

A Quick Guide to the Employment Rights Act

DOCUMENTATION

- Section 3** 1. Contract of employment means a contract of service or apprenticeship, whether express or implied and if it is expressed, whether oral or in writing. Factors in determining the existence of a Contract of Service are found in the First Schedule.
- Section 4** 2. Period of continuous employment commences on the first day of work and includes probation. Continuity of employment is broken only where employment ceases in excess of 42 days.
- Section 13** 3. Written contracts of employment are required at the start of employment and any changes to terms and conditions must be given in writing.
- Section 17** 4. Itemised pay slips must be given to employees and should state: gross wages, variable and fixed deductions, net wages, date of payment and pay period.
- Section 19** 5. Where the employer fails to issue employment particulars and/or itemized pay slips, employees may make a complaint to the tribunal, through the Chief Labour Officer (CLO).
- Section 52(2)** 6. Employers have until **October 14, 2013** to issue all documentation to employees (contracts, job descriptions etc.).

TERMINATION

- Section 22** 1. Both employee and employer are subject to provide a period of notice, where either party is seeking to end the employment relationship. The minimum period of notice is stated in Section 22.
- Section 23** 2. Where an employment relationship comes to an end, the employer has 14 days to provide the employee (s) with a certificate of employment record. Details to be included are noted in section 23 of the Act.

- Sections 27(1) & 30** 3. The right not to be unfairly dismissed is protected under this act and circumstances where unfair dismissal arises are listed.
- Section 27 (3)** 4. An employee employed for less than a year **CANNOT** claim unfair dismissal under the provisions of this Act.
- Section 29 (2)** 5. An employer can dismiss an employee for capability (skill, aptitude, health) to perform work, conduct of employee, redundancy or restriction imposed by law.
- Section 29 (4)** 6. The onus is on the employer to prove that the organization acted fairly in both the **reason and process** of dismissal.
- Section 33** 7. If the tribunal finds that a dismissal was unfair, they have the power to order reinstatement or reengagement. The tribunal however shall conduct a thorough investigation to determine if either option is plausible. Where neither can be used, an award of compensation for unfair dismissal can be granted.
- Section 31 (4)** 8. Where 10% or more of a workforce is being reduced, the employer must consult with the employees or recognized trade union and write to the CLO **not later than 6 weeks before** the affected employees are dismissed.

LAY-OFF & SHORT TIME

- Section 38 (2) (3)** 1. **Lay-off** is defined as a temporary stoppage of work where the employee is expected to be recalled. **Short Time** occurs when an employee is working for less than half of his/her normal earnings.
- Section 38 (4)** 2. Employees should only be placed on lay-off or short time where business has temporarily ceased or diminished.
- Section 38 (7)** 3. Prior to placing an employee on lay-off or short time the employer must write to the CLO and consult with the affected employees or their representative not less than 6 weeks prior.

TIME RESTRICTIONS

- Section 24 (3)** 1. Employees have 6 months after termination to make a complaint with reference to the notice received.
- Section 32** 2. Employees have 3 months after termination within which to file a complaint of unfair dismissal.
- Section 40** 3. If within 6 months of redundancy, there is an increase in demand for goods and services, all things being equal, the affected employees shall be given priority in recruitment.

CHIEF LABOUR OFFICER

- Section 5** 1. The CLO has the responsibility to provide advice on the Act, make periodic inspections of companies, require employers to provide relevant information
- Section 4** 2. The CLO has the right to investigate employers and shall notify the employer of his presence before conducting inspections.
- Section 5** 3. Delay, obstruct or failure to comply with the CLO could result in fine of \$20,000 or imprisonment of 6 months or both.

EMPLOYMENT RIGHTS TRIBUNAL

- Section 7** 1. The Employment Rights Tribunal is responsible for determining complaints under the Act.
- Section 8 (2)** 2. All complaints to the Tribunal are to be made through the CLO.
- Section 10** 3. At the tribunal, a person may be represented by an attorney, trade union, employer's association or any other person.
- Section 11** 4. Tribunal hearings shall be open to the public except for hearings regarding sexual harassment.
5. All tribunal decisions are final on matters other than law and are not subject to appeal.

