

PAYMENT OF WAGES

The Payment of Wages Act 1991 establishes a range of legally acceptable modes of wage payment. The Act also defines the circumstances in which deductions may be made and the nature of deductions permitted. The main provisions of the Act are outlined in this section.

The Employment Equality Act 1998, which basically gives an entitlement to equal pay for “like work” not only between males and females but between persons of different marital and family status, sexual orientation, religious belief/backgrounds, age, disability, race, or members of the travelling community who carry out the same work

Summary Points

- The Act applies to all employees including apprentices.
- The lawful means by which an employer may pay wages include:
 - Cheque
 - Bank draft
 - Postal order
 - Money Order
 - Credit transfer (to an account specified by the employee)
 - Cash
- A written statement specifying the gross amount and the nature and amount of any deductions must accompany payment, in an itemised format.
- Deductions from wages other than statutory deductions must not be made without the prior written consent of the employee.
- Employees who, prior to the coming into force of the Act, were being paid in cash, or by any other lawful method, are entitled to continue to be paid by this method unless another legal mode is agreed between the employer and the employee.

Wages

- Wages mean any sum payable to the employee by the employer and include the following:
 - Normal basic pay including overtime
 - Shift allowances or similar payments
 - Any fee, Bonus payments, or Commission
 - Holiday pay, Sick or Maternity pay
 - Any other payment for work whether under a contract or not
 - Any pay due to an employee in lieu of termination notice.

The following payments are not included

- Expenses
- Pension
- Redundancy payments

- Any payment to the employee other than in his/her capacity as an employee
- Benefit in kind

Itemised Pay Statements

With each wage payment, the employer must provide a written statement specifying:

- The gross amount of the wage to the employee and
 - The nature and amount of any deduction.
- The employer must ensure that the information contained in the statement is treated as confidential.
 - If payment is by credit transfer, (which is specified by the employee) then the statement must be given as soon as possible thereafter.

Deductions

- An employer shall not make a deduction **unless**:
 - the deduction is statutory in nature, e.g., PRSI, PAYE **or**
 - the deduction is agreed by both employer and employee and is a term of the contract of employment e.g., VHI, pension contributions **or**
 - the deduction has been consented to in writing by the employee.
- A deduction may not be made in respect of:
 1. any act or omission of the employee **or**
 2. goods or services provided to the employee by the employer which are necessary to the employment **unless**:
 - agreed to in the contract of employment **or**
 - the employee is notified in writing of the likelihood of such deductions prior to the act or omission (at least one week). Where a written contract exists, a copy of the term of the contract, which provides for the deduction of payment must be given to the employee. In any other case, the employee must be given written notice of the existence and effect of the term.

In addition

- the amount of the deduction must be fair and reasonable and have regard to the amount of the wages of the employee concerned.
- prior to a deduction in respect of an act or omission, the employee must receive written notice of the amount of the deduction to be made and particulars of the act or omission at least one week in advance of the deduction being made.
- the deduction must not exceed the amount or the cost of the damage sustained by the employer. If in respect of goods or services provided, the deduction must not exceed the cost of those goods or services.
- a deduction must take place within six months of the act or omission of the provision of the goods or services. Where there are likely to be a series of deductions arising but of the same incident, the first deduction must be made not later than 6 months after the provision of the goods or services, or the act or omission becomes known to the employer.
- a deduction by virtue of a period of suspension without pay shall not be valid unless a term of the employee's contract allows for same **or**

- unless the employee is furnished with particulars of the deduction at least one week in advance of its occurrence.

NOTE: Where the employer accepts a payment in place of a deduction and this satisfies the above conditions the employer must issue a receipt to the employee.

- The restrictions outlined above do not apply to deductions made in respect of an overpayment of wages; where there is a legal requirement to make the deduction; deductions arising from the employee's participation in industrial disputes or strikes; deductions arising from Court orders or statutory disciplinary proceedings governed by legislation.

Non Payment of Wages or Deficiency in Wages

Non payment of wages or a deficiency in the amount of any wages payable by an employer to an employee will be regarded as an unlawful deduction unless the reason for the inaccuracy was a computable error.

Frequency of Payment

- Aside from the provisions of the Act outlined above, employers should note that they are obliged to pay wages at the frequency agreed in the contract of employment, whether this is expressed orally or in writing.

Disputes

Employees have the right under the Act to complain to a Rights Commissioner against an unlawful deduction (or payment) from wages or in the event of non-payment of wages.

NATIONAL MINIMUM WAGE

The National Minimum Wage Act 2000 became law on 1st April 2000. The Act applies to all employees, including full-time, part-time, temporary and casual employees except the following categories of employees who are excluded from its provisions:

(i) close relatives of the employer such as a spouse, father, mother, son, daughter, brother and sister;

(ii) apprentices within the meaning of the Industrial Training Act 1967 and Labour Services Act 1987 including an apprentice printer, bricklayer, mechanic, plumber, carpenter/joiner and electrician.

National Minimum Wage Rate

The national minimum wage rate at present is €8.65 (July 2011) for an experienced adult worker. The rate is reviewed either on the recommendation by the Social Partners or by a request to the Labour Court by an organisation that substantially represents employees or employers in the State.

Minimum Hourly Rates of Pay

The Act provides that an experienced adult worker must be paid an average hourly rate of pay that is not less than the national minimum wage shown above in a pay reference period. A pay reference period may be a week, a fortnight or no longer than a month. For the purposes of the Act, an experienced adult worker is an employee who is not:

- under age 18 or
- in the first two years after the date of first employment over age 18, or
- a trainee undergoing a course that satisfies certain conditions which are set out below.

Determining average hourly rate of pay

The gross reckonable pay earned by an employee in a pay reference period is divided by the employee's working hours in that pay reference period. The average hourly rate of pay obtained must be not less than the minimum hourly rate of pay entitlement of the employee, as detailed in the Table below.

Employee	Minimum Hourly Rate of Pay
	From 1 July 2011
Experienced adult worker	€8.65
Under age 18	€6.06
*In the first year after the date of first employment over age 18, whether or not the employee changes employer during the year	€6.92

*In the second year after the date of first employment over age 18, whether or not the employee changes employer during the year	€7.79
In a course of training or study over age 18, undertaken in normal working hours 1st 1/3 period 2nd 1/3 period 3rd 1/3 period NB Each 1/3 period must be at least 1 month and no longer than 12 months.	€6.49 €6.92 €7.79
Experienced adult worker named by the Labour Court in granting a temporary exemption to an employer from paying the national minimum hourly rate of pay. NB. Minimum period of temporary exemption is 3 months and maximum period is 12 months.	Labour Court will decide the lower hourly rate of pay that the employee must be paid for the period of the temporary exemption.

*Employment experience prior to age 18 is not taken into account for these rates.

The above statutory minimum hourly rates of pay are gross amounts i.e. before tax/PRSI is deducted.

Working Hours

The working hours of an employee for the purposes of the Act include,

- any overtime hours worked in the pay reference period,
- any time spent on standby in the workplace, and
- any training time during normal working hours.

Working hours for the purposes of the Act, do not include,

- the time that an employee is absent from work on annual leave, sick leave, protective leave, adoptive leave, parental leave, while laid-off, on strike or time for which an employee is paid in lieu of notice.

Reckonable and Non-Reckonable Pay

Reckonable pay means those payments or benefits in kind that are allowable in calculating the average hourly rate of pay of an employee, in order to determine if the employee has been paid his/her minimum hourly rate of pay entitlement under the Act. The following reckonable pay components may be taken into account to determine an employee's average hourly rate of pay in a specific pay reference period.

1. Basic Pay.
2. Shift premium.
3. Piece and incentive rates, commission and bonuses which are productivity related.

4. If an employee receives board and lodgings, board only or lodgings only from an employer, then the following amounts are reckonable:
 - €54.13 for full board and lodgings per week, or €7.73 per day;
 - €32.14 for full board only per week, or €4.60 per day;
 - €21.85 for lodgings only per week, or €3.14 per day.
5. The amount of any service charge distributed to the employee through the payroll.
6. Any payments under section 18 of the Organisation of Working Time Act, 1997 (zero hour protection).
7. Any payment in respect of any of the above items advanced in a previous pay reference period that relates to the specific pay reference period.
8. Any amount in respect of any of the above items earned in the specific pay reference period and paid no later than the next following pay reference period.
9. In the case of an employee whose hours of work are not controlled by the employer, any amount in respect of any of the above items earned in the specific pay reference period and paid no later than the pay reference period in which the record of working hours is received or due to be received by the employer, or the pay reference period immediately after that.

The **non-reckonable** components of pay include,

1. Overtime premium.
2. Call-out premium.
3. Service pay.
4. Unsocial hours premium.
5. Any amount distributed to the employee of tips or gratuities paid into a central fund managed by the employer and paid through the payroll.
6. Public holiday premium, Saturday premium and Sunday premium, where any such holidays or days are worked.
7. Allowances for special or additional duties including those of a post of responsibility.
8. Any payment of expenses incurred by the employee in carrying out his or her employment, including travel allowance, subsistence allowance, tool allowance and clothing allowance.
9. On-call or standby allowance.
10. Any payments for or in relation to a period of absence of the employee from the workplace, such as sick pay, holiday pay, payment for health and safety leave under the Maternity Protection Act, 1994 & 2004 or pay in lieu of notice, but not including a payment made under section 18 of the Organisation of Working Time Act, 1997 (zero hour protection).
11. Any payment by way of an allowance or gratuity in connection with the retirement or resignation of the employee or as compensation for loss of office.
12. Pension contributions paid by the employer on behalf of the employee.
13. Any payment referable to the employee's redundancy.
14. Any advance of a payment in the specific pay reference period relating to a subsequent pay reference period.
15. Any payment-in-kind or benefit-in-kind, except board with lodgings, lodgings only or board only.
16. Any payment to the employee otherwise than in his or her capacity as an employee.

17. Any payment representing compensation for the employee, such as for injury or loss of tools and equipment.
18. An amount of any award under a staff suggestion scheme.
19. Any loan by the employer to the employee.

Training / Study Criteria

The criteria that a course of training or study must satisfy for the purposes of the Act, in order for an employer to pay an employee the trainee rates, are set out in appendix 1 on the next page. An employer, even if an employee changes his/her job, cannot pay an employee the trainee rates a second time unless the employee undergoes a course of training or study that is different in purpose or content from the previous training or study undertaken by the employee.

Records

An employer must keep all records that are necessary to show whether this Act is being complied with in relation to an employee, for at least 3 years from the date any record is made. The records must be kept by the employer at the premises or place where the employee works, or if the employee works at 2 or more premises or places, the premises or place from which the activities of the employee are principally directed or controlled.

Redress

An employee may refer a complaint in relation to entitlements under the National Minimum Wage Act 2000 to a Rights Commissioner of the Labour Relations Commission or may instead make a complaint to the Labour Inspectorate at the Department of Enterprise, Trade and Employment. It is open to the employee to choose whichever course of action he/she wishes to pursue but an employee may not refer a dispute to a Rights Commissioner and also make a complaint to the Labour Inspectorate in relation to the same alleged under-payment of the employee's statutory minimum hourly rate of pay entitlement

An employee cannot refer a dispute to a Rights Commissioner unless the employee has written to the employer requesting a written statement of his/her average hourly rate of pay from the employer, in relation to a specific pay reference period or periods that are the subject of the dispute, and has either obtained that statement, or waited for the 4 weeks to elapse during which the employer is permitted to respond to the employee's request.

An employee must refer the dispute to a Rights Commissioner within a period of 6 months from the date the employee obtained the written statement or, in the case where an employer fails to supply the written statement, within 6 months from the latest date the employer was obliged to supply the statement. This time limit may be extended to 12 months, at the discretion of the Rights Commissioner.

Appendix 1.

PRESCRIBED COURSES OF STUDY OR TRAINING

A course of study or training that satisfies the following criteria is a prescribed course of study or training for the purposes of the National Minimum Wage Act 2000.

1. The employee's participation in the course is directed or approved by the employer.
2. The duration of the course is for a minimum period of 3 calendar months.
3. Subject to number 4, the course takes place during the normal working hours of the employee.
4. The course includes workplace training and also must involve at least 10% of directed training or study i.e. away from ordinary operational work, which may be within or outside of normal working hours.
5. Any fees concerned with the employee's participation in the course which is directed by the employer, are paid by the employer.
6. The course enables the acquisition of skills and/or knowledge expected to enhance the work performance of the employee at the end of the course.
7. The course involves supervision of the employee during workplace training.
8. The course includes a system of recording the progress and results of the employee. Such records must be retained by the employer for 3 years after the end of the employee's participation in the course.
9. The course includes an assessment and certification procedure, or written confirmation of the employee's completion of the course identifying the level of employee attainment against the objectives, which must include the employee's signature.
10. The course is the subject of a pre-existing written document or documents detailing the following information:
 - a. its title and purpose;
 - b. its objectives;
 - c. an outline plan of duration and approach;
 - d. the record system to apply;
 - e. the assessment and certification procedure;
 - f. advice by the employer of any facilities, including any time-off, to be given to the employee during the period of the employee's participation in the course to enable the employee to successfully complete the course, and any changes to the employee's working arrangements during the period of the employee's participation in the course.

SICK LEAVE

There is no legal obligation on an employer to provide an *occupational sick pay scheme* for employees.

Unless

- a) - there is a clause in the contract of employment that incorporates a sick pay scheme. Employees then have a right to same; or
- b) - if there is no formal sick pay scheme in place, and it has become normal practice for the company to pay an employee when absent through illness, a right to such sick pay entitlements may be established through custom and practice; or
- c) - if the company is covered by a registered agreement which provides for sick pay benefits this would then be legally binding; or
- d) - if the industry was covered by a Joint Labour Committee, the company may be obliged to comply with this provision.

Points of Interest

Control Mechanisms should be put in place for sick leave schemes. These are quite simple and usually reflect the culture of the organisation. For instance some Organisations will have informal policies in place pertaining to sick leave and others will have formal. Regardless of the type of policies formal or informal these may include points such as:-

- The type of sick leave i.e. is it up to the discretion of the company? If it is up to the discretion of the company, this conveys a message that there is no absolute right to the employee for sick pay.
- Are only long service employees entitled to sick pay? If this is case, what is the length of time i.e. 6 months/1year, etc?
- When the employee is ill, whom should they notify in the company of their absence, and before what time?
- Are payments only made for certified illness? If so, when will the employee be required to submit medical certificates? The norm is usually that the certificate will be requested on the third day of the illness and then certificates should be furnished on a weekly basis thereafter. Additionally the company may request certificates for absences from work on Friday and the following Monday. Payments would not normally be paid for the first three days of any illness.
- What will be required on the certificates? Certificates should include the date of commencement of sick leave; nature of the illness (which is at the discretion of the doctor), the probable date of resumption of duty, the name, address and stamp of the doctor;
- Casual sick leave (which is uncertified sick leave) - will payments be made for this leave? If so will employees need to state an explanation, verbal or written, stating the nature of the illness and to whom? Some Organisations curb the amount of casual

sick days by stating the amount allowed in a year. A year can be based on a calendar year or on a 12 month rolling basis within a 3-year period. This practice would not be recommended.

- What is the length of time that sick payments will be made? Some companies will only pay sick leave for a short number of weeks. An example would be that employees may receive full or basic pay for 4 weeks (less Social Welfare), then half pay for an additional 4 weeks pay from the Company and then sick pay will cease. (time-frames are only an example). From this point on employees will only receive payments from the Department of Social and Family Affairs. This can be based on a yearly period or on any rolling year in a three-year period, etc. This fixes the number of days that payment will be made to employees.
- What happens with the event of an accident at work? Conditions for payment should be established in the event of this occurring. i.e. (a) the accident should be reported immediately, (b) medical treatment should be sought straight away, (c) sick leave policies should state that payments by the employer are not obligatory and without prejudice, (d) payments made are not an admission of liability or negligence on the part of the company/employer.
- The company may request an employee to be referred to a company doctor. If the company wishes to avail of this they should state this in the sick leave policy. *E.g. In all cases of sick absences the company reserves the right to refer the case to a Doctor nominated by the Company. This may involve a medical examination of the employee.*

Or

In the case of employees returning to work after a long period of absences the company may wish the employee to attend for examination by the company doctor. *E.g. Before returning to work after serious or prolonged sickness, the company may refer the employee for examination to a company doctor.*

- **When will payments not be made?**
 - Failure to furnish certificates.
 - Illness caused by substance abuse.
 - Illness/injury caused by dangerous sports (i.e. martial arts, mountaineering, skiing, parachuting, flying as a hobby, hang gliding, etc)
 - Illness/Injury arising from failure to abide by company health and safety rules.
 - Failures to comply with regulations of sick leave policy i.e. reporting absence, attending company doctor etc.
 - Illness/Injury caused whilst working for another employer.
 - Illness during strike period in which the employee is participating in.
- **What is the measures put in place for employees abusing the sick pay scheme?**

Normally this will result in the cessation of sick leave payments, followed with a disciplinary hearing. In severe cases this may also result in the employee being suspended from the sick pay scheme for a period of time, and or certificates being requested on each absence. This should be built into the company policy for sick leave.

- **Can annual leave be used in place of sick leave?**

This normally occurs when there is no payment for sick leave or where the employee has used up all their entitlements. However, this is not allowed under Organisation of Working Time Act, 1997. If employees are ill on holidays and have supplied a medical certificate stating that the employee will then retain their annual leave entitlements to be taken at a later stage. When they have already received holiday pay they will not be entitled to holiday pay again. Also, if the company allow an employee to take a day's leave when they do not want to come to work because they are feeling unwell this will undermine the requirement for the employee to have to give advance notice for holidays.

- **Is it important to monitor and record absenteeism?**

Without a doubt, yes. Ensuring the absenteeism is recorded and monitored will show patterns, trends and levels of employee(s) absenteeism which, will need to be addressed. Absenteeism may also show up areas of difficulties within your work force. For instance if individuals are out sick on a constant basis this may well be valid, however it may show that individuals are preferring not to come into work during a specific period each time. This can either be abuse of the sick leave or a cause such as the employee avoiding work due to harassment/bullying taking place. High levels of long-term or casual absenteeism will require an investigation to be put into place.

- **Return to work interviews**

This is a good practice as it allows the company to talk to someone each time they are absent to ascertain why they are out from work. It also means the employee cannot simply stroll back into work after being sick and no comment being passed.

Sample Sick Leave Record Form

Employee Name: _____ Employee Number: _____

Job Title: _____ Department: _____

Dates To	Dates From	Amount of Days Taken	Nature of Illness	Certified	Uncertified	Cert. Received