than 5 days from the commencement of employment.
- Reviewing record keeping measures in order to ensure that a comprehensive record of hours worked by employees is maintained by the employer and can stand up to legislative scrutiny eg where an employee claims to have worked hours that are not consistent with those stipulated under his/her contract of employment.

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Our Education Law Department regularly advises educational bodies on employment matters, including statutory compliance, drafting contracts of employment, reviewing terms & conditions of employment for teaching and non-teaching staff, advising on contracts of indefinite duration and defending claims before the relevant statutory bodies and the Courts. Please feel free to contact any of our team members for advice.

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⁵ Section 6B of the Terms of Employment (Information) Act 1994 as amended by Section 10 of the 2018 Act.